

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7089      PCB JDC 18-03      Public Safety  
**SPONSOR(S):** Judiciary Committee, Byrd  
**TIED BILLS:**                      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee	18 Y, 1 N	Jones	Poche
1) Appropriations Committee	24 Y, 0 N	Welty	Leznoff

### SUMMARY ANALYSIS

HB 7089 makes several changes to current law to increase public safety and assist offenders as they reintegrate into the workforce and the community. The bill:

- Increases the penalty for a second or subsequent offense of unlawfully exposing one's sexual organs from a first degree misdemeanor to a third degree felony.
- Requires the Florida Department of Corrections (FDC) to input all of a probationer's conditions of probation into the Florida Crime Information Center (FCIC),
- Clarifies that mutual aid agreements between law enforcement agencies may be used to increase the presence of law enforcement during a state of emergency.
- Provides that each county sheriff is responsible for providing security for trial court facilities in the manner each sheriff chooses.
- Prohibits the court from awarding attorney fees in proceedings for protective injunctions for repeat, sexual, or dating violence or stalking.
- Creates a statewide alternative sanctioning program for probationers and offenders on community control who commit "technical" violations – violations of the terms of supervision that do not involve the alleged commission of a new felony, misdemeanor or criminal traffic offense.
- Requires FDC transition staff to provide comprehensive information to inmates to help them reenter the community and the workforce.
- Directs the FDC to establish a registration process for organizations that provide inmate reentry services.
- Creates a process and criteria for the FDC to award a "certificate of achievement and employability" to an inmate and provides that such certificate constitutes a rebuttable presumption that the certificate holder's conviction alone is insufficient evidence that he or she is unfit for the license or employment.
- Requires each judicial circuit to establish a Driver License Reinstatement Days program and provides eligibility criteria for participation.
- Authorizes each judicial circuit to create a voluntary "community court program" for defendants charged with certain misdemeanor offenses.

The bill has indeterminate fiscal impacts on state and local governments and the private sector. The Criminal Justice Impact Conference (CJIC) considered this bill on Monday, February 19, 2018, and determined:

- Increasing the penalty for a second or subsequent offense of unlawfully exposing one's sexual organs will insignificantly increase the need for prison beds, and
- Implementing a statewide alternative sanctioning program, and the bill as a whole, will significantly decrease the need for prison beds.

See the Fiscal Analysis & Economic Impact Statement for additional fiscal impacts.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Probation**

##### Background

At sentencing, a judge may place an offender on probation or community control in lieu of or in addition to incarceration.<sup>1</sup> Probation is a form of community supervision requiring specified contacts with probation officers and other terms and conditions,<sup>2</sup> while community control is a more intensive form of supervision involving an individualized program, which restricts the offender's movement within the community, home, or residential placement.<sup>3</sup> Several standard conditions of probation or community control attach automatically, including requirements to report to a probation officer as directed and to live without violating any law.<sup>4</sup> The court may also impose special conditions as it considers proper.<sup>5</sup> Examples of special conditions include community service hours, regular drug or alcohol testing, no contact orders, and treatment programs.<sup>6</sup> Failure to meet any standard or special conditions of supervision is a violation of probation or community control (VOP).

##### *Court Resolutions to VOPs*

A VOP may come before the court for resolution either by:

- Affidavit and issuance of a warrant or notice to appear,<sup>7</sup> or
- A warrantless arrest by a law enforcement officer with knowledge that the offender is on supervision.<sup>8</sup>

Generally, upon a finding that an offender violated probation or community control, the court may revoke, modify, or continue the supervision.<sup>9</sup> If the court chooses to revoke, it may impose any sentence originally permissible before placing the offender on supervision.<sup>10</sup> Upon revocation of supervision, the court is bound by the sentencing guidelines under the Criminal Punishment Code.<sup>11</sup> The sentencing guidelines provide a computation of the lowest permissible prison sentence, based on factors including the offender's current and prior offenses. The court must make written findings, contemporaneous with sentencing for the revocation of supervision, to justify a downward departure and sentence an offender to less than the lowest permissible sentence.<sup>12</sup>

---

<sup>1</sup> S. 948.01, F.S.

<sup>2</sup> S. 948.001(8), F.S.

<sup>3</sup> S. 948.001(3), F.S.

<sup>4</sup> S. 948.03(1), F.S.

<sup>5</sup> S. 948.03(2), F.S.

<sup>6</sup> Department of Corrections, *Order of Probation Form*, available at: <http://www.dc.state.fl.us/Conditions-of-Probation.pdf> (last visited February 20, 2018).

<sup>7</sup> S. 948.06(1)(b), F.S.

<sup>8</sup> S. 948.06(1)(a), F.S.

<sup>9</sup> S. 948.06(2)(b), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> S. 921.0022, F.S.

<sup>12</sup> *State v. Roman*, 634 So.2d 291 (Fla. 1st DCA 1994)

If an offender qualifies as a violent felony offender of special concern (VFOSC), the court must revoke supervision, unless it makes written findings that the VFOSC does not pose a danger to the community.<sup>13</sup> A VFOSC is any person who:

- Is on felony supervision related to the commission of a qualifying offense<sup>14</sup> committed on or after March 12, 2007.
- Is on felony supervision for any offense committed on or after March 12, 2007, and has previously been convicted of a qualifying offense.
- Is on felony supervision for any offense committed on or after March 12, 2007, and is found to have violated that supervision by committing a qualifying offense.
- Is on felony supervision and has previously been found by a court to be a habitual violent felony offender,<sup>15</sup> three-time violent offender,<sup>16</sup> or sexual predator,<sup>17</sup> and has committed a qualifying offense on or after March 12, 2007.<sup>18</sup>

VFOSC status also increases an offender's score under the sentencing guidelines, leading to a higher minimum permissible prison sentence.<sup>19</sup>

### *Release Pending Disposition of a VOP*

When a person is arrested for committing a crime, he or she is generally entitled to pretrial release on reasonable conditions under the Florida Constitution.<sup>20</sup> However, a person taken into custody for a VOP does not have a constitutional right to release pending the disposition of the VOP.<sup>21</sup> If the offender qualifies as a VFOSC, the court is prohibited from granting pretrial release.<sup>22</sup> For other offenders, the court has discretion to grant or deny bail.<sup>23</sup> A court must exercise this discretion on a case-by-case basis and may not adopt a policy of never granting pretrial release on a VOP; however, this discretionary power leads to many offenders being detained at the county jail during the pendency of their VOP cases.

### *Alternative Sanctioning Programs*

Section 948.06(1)(h), F.S., authorizes the chief judge of each judicial circuit to establish an alternative sanctioning program (ASP), which allows the Department of Corrections (FDC) to enforce technical violations with court approval. A technical violation is any alleged violation of supervision that is not a

---

<sup>13</sup> S. 948.06(8)(e)2.b., F.S.

<sup>14</sup> Section 948.06(8)(c), F.S., defines qualifying offense to include any of the following: kidnapping or attempted kidnapping, S. 787.01, F.S.; false imprisonment of a child under the age of 13, S. 787.02(3), F.S.; luring or enticing a child, S. 787.025(2)(b) or (b), F.S.; murder or attempted murder, S. 782.04, F.S.; attempted felony murder, S. 782.051, F.S.; manslaughter, S. 782.07, F.S.; aggravated battery or attempt, S. 784.045, F.S.; sexual battery or attempt; S. 794.011(2), (3), (4), or (8)(b) or (c), F.S.; lewd and lascivious battery or attempt, S. 800.04(4); lewd and lascivious molestation, S. 800.04(5)(b) or (c), F.S.; lewd and lascivious conduct, S. 800.04(6)(b), F.S.; lewd and lascivious exhibition, S. 800.04(7)(b); lewd and lascivious exhibition on computer, S. 847.0135(5)(b); robbery or attempt, S. 812.13, F.S.; carjacking or attempt, S. 812.133, F.S.; home invasion robbery or attempt, S. 812.135, F.S.; lewd and lascivious offense upon or in the presence of an elderly person or attempt, S. 825.1025, F.S.; sexual performance by a child or attempt, S. 827.071, F.S.; computer pornography, S. 847.0135(2) or (3), F.S.; transmission of child pornography, S. 847.0137, F.S.; selling or buying of minors, S. 847.0145, F.S.; poisoning food or water, S. 859.01, F.S.; abuse of a dead human body, S. 872.06, F.S.; any burglary offense that is a first or second degree felony, S. 810.02(2) or (3), F.S.; arson or attempt, S. 806.01(1), F.S.; aggravated assault, S. 784.021, F.S.; aggravated stalking, S. 784.048(3), (4), (5), or (7), F.S.; aircraft piracy, S. 860.16, F.S.; throwing a deadly missile, S. 790.161(2), (3), or (4), F.S.; and treason, S. 876.32, F.S.

<sup>15</sup> S. 775.084(1)(b), F.S.

<sup>16</sup> S. 775.084(1)(c), F.S.

<sup>17</sup> S. 775.21, F.S.

<sup>18</sup> S. 946.06(8)(b), F.S.

<sup>19</sup> S. 921.0024, F.S.

<sup>20</sup> FLA. CONST. art. I, s. 14. Exceptions include when a person is charged with a capital offense or offense punishable by life and the proof of guilt is evident or the presumption is great, or if no conditions can reasonably protect the community from risk of physical harm.

<sup>21</sup> *Bernhardt v. State*, 288 So.2d 490, 497 (Fla. 1974).

<sup>22</sup> S. 903.0351, F.S.

<sup>23</sup> S. 948.06(2)(c), F.S.; Fla. R. Crim. P. 3.790(b).

new felony offense, misdemeanor offense, or criminal traffic offense.<sup>24</sup> In fiscal year 2016-2017, over half – 19,616 – of all resolved VOPs were technical violations.<sup>25</sup> Many of these violations resulted in the offender returning to some form of supervision or serving a county jail sentence.<sup>26</sup>

The ASP allows for an alternative resolution of these technical violations, ensuring a swift and certain response to technical violations without initiating the court process or arresting and booking the offender. In establishing an ASP, the chief judge, in consultation with the state attorney, public defender and FDC, determines which technical violations are eligible for alternative sanctioning, offender eligibility criteria, permissible sanctions, and the process for reporting technical violations through the ASP.<sup>27</sup> Common sanctions issued through the ASP include increased reporting requirements, imposition or modification of a curfew, drug evaluation and treatment, and classes.<sup>28</sup> As of January 2018, three circuits had included short jail sentences<sup>29</sup> as a possible ASP sanction through administrative order.<sup>30</sup>

After receiving written notice of an alleged technical violation and disclosure of the evidence supporting the violation, an offender who is eligible for the ASP may elect to either participate in the program or waive participation.<sup>31</sup> If the offender waives participation, the violation proceeds through the court resolution process.<sup>32</sup> If the offender elects to participate, he or she must admit to the technical violation, agree to comply with the probation officer's recommended sanction, and agree to waive the right:

- To be represented by counsel.
- To require the state to prove his or her guilt.
- To subpoena witnesses and present evidence to a judge in his or her defense.
- To confront and cross-examine witnesses.
- To receive a written statement from a factfinder as to the evidence relied on and the reasons for the sanction imposed.<sup>33</sup>

Prior to 2016, the FDC developed and implemented the ASP in twelve counties within six judicial circuits.<sup>34</sup> Section 948.06(1)(h), F.S., codified the ASP option when it was passed into law in 2016.<sup>35</sup> ASP use has increased substantially since codification of the ASP option. As of December 2017, 46 of 67 counties in Florida had established an ASP by administrative order.<sup>36</sup> As of January 4, 2018, participating jurisdictions had resolved 2,272 cases through an ASP.<sup>37</sup>

---

<sup>24</sup> S. 946.08(2)(h)1., F.S.

<sup>25</sup> Florida Department of Corrections, *Number of Violations by Type, Violation Completed FY 2016-2017*, (January 9, 2018) (on file with Judiciary Committee).

<sup>26</sup> Id.

<sup>27</sup> S. 948.06(1)(h)2., F.S.

<sup>28</sup> Eighteenth Judicial Circuit, Administrative Order No. 17-30-S (June 28, 2017); Sixth Judicial Circuit, Administrative Order No. 2016-058 PA/PI-CIR (September 9, 2016); Eighth Judicial Circuit, Administrative Order No. 4.16 (June 10, 2016); Tenth Judicial Circuit, Administrative Order No. 2-79.0 (June 27, 2016); Eighteenth Judicial Circuit, Administrative Order No. 16-17-B (June 7, 2016) (all on file with Judiciary Committee).

<sup>29</sup> Other states have found that brief periods of incarceration in response to VOPs are as effective at curbing new violations as longer stays, when the sentence is swiftly-imposed and certain. Scott Taylor, President of the American Probation and Parole Association, *Summit on Effective Responses to Violations of Probation and Parole*, at 13-14, (December 11, 2012) available at <https://www.appa-net.org/eWeb/Resources/SPSP/Lessons-Learned-P1.pdf> (last viewed February 12, 2018); National Institute of Justice, "Swift and Certain" Sanction in Probation are Highly Effective: Evaluation of the HOPE Program, available at: <https://www.nij.gov/topics/corrections/community/drug-offenders/pages/hawaii-hope.aspx> (last viewed February 12, 2018).

<sup>30</sup> Eighth Judicial Circuit, Administrative Order No. 4.16 (June 10, 2016); Tenth Judicial Circuit, Administrative Order No. 2-79.0 (June 27, 2016); Eighteenth Judicial Circuit, Administrative Order No. 16-17-B (June 7, 2016) (all on file with Judiciary Committee).

<sup>31</sup> S. 948.06(1)(h)3., F.S.

<sup>32</sup> S. 948.06(1)(h)3.a., F.S.

<sup>33</sup> S. 948.06(1)(h)3.b., F.S.

<sup>34</sup> Florida Department of Corrections, Agency Analysis 2016 House Bill 1149, at 2 (January 20, 2016).

<sup>35</sup> Ch. 2016-100, Laws of Fla.

<sup>36</sup> Email from Florida Department of Corrections staff, RE: ASP status 11/23/17 (December 5, 2017) (on file with Judiciary Committee).

<sup>37</sup> Email from Florida Department of Corrections staff, FW: ASP administrative orders (January 5, 2018) (on file with Judiciary Committee).

### *Administrative Probation*

Administrative probation is a form of nonreporting supervision available to low-risk offenders upon successful completion of half of their probationary term.<sup>38</sup> Only the FDC has the authority to transfer a probationer to administrative probation.<sup>39</sup> FDC may develop procedures for transferring probationers to administrative probation.<sup>40</sup> Certain offenders are ineligible for conversion to administrative probation, including those on probation for enumerated sexual offenses or offenses involving minors and those qualifying as sexual predators.<sup>41</sup>

### Effect of Proposed Changes

#### *Alternative Sanctioning Program*

HB 7089 creates a statewide ASP, identifying eligible offenders, eligible violations, and permissible sanctions. The bill classifies eligible violations as either low-risk or moderate-risk.

Low-risk violations only apply to probationers and include:

- A positive drug or alcohol test result;
- Failure to report to the probation office;
- Failure to report a change in address or other required information;
- Failure to attend a required class, treatment or counseling session, or meeting;
- Failure to submit to a drug or alcohol test;
- Violation of curfew;
- Failure to meet a monthly quota of any required probation condition, including making restitution payments, paying court costs, and completing community service hours;
- Leaving the county without permission;
- Failure to report a change in employment;
- Associating with people engaged in criminal activity; or
- Any other violation as determined by administrative order by the chief judge of the circuit.

Moderate-risk violations include:

- Any violation classified as low-risk when committed by an offender on community control;
- Failure to remain at an approved residence by an offender on community control;
- A third low-risk violation by a probationer; or
- Any other violation as determined by administrative order by the chief judge of the circuit.

The permissible sanctions correspond to the risk level of the violation. A probation officer may offer one or more of the following in response to a low-risk violation:

- Up to five days in the county jail;
- Up to fifty additional community service hours;
- Counseling or treatment;
- Support group attendance;
- Drug testing;
- Loss of travel or other privileges;
- Curfew for up to thirty days;
- House arrest for up to thirty days; or
- Any other sanction as determined by administrative order by the chief judge of the circuit.

---

<sup>38</sup> S. 948.01(1), F.S.

<sup>39</sup> Id.; *State v. Nazario*, 100 So.3d 1246 (Fla. 4th DCA 2012).

<sup>40</sup> S. 948.013(1), F.S.

<sup>41</sup> S. 948.013(2), F.S.

The permissible sanctions for a moderate-risk violation include all sanctions available for a low-risk violation and:

- Up to twenty-one days in the county jail;
- Curfew for up to ninety days;
- House arrest for up to ninety days;
- Electronic monitoring for up to ninety days;
- Residential treatment for up to ninety days; or
- Any other sanction as determined by administrative order by the chief judge of the circuit.

The bill disqualifies offenders from alternative sanctioning under any of the following circumstances:

- The offender is a violent felony offender of special concern;
- The violation is a felony, misdemeanor, or criminal traffic offense;
- The violation is absconding;
- The violation is of a stay-away order or no-contact order;
- The violation is not identified as low- or moderate-risk by statute or administrative order;
- The offender has a prior moderate-risk level violation during the same term of supervision;
- The offender has three prior low-risk level violations in the same term of supervision;
- The term of probation is scheduled to terminate in less than 90 days; or
- The terms of the sentence prohibit alternative sanctioning.

The bill allows the individual circuits to add other eligible violations or permissible sanctions to the ASP so as to best meet local needs. A court may also disqualify a person from the ASP when initially sentencing him or her to probation.

As in current law, the bill allows an eligible offender to participate in the ASP or waive participation and proceed to a court resolution of the VOP. If the offender elects to participate, he or she must admit to the technical violation, agree to comply with the probation officer's recommended sanction, and agree to waive the right to:

- Be represented by counsel.
- Require the state to prove his or her guilt.
- Subpoena witnesses and present evidence to a judge in his or her defense.
- Confront and cross-examine witnesses.
- Receive a written statement from a factfinder as to the evidence relied on and the reasons for the sanction imposed.

The ASP is voluntary, and the offender may withdraw from participation at any time. If the offender withdraws or fails to successfully complete the sanction within either 90 days or a timeframe determined in the agreed-upon sanction, the original VOP proceeds to the court resolution process.

#### *Administrative Probation*

The bill allows a court to impose an administrative probation sentence or convert supervision to administrative probation. FDC retains its authority to transfer a probationer meeting criteria to administrative probation as under current law.

## Conditions of Probation in the Florida Crime Information Center

### Background

The Florida Crime Information Center (FCIC) is the state's central database for tracking crime related information.<sup>42</sup> FCIC was created in the mid-1970s within the Florida Department of Law Enforcement (FDLE).<sup>43</sup> A second, updated version, was installed in 1997.<sup>44</sup> Information contained in the FCIC database includes, but is not limited to, statewide information on persons and property, driver's license and registration information, wanted and missing persons, stolen guns, vehicles, and other property, and persons' status files, and computerized criminal history.<sup>45</sup> It is commonly used by law enforcement officers to gather relevant information when responding to a call for service or engaging in a citizen encounter.

Every criminal justice agency<sup>46</sup> within Florida is eligible for access to FCIC.<sup>47</sup> Access is divided into limited access and full access.<sup>48</sup> With limited access, the user is able to run a query in the system. With full access, the user is able to make modifications in the system.<sup>49</sup> In order to gain access to FCIC, the user must complete security awareness training and an online course on FCIC via FDLE.<sup>50</sup> Different courses and tests are available depending on whether the user wants limited or full access. Once the user completes the course and passes the examination, a user identification is issued to that individual. Users must recertify every two years to continue access to FCIC.<sup>51</sup>

Currently, an officer may run a driver license, warrant, or person query in FCIC and the results will include information on whether the individual is currently on probation.<sup>52</sup> However, in general, a law enforcement officer will only see that the person is on probation. FCIC will not include the specific terms of probation.<sup>53</sup>

When an offender is placed on probation with the state, the Department of Corrections (FDC) is responsible for oversight of the individual.<sup>54</sup> It is the responsibility of the court to determine the terms and conditions of probation.<sup>55</sup> Standard conditions do not require oral pronouncement by the court<sup>56</sup>, but if the judge is imposing special probation conditions, those conditions must be clearly stated on the record and be reflected in writing.<sup>57</sup> Standard conditions of probation include:

- Report to probation officer as directed;
- Permit the probation officer to visit him or her at his or her home or elsewhere;
- Work faithfully at suitable employment insofar as may be possible;
- Remain within a specified place;
- Live without violated any law;

---

<sup>42</sup> Department of Juvenile Justice, Florida Department of Juvenile Justice Procedure, pg. 2, available at: <http://www.djj.state.fl.us/docs/policies/fcic-ncic-cjnet-jis-and-david-access-use-procedures-fdjj-1805p.pdf?sfvrsn=4> (last visited February 9, 2018).

<sup>43</sup> Phone call with Florida Department of Law Enforcement and Judiciary Staff, February 9, 2018.

<sup>44</sup> Id.

<sup>45</sup> Id.

<sup>46</sup> FDLE defines "criminal justice agency" to include courts and governmental agencies that perform the administration of criminal justice pursuant to a statute or executive order.

<sup>47</sup> Id.

<sup>48</sup> Id.

<sup>49</sup> Id.

<sup>50</sup> Id.

<sup>51</sup> Id.

<sup>52</sup> Id.

<sup>53</sup> Email from Florida Sheriffs Association, November 30, 2017 (on file with Judiciary Committee).

<sup>54</sup> S. 948.03, F.S.

<sup>55</sup> S. 948.03, F.S.

<sup>56</sup> Id.

<sup>57</sup> S. 948.039, F.S.

- Make reparation or restitution to the aggrieved party for the damage or loss caused by his or her offense in an amount to be determined by the court;
- Support his or her legal dependents to the best of his or her ability;
- Pay any court fees or fines;
- Submit to random drug and alcohol testing as directed by the probation officer;
- Be prohibited from carrying a firearm or weapon without first procuring the consent of a probation officer;
- Be prohibited from using intoxicants to excess or possessing any drugs or narcotics unless properly prescribed; and
- Submit to the taking of a digitized photograph by FDC as a part of the offender's record.

When probation conditions are ordered, modified, or deleted by the court, that information is forwarded to FDC via the clerk of court.<sup>58</sup> Once the conditions are received by FDC, they are manually entered into the database.<sup>59</sup> Delays in this process may vary due to the volume of information, the manner in which information is received, and the variations in the process among the circuits.<sup>60</sup>

FDC sends a probationer's data electronically to FDLE through a real time direct data pipe line.<sup>61</sup> To include a probationer's conditions, FDC will enter the information into a "Miscellaneous Field of the Status Record" field available in FCIC.<sup>62</sup> FDC currently includes the following relevant conditions of probation for each probationer in the data it sends to FDLE:

- Sex offender curfew;
- Curfew for non-sex offenders;
- Remain confined to approved residence;
- No unsupervised contact with minors;
- No work or volunteer work with children;
- Do not live or work within 1,000 feet of school or bus stop;
- Submit to search;
- No driving or drivers license revoked or suspended;
- Driving for employment only;
- No alcohol or illegal drugs;
- No contact with victim;
- No pornographic material;
- Restrictions to enter or leave a city;
- No employment that involves handling money;
- No post office box; and
- No checking account.<sup>63</sup>

A court has authority to modify or alter conditions of probation based on a probationer's particular circumstances.<sup>64</sup> As a result, a probation officer may have permission to allow certain exceptions to conditions of probation on a case-by-case basis. For example, a court may allow a probation officer to give permission to a probationer to stay out past a designated curfew if the reason is for work, school or health care emergencies. When this occurs, probation officers may not have access to FDC databases in order to update in real time any exceptions to the individual's probation in FCIC.<sup>65</sup>

---

<sup>58</sup> Id.

<sup>59</sup> Id.

<sup>60</sup> Id.

<sup>61</sup> Email from Department of Corrections, February 9, 2018 (on file with Judiciary Committee).

<sup>62</sup> Email from Department of Law Enforcement, February 9, 2018 (on file with Judiciary Committee).

<sup>63</sup> Supra, FN 61.

<sup>64</sup> Supra, FN 57.

<sup>65</sup> Supra, FN 61.



Whenever within the period of probation or community control there are reasonable grounds to believe that a probationer has violated his or her probation in a material respect, any law enforcement officer who is aware of the probationer's status may arrest him or her without a warrant.<sup>66</sup> At first appearance or arraignment for a violation of probation, a judge may revoke bond if probable cause exists to believe the probationer violated conditions of his or her release.<sup>67</sup>

### Effect of Proposed Changes

HB 7089 requires FDC to input into FCIC all of a probationer's specific conditions of probation as determined by the court. If the court modifies the conditions of probation during the period of probation, FDC must update the changes in FCIC.

## **Reentry Programming**

### Background

#### *Transition Assistance*

Section 944.704, F.S., requires the Florida Department of Corrections (FDC) to provide a transition assistance specialist at each of its major prison institutions to provide the following services to inmates:

- Coordinating the delivery of transition assistance program services;
- Assisting in the development of a postrelease plan;
- Obtaining job placement information;
- Providing a written medical discharge plan and referral to a county health department;
- Providing a 30 day supply of HIV/AIDs medication, if taken prior to release by an inmate who is known to be HIV positive;
- Facilitating placement in a private transition housing program, if the inmate is eligible and makes such a request,<sup>68</sup> and
- Providing a photo identification card prior to release.

The law prohibits a correctional officer<sup>69</sup> or a correctional probation officer<sup>70</sup> from serving in the role of the transition assistance specialist.

Before release from incarceration, every inmate must complete a 100-hour comprehensive training course that focuses on job readiness and life management skills.<sup>71</sup> In June 2017, FDC implemented statewide use of the Compass 100 program to meet this statutory training requirement. Inmates nearing release complete Compass 100's curriculum, which focuses on developing life skills in conjunction with other educational courses and substance abuse treatment.<sup>72</sup> Topics include punctuality, workplace

---

<sup>66</sup> S. 948.06, F.S.

<sup>67</sup> S. 948.06(d), F.S.

<sup>68</sup> These placements may include contracted substance abuse transition housing or contracted faith-based substance abuse transition housing programs. S. 944.704, F.S.

<sup>69</sup> A "correctional officer" is defined as "any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correction institution." The term does not include any secretarial, clerical, or professionally trained staff. S. 943.10(2), F.S.

<sup>70</sup> A "correctional probation officer" is defined as "any person who is employed full time by the state whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controlees within institutions of the Department of Corrections or within the community." The term includes supervisory personnel whose duties include, in whole or in part, the supervision, training, and guidance of correctional probation officers, but excludes management and administrative personnel above, but not including, the probation and parole regional administrator level. S. 943.10(3), F.S.

<sup>71</sup> S. 944.7065, F.S.

<sup>72</sup> Florida Department of Corrections, *Florida Department of Corrections Launches Compass 100*, June 5, 2017, <http://dc.state.fl.us/secretary/press/2017/06-05-Compass100.html> (last visited February 12, 2018).

etiquette, interpersonal communication, and problem solving.<sup>73</sup> Additionally, inmates are required to complete a cognitive behavioral curriculum called "Thinking for a Change" which is designed to help inmates change their way of thinking and provide effective communication and problem solving skills.<sup>74</sup> Upon completion of Compass 100, each inmate has a "Readiness Portfolio" that contains a resume, community resources, and program completion certificates.<sup>75</sup>

In addition to institutional transition assistance, FDC employs four regional community transition specialists who collaborate with public, private, and community agencies to identify and develop employment opportunities for ex-offenders.<sup>76</sup> Transition specialists and ex-offenders may also use a statewide resource directory to search for reentry services. The resource directory is a searchable database available on FDC's website and contains over 6,000 state and local organizations that provide reentry services to offenders returning to the community.<sup>77</sup> Organizations that want to be included in the resource directory submit an application to FDC, who then enters the information into the directory. FDC verifies the resource directory on a routine basis to ensure the information provided remains current.<sup>78</sup>

### *Release Orientation Programming*

Section 944.705, F.S., requires FDC to establish a standard release orientation program available to every eligible inmate.<sup>79</sup> Release orientation must include instruction addressing:

- Employment skills;
- Money management skills;
- Personal development and planning;
- Special needs;
- Community reentry concerns;
- Community reentry support; and
- Any other appropriate instruction to ensure the inmate's successful reentry into the community.<sup>80</sup>

As part of the release orientation program, FDC conducts a needs assessment of every inmate to determine any basic support services the inmate may need.<sup>81</sup> To provide these services, FDC may contract with outside public or private entities, including faith-based service groups.<sup>82</sup>

### *Educational Programming*

Section 944.801, F.S., authorizes the Correctional Education Program to establish educational facilities and services in all FDC institutions. FDC is required to collect information relating to inmates' educational or vocational areas of interest, vocational skills, and level of education during the intake process. FDC must then approve educational programs of varying levels and types in the correctional institutions and establish procedures for the admission of inmates to those programs.<sup>83</sup> FDC must enter into agreements with certain entities to ensure the educational programs meet minimum performance

---

<sup>73</sup> Id.

<sup>74</sup> Id.

<sup>75</sup> Id.

<sup>76</sup> Florida Department of Corrections, Agency Analysis of 2018 SB 226, pg. 3 (October 2, 2017) (on file with the Judiciary Committee).

<sup>77</sup> Id. at pg. 2.

<sup>78</sup> Id.

<sup>79</sup> All inmates released from the custody of FDC are eligible to receive transition services. However, the law instructs FDC to give priority for these services to substance abuse addicted inmates. The law provides that inmates released from private correctional facilities should be informed of and provided with the same level of transition assistance services as provided by FDC for an inmate in a state correctional facility. SS. 944.703 and 944.7031, F.S.

<sup>80</sup> S. 944.705, F.S.

<sup>81</sup> S. 944.705(4), F.S.

<sup>82</sup> S. 944.705(5), F.S.

<sup>83</sup> S. 944.801, F.S.

standards established by the Department of Education.<sup>84</sup> FDC may enter into agreements with public or private:

- School districts;
- Entities;
- Community colleges;
- Junior colleges;
- Colleges; or
- Universities.<sup>85</sup>

### *Career and Technical Education Programming*

FDC offers a variety of career and technical education programs for inmates, including:

- Air Conditioning, Refrigeration and Heating Technology;
- Applied Welding Technologies;
- Automotive Collision Repair and Refinishing;
- Automotive Technology Career Services;
- Cabinetmaking;
- Carpentry;
- Commercial Class "B" Driving;
- Computer Systems and Information Technology;
- Cosmetology;
- Culinary Arts;
- Digital Design;
- Drafting;
- Electricity;
- Environmental Design;
- Environmental Services;
- Equine Care Technology;
- Industrial Machine Repair;
- Janitorial Services;
- Landscape Management;
- Masonry, Brick and Block;
- Plumbing Technology;
- Printing and Graphic Communications;
- Technology Support Services;
- Wastewater/Water Treatment Technologies; and
- Web Development.<sup>86</sup>

In FY 2015-2016, FDC awarded 1,829 vocational certificates and 2,027 industry certificates,<sup>87</sup> and in FY 2016-2017, FDC awarded 1,799 vocational certificates and 1,349 industry certifications.<sup>88</sup> FDC has since launched new credentialing programs for Canine Obedience and Beekeeping programs, and plans to expand credentialing to construction, horticulture, farm, and culinary programs in 30 institutions.<sup>89</sup>

---

<sup>84</sup> S. 944.801(3)(e), F.S.

<sup>85</sup> Id.

<sup>86</sup> Florida Department of Corrections, *Annual Report Fiscal Year 2015-2016*, pg. 18-19, available at: [http://www.dc.state.fl.us/pub/annual/1516/FDC\\_AR2015-16.pdf](http://www.dc.state.fl.us/pub/annual/1516/FDC_AR2015-16.pdf) (last visited February 12, 2018).

<sup>87</sup> Id. at pg. 14.

<sup>88</sup> Florida Department of Corrections, Agency Analysis of 2018 SB 226-Revised, pg. 2 (October 25, 2017) (on file with the Judiciary Committee).

<sup>89</sup> Id.

## *Prison Entrepreneurship Program*

In 2011, the University of Virginia's Darden School of Business implemented a prison entrepreneurship program at Virginia's Dillwyn Correctional Center, a medium-security prison housing more than 1,000 inmates.<sup>90</sup> The classes are taught by Darden students and volunteers.<sup>91</sup> The program focuses on entrepreneurship skills, ethics, and business strategy. Students must complete math testing, develop a personal business plan, and complete a final exam.<sup>92</sup>

Similar programs have had success in other states. Texas has a prison entrepreneurship program at the Cleveland Correctional Facility in Houston.<sup>93</sup> It was founded in 2004, with approximately 800 inmates graduating from the program annually.<sup>94</sup> Of its graduates, 106 have founded businesses and the recidivism rate of those inmates is less than 7 percent.<sup>95</sup>

Though not statutorily mandated, FDC partners with the following educational institutions to offer inmates job training and readiness skills:

- Stetson University;
- Florida State University;
- University of Central Florida; and
- University of West Florida.<sup>96</sup>

## Effect of Proposed Changes

### *Release Orientation Programming*

HB 7089 requires transition assistance staff to provide information to inmates identifying job assignment credentialing or industry certifications for which the inmate is eligible. The bill mandates that each inmate receive a community reentry resource directory. The directory must be organized by county and include the name, address, and telephone number of each provider, as well as a description of the services offered.

The bill requires FDC to allow nonprofit faith-based, business and professional, civic or community organizations to apply to be registered to provide reentry services. These services include, but are not limited to, providing information on housing and job placement, money management assistance, and counseling addressing substance abuse, mental health, and co-occurring conditions. FDC must adopt policies and procedures for screening, approving, and registering an organization that applies to be registered. FDC may deny registration if the organization does not meet such policies and procedures.

The bill also authorizes FDC to contract with Veteran Advocacy Clinics or Veteran Legal Clinics operated by colleges, universities or other nonprofit organizations, to assist qualified veteran inmates in applying for veteran's assistance benefits upon release.

---

<sup>90</sup> The Darden Report, *Second Chances: Darden's Fairchild Launches Prison Entrepreneurship Program*, January 4, 2013, available at: <https://news.virginia.edu/content/second-chances-darden-s-fairchild-launches-prison-entrepreneurship-program> (last visited February 10, 2018).

<sup>91</sup> Id.

<sup>92</sup> Id.

<sup>93</sup> Id. See also The Prison Entrepreneurship Program, available at: <http://www.pep.org/releasing-potential/> (last visited February 10, 2018).

<sup>94</sup> Id.

<sup>95</sup> Versus 25 percent statewide. Id. See also The Prison Entrepreneurship Program, *The Results*, available at: <http://www.pep.org/pep-results/> (last visited February 10, 2018).

<sup>96</sup> Email from Department of Corrections, February 9, 2018 (on file with Judiciary Committee).

## *Prison Entrepreneurship Program*

The bill authorizes FDC to develop a Prison Entrepreneurship Program, to include 180 days of in-prison education. If the program is implemented in a facility, the curriculum must include a component on developing a business plan, procedures for graduation and certification of successful student inmates, and at least 90 days of transitional and post-release continuing education services. The bill authorizes FDC to enter into agreements with public or private community colleges, junior colleges, colleges, universities, or other non-profit entities to implement the program.

## **Certificate of Achievement and Employability**

### Background

In general, a person may only be denied employment by the state, any of its agencies or political subdivisions, or any municipality, based on a prior conviction for a crime if the crime was a felony or first-degree misdemeanor and directly related to the position of employment sought.<sup>97</sup> However, a person may be denied a license, permit, or certification to pursue, practice, or engage in an occupation, trade, vocation, profession, or business based on a prior conviction for a crime.<sup>98</sup> The crime must be a felony or first-degree misdemeanor and directly relate to the standard determined by the regulatory authority to be necessary and reasonably related to protect the public, health, safety, and welfare for the occupation, trade, vocation, profession, or business for which the license, permit or certificate is sought.<sup>99</sup> For example, s. 408.809, F.S., disqualifies some ex-offenders from employment in certain Agency of Health Care Administration licensed facilities.

### *Level Two Background Screening*

An employee required by law to undergo a level two background screening will be disqualified from employment if he or she has been arrested for and awaiting final disposition of, have been found guilty of, or entered a plea of nolo contendere or guilty to, or have been adjudicated delinquent and the record has not been sealed or expunged for, any of the following offenses<sup>100</sup>:

- Sexual misconduct with certain developmentally disabled clients, mental health patients, forensic clients or youth in juvenile justice programs.
- Abuse, neglect, or exploitation of aged persons or disabled adults.
- Murder.
- Manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, or aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.
- Vehicular homicide.
- Killing of an unborn child by injury to the mother.
- Aggravated assault.
- Aggravated battery.
- Battery on a detention or commitment facility staff member or a juvenile probation officer.
- Kidnapping.
- False imprisonment.
- Luring or enticing a child.
- Leading, taking, enticing, or removing a minor beyond the state limits, or concealing the location of a minor, with criminal intent pending custody or dependency proceedings.

---

<sup>97</sup> S. 112.011(1)(a), F.S.

<sup>98</sup> S. 112.011(1)(b), F.S.

<sup>99</sup> Id.

<sup>100</sup> s. 435.04(2), F.S.

- Exhibiting firearms or weapons at a school-sponsored event, on school property, or within 1,000 feet of school.
- Possessing an electric weapon or device, destructive device, or other weapon at a school-sponsored event or on school property.
- Sexual battery.
- Sexual activity with or solicitation of a child by a person in familial or custodial authority.
- Unlawful sexual activity with certain minors.
- Prostitution.
- Lewd and lascivious behavior.
- Lewdness and indecent exposure.
- Arson.
- Voyeurism.
- Coordinating the commission of theft in excess of \$3,000.
- Theft from persons 65 years or older.
- Dealing in stolen property.
- Robbery.
- Robbery by sudden snatching.
- Carjacking.
- Home-invasion robbery.
- Fraudulent sale of controlled substance.
- Abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- Lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person.
- Incest.
- Child abuse, aggravated child abuse, or neglect of a child.
- Contributing to the delinquency or dependency of a child.
- Sexual performance by a child.
- Resisting arrest with violence.
- Obscenity.
- Causing, encouraging, soliciting, or recruiting another to join a criminal street gang.
- Any drug abuse charges under ch. 893, F.S., if offense was a second degree felony or higher.
- Fraudulent sale of controlled substances under s. 817.563, F.S.
- Introduction, removal, or possession of contraband at a correctional facility or juvenile detention facility or commitment program.
- Escape.
- Harboring, concealing or aiding an escaped prisoner.
- Inflicting cruel or inhumane treatment on an inmate resulting in great bodily harm.

In addition to the disqualifying offenses listed in a level 2 background screening, the applicant may be disqualified by the Agency for Healthcare Administration (AHCA) for any of the following offenses:

- Medicaid provider fraud;
- Medicaid fraud;
- Domestic violence;
- Fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems;
- False and fraudulent insurance claims;
- Obtaining good by using a false or expired credit card or other credit device;
- Fraudulently obtaining goods or services from a health care provider;
- Patient brokering;
- Criminal use of personal identification information;

- Obtaining a credit card through fraudulent means;
- Fraudulent use of credit cards;
- Forgery;
- Uttering forged instruments;
- Forging bank bills, checks, drafts, or promissory notes;
- Uttering forged bank bills, checks, drafts, or promissory notes;
- Fraud in obtaining medicinal drugs;
- Sale, manufacture, delivery, or possession with the intent to sell, manufacture, or deliver any counterfeit controlled substance;
- Racketeering and collection of unlawful debts;
- Acts committed under the Florida Money Laundering Act.<sup>101</sup>

### *Licensure*

A license means a franchise, permit, certification, registration, charter, or similar form of authorization required by law.<sup>102</sup> Divisions and boards within the Department of Health (DOH) license professions and occupations regulated by:<sup>103</sup> Emergency Medical Oversight, Environmental Health, Medical Quality Assurance, and the Office of Medical Marijuana Use.<sup>104</sup> The Division of Medical Quality Assurance, the Bureau of Environmental Health, and the Office of Medical Marijuana Use have professions or occupations with statutory disqualifications for ex-offenders.<sup>105</sup>

The Bureau of Environmental Health issues registrations for septic tank contractors.<sup>106</sup> To be eligible for registration for a septic tank contractor license, the applicant must be of good moral character.<sup>107</sup> In determining good moral character, the Bureau can consider whether an applicant has been found guilty of, or entered a plea to, a crime in any jurisdiction that relates to the practice of contracting or the ability to practice contracting.<sup>108</sup> If so, the applicant can be denied licensure.

The Office of Medical Marijuana Use requires all owners and managers of a low-THC dispensing organization<sup>109</sup> to pass a level 2 background screening pursuant to sections 435.04(2) and (3), F.S.<sup>110</sup>

The Division of Medical Quality Assurance licenses and regulates 44 health care professions and 7 types of facilities and establishments under ch. 456, F.S.<sup>111</sup> DOH is prohibited from issuing or renewing a license to a health care practitioner who has been convicted of, or entered a plea to, fraud under ch. 409, F.S., or ch. 817, F.S., or a felony drug offense under ch. 893, F.S.<sup>112</sup> DOH is also prohibited from issuing or renewing a pharmacy permit if the applicant has been convicted of, or entered a plea to, a crime in any jurisdiction which relates to the practice of, or the ability to practice, the profession of pharmacy.<sup>113</sup>

In addition, a massage therapist will be barred from licensure if he or she has been convicted of, or entered a plea to, any of the following offenses:

- Kidnapping;

<sup>101</sup> S. 408.809(4), F.S.

<sup>102</sup> S. 120.52(10), F.S.

<sup>103</sup> Department of Health, Division of Medical Quality Assurance, December 21, 2015, pg. 7 (on file with Judiciary Committee).

<sup>104</sup> Id.

<sup>105</sup> Id.

<sup>106</sup> S. 489.553(4)(a), F.S.

<sup>107</sup> Id.

<sup>108</sup> Id.

<sup>109</sup> Dispensaries licensed to distribute low-THC cannabis for medical purposes pursuant to s. 381.986, F.S.

<sup>110</sup> Department of Health, Division of Medical Quality Assurance, December 21, 2015, pg. 8 (on file with Judiciary Committee).

<sup>111</sup> Department of Health, Division of Medical Quality Assurance, December 21, 2015, pg. 9 (on file with Judiciary Committee).

<sup>112</sup> S. 456.0635(2)(a), F.S.

<sup>113</sup> S. 465.0022, F.S.

- False imprisonment;
- Luring or enticing a child;
- Human trafficking;
- Human smuggling;
- Sexual battery;
- Female genital mutilation;
- Procuring a person under the age of 18 for prostitution;
- Relating to selling or buying of minors into prostitution;
- Forcing, compelling, or coercing another to become a prostitute;
- Deriving support from the proceeds of prostitution;
- Third or subsequent violation of prostitution;
- Lewd or lascivious offenses committed upon or in the presence of a person less than 16 years of age;
- Lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person;
- Sexual performance by a child;
- Computer child pornography;
- Transmission of harmful material to minors by electronic device or equipment; or
- Selling or buying of minors.<sup>114</sup>

#### *Exemptions from Disqualification*

Statute provides for exemptions from disqualification for prior criminal offenses.<sup>115</sup> The head of the appropriate agency may grant an employee otherwise disqualified from employment an exemption from disqualification for::

- Disqualifying felonies for which at least 3 years have elapsed since the applicant has completed or been lawfully released from confinement, supervision, or a nonmonetary condition imposed by the court for the disqualifying felony;
- Disqualifying misdemeanors for which the applicant has completed or been lawfully released from confinement, supervision, or a nonmonetary condition imposed by the court;
- Offenses that were felonies when committed but are now misdemeanors and for which the applicant has completed or been lawfully released from confinement, supervision, or a nonmonetary condition imposed by the court; or
- For offenses that would be felonies if committed by an adult and the record has not been sealed or expunged, the exemption may be granted after 3 years have elapsed since the applicant has completed or been lawfully released from confinement, supervision, or a nonmonetary condition imposed by the court.<sup>116</sup>

A person applying for exemption must pay any outstanding court fee, fine, fund, lien, civil judgment, application, cost of prosecution, trust, or restitution as part of the criminal case prior to being eligible for exemption.<sup>117</sup>

In order for the head of the agency to grant an exemption to an applicant, the applicant must demonstrate by clear and convincing evidence that he or she should not be disqualified from employment.<sup>118</sup> The applicant has the burden of setting forth clear and convincing evidence of rehabilitation, including, but not limited to:

- The circumstances surrounding the criminal incident;

---

<sup>114</sup> S. 480.041(7), F.S.

<sup>115</sup> S. 435.07, F.S.

<sup>116</sup> S. 435.07(1)(a), F.S.

<sup>117</sup> S. 435.07(1)(b), F.S.

<sup>118</sup> S. 435.07(3)(a), F.S.



- The time period that has elapsed since the incident;
- The nature of the harm caused to the victim;
- Applicant's history since the incident; and
- Any other evidence or circumstances indicating that the applicant will not present a danger if employment or continued employment is allowed.<sup>119</sup>

The decision of the head of an agency regarding an exemption may be challenged pursuant to ch. 120, F.S.<sup>120</sup> The standard of review by the administrative law judge is whether the agency head's action is an abuse of discretion.<sup>121</sup>

### Effect of Proposed Changes

HB 7089 creates a certificate of achievement and employability (CAE) that may remove most mandatory barriers to licensure and employment for ex-offenders.

#### *Application for CAE*

An eligible inmate is a person serving a prison term in a state correctional institution or who is under the supervision of FDC on probation or under a post-release control sanction. If the eligible inmate is incarcerated, he or she may apply for a CAE from one year prior to the date of his or her release up to the date of release. If the eligible inmate is under supervision or post-release control of FDC, he or she may apply anytime while under said probation or control.

The inmate may apply if he or she has:

- Successfully completed one or more in prison vocational programs approved by FDC;
- Demonstrated exemplary performance as determined by completion of one or more cognitive or behavioral improvement programs approved by FDC while incarcerated or under the supervision of FDC; and
- Shown evidence of achievement and rehabilitation.

The inmate is ineligible to apply for a certificate if he or she is currently serving time for, or has previously been convicted of, a dangerous crime,<sup>122</sup> or a predicate offense for registration as a sexual predator<sup>123</sup> or sexual offender.<sup>124</sup>

#### *Notice to Licensing Agency*

The bill defines licensing agency as any regulatory or licensing entity with authority to issue, suspend or revoke any professional license or certification. When an eligible inmate applies for the certificate, FDC shall notify the licensing agency and allow the agency an opportunity to object in writing to the issuing of the certificate. FDC shall then consider the eligible inmate's application and all objections to issuing the certificate and, if FDC determines the inmate is eligible, the application was timely filed, and the objections are insufficient, it shall issue the certificate.

#### *Effect of the CAE*

---

<sup>119</sup> Id.

<sup>120</sup> S. 435.07(3)(c), F.S.

<sup>121</sup> Id.

<sup>122</sup> Arson, aggravated assault, aggravated battery, illegal use of explosives, child abuse or aggravated child abuse, abuse of an elderly person, aircraft piracy, kidnapping, homicide, manslaughter, sexual battery, robbery, carjacking, lewd or lascivious assault upon or in the presence of a child under 16 years of age, sexual activity with a child, burglary of a dwelling, stalking and aggravated stalking, domestic violence, home invasion robbery, manufacturing controlled substances, and human trafficking. S. 907.041(4), F.S.

<sup>123</sup> Pursuant to s. 775.21, F.S.

<sup>124</sup> Pursuant to s. 943.0435, F.S.

An inmate that would otherwise be disqualified from employment or licensure due to a criminal offense shall be given individualized consideration by the licensing agency if the inmate was issued a certificate of achievement and employability from FDC.

The certificate constitutes a rebuttable presumption that the inmate's conviction is solely insufficient evidence that he or she is unfit for the license or employment. However, an agency may still deny the license or employment if it determines the inmate is otherwise unfit for licensure or certification after considering all relevant facts and circumstances.

### *Revocation*

The bill requires FDC to adopt rules governing revocation of a certificate of achievement and employability. At a minimum, revocation is required if a certificate holder is convicted of, or pleads guilty to, a felony. FDC shall also determine which additional offenses will require revocation, considering the nature of the offense and the employment of a certificate holder.

### *Liability and Rulemaking Authority*

The bill provides that FDC is not liable for a claim for damages arising from issuing, denying, or revoking a certificate of achievement and employability or for failing to revoke a certificate.

The bill provides rulemaking authority to FDC to implement the provisions set forth in the certificates of achievement and employability sections. It also requires the CAE program to be funded within existing resources of FDC.

## **Driver License Reinstatement Days**

### Background

Florida requires a person to hold a driver license<sup>125</sup> or be exempt from licensure to operate a motor vehicle on the state's roadways.<sup>126</sup> Exemptions to the licensure requirement include nonresidents who possess a valid driver license issued by their home states, federal government employees operating a government vehicle for official business, and people operating a road machine, tractor, or golf cart.<sup>127</sup> Both licensed drivers and exempted individuals have a driving privilege in Florida.<sup>128</sup>

The Department of Highway Safety and Motor Vehicles (DHSMV) can revoke or suspend a driver license or driving privilege for several driving-related and non-driving-related reasons. Revocation means the driving privilege is terminated,<sup>129</sup> while suspension means the driving privilege is temporary withdrawn.<sup>130</sup> Both revocations and suspensions can be indefinite or for a defined period of time, but only revocations in certain circumstances can be permanent.<sup>131</sup> The base fee for driver license reinstatement after revocation is \$75, and the fee for reinstatement after suspension is \$45.<sup>132</sup> As both revocations and suspensions functionally prohibit a person from driving, the terms are often used interchangeably in statute.

---

<sup>125</sup> Driver license means a certificate that, subject to all other requirements of law, authorizes an individual to drive a motor vehicle. S. 322.01(17), F.S.

<sup>126</sup> S. 322.03(1), F.S.

<sup>127</sup> S. 322.04, F.S.

<sup>128</sup> *State v. Miller*, 227 So.3d 562, 564 (Fla. 2017) ("the Legislature's use of 'driving privilege' refers to all individuals who may *lawfully* operate vehicles on Florida's roads, even if they do not possess a Florida driver license").

<sup>129</sup> S. 322.01(36), F.S.

<sup>130</sup> S. 322.01(40), F.S.

<sup>131</sup> See, e.g., SS. 322.26(1)(a) & 322.26(2), F.S.

<sup>132</sup> Department of Highway Safety and Motor Vehicles, *Fees*, available at: <https://www.flhsmv.gov/fees/> (last viewed February 12, 2018).

### *Failure to Meet Court-Imposed Obligations*

The clerk of the circuit court can notify DHSMV to suspend a license for several reasons, including failure to comply with civil penalties,<sup>133</sup> failure to appear,<sup>134</sup> and failure to pay criminal financial obligations.<sup>135</sup> These suspensions last until the individual is compliant with the court's requirements for reinstatement<sup>136</sup> or, in the case of criminal financial obligations, the court grants relief from the suspension.<sup>137</sup> In FY 2016-17, the clerks of the circuit court initiated over 1.32 million driver license suspensions for failure to meet court-imposed obligations.<sup>138</sup>

### *Payment Plans, Community Service Options, and Collections*

The clerk of court is required to accept partial payment of court-related fees, service charges, costs, or fines in accordance with the terms of an established payment plan.<sup>139</sup> The court may review the reasonableness of the payment plan. A monthly payment amount is presumed to correspond to the person's ability to pay if the amount does not exceed two percent of the person's annual net income, divided by twelve.<sup>140</sup>

The court may convert a statutory financial obligation in a criminal case or a noncriminal traffic infraction into a requirement to perform community service.<sup>141</sup> The hourly conversion rate for community service is equal to the federal minimum wage,<sup>142</sup> unless the person performing the community service has a trade or profession for which there is a community service need, in which case the rate is the prevailing wage rate for that trade or profession.<sup>143</sup>

The clerk of the circuit court must pursue the collection of any unpaid financial obligations that remain unpaid after 90 days by referring the account to a private attorney or collection agent.<sup>144</sup> The clerk must have attempted to collect the unpaid obligation through a collection court, collections docket, or any other collections process prior to referring the account to a private attorney or collections agent, find the referral to be cost-effective, and follow any applicable procurement processes.<sup>145</sup> A collection fee of up to forty percent of the amount owed at the time the account is referred to the attorney or agent for collection may be added to the outstanding balance.<sup>146</sup>

### *Reinstatement Clinics*

Several counties have held events to assist individuals whose licenses are suspended for financial reasons related to civil penalties or criminal financial obligations. In April 2015, 60 out of 67 counties participated in Operation Green Light: a short-term event in which the clerk waived the forty percent collections surcharge in exchange for full payment of the financial obligation behind a person's driver

---

<sup>133</sup> S. 318.15, F.S.

<sup>134</sup> S. 318.15, F.S.

<sup>135</sup> S. 322.245, F.S.

<sup>136</sup> SS. 318.15(2) & 322.245(5), F.S.

<sup>137</sup> S. 322.245(5), F.S.

<sup>138</sup> Department of Highway Safety and Motor Vehicles, *Sanctions Created/Effective for FY 16/17* (January 3, 2018) (on file with Judiciary Committee staff).

<sup>139</sup> S. 28.246(4), F.S.

<sup>140</sup> S. 28.246(4), F.S.

<sup>141</sup> SS. 938.30(2) & 318.18(8)(b)1.a., F.S.

<sup>142</sup> 29 USC § 206.

<sup>143</sup> S. 318.18(8)(b)1.b., F.S.; Bureau of Labor Statistics, *May 2016 National Occupational Employment and Wage Estimates: United States*, available at: [https://www.bls.gov/oes/current/oes\\_nat.htm#00-0000](https://www.bls.gov/oes/current/oes_nat.htm#00-0000) (last viewed February 12, 2018) (e.g. the mean hourly wage for an electrician is \$27.24).

<sup>144</sup> S. 28.246(6), F.S.

<sup>145</sup> S. 28.246(6), F.S.

<sup>146</sup> S. 28.246(6), F.S.

license suspension.<sup>147</sup> Upon satisfaction of the obligation, the participants' licenses were reinstated. The total statewide cost for the event was \$132,707.21, and the clerks collected \$5,414,069.35 while reinstating 1,851 licenses.<sup>148</sup> Several counties have since conducted similar events.<sup>149</sup>

## Effect of Proposed Changes

### *Reinstatement Clinics*

HB 7089 requires each judicial circuit to establish a Driver License Reinstatement Days program for reinstating suspended driver licenses collaboratively with DHSMV, the state attorney's office, the public defender's office, the circuit and county courts, the clerk of court, and any interested community organization. Participants must pay the full license reinstatement fee; however, the clerk may compromise or waive other fees and costs to facilitate reinstatement.

A person is eligible for the Driver License Reinstatement Days program if his or her driver license or driving privilege was suspended for:

- Driving without a valid license;
- Driving with a suspended license;
- Failing to make a payment on penalties in collection;
- Failing to appear in court for a traffic violation; or
- Failing to comply with provisions of ch. 318 or ch. 322, F.S.

A person is not eligible for reinstatement under the program if his or her driver license or driving privilege is suspended or revoked:

- Because the person failed to fulfill a court-ordered child support obligation;
- For driving under the influence;
- Because the person has not completed a required driver training program, driver improvement course, or alcohol or substance abuse education or evaluation program;
- For a traffic-related felony; or
- Because the person is a habitual traffic offender.

## **Exposure of Sexual Organs**

### Background

Section 800.03, F.S., prohibits the following conduct:

- Exposure or exhibition of sexual organs in public in a vulgar or indecent manner;
- Exposure or exhibition of sexual organs on the private premises of another person, or so near thereto as to be seen from a private premises, in a vulgar or indecent manner; or
- Being naked in public, except when in a place provided for that purpose.

A violation of the law is a first degree misdemeanor punishable by up to one year in county jail and a \$1,000 fine.<sup>150</sup> The law specifies that a mother's breastfeeding of her baby is not a violation.

---

<sup>147</sup> Harrison Barrus, *Operation green light gives ticket payers a break*, NEWS 4 JAX, available at:

<https://www.news4jax.com/news/local/operation-green-light-gives-ticket-payers-a-break> (last viewed February 12, 2018).

<sup>148</sup> Florida Clerks of Court Operations Corporation, *Operation Green Light Success Story*, available at:

[http://c.ymcdn.com/sites/www.flclerks.com/resource/resmgr/Statewide\\_Collection\\_Initiat.pdf](http://c.ymcdn.com/sites/www.flclerks.com/resource/resmgr/Statewide_Collection_Initiat.pdf) (last viewed February 12, 2018).

<sup>149</sup> Wayne K. Roustan, *Operation Green Light to offer amnesty on unpaid fines, fees in Broward*, SUN SENTINEL (April 21, 2017), available at: <http://www.sun-sentinel.com/news/transportation/fl-sb-broward-ticket-amnesty-20170421-story.html> (last viewed February 12, 2018); Karl Etters, *Clinic hopes to restore driver's licenses*, Tallahassee Democrat (May 30, 2017), available at:

<http://www.tallahassee.com/story/news/2017/05/30/clinic-hopes-restore-drivers-licenses/102055664/> (last viewed February 12, 2018);

11<sup>th</sup> Jud. Cir., *Driver License Reinstatement Event Flyer*, available at:

<https://www.jud11.flcourts.org/DesktopModules/EasyDNNNews/DocumentDownload.ashx?portalid=0&moduleid=599&articleid=2744&documentid=11> (last viewed February 12, 2018).

The Florida Supreme Court has defined the term "indecent" in this context to be synonymous with a "wicked, lustful, unchaste, licentious, or sensual design on the part of the perpetrator."<sup>151</sup> Other Florida courts have clarified that public nudity alone does not violate s. 800.03, F.S.; rather, such nudity must be accompanied by a "lewd or lascivious exhibition or exposure of the sexual organs."<sup>152</sup>

The law has been interpreted to include a distinction between conduct that occurs in public places and conduct occurring in private places. Generally, if the vulgar or indecent conduct occurs in a public place it is viewed as objectively offensive, and therefore, criminal. On the other hand, if the vulgar or indecent conduct takes place in a private place, the state must make the additional showing that someone was offended by the alleged conduct in order to obtain a conviction.<sup>153</sup>

During Fiscal Year 2015-2016, there were 381 total convictions for exposure of sexual organs in Florida.<sup>154</sup> During Fiscal Year 2016-2017, the number of convictions for exposure of sexual organs totaled 331 in Florida.<sup>155</sup>

### *Misdemeanor Offenses Eligible for Felony Enhancement*

Current law allows for certain offenses normally classified as a misdemeanor to be enhanced to a felony if the offender has a prior or multiple prior convictions for the same crime. Examples of misdemeanor offenses which may be enhanced to a third degree felony because of relevant prior convictions include:

- Driving under the influence;<sup>156</sup>
- Driving while driver license suspended, revoked, cancelled, or disqualified;<sup>157</sup>
- Battery;<sup>158</sup>
- Prostitution;<sup>159</sup>
- Criminal mischief;<sup>160</sup>
- Voyeurism;<sup>161</sup>
- Petit theft.<sup>162</sup>

---

<sup>150</sup> SS. 775.082 and 775.083, F.S.

<sup>151</sup> *Boles v. State*, 158 Fla. 220, 221(Fla. 1946).

<sup>152</sup> *Goodmakers v. State*, 450 So. 2d 888, 891 (Fla. 2d 1984).

<sup>153</sup> *State v. Kees*, 919 So.2d 504, 506-507 (Fla. 5th 2005).

<sup>154</sup> Email from Sarah Naf Biehl, Chief of Legislative Affairs, Office of State Courts Administrator, RE: Arrest and Convictions-Exposure of Sexual Organs, (December 15, 2017)(on file with the Judiciary Committee).

<sup>155</sup> *Id.*

<sup>156</sup> A person convicted of a third or subsequent violation for DUI that occurs within 10 years of a prior conviction or a fourth or subsequent violation regardless of when the prior convictions occurred, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. SS. 316.193(2)(b)1. and S. 316.193(2)(b)3., F.S.

<sup>157</sup> A third or subsequent conviction is a third degree felony punishable as provided in s. 775.082, s. 775.083, or s. 775.084. S. 322.34(2)(c), F.S.

<sup>158</sup> A person who has one prior conviction for battery, aggravated battery, or felony battery and who commits any second or subsequent battery commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. S. 784.03(2), F.S.

<sup>159</sup> A third or subsequent violation for prostitution is a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. S. 796.07(4)(a)3., F.S.

<sup>160</sup> If the person has one or more previous convictions for criminal mischief, the offense shall be reclassified as a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. S. 806.13(1)(b)4., F.S.

<sup>161</sup> A person who commits voyeurism and who has been previously convicted or adjudicated delinquent two or more times of voyeurism commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. S. 810.14(3), F.S.

<sup>162</sup> A person who commits petit theft and who has previously been convicted two or more times of any theft commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. S. 812.014(3)(c), F.S.

Currently, if a person commits a second or subsequent offense of exposure of sexual organs, there is no felony enhancement available, and the offender may only be prosecuted with a first degree misdemeanor.

### Criminal Punishment Code - Offense Severity Ranking Chart

The Criminal Punishment Code (Code) applies to all felony offenses, except capital felonies, committed on or after October 1, 1998.<sup>163</sup> Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10), either by being specifically listed in the offense severity ranking chart<sup>164</sup> or by default.<sup>165</sup> Judges must use the Criminal Punishment Code worksheet to compute a sentence score for each felony offender.<sup>166</sup>

Sentence points are assigned and accrue based on the level ranking assigned to the primary offense, additional offenses and prior offenses.<sup>167</sup> Sentence points increase as the offense severity level increases from Level 1 (least severe) to Level 10 (most severe). Sentence points are added for victim injury, and increase based on the type of injury and severity.<sup>168</sup> Sentence points may also be added or multiplied for other factors including possession of a firearm or the commission of certain offenses, such as drug trafficking.<sup>169</sup>

If total sentence points equal or are less than 44 points, the lowest permissible sentence is any nonstate prison sanction, 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.<sup>170</sup> Absent mitigation,<sup>171</sup> the permissible range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.<sup>172</sup>

Currently, a violation of s. 800.03, F.S., is not a felony offense and the Criminal Punishment Code does not apply.

### Effect of Proposed Changes

HB 7089 creates an enhanced felony offense when a person who has a prior conviction for exposure of sexual organs commits a second or subsequent violation. A second or subsequent offense will be a Level 3, third degree felony punishable by up to 5 years in prison and a fine up to \$5,000.<sup>173</sup> The bill specifies that any determination of guilt resulting from a plea or a trial, regardless of whether adjudication was withheld, qualifies as a conviction for the purposes of determining if the offender has the prior conviction necessary for the felony enhancement.

---

<sup>163</sup> s. 921.002, F.S.

<sup>164</sup> s. 921.0022, F.S.

<sup>165</sup> s. 921.0023, F.S., addresses ranking unlisted felony offenses. For example, an unlisted felony of the third degree is ranked within offense level 1.

<sup>166</sup> s. 921.0024, F.S.

<sup>167</sup> Id.

<sup>168</sup> Id.

<sup>169</sup> Id.

<sup>170</sup> s. 921.0022(2), F.S.

<sup>171</sup> 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.

<sup>172</sup> s. 921.0022(2), F.S.

<sup>173</sup> A third degree felony is punishable up to five years imprisonment and a \$5,000 fine. SS. 775.082 and 775.083, F.S.

Additionally, the bill amends s. 921.0022, F.S., to rank the newly created felony offense for a second or subsequent conviction of exposure of sexual organs on the offense severity ranking chart as a level three offense. If a person is convicted of a felony exposure of sexual organs and has no other criminal history, other than the required prior misdemeanor conviction for exposure of sexual organs, he or she would not score a mandatory prison sentence under the Criminal Punishment Code scoresheet. However, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to prison.<sup>174</sup> It is more likely that an offender who scores a mandatory prison sentence for a conviction on a level three offense would have a number of prior felony convictions or additional secondary offenses.

## **Attorney Fees in Injunction Proceedings**

### Background

#### *Protective Injunctions*

Protective injunctions are available under Florida law for victims of:

- Domestic violence;<sup>175</sup>
- Repeat violence;<sup>176</sup>
- Sexual violence;<sup>177</sup>
- Dating violence;<sup>178</sup> and
- Stalking.<sup>179</sup>

A protective injunction may prohibit a person from:

- Going to or being within 500 feet of the petitioner's residence, school, place of employment, or other specified place;
- Committing an act of violence against the petitioner;
- Telephoning, contacting, or otherwise communicating with the petitioner; and
- Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle.<sup>180</sup>

The court may also require a respondent to surrender a firearm, vacate a shared dwelling with the petitioner, or complete a Batterer's Intervention Program.<sup>181</sup> Violation of a protective injunction is a first degree misdemeanor, punishable by up to 1 year in jail and a \$1,000 fine.<sup>182</sup>

#### *Procedure for Obtaining an Injunction*

For a domestic violence injunction, the petitioner must allege in a sworn petition that:

- He or she is a victim of domestic violence; repeat, sexual, or dating violence; or stalking; or
- In the case of a petition for a domestic violence injunction, he or she has reasonable cause to believe he or she is in imminent danger of such violence.<sup>183</sup>

As soon as possible following the filing of the petition, a court must set a hearing to determine whether an immediate and present danger of the violence alleged exists.<sup>184</sup> Upon finding an immediate and

---

<sup>174</sup> S. 775.082(10), F.S.

<sup>175</sup> S. 741.30, F.S.

<sup>176</sup> S. 784.046.

<sup>177</sup> Id.

<sup>178</sup> Id.

<sup>179</sup> S. 784.0485, F.S.

<sup>180</sup> SS. 741.31, 784.047, & 784.0487, F.S.

<sup>181</sup> Id.; S. 741.30, F.S.

<sup>182</sup> SS. 741.31, 775.082, 775.083, 784.047, & 784.0487, F.S.

<sup>183</sup> SS. 741.30(1)(a), 784.046, & 784.0485, F.S.

present danger, the court may grant an ex parte temporary injunction for 15 days.<sup>185</sup> A court must then set a hearing with notice to the respondent, and upon such hearing with notice, may grant protective injunctive relief as it deems proper.<sup>186</sup>

### *Attorney's Fees*

A court must award a reasonable attorney's fee to be paid by the losing party and the losing party's attorney on any claim or defense during a civil proceeding or action if the court finds that the losing party or losing party's attorney knew or should have known that a claim:

- Was not supported by the material facts necessary to establish the claim or defense; or
- Would not be supported by the application of then-existing law to those material facts.<sup>187</sup>

Florida law prohibits attorney fee awards stemming from domestic violence injunction proceedings; however, there is no such explicit prohibition for repeat violence, sexual violence, dating violence, or stalking injunction proceedings. In *Lopez v. Hall*, the Florida Supreme Court held that an award of attorney's fees was permissible in dating, repeat, and sexual violence injunction proceedings, as they were not explicitly prohibited by statute.<sup>188</sup>

### Effect of the Bill

HB 7089 prohibits the court from awarding attorney fees in injunction proceedings for repeat violence, sexual violence, sexual violence, and stalking.

## **Mutual Aid Agreements**

### Background

A mutual aid agreement is an agreement between two or more law enforcement agencies to permit voluntary cooperation in routine matters or to render assistance in the event of a law enforcement emergency.<sup>189</sup> A mutual aid agreement must generally be in writing and specify:

- The nature of the assistance to be rendered;
- The agency or entity that will bear liability in certain situations;
- Procedures for requesting and authorizing assistance;
- The agency or entity in charge of supervision;
- The time limit for the agreement;
- The terms of compensation; and
- Any other terms necessary to give effect to the agreement.<sup>190</sup>

If the Governor declares a state of emergency pursuant to chapter 252, F.S., the requirement that an agreement to render emergency assistance be in writing may be waived by the participating agencies for up to 90 days after the Governor's declaration.<sup>191</sup>

### Effect of Proposed Changes

---

<sup>184</sup> SS. 741.30(5)(a), 784.046, & 784.0485, F.S.

<sup>185</sup> Id.

<sup>186</sup> S. 741.30(6)(a), 784.046, & 784.0485 F.S.

<sup>187</sup> S. 57.105, F.S.

<sup>188</sup> No. SC16-1921 (January 11, 2018).

<sup>189</sup> S. 23.1225(1), F.S.

<sup>190</sup> Id.

<sup>191</sup> S. 23.1225(5), F.S.



HB 7089 specifies that in the event the Governor declares a state of emergency pursuant to chapter 252, F.S., a mutual aid agreement may be used to increase the presence of law enforcement to aid in:

- Traffic and crowd control;
- Emergency response; and
- Evacuation support.

## **Courthouse Security**

### Background

#### *County Sheriffs*

The Florida Constitution establishes five specific county officers, including the county sheriff.<sup>192</sup> Each sheriff is elected by county voters for a four-year term.<sup>193</sup> Abolishing the office of sheriff or revising the manner in which the sheriff is chosen may be provided by county charter or special law approved by a vote of the electors of the county under certain circumstances.<sup>194</sup>

Section 30.15, F.S., provides for the powers and duties of sheriffs. Within their respective counties, sheriffs must, in person or by deputy, among other duties:

- Execute all process of the courts and board of county commissioners;
- Execute all orders of the board of county commissioners;
- Execute other writs, processes, warrants, and papers;
- Act as conservators of the peace and apprehend any person disturbing the peace;
- Suppress riots and unlawful assemblies;
- At the request of the board of county commissioners, attend all board meetings; and
- Attend sessions of the circuit court and county court.<sup>195</sup>

If a sheriff fails to attend a session of the court, either in person or by deputy, the judge may appoint an interim sheriff to assume the sheriff's responsibilities and duties.<sup>196</sup> The sheriff is the executive officer of the county court and circuit court of the county.<sup>197</sup>

#### *Judicial Administration*

The Florida Constitution provides that the chief judge of each judicial circuit is responsible for the administrative supervision of the circuit courts and county courts in the circuit.<sup>198</sup> The chief judge has authority to:

- Assign judges;
- Regulate the use of courtrooms;
- Supervise dockets and calendars;
- Require attendance of state attorneys, public defenders, clerks, bailiffs, and other officers of the court;
- Delegate to the trial court administrator the authority to bind the circuit in contract;
- Promote the prompt and efficient administration of justice; and
- Manage, operate, and oversee the jury system.<sup>199</sup>

---

<sup>192</sup> FLA. CONST. Art. VIII, s. 1.

<sup>193</sup> FLA. CONST. Art. VIII, s. 1(d).

<sup>194</sup> Id.

<sup>195</sup> S. 30.15, F.S.

<sup>196</sup> S. 30.12, F.S.

<sup>197</sup> SS. 26.49 and 34.07, F.S.

<sup>198</sup> FLA. CONST. Art. V, s. 2(d).

<sup>199</sup> S. 43.26, F.S.; see also s. 40.001, F.S.

Failure of any judge, clerk, prosecutor, public defender, or other officer of the court to comply with an order or directive of the chief judge under s. 43.26, F.S., constitutes neglect of duty.<sup>200</sup> Additionally, Florida Rule of Judicial Administration 2.215 provides that the chief judge regulates the use of court facilities and directs the formation and implementation of policies and priorities for the operation of all courts and officers within the circuit.<sup>201</sup>

### Effect of Proposed Changes

HB 7089 amends s. 30.15, F.S., to require the county sheriffs to provide security for trial court facilities. The bill clarifies that county sheriffs and their deputies, employees, and contractors are officers of the court when providing security for court facilities. The bill gives sheriffs the operational control over the manner in which security is provided. The sheriff must coordinate with the chief judge on all matters of security for trial court facilities.

The bill also states that each chief judge:

- Has decision-making authority to ensure the due process rights of all persons are protected; and
- Has authority to schedule and conduct trials and other judicial proceedings.

## **Community Courts**

### Background

Problem-solving courts are specialized, non-traditional courts addressing the underlying causes of crime to reduce recidivism and promote rehabilitation. Problem-solving courts build relationships in the community, address each defendant individually, and typically also include:

- A problem-solving team including judges, case managers, prosecutors, defense attorneys, treatment professionals, law enforcement officers, corrections personnel, and other community stakeholders.
- A non-adversarial approach.
- Individualized treatment services.
- Judicial leadership and interaction.
- Responses to defendant compliance.<sup>202</sup>

Florida created the first drug court in the United States in Miami-Dade County in 1989.<sup>203</sup> Today, Florida has over 170 problem-solving courts, including:

- Adult drug courts.
- Juvenile drug courts.
- Family dependency drug courts.
- Veterans' courts.
- Mental health courts.
- Early childhood courts.
- Permanency courts.
- DUI courts.<sup>204</sup>

---

<sup>200</sup> S. 43.26(4), F.S.

<sup>201</sup> Fla. R. Jud. Admin. 2.215(b).

<sup>202</sup> <http://www.flcourts.org/resources-and-services/court-improvement/problem-solving-courts/index.stml> (last visited Feb. 12, 2018).

<sup>203</sup> Id.

<sup>204</sup> Id.

## Effect of Proposed Changes

HB 7089 allows each judicial circuit, in its discretion, to establish a community court program for defendants charged with certain misdemeanors. The chief judge of the circuit must issue an administrative order specifying what types of misdemeanor crimes will be addressed by the community court. In making the determination of which crimes to include, the chief judge must consider the needs and concerns of the communities within the circuit. This allows each judicial circuit to adapt its community court to its own particular needs. State government agencies involved in the criminal justice system are required to support community court programs, and entry into the program is voluntary for defendants. The bill requires each community court to:

- Adopt a non-adversarial approach;
- Establish an advisory committee to make recommendations in each case;
- Consider the needs of the victim;
- Consider individualized treatment services for the defendant;
- Provide for judicial leadership and interaction; and
- Monitor each defendant's compliance with the program.

Additionally, each community court must have a resource coordinator, to:

- Coordinate the participating agencies and service providers;
- Provide case management services;
- Monitor defendants' compliance with the program; and
- Manage data collection.

Each community court must also have an advisory committee selected by the chief judge and consisting, at a minimum, of:

- The chief judge or a judge designated by the chief judge (serving as chair);
- The state attorney;
- The public defender; and
- The resource coordinator.

The chief judge may appoint additional committee members, consisting of community stakeholders, treatment representatives, or any other persons the chair deems appropriate. The advisory committee reviews each defendant's case and makes recommendations to the judge for appropriate sanctions and treatment solutions. The judge has final decision making authority.

The bill requires each judicial circuit to report certain data to the Office of State Courts Administrator to support community court program evaluation. A community court program must be funded by sources other than the state, except for costs already assumed by the state under s. 29.004, F.S.<sup>205</sup> Funds provided by executive branch agencies for treatment and other services may also be used.

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

### B. SECTION DIRECTORY:

**Section 1:** Amends s. 23.1225, F.S., relating to mutual aid agreements.

**Section 2:** Amends s. 30.15, F.S., relating to powers, duties, and obligations.

**Section 3:** Amends s. 57.105, F.S., relating to attorney's fee; sanctions for raising unsupported claims or defenses; exceptions; service of motions; damages for delay of litigation.

---

<sup>205</sup> This section provides that the general costs of running the court system (including providing for judges, jurors, court facilities, court administrators, and other needs) are funded from state revenues appropriated by general law.

- Section 4:** Creates s. 322.75, F.S., relating to Driver License Reinstatement Days.
- Section 5:** Amends s. 784.046, F.S., relating to action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.
- Section 6:** Amends s. 784.0485, F.S., relating to stalking; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.
- Section 7:** Amends s. 800.03, F.S., relating to exposure of sexual organs.
- Section 8:** Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.
- Section 9:** Amends s. 944.704, F.S., relating to staff who provide transition assistance; duties.
- Section 10:** Amends s. 944.705, F.S., relating to release orientation program.
- Section 11:** Amends s. 944.801, F.S., relating to education for state prisoners.
- Section 12:** Creates s. 944.805, F.S., relating to certificate of achievement and employability; definitions.
- Section 13:** Creates s. 944.8055 F.S., relating to certificate of achievement and employability; eligibility.
- Section 14:** Creates s. 944.806, F.S., relating to certificate of achievement and employability; effect.
- Section 15:** Creates s. 944.8065, F.S., relating to certificate of achievement and employability; revocation.
- Section 16:** Amends s. 948.001, F.S., relating to definitions.
- Section 17:** Amends s. 948.013, F.S., relating to administrative probation.
- Section 18:** Amends s. 948.03, F.S., relating to terms and conditions of probation.
- Section 19:** Amends s. 948.06, F.S., relating to violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.
- Section 20:** Creates s. 948.081, F.S., relating to community court programs.
- Section 21:** Reenacts s. 447.203, F.S., relating to definitions.
- Section 22:** Reenacts s. 794.056, F.S., relating to the Rape Crisis Program Trust Fund.
- Section 23:** Reenacts s. 914.16, F.S., relating to child abuse and sexual abuse of victims under age of 16 or who have an intellectual disability; limits on interviews.
- Section 24:** Reenacts s. 933.18, F.S., relating to when warrant may be issued for search of private dwelling.
- Section 25:** Reenacts s. 938.085, F.S., relating to additional cost to fund rape crisis centers.
- Section 26:** Reenacts s. 943.051, F.S., relating to criminal justice information; collection and storage; fingerprinting.
- Section 27:** Reenacts s. 944.026, F.S., relating to community-based facilities and programs.
- Section 28:** Reenacts s. 944.4731, F.S., relating to Addiction-Recovery Supervision Program.
- Section 29:** Reenacts s. 985.11, F.S., relating to fingerprinting and photographing.
- Section 30:** Reenacts s. 985.441, F.S., relating to commitment.
- Section 31:** Provides an effective date of October 1, 2018.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

Alternative Sanctioning Program

In Fiscal Year 2016-17, 5,443 technical violators were sentenced to prison.<sup>206</sup> The alternative sanctioning program would apply to certain technical violators and result in greater non-prison sanctions for these violators. It is unknown how many of these technical violators would be eligible for the alternative sanctioning program or how many would volunteer for the program. The Criminal Justice Impact Conference (CJIC) considered this bill on February 19, 2018, and determined creating a statewide alternative sanctioning program will have a negative significant impact on the prison population, which is a decrease of more than 25 prison beds.

### Probation and FCIC

The bill requires FDC to submit additional information to FCIC if the court modifies conditions of probation. This requirement will cost the department a nonrecurring amount of \$6,800 to modify their existing data feed to FDLE and a nonrecurring amount of \$13,600 to modify the Offender Based Information System.<sup>207</sup> It is anticipated that these fiscal impacts can be absorbed within existing resources.

### Entrepreneurship Program

The bill allows the FDC to develop an entrepreneurship program. If the department elects to do so, the bill requires the program to be implemented within existing resources. In its analysis, the department identifies the need to have one Correctional Services Consultant to coordinate program services at a total cost of \$68,989 (\$64,440 recurring; \$4,549 nonrecurring) and a recurring cost of \$200,000 to implement and provide services at one location.<sup>208</sup>

### Transition Assistance

The bill has a fiscal impact to FDC for the provisions relating to transition assistance. The department indicates that Transition Assistant Specialists have not been funded since 2003. To implement the provisions in the bill, the department indicates a need for 13 Correctional Services Assistant Consultant positions at a total cost of \$834,119 (\$774,982 recurring; \$59,137 nonrecurring).<sup>209</sup>

Currently, the FDC does not have the programming capability to provide for nonprofit faith-based, business and professional, civic or community organizations to apply to be registered to provide inmate reentry services. In order to accomplish this, a new system/web portal would need to be created or purchased. The FDC indicates that the cost to create a new system/web portal is indeterminate and may require a procurement to identify possible solutions.<sup>210</sup>

### Certificate of Achievement and Employment

The bill requires FDC to fund the certificate of achievement and employability program within existing resources. The department indicates it will cost \$207,825 to develop a system to transmit the necessary information to the various licensing agencies in the state including the Department of Business and Regulation and the Agency for Healthcare Administration.

### Exposure of Sexual Organs

---

<sup>206</sup> Criminal Justice Impact Conference, February 19, 2018, available at:

<http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/PCBJDC1803.pdf>.

<sup>207</sup> Florida Department of Corrections, Agency Analysis of 2018 HB 7089, pg. 8 (February, 20, 2018)

<sup>208</sup> Florida Department of Corrections, Agency Analysis of 2018 HB 7089, pg. 4 (February, 20, 2018)

<sup>209</sup> Florida Department of Corrections, Agency Analysis of 2018 HB 7089, pg. 3 (February, 20, 2018)

<sup>210</sup> Florida Department of Corrections, Agency Analysis of 2018 HB 7089, pg. 8 (February, 20, 2018)

In Fiscal Year 2016-17, 36 offenders were convicted for a repeat offense of exposure of sexual organs.<sup>211</sup> The incarceration rate for a level 3, third degree felony was 10.9% in Fiscal Year 2016-17. The Criminal Justice Impact Conference (CJIC) considered this bill on February 19, 2018, and determined the exposure of sexual organs enhancement will have a positive insignificant impact on prison populations, which means an increase of 10 or fewer prison beds.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

###### Probation

The bill establishes a statewide Alternative Sanctioning Program (ASP) that may decrease the need for jail beds, as more violations may be resolved through the ASP rather than through revocation of probation and fewer individuals are incarcerated pending court resolutions to probation violations. However, one of the alternative sanctions for a violation is up to 5 days in a county jail for a low-risk violation and up to 21 days for a moderate-risk violation. This section has an indeterminate fiscal impact on local government.

###### Courthouse Security

Currently, a sheriff must provide security at any court facility, which includes office space relating to court administration. By limiting the sheriff's responsibility to "trial court facilities," the bill may reduce the fiscal impact to local governments.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

###### Certificate of Achievement and Employability

The bill may result in a greater number of state prisoners being able to find employment upon release from incarceration. This could have an indeterminate positive impact on the private sector.

###### Attorney Fees

The bill also prohibits the court from awarding attorney fees in proceedings for protective injunctions for repeat, sexual, or dating violence or stalking. This change may have an indeterminate, but likely insignificant, impact on attorneys.

#### D. FISCAL COMMENTS:

None.

### III. COMMENTS

---

<sup>211</sup> Criminal Justice Impact Conference, February 19, 2018, available at: <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/PCBJDC1803.pdf>.

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

The Department of Corrections notes in its analysis that, "There could be a separation of powers issue with the alternative sanctions program as expanded in the bill. Although the sanctions may be subject to court review, the bill could, in practice, be determined to grant probation officers excessive authority to impose a variety of sanctions without sufficient input from a judge."<sup>212</sup>

B. RULE-MAKING AUTHORITY:

The bill provides appropriate rulemaking authority to FDC to implement the release orientation programs and certificates of achievement and employability.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Florida Department of Corrections (FDC) does not monitor inmates after release from prison, unless there is a specific judicial order of post-release supervision. The bill requires the department to revoke a certificate of achievement and employability, if the certificate holder is convicted or pleads guilty to a felony. Unless a court sentences the certificate holder to prison or state probation, the department may not know of a new felony conviction.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 15, 2018, the Judiciary Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Required that the certificate of achievement and employability program be funded within the Department of Corrections' existing resources; and
- Specified that administrative probation may be imposed by court order or transfer by the Department of Corrections.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.