

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Appropriations

---

BILL: CS/CS/SB 642

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Criminal Justice Committee; and Senators Brandes, Gruters, Rouson, and others

SUBJECT: Public Safety

DATE: April 22, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	<b>Fav/CS</b>
2.	Forbes	Jameson	ACJ	<b>Recommend: Fav/CS</b>
3.	Forbes	Kynoch	AP	<b>Fav/CS</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/CS/SB 642 makes a number of changes to various provisions related to Florida's criminal justice system, courts, and public safety, including:

- Requiring, at the request of any justice permanently residing outside of Leon County, the Chief Justice of the Florida Supreme Court to designate and coordinate a location in the justice's district for the justice's private chambers pursuant to section 112.061, Florida Statutes;
- Adding a circuit court judgeship to both the Ninth Judicial Circuit Court and the Twelfth Judicial Circuit Court;
- Requiring the Office of the State Courts Administrator to provide an annual report detailing the number of participants in each problem-solving court for each fiscal year of operation;
- Allowing each judicial circuit to establish a community court program for defendants charged with certain misdemeanor offenses and specifying program requirements;
- Requiring the chief judge of each judicial circuit to establish a Veterans' court;
- Expanding eligibility beyond veterans and active duty servicemembers to include individuals who are current or former United States Department of Defense contractors and current or former military members of a foreign allied country for veteran treatment courts, pretrial drug courts, and veteran pretrial intervention and treatment programs;
- Increasing the threshold amounts of various theft offenses;

- Requiring the Office of Program Policy Analysis and Government Accountability to review specified threshold amounts periodically and report its findings to the Governor, President of the Senate, and Speaker of the House of Representatives;
- Requiring the clerk of court to establish a Driver License Reinstatement Day Program to assist people seeking to have their driver license reinstated;
- Modifying several provisions relating to the revocation and suspension of a driver license;
- Removing any felony criminal penalties for a subsequent violation of driving on a suspended, revoked, etc. license;
- Reducing the offense of engaging in sex while knowingly positive for the Human Immunodeficiency Virus (HIV) without the informed consent of the sexual partner from a third degree felony to a first degree misdemeanor;
- Requiring the state to prove additional elements to convict for the crime of transmitting a specified sexually transmitted disease (STD);
- Providing that a good faith effort to comply with a treatment regimen or behavioral recommendations is an affirmative defense to the charge of intending to transmit an STD;
- Removing the donation of blood, plasma, organs, skin, or other human tissue from the list of specified offenses involving the transmission of bodily fluids that require mandatory Hepatitis and HIV testing at a victim's request in certain situation;
- Reducing certain STD transmission related offenses from a third degree felony to a first degree misdemeanor;
- Ensuring the Sexually Violent Predator Program is considered to serve a criminal justice function to maintain its access to the National Crime Information Center database;
- Prohibiting specified entities from considering convictions that have occurred more than five years from the date of a licensure or registration application from being a basis for denial of an occupational license or registration;
- Allowing a veterinarian to report certain suspected criminal violations to the appropriate authorities without notice to the client;
- Providing a just cause defense for criminal offenses and disciplinary violations against a contractor for failure to do certain things within a specified amount of time;
- Increasing the felony thresholds applicable to the fraud provisions related to contractors;
- Removing the mandatory minimum sentence for horse meat offenses;
- Ensuring that a person released from a county detention facility following incarceration for an offense for which the sentence pronounced was a prison sentence qualifies as a prison releasee reoffender if otherwise eligible;
- Retroactively applying legislative changes that removed aggravated assault and attempted aggravated assault as predicate offenses for mandatory minimum sentencing under the "10-20-Life" statute;
- Ensuring that attorney's fees cannot be awarded in injunction proceedings for repeat, dating, or sexual violence or stalking unless specified findings are made;
- Providing that cyberstalking includes accessing or attempting to access the online accounts or Internet-connected home electronic systems of another person without that person's permission, causing substantial emotional distress to that person and serving no legitimate purpose;
- Specifying that a person who holds or held an active certification from the Criminal Justice Standards and Training Commission as a law enforcement or correctional officer and who meets other specified criteria meets the definition of "qualified law enforcement officer"

- found at 18 United States Code section 926(B) and (C), thereby authorizing such person to carry a concealed firearm in Florida in accordance with federal requirements;
- Prohibiting lewd or lascivious exhibition in the presence of any person employed at or performing contractual work for a county detention facility;
  - Amending the definition of “access,” relating to computer crimes, to reference an electronic device, so unlawful access includes unlawfully accessing an electronic device;
  - Providing for punishment of computer-related crimes when those crimes are committed willfully, knowingly, and exceeding authorization;
  - Prohibiting a person from selling, lending, giving away, distributing, transmitting, showing, transmuting, or possessing a child-like sex doll;
  - Reducing the penalties from a third degree felony to a second degree misdemeanor for certain alcohol and gambling offenses;
  - Creating a new drug trafficking offense called “trafficking in pharmaceuticals,” which will apply to trafficking in a specified number of dosage units containing a controlled substance specified in the drug trafficking statute;
  - Authorizing a court to depart from the imposition of a mandatory minimum sentence in drug trafficking cases if certain circumstances are met;
  - Retroactively applying ameliorative sentencing changes to trafficking in hydrocodone and oxycodone and mixtures containing either controlled substance;
  - Modifying a number of definitions and data collection points necessary for efficient data collection in accordance with the Criminal Justice Data Transparency Act;
  - Ensuring that data collected in accordance with section 900.05, Florida Statutes, maintains the necessary confidential and exempt status when such data is reported to the Florida Department of Law Enforcement;
  - Requiring the FDLE to commission racial impacts statement for all criminal justice related bills heard by the Legislature during legislative session;
  - Requiring the recording of custodial interrogations for specified offenses;
  - Increasing monthly incentive gain-time awards that the Department of Corrections (DOC) may grant from up to 10 days to up to 20 days for offenders sentenced for offenses committed on or after October 1, 1995;
  - Reducing the amount of a sentence that must be served by a prisoner convicted of a nonviolent felony from no less than 85 percent to no less than 65 percent;
  - Maintaining the provision that requires a prisoner to serve no less than 85 percent of his or her sentence if convicted of a violent felony;
  - Reorganizing the court-ordered sealing and expunction statutes for clarity;
  - Creating an automatic sealing process for certain criminal history records of a minor or adult;
  - Moving the provision for lawful self-defense to a separate statutory section for clarity;
  - Allowing matches between casework evidence DNA samples and DNA databases of offenders for an additional purpose of finding probable cause to obtain a warrant for an offender’s arrest;
  - Enhancing the Criminal Punishment Code ranking level for an employee who uses such position to introduce contraband into a state correctional facility;
  - Adding cellular telephones to the list of items that are prohibited from being introduced into a county detention facility and applying criminal penalties for introducing such items;
  - Authorizing the DOC to increase the number of transition assistance specialists;

- Requiring transition assistance specialists to inform inmates about relevant job credentialing or industry certifications and expanding the use of such credentialing;
- Requiring the DOC to create a toll-free hotline for released inmates to obtain information about community-based reentry services;
- Expanding the use of the Spectrum program to provide inmates and offenders with community-specific reentry service provider referrals;
- Requiring the DOC to provide inmates with a comprehensive community reentry resource directory that includes specified information related to services and portals available in the county to which the inmate is to be released;
- Permitting specified entities to apply with the DOC to be registered to provide inmate reentry services and requiring the DOC to create a process for screening, approving, and registering such entities;
- Authorizing the DOC to contract with specified entities to assist veteran inmates in applying for veteran's benefits upon release;
- Authorizing the DOC to develop, within its existing resources, a Prison Entrepreneurship Program (PEP) that includes education with specified curriculum;
- Authorizing the court to order or the DOC to transfer offenders to administrative probation if the offender presents a low risk of harm to the community and has completed at least half of their term of probation;
- Requiring a court to early terminate or transfer to administrative probation certain compliant probationers upon certain factors being met and providing for exceptions to such requirement;
- Codifying the DOC's current practice of using graduated incentives to promote compliance with probationers and offenders on community control on supervision with the DOC;
- Requiring the court to modify or continue the supervision term of certain low-risk offenders with a first *filed* violation of probation and providing modification terms and exceptions;
- Requiring each circuit to create an alternative sanctions program to handle specified types and occurrences of technical violations of probation or community control with the judge's concurrence;
- Requiring the DOC to include in the Florida Crime Information Center system all conditions of probation as determined by the court;
- Permitting a court to impose a sentence as a youthful offender if a person committed a felony before they turned 21 years of age;
- Increasing the relevant timeframes in which a person who is eligible for financial compensation through the Department of Legal Affairs Crime Victim Services may apply for such compensation;
- Adding locally authorized entity to the list of entities that may operate an independent civil citation or similar prearrest diversion program in addition to a circuit program; and
- Removing the requirement for the Department of Juvenile Justice to enter information related to a civil citation or prearrest diversion program into the Juvenile Justice Information System Prevention Web;
- Requiring the court to hold an evidentiary hearing, within 30 days of the direct filing decision, to determine whether a child transferred to adult court pursuant to discretionary direct file should remain in adult court or be transferred back to juvenile court;
- Prohibiting a child who has been transferred for prosecution as an adult pursuant to discretionary direct file from being held in a jail or other facility intended or used for the

detention of adults prior to a finding of the appropriateness of such transfer in accordance with the evidentiary hearing required by the bill; and

- Repealing all provisions related to transferring a child to adult court for prosecution pursuant to mandatory direct file.

The bill makes various conforming changes and reenacts a number of provisions to comply with the act.

The bill makes numerous changes to provisions that will likely result in negative significant prison bed impact. See Section V. Fiscal Impact Statement.

Except as expressly provided, the bill is effective October 1, 2019.

## II. Present Situation:

Refer to Section III. Effect of Proposed Changes for discussion of the relevant portions of current law.

## III. Effect of Proposed Changes:

### Supreme Court Headquarters (Section 1)

Article II, section 2 of the Florida Constitution designates Tallahassee as the seat of state government “where the *offices* of the governor, lieutenant governor, cabinet members and the supreme court shall be maintained and the sessions of the legislature shall be held[.]”<sup>1</sup> Article V, section 3 of the Florida Constitution provides that the Supreme Court will consist of seven justices, and that each of the five appellate districts “shall have at least one justice elected or appointed from the district at the time of the original appointment or election.” The chambers of all seven justices are in the Florida Supreme Court building,<sup>2</sup> and all official Supreme Court business is conducted in Tallahassee.<sup>3</sup>

<sup>1</sup> FLA. CONST. art. II, s. 2.

<sup>2</sup> The Supreme Court of Florida, Manual of Internal Operating Procedures, *Section 1. Court Structure*, p. 1 (Rev. September, 21, 2016), available at [http://www.floridasupremecourt.org/pub\\_info/documents/IOPs.pdf](http://www.floridasupremecourt.org/pub_info/documents/IOPs.pdf) (last visited April 14, 2019). *But see In re: Designation of Official Headquarters*, AOSC18-37 (Fla. July 2, 2018)(administrative order issued by Florida Supreme Court designating remote headquarters pursuant to ch. 18-10, s. 46, L.O.F., the 2018 appropriations law), available at <https://www.floridasupremecourt.org/content/download/421872/4557988/AOSC18-37.pdf> (last visited April 12, 2019).

<sup>3</sup> “[T]he Florida Supreme Court, comprised of its Justices, has only one “office” — the Supreme Court Building, located in the Northern District.” *Castro v. Labarga*, 16-22297-CIV, 2016 WL 6565946, at p. 5 (S.D. Fla. Nov. 3, 2016)(citing FLA. CONST. art. II, s. 2). “In my view, the mere fact that a Florida Supreme Court justice may periodically travel outside of the Northern District of Florida to attend bar functions or educational seminars and obtains travel reimbursements does not translate the trip into an ‘official duty’ trip sufficient to generate venue in the other districts.” *Id.* “If the Florida Supreme Court maintained major offices, courtrooms or staff in other districts, then the result about venue and venue discovery might be different. But those significant facts, which Castro relies on when citing other cases, are absent here.” *Id.* (holding the proper venue of a bar candidate suing the Florida Supreme Court is the northern district of Florida). *See also Uberoi v. Labarga*, 8:16-CV-1821-T-33JSS, 2016 WL 5914922, at p. 2 (M.D. Fla. Oct. 11, 2016) (transferring another bar candidate’s case to the Northern District based a motion to dismiss filed by Justice Labarga noting that official acts by the Florida Supreme Court concerning the candidate’s admission to the bar are done in Tallahassee; citing FLA. CONST. art. II, s. 2, noting that Tallahassee “is where the offices of the Florida Supreme Court shall be maintained.”).

### ***Headquarters for Purposes of Travel Reimbursement***

Section 112.061, F.S., governs the reimbursement of travel expenses to public employees and officers. Specifically, s. 112.061(4), F.S., provides that the official headquarters of an officer or employee assigned to an office must be the city or town in which the office is located except that:

- The official headquarters of a person located in the field is in the city or town nearest to the area where the majority of the person's work is performed, or such other city, town, or area designated by the agency head provided that the designation is in the best interests of the agency and not for the convenience of the employee.
- When any state employee is stationed in a city or town for a period of over 30 continuous workdays, that city or town is the employee's official headquarters, and he or she is not allowed per diem or subsistence, after the 30 continuous workdays have elapsed, unless that time period is extended by the agency head or his or her designee.
- An employee may leave his or her assigned post to return home overnight, over a weekend, or during a holiday, but time lost from work must be taken as annual leave. The employee cannot be reimbursed for travel expenses other than per diem allowable had he or she remained at the temporary post. However, when an employee is temporarily assigned away from his or her official headquarters for more than 30 days, he or she can receive reimbursement for travel expenses for one round trip for each 30-day period actually taken to his or her home.

Additionally, s. 112.061(1)(b)1., F.S., specifies that it is the Legislature's intent to establish standard travel reimbursement rates, procedures, and limitations, with certain justifiable exceptions and exemptions. To preserve the standardization established, s. 112.061, F.S., should prevail over any conflicting provisions to the extent of the conflict.

Prior to district courts of appeal being authorized to establish branch headquarters, the Attorney General opined for travel and reimbursement purposes that a district court of appeal judge could *not* designate the city of his or her residence as his or her official headquarters for purposes of travel expenses. Notably, the opinion relied on the fact that, at that time, s. 35.05, F.S., designated the official headquarters of each district court of appeal in specific cities.<sup>4</sup> Subsequently, s. 35.05, F.S., was amended to permit a district court of appeal to designate branch headquarters within its district for purposes of s. 112.061, F.S.<sup>5</sup>

In 2018, the Implementing Bill authorized the funding of travel and subsistence expenses for justices residing outside Leon County who elected to designate a remote "headquarters" to use as their private chambers.<sup>6</sup> An appropriation of \$209,930 recurring general revenue was made to the Supreme Court for this purpose in the Fiscal Year 2018-19 General Appropriations Act.

---

<sup>4</sup> Op. Att'y Gen. Fla. 74-132 (1974).

<sup>5</sup> Section 35.05(2), F.S. Currently, it appears that only the Second District Court of Appeal has designated a second branch office, in Tampa on the Stetson University campus. However, the Second District's clerk's office is at the official headquarters in Lakeland. See Florida Second District Court of Appeal, available at <http://www.2dca.org/Directions/tampa.shtml> (last visited April 12, 2019).

<sup>6</sup> See ch. 18-10, s. 46, L.O.F.; *In re: Designation of Official Headquarters*, Fla. Admin. Order. No. AOSC18-37, July 2, 2018, available at <https://www.floridasupremecourt.org/content/download/421872/4557988/AOSC18-37.pdf> (last visited April 12, 2019).

***Effect of the Bill***

The bill creates s. 25.025, F.S., requiring the Chief Justice of the Florida Supreme Court, upon the request of any justice permanently residing outside of Leon County, to:

- Designate and coordinate a district court of appeal courthouse, a county courthouse, or other appropriate facility in the justice's district as his or her official headquarters to serve as the justice's private chambers pursuant to s. 112.061, F.S.; and
- Reimburse the justice for travel and subsistence while in Tallahassee on court business, to the extent funding is available.

This section of the bill is effective July 1, 2019.

**Certification of Need for Additional Judges (Section 2)**

Article V, section 9 of the Florida Constitution requires the Florida Supreme Court to submit recommendations to the Legislature when there is a need to increase or decrease the number of judges. The constitutional provision further directs the Court to base its recommendations on uniform criteria adopted by court rule.<sup>7</sup>

The Court's rule setting forth criteria for assessing judicial need at the trial court level is based primarily upon the application of case weights to circuit and county court caseload statistics. These weights are a quantified measure of judicial time spent on case-related activity. The judicial workload is then based on judicial caseloads adjusted in the relative complexity of various case types.<sup>8</sup> In addition to the statistical information, the Court, in weighing the need for trial court judges, will also consider a variety of factors related to caseload trends, workload, and availability of judges in the area.<sup>9</sup>

In addition to the weighted caseload statistics, the Court will also consider the time to perform other judicial activities, such as reviewing appellate decisions, reviewing petitions and motions for post-conviction relief, hearing and disposing motions, and participating in meetings with those involved in the justice system.<sup>10</sup> Finally, the Court will consider any request for an increase or decrease in the number of judges that the chief judge of the circuit "feels are required."<sup>11</sup> The Florida Supreme Court recently issued an order certifying the need for additional judges for the 2019-2020 fiscal year.<sup>12</sup>

***Effect of the Bill***

The bill amends s. 26.031, F.S., to add one circuit court judgeship to the Ninth Judicial Circuit Court, which includes Orange and Osceola Counties, and one circuit court judgeship to the Twelfth Judicial Circuit Court, which includes Manatee and Sarasota Counties. The newly created judgeships will be filled by the Governor from among nominees by the appropriate judicial nominating commission.

---

<sup>7</sup> FLA. CONST. art. V, s. 9.

<sup>8</sup> Fla. R. Jud. Admin. 2.240(b)(1)(A).

<sup>9</sup> See Fla. R. Jud. Admin. 2.240(b)(1)(B), for a full list of factors.

<sup>10</sup> Fla. R. Jud. Admin. 2.240(c).

<sup>11</sup> Fla. R. Jud. Admin. 2.240(d).

<sup>12</sup> *In Re: Certification of Need for Additional Judges*, S.Ct. No. SC18-1970, December 28, 2018, available at <https://www.floridasupremecourt.org/content/download/425472/4585604/file/sc18-1970.pdf> (last visited April 12, 2019).

This section of the bill is effective October 1, 2019.

### **Problem-Solving Courts (Sections 3, 17, 71 and 72)**

In 1989, Florida created the first problem-solving court in the United States with its drug court in Miami-Dade County. Other types of problem-solving court dockets subsequently followed using the drug court model and were implemented to assist individuals with a range of problems such as drug addiction, mental illness, domestic violence, and child abuse and neglect.<sup>13</sup>

Florida's problem-solving courts address the root causes of an individual's involvement with the justice system through specialized dockets, multidisciplinary teams, and a nonadversarial approach. Offering evidence-based treatment, judicial supervision, and accountability, problem-solving courts provide individualized interventions for participants, thereby reducing recidivism and promoting confidence and satisfaction with the justice system process.<sup>14</sup>

A qualified person may enter into a voluntary, one-year pretrial substance abuse education and treatment intervention program,<sup>15</sup> including a county treatment-based drug court program.<sup>16</sup> Upon motion by either party or the court's own motion, a court must allow an eligible person who wishes to enter a pretrial substance abuse education and treatment intervention program court to do so,<sup>17</sup> subject to certain exceptions.<sup>18</sup> A person is eligible for a pretrial drug court program if he or she:

- Is charged with:
  - A nonviolent felony<sup>19</sup> and is identified as having a substance abuse problem; or
  - A second or third degree felony for purchase or possession of a controlled substance, prostitution, tampering with evidence, solicitation for purchase of a controlled substance, or obtaining a prescription by fraud.
- Has not been charged with a crime of violence.
- Has not previously been convicted of a felony.<sup>20</sup>

However, a court may deny a person's admission to a pretrial drug court program if the person was previously offered admission to a pretrial drug court program and rejected the offer on the record.<sup>21</sup> Additionally, the state attorney may request a preadmission hearing for a person believed to be involved in dealing or selling controlled substances. If the state proves such involvement by a preponderance of the evidence, a court must deny the person admission into the pretrial substance abuse education and treatment intervention program.<sup>22</sup>

---

<sup>13</sup> Florida Courts, Office of Court Improvement, *Problem-Solving Courts*, available at <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts> (last visited April 12, 2019).

<sup>14</sup> *Id.*

<sup>15</sup> Section 948.08(6)(a), F.S.

<sup>16</sup> Section 397.334, F.S.

<sup>17</sup> Section 948.08(6)(a), F.S.

<sup>18</sup> Sections 948.08(6)(a)1. and 2., F.S.

<sup>19</sup> Section 948.08(6)(a), F.S., defines a nonviolent felony to mean a third degree felony violation of ch. 810, F.S., or any other felony offense that is not a forcible felony under s. 776.08, F.S.

<sup>20</sup> Section 948.08(6)(a), F.S.

<sup>21</sup> Sections 948.08(6)(a)1., F.S.

<sup>22</sup> Section 948.089(6)(a)2., F.S.



A drug court team develops a coordinated strategy for each participant in a drug court program.<sup>23</sup> A pretrial drug court program may use sanctions for noncompliance once a participant has agreed to the program, including placement in a treatment program or short periods of incarceration.<sup>24</sup> A court must dismiss the charges upon finding a person successfully completed a pretrial drug court program. If a person does not successfully complete the program, a court may order the person into further education and treatment or order that the charges revert to the normal channels for prosecution.<sup>25</sup>

Another type of problem-solving court is the “community court.” Specifically, these courts are typically neighborhood focused and aim to address local problems. These courts strive to improve the judicial response to low-level crime and grow the public’s trust in the justice system.<sup>26</sup> Community courts bring together a diverse group of stakeholders to build new relationships in the community, reduce recidivism, and improve community safety.<sup>27</sup>

On January 9, 2019, Ft. Lauderdale launched a new community court program, focusing particularly on minor crimes committed by the local homeless population. The program aims to reduce the number of people arrested and sent to jail for minor crimes. Other program goals include addressing the underlying causes of homelessness, preventing crime, and diverting participants to social services.<sup>28</sup>

### ***Effect of the Bill***

#### **Problem-solving Court Reports (Section 3)**

The bill creates s. 43.51, F.S., requiring the Office of the State Courts Administrator to provide an annual report to the President of the Senate and the Speaker of the House of Representatives detailing the number of participants in each problem-solving court for each fiscal year the court has been operating. The report must also include the types of services provided, the source of funding for each court, and provide performance outcomes.

This section of the bill is effective October 1, 2019.

---

<sup>23</sup> Sections 397.334(4) and 948.08(6)(b), F.S.

<sup>24</sup> Section 948.08(6)(b), F.S.

<sup>25</sup> Section 948.08(6)(c), F.S.

<sup>26</sup> Bureau of Justice Assistance, U.S. Department of Justice, Center for Court Innovation, *Principles of Community Justice, A guide for Community Court Planners*, p. 1, (2010), available at <https://www.courtinnovation.org/sites/default/files/Communitycourtprinciples.pdf> (last visited April 13, 2019).

<sup>27</sup> *Id.* at p. 9.

<sup>28</sup> Brittany Wallman, *Fort Lauderdale Launches Florida's First Homeless Community Court*, SUN SENTINEL January 9, 2019, available at <http://www.sun-sentinel.com/local/broward/fort-lauderdale/fl-ne-homeless-court-fort-lauderdale-20190107-story.html> (last visited April. 12, 2019).

### Pretrial Drug Court (Section 17 and 71)

The bill amend s. 397.334, F.S., expanding eligibility for a pretrial drug court program to a person with up to two prior nonviolent felony convictions. The bill authorizes for a judge to deny admission to a pretrial drug court program if the defendant has prior felony convictions.

The bill also amends s. 948.08, F.S., expanding eligibility for a pretrial drug court program to a person with up to two prior nonviolent felony convictions. The bill authorizes for a judge to deny admission to a pretrial drug court program if the defendant has prior felony convictions.

This section of the bill is effective October 1, 2019.

### Community Court (Section 72)

The bill creates s. 948.081, F.S., authorizing each judicial circuit to establish a community court program for defendants charged with certain misdemeanor offenses. If a judicial circuit creates a community court, the chief judge must consider the needs and concerns of the community and specify each misdemeanor offense eligible for the community court. A defendant's participation in a community court program is voluntary. At a minimum, each community court should:

- Adopt a nonadversarial approach.
- Establish an advisory committee to recommend solutions and sanctions in each case.
- Provide for judicial leadership and interaction.
- In each particular case, consider the needs of the victim, consider individualized treatment services for the defendant, and monitor the defendant's compliance.

The chief judge must also appoint members to an advisory committee for each community court, including, but not limited to:

- The chief judge or a community court judge designated by the chief judge, who will be chair.
- The state attorney or his or her designee.
- The public defender or his or her designee.
- The community court resource coordinator.<sup>29</sup>

The advisory committee shall review each defendant's case. Each committee member may make recommendations to the judge, including appropriate sanctions and treatment solutions for the defendant. The judge shall consider such recommendations and make the final decision concerning sanctions and treatment with respect to each defendant.

The bill requires each participating circuit to annually report specified data to the Office of the State Courts Administrator. A circuit that establishes a community court must fund the program with sources other than the state funds except for costs assumed under s. 29.004, F.S. Funds provided by state agencies for treatment and other services may be used for participants of a the community court program.

This section of the bill is effective October 1, 2019.

---

<sup>29</sup> The committee may also include community stakeholders, treatment representatives, and other persons the chair deems appropriate.

## **Attorney's Fees in Specific Injunction Cases (Section 4)**

### ***Protective Injunctions***

Protective injunctions are available under Florida law for victims of domestic violence, repeat violence, sexual violence, dating violence, and stalking.<sup>30</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>31</sup>

Violation of a protective injunction is a first-degree misdemeanor, punishable by up to one year in jail and a \$1,000 fine.<sup>32</sup>

### ***Procedure for Obtaining an Injunction***

The process for obtaining an injunction in any of the above-mentioned circumstances is very similar and requires that the victim file a sworn petition for injunction that alleges:

- 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>33</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. Upon finding an immediate and present danger, the court may grant an ex parte temporary injunction for 15 days. 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>34</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>35</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

---

<sup>30</sup> Sections 741.30, 784.046, and 784.0485, F.S.

<sup>31</sup> Sections 741.31, 784.047, and 784.0487, F.S.

<sup>32</sup> *Id.*

<sup>33</sup> Sections 741.30, 784.046, and 784.0485, F.S.

<sup>34</sup> *Id.*

<sup>35</sup> Section 57.105, F.S.

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>36</sup>

### ***Effect of the Bill***

The bill amends s. 57.105, F.S., providing that attorney's fees may not be awarded for proceedings for an injunction for protection pursuant to s. 784.046, F.S., or s. 784.0485, F.S., unless the court finds by clear and convincing evidence that the petitioner knowingly made a false statement or allegation in the petition with regard to a material matter as defined in s. 837.011(3), F.S.<sup>37</sup>

The bill applies a different standard for awarding attorney's fees in injunction proceedings for repeat violence, sexual violence, or dating violence, or stalking proceedings than is currently provided for in proceedings involving an injunction against domestic violence. Section 741.30, F.S., merely states that attorney's fees may not be awarded in any such proceeding.

This section of the bill is effective October 1, 2019.

### **Veterans (Sections 15, 71, 73, and 74)**

#### ***Veterans' Courts***

Veterans' courts are problem-solving courts, modeled after drug courts, which are aimed at addressing the root causes of criminal behavior unique to veterans.<sup>38</sup> In 2012, the Florida Legislature passed the "T. Patt Maney Veterans' Treatment Intervention Act." Which created the military veterans and servicemembers court program, better known as veterans' courts.<sup>39</sup> Each judicial circuit is authorized to establish a veterans' court program to serve the special needs of eligible veterans<sup>40</sup> and active duty servicemembers<sup>41</sup> who are:

- Suffering a military-related condition, such as mental illness, traumatic brain injury, or substance abuse; and
- Charged with or convicted of a criminal offense.<sup>42</sup>

To be eligible to participate in the veterans' court program,<sup>43</sup> the defendant must allege that he or she is suffering a military-related injury and establish that he or she is:

---

<sup>36</sup> *Lopez v. Hall*, 233 So.3d 451 (Fla. 2018).

<sup>37</sup> Section 837.011(3), F.S., defines "material matter" to mean any subject, regardless of its admissibility under the rules of evidence, which could affect the course or outcome of the proceeding. Whether a matter is material in a given factual situation is a question of law.

<sup>38</sup> Florida Courts, *Problem-Solving Courts*, available at <http://www.flcourts.org/resources-and-services/court-improvement/problem-solving-courts/> (last visited April 15, 2019).

<sup>39</sup> Chapter 2012-159, L.O.F.

<sup>40</sup> Section 1.01(14), F.S., defines a veteran as a person who served in active military, naval, or air service who was discharged or released under honorable conditions or who later received an upgraded discharge under honorable conditions.

<sup>41</sup> A servicemember is defined as a person serving as a member of the United States Armed Forces on active duty or state active duty and members of the Florida National Guard and United States Reserve Forces. Section 250.01(19), F.S.

<sup>42</sup> Section 394.47891, F.S.

<sup>43</sup> As of February 2019, there are 30 veterans' courts in Florida. Additionally, the Office of Court Improvement reports that in 2017, "Florida's veterans' courts admitted 1,051 participants and graduated 593." Email from the Office of the State Courts Administrator, March 1, 2019 (on file with Senate Appropriations Committee).

- An honorably discharged veteran;<sup>44</sup>
- A generally discharged veteran;<sup>45</sup> or
- An active duty servicemember.<sup>46</sup>

The Task Force on Substance Abuse and Mental Health Issues in the Courts has proposed that eligibility to participate in the veterans' courts be expanded to all veterans of any discharge status.<sup>47</sup> The Task Force also recommends that veterans' courts be extended to other military-related individuals: current or former United States defense contractors, and current or former military members of a foreign allied country.<sup>48</sup>

### ***Veterans and Pretrial Intervention Participation***

After a criminal arrest, rather than being prosecuted, eligible veterans may be diverted to a pretrial intervention program. Prior to placement in a program, a veterans' treatment intervention team must develop an individualized coordinated strategy for the veteran. The team must present the coordinated strategy to the veteran in writing before he or she agrees to enter the program. The strategy is modeled after the ten therapeutic jurisprudence principles and key components for treatment-based drug court programs.<sup>49</sup>

If the defendant agrees to participate in the pretrial intervention program the court retains jurisdiction in the defendant's case, while participating in the program. At the end of the program, the court considers recommendations for disposition by the state attorney and the program administrator. If the veteran successfully completes the treatment program, the court must dismiss the criminal charges. If the court finds that the veteran did not successfully complete the pretrial intervention program, the court can either order the veteran to continue in education and treatment or authorize the state attorney to proceed with prosecution.<sup>50</sup>

The 2012 Act also amended ch. 948, F.S., providing when veterans and servicemembers may be eligible to participate in the veterans' court program for treatment and services. Eligible individuals may participate after being:

---

<sup>44</sup> Section 1.01(14), F.S.

<sup>45</sup> Section 948.21(2), F.S.

<sup>46</sup> Section 250.01(19), F.S.

<sup>47</sup> The "Task Force on Substance Abuse and Mental Health Issues in the Courts" is the task force "charged with developing a strategy for ensuring fidelity to nationally accepted key components of veterans courts" pursuant to Florida Supreme Court Administrative Order 14-46. See Judicial Branch 2019 Legislative Agenda, *Expansion of Veterans Court Eligibility*, p. 51, n. 17 (on file with the Senate Appropriations Committee).

<sup>48</sup> *Id.* at 50. The proposed expansion to include contractors and military members of foreign allied countries is in response to nationwide reports "that a large number of service personnel are being excluded from veterans courts because they do not meet the definition of 'veteran' or 'servicemember'" who have "served our country and would respond well to veterans court interventions." *Id.* at 52.

<sup>49</sup> Section 948.08(7)(b), F.S., requires a coordinated strategy for veterans charged with felonies who are participating in pretrial intervention programs. Section 948.16(2)(b), F.S., requires a coordinated strategy for veterans charged with misdemeanors. Section 397.334(4), F.S., requires treatment based court programs to include therapeutic jurisprudence principles and components recognized by the United States Department of Justice and adopted by the Florida Supreme Court Treatment-based Drug Court Steering Committee. See also s. 394.47891, F.S.

<sup>50</sup> Sections 948.16(2)(b) and 948.08(7)(b) and (c), F.S. Eligible veterans who successfully complete the diversion program may petition the court to order the expunction of the arrest record and the plea.

- Charged with a criminal misdemeanor<sup>51</sup> or certain felony offenses but before being convicted (pretrial intervention);<sup>52</sup> or
- Convicted and sentenced, as a condition of probation or community control.<sup>53</sup>

### ***Participation in Treatment Program while on Probation or Community Control***

Veterans and servicemembers on probation or community control who committed a crime on or after July 1, 2012, and suffer from a military-related mental illness, a traumatic brain injury, or a substance abuse disorder may also qualify for treatment programs. A court may impose, as a condition of probation or community control, successful completion of a mental health or substance abuse treatment program.<sup>54</sup>

### ***Effect of the Bill***

#### Veterans' Courts (Section 15)

The bill amends s. 394.47891, F.S., requiring the chief judge of each judicial circuit to establish a Veterans' court. The bill also expands eligibility beyond veterans and active duty servicemembers to include individuals who are current or former United States Defense contractors and current or former military members of a foreign allied country.

This section of the bill is effective October 1, 2019.

#### Veterans' and Pretrial Drug Court, Pretrial Intervention Programs, and Treatment Programs (Sections 71, 73, and 74)

The bill also amends ss. 948.08, 948.16, and 948.21, F.S., related to veterans' and pretrial drug court, pretrial intervention programs, and treatment programs, respectively, expanding the eligibility for voluntary admission into such programs to include individuals who are current or former United States Defense contractors and current or former military members of a foreign allied country.

These sections of the bill are effective October 1, 2019.

### **Theft Offenses (Sections 5, 23, 29, 38, 39, 43, and 92)**

Approximately 3,000 people are currently incarcerated in the DOC for felony theft convictions and just over 24,000 people are on state community supervision for a felony theft crime in Florida.<sup>55</sup> Since 2000, 37 states have increased the threshold dollar amounts for felony theft

<sup>51</sup> Section 948.16(2)(a), F.S., establishes the misdemeanor pretrial veterans' treatment intervention program.

<sup>52</sup> Section 948.08(7)(a), F.S., authorizes courts to consider veterans charged with non-disqualifying felonies for pretrial veterans' treatment intervention programs. Section 948.08(7), F.S., references the disqualifying felony offenses listed in s. 948.06(8)(c), F.S.; i.e., s. 948.06(8)(c), F.S., lists 19 disqualifying felony offenses of a serious nature, such as kidnapping, murder, sexual battery, treason, etc.

<sup>53</sup> Section 948.21, F.S.

<sup>54</sup> Section 948.21, F.S.

<sup>55</sup> Email from Scotti Vaughan, Department of Corrections, Deputy Legislative Affairs Director, February 6, 2019 (on file with Senate Criminal Justice Committee).

crimes.<sup>56</sup> Such increases ensure that associated “criminal sentences don’t become more severe over time simply because of natural increases in the prices of consumer goods.”<sup>57</sup>

A majority of states (30 states) and the District of Columbia have a \$1,000-or-greater property value threshold for felony grand theft. Fifteen states have thresholds between \$500 and \$950, and five states, including Florida, have thresholds below \$500. Between 2003 and 2015, nine states, including Alabama, Mississippi, and Louisiana, raised their felony thresholds twice.<sup>58</sup>

### ***Property Theft (Sections 38 and 92)***

Section 812.014, F.S., provides that a person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property; or
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.<sup>59</sup>

Second degree petit theft, a second degree misdemeanor, is theft of property valued at less than \$100.<sup>60</sup> First degree petit theft, a first degree misdemeanor, is theft of property valued at \$100 or more but less than \$300.<sup>61</sup> Third degree grand theft, a third degree felony,<sup>62</sup> is theft of:

- Property valued at \$300 or more, but less than \$20,000.
- Specified property including, but not limited to:
  - A will, codicil, or testamentary instrument;
  - A firearm;
  - Any commercially farmed animal,<sup>63</sup> a bee colony of a registered beekeeper, or aquaculture species raised at a certified aquaculture facility;
  - Any fire extinguisher;
  - Citrus fruit of 2,000 or more individual pieces;
  - Any stop sign;
  - Property taken from a designated, posted construction site;<sup>64</sup> and

<sup>56</sup> Pew Charitable Trusts, *The Effects of Changing State Theft Penalties*, February 2016, available at [http://www.pewtrusts.org/~media/assets/2016/02/the\\_effects\\_of\\_changing\\_state\\_theft\\_penalties.pdf?la=en](http://www.pewtrusts.org/~media/assets/2016/02/the_effects_of_changing_state_theft_penalties.pdf?la=en) (last visited April 13, 2019); See also Alison Lawrence, *Making Sense of Sentencing: State Systems and Policies*, National Conference of State Legislatures, June 2015, available at <http://www.ncsl.org/documents/cj/sentencing.pdf> (last visited April 14, 2019).

<sup>57</sup> John Gramlich and Katie Zafft, *Updating State Theft Laws Can Bring Less Incarceration – and Less*, Stateline, Pew Charitable Trusts, March 1, 2016, available at <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/03/31/updating-state-theft-laws-can-bring-less-incarceration-and-less-crime> (last visited April 13, 2019).

<sup>58</sup> *Id.*

<sup>59</sup> Section 812.014(1), F.S.

<sup>60</sup> Section 812.014(3)(a), F.S. A second degree misdemeanor is punishable by up to 60 days in jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

<sup>61</sup> Section 812.014(2)(e), F.S. A first degree misdemeanor is punishable by up to one year in jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

<sup>62</sup> A third degree felony is punishable by up to 5 years’ incarceration and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

<sup>63</sup> This includes any animal of the equine, avian, bovine, or swine class or other grazing animal.

<sup>64</sup> Section 812.014(2)(c), F.S.

- Property from a dwelling or its unenclosed curtilage if the property is valued at \$100 or more, but less than \$300.<sup>65</sup>

The last time the Legislature increased the minimum threshold property value for third degree grand theft was in 1986.<sup>66</sup> The third degree grand theft provisions related to property taken from a dwelling or its unenclosed curtilage were added in 1996. The petit theft provisions were also amended, including the thresholds, in 1996.<sup>67</sup> Using the U.S. Department of Labor, Bureau of Labor Statistics' Consumer Price Index Inflation Calculator, the inflation-adjusted value of the \$300 felony retail threshold that became effective July 1, 1986, is \$696.44, as of March 2019. The March 2019 inflation-adjusted value of \$300 since October 1, 1996 (the date the grand theft provisions relating to a dwelling and its enclosed curtilage became effective), is \$481.75.<sup>68</sup>

### ***Effect of the Bill***

The bill amends s. 812.014, F.S., increasing the minimum threshold amounts for a third degree felony grand theft from \$300 to \$750. For property taken from a dwelling or enclosed curtilage, the theft threshold amounts specified in s. 812.014(2)(d), F.S., are modified from \$100 or more, but less than \$300, to \$750 or more, but less than \$5,000. The first degree misdemeanor petit theft threshold amount specified in s. 812.012(2)(c), F.S., is modified from \$100 or more, but less than \$300, to less than \$750.

The bill also requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to perform a study every five years to determine the appropriateness of the revised thresholds in this section. The study's scope must include, but not be limited to, the crime trends related to theft offenses, the theft thresholds of other states in effect at the time of the study, the fiscal impact of any modifications to the state's thresholds, and the effect on economic factors, such as inflation. The study must include options for amending the thresholds if the study finds that the amounts are not consistent with current trends. The OPPAGA is directed to consult with the Office of Economic and Demographic Research (EDR) in addition to other interested entities and to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by September 1, of each fifth year.

The bill amends s. 921.0022, F.S., conforming the offense severity ranking chart to changes made by the act to the felony threshold amounts for property theft.

This section of the bill is effective October 1, 2019.

### ***Retail Theft (Sections 39 and 92)***

Retail theft is defined as:

- The taking possession of or carrying away of merchandise, property, money, or negotiable documents;
- Altering or removing a label, universal product code, or price tag;

---

<sup>65</sup> Section 812.014(2)(d), F.S.

<sup>66</sup> Chapter 86-161, s. 1, L.O.F., which became effective on July 1, 1986.

<sup>67</sup> Chapter 96-388, s. 49, L.O.F., which became effective on October 1, 1996.

<sup>68</sup> Consumer Price Index Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, available at [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm) (last visited April 13, 2019).



- Transferring merchandise from one container to another; or
- Removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value.<sup>69</sup>

Retail theft is a third degree felony if the theft involves property valued at \$300 or more and the person:

- Individually, or in concert with one or more other persons, coordinates the activities of one or more individuals in committing the offense;
- Commits theft from more than one location within a 48-hour period;<sup>70</sup>
- Acts in concert with one or more other individuals within one or more establishments to distract the merchant, merchant's employee, or law enforcement officer in order to carry out the offense, or acts in other ways to coordinate efforts to carry out the offense; or
- Commits the offense through the purchase of merchandise in a package or box that contains merchandise other than, or in addition to, the merchandise purported to be contained in the package or box.<sup>71</sup>

The threshold for a third degree felony retail theft was created and set by the Legislature in 2001.<sup>72</sup>

### ***Effect of the Bill***

The bill amends s. 812.015(8), F.S., increasing the property value of third degree felony retail theft from \$300 or more, to \$750 or more. Currently, the value of property stolen by a person who acts in concert with, or who coordinates with others can be aggregated. The bill increases the time period that certain thefts can be aggregated by requiring multiple acts of retail theft that occur within a 30-day period, rather than a 48-hour period, by an individual or in concert with one or multiple persons must be aggregated to determine the value of property stolen. The bill increases the 48-hour time period that that theft must have occurred in to aggregate the property value stolen within 30 days.

The bill also amends s. 812.015(9), F.S., specifying that the value of the stolen property may be aggregated over a 30-day period. However, the amount aggregated must be in excess of \$3,000, as required in current law.

The bill also provides that a person who conspires with another to commit retail theft with the intent to sell stolen property or for other gain, and who subsequently places the control of the property with another person in exchange for consideration commits a third degree felony. If the conspiracy to commit retail theft is in excess of \$3,000, aggregated over a 30-day period, then the offense is a second degree felony.

The bill provides for the amount of multiple instances of retail theft within a 30-day period to be aggregated. If multiple instances of retail theft are committed in more than one county within a

---

<sup>69</sup> Section 812.015(1)(d), F.S.

<sup>70</sup> In the first two instances, the amount of each individual theft is aggregated to determine the value of the property stolen. Section 812.015(8)(a) and (b), F.S.

<sup>71</sup> Section 812.015(8), F.S.

<sup>72</sup> Chapter 01-115, s. 3, L.O.F.

30-day period they may be aggregated and must be prosecuted by the Office of the Statewide Prosecutor.

The OPPAGA study required in the above mentioned Property Theft section is also required to be conducted for retail theft.

The bill amends s. 921.0022, F.S., conforming the offense severity ranking chart to changes made by the act to the felony threshold amount increases for retail theft. Additionally, the bill adds retail theft with intent to sell, coordinate with others as a level 3 offense in the offense severity ranking chart.

This section of the bill is effective October 1, 2019.

### ***Theft of State Funds (Section 5)***

The taxes imposed on sales, use, and other transactions in accordance with ch. 212, F.S., must become state funds at the moment of collection and are due to the Department of Revenue on the first day of the succeeding month. Such taxes are considered delinquent on the 21st day of the month upon when they become due.<sup>73</sup>

A person commits theft of state funds when he or she fails to remit taxes with the intent to unlawfully deprive or defraud the state of its money or the use or benefit thereof.<sup>74</sup> If the value of the stolen revenue is less than \$300, the offense is a second degree misdemeanor.<sup>75</sup> If the value of the stolen revenue is \$300 or more, but less than \$20,000, the offense is a third degree felony.<sup>76</sup>

### ***Obtaining Food or Lodging with Intent to Defraud (Section 23)***

A person who obtains food, lodging, or other accommodations at any public food service establishment, or at any transient establishment, with intent to defraud, commits a second degree misdemeanor if the value of the goods obtained is less than \$300, and a third degree felony if the value of the goods is \$1,000 or more.<sup>77</sup>

### ***Removing Property upon Which a Lien Has Accrued (Section 29)***

When a person rents a room or apartment in a hotel, apartment house, roominghouse, boardinghouse, or tenement house in, a lien in favor of the operator of the establishment exists upon all personal property brought into or placed in the establishment by the renter and by the renter's roommates, boarders, and guests. The lien continues until the rent due is paid in full.<sup>78</sup> Once a lien is placed upon the personal property of a renter, or other person mentioned above, it is unlawful to remove such property until the rent is paid and the lien is removed. A person who removes such property without the written consent of the person operating the establishment

---

<sup>73</sup> Section 212.15(1), F.S. The only exception to the tax liability is provided for in s. 212.06(5)(a)2.e., F.S.

<sup>74</sup> Section 212.15(2), F.S.

<sup>75</sup> Section 212.15(2)(a), F.S.

<sup>76</sup> Section 212.15(2)(b), F.S.

<sup>77</sup> Section 509.151, F.S.

<sup>78</sup> Section 713.68, F.S.

commits a second degree misdemeanor if the value of the property removed is \$50 or less, or a third degree felony if the value of the property is greater than \$50.<sup>79</sup>

***Sale of Used Motor Vehicles Goods as New (Section 43)***

A person selling a motor vehicle in a transaction for which any charges will be paid from the proceeds of a motor vehicle insurance policy, and in which the purchase price of the goods exceeds \$100, is prohibited from knowingly misrepresenting orally, in writing, or by failure to speak, that the goods are new or original when they are used or repossessed or have been used for sales demonstration. A violation of this offense is a third degree felony.<sup>80</sup>

***Effect of the Bill (Sections 5, 23, 29, 43, and 92)***

The bill amends ss. 212.15, 509.151, 713.69, and 817.413, F.S., raising the felony threshold for these offenses from \$300 to \$1,000. Any theft in an amount less than \$1,000 is a violation of a misdemeanor offense.

The bill amends s. 921.0022, F.S., conforming the offense severity ranking chart to changes made by the act to the felony threshold amount increases for ss. 212.15, 509.151, and 713.69, F.S. Section 817.413(1), F.S., is not ranked in the offense severity ranking chart so no changes were necessary.

These sections of the bill are effective October 1, 2019.

***Driver Licenses (Sections 6-10, 24, 25, 28, 35, 37, 40, and 47)***

Florida law requires a person to hold a driver license<sup>81</sup> or be exempted from licensure to operate a motor vehicle on the state's roadways.<sup>82</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>83</sup>

The Department of Highway Safety and Motor Vehicles (DHSMV) can suspend or revoke a driver license or driving privilege for both driving-related and non-driving related reasons. Suspension means the temporary withdrawal of the privilege to drive<sup>84</sup> and revocation means a termination of the privilege to drive.<sup>85</sup> The penalties for driving with a suspended or revoked license range from a moving traffic violation to a third degree felony. Generally, a person can be charged with a felony for such offense if:

- He or she knows of the suspension or revocation and has at least two prior convictions for driving with a revoked or suspended license;

<sup>79</sup> Section 713.69, F.S.

<sup>80</sup> Section 817.413, F.S.

<sup>81</sup> "Driver license" is a certificate that, subject to all other requirements of law, authorizes an individual to drive a motor vehicle and denotes an operator's license as defined in 49 U.S.C. s. 30301. Section 322.01(17), F.S.

<sup>82</sup> Section 322.03(1), F.S.

<sup>83</sup> Section 322.04, F.S.

<sup>84</sup> Section 322.01(40), F.S.

<sup>85</sup> Section 322.01(36), F.S.

- He or she qualifies as a habitual traffic offender;<sup>86</sup> or
- His or her license has been permanently revoked.<sup>87</sup>

Among the driving-related reasons that a person may have his or her license suspended or revoked are convictions for fleeing or attempting to elude a law enforcement officer,<sup>88</sup> driving under the influence (DUI),<sup>89</sup> and refusal to submit to a lawful breath, blood, or urine test in a DUI investigation.<sup>90</sup> Alternatively, some of the non-driving related convictions a person may have his or her license suspended or revoked for are graffiti by a minor<sup>91</sup> and certain drug offenses.<sup>92</sup>

Additionally, the clerk of the court can direct the DHSMV to suspend a license for several reasons, including failure to comply with civil penalties.<sup>93</sup> Such a suspension lasts until the individual is compliant with the court's requirements for reinstatement<sup>94</sup> or, if the court grants relief from the suspension.<sup>95</sup> A person with a suspended or revoked license cannot drive, which can inhibit his or her ability to work and can further impede the process of resolving outstanding financial obligations.<sup>96</sup> As a result of this, counties have held events to assist individuals whose licenses are suspended for financial reasons related to civil penalties or criminal financial obligations.

### ***Driver License Reinstatement Days (Section 10)***

#### **Effect of the Bill**

The bill creates s. 322.75, F.S., to require each clerk of court to establish a Driver License Reinstatement Days program for reinstating suspended driver licenses. The bill requires the clerk of court to select one or more days for an event, annually, at which a person may have his or her driver license reinstated. At such an event, a person must pay the full license reinstatement fee, but the clerk may reduce or waive other fees and costs to facilitate reinstatement.

The bill provides that a person is eligible for reinstatement pursuant to the program if his or her license was suspended due to:

- Driving without a valid driver license;
- Driving with a suspended driver license;
- Failing to make a payment on penalties in collection;
- Failing to appear in court for a traffic violation; or
- Failing to comply with any provision of ch. 318, F.S., (Traffic Infractions) or ch. 322, F.S. (Driver Licenses)

<sup>86</sup> See s. 322.264, F.S.

<sup>87</sup> See ss. 322.34 and 322.341, F.S.

<sup>88</sup> Section 316.1935(5), F.S.

<sup>89</sup> See ss. 316.193, 322.26, 322.271, and 322.28, F.S.

<sup>90</sup> See ss. 316.193 322.2615(1)(b), F.S.

<sup>91</sup> Section 806.13, F.S.

<sup>92</sup> Section 322.055, F.S.

<sup>93</sup> Section 322.245, F.S.

<sup>94</sup> See ss. 318.15(2) and 322.245(5), F.S.

<sup>95</sup> Section 322.245(5), F.S.

<sup>96</sup> Section 322.271, F.S., allows a person to have his or her driving privilege reinstated on a restricted basis solely for business or employment purposes under certain circumstances.

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

- The person's failure to fulfill a court-ordered child support obligation;
- A violation of s. 316.193, F.S.;
- The person's failure to complete a driver training program, driver improvement course, or alcohol or substance abuse education or evaluation program required under ss. 316.192, 316.193, 322.2616, 322.271, or 322.264, F.S.;
- A traffic-related felony; or
- The person being designated as a habitual traffic offender under s. 322.264, F.S.

The bill also requires the clerk of court to collect and report to the Florida Clerks of the Court Operations Corporation information relating to the reinstatement days so the corporation can report such information in its annual report required by s. 28.32, F.S.

This section of the bill is effective October 1, 2019.

***Driver License Impacts of Drug, Alcohol related Convictions, (Section 6, 7, 8, 24 and 25)***

Section 322.055, F.S., currently provides that upon the conviction of a person 18 years of age or older for possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance, the court must direct the DHSMV to *revoke the driver license for 1 year*.<sup>97</sup> However, if the person does not have a license but is eligible to have one, the DHSMV must withhold issuance of such person's driver license or driving privilege for *1 year* after the date the person was convicted or until such person completes a drug treatment program, if necessary.<sup>98</sup> If a person is ineligible to have a license or driving privilege, the court must direct the DHSMV to withhold issuance of a license for *1 year* after the date he or she would otherwise have become eligible for a license.<sup>99</sup> If such a person's driver license is already under suspension or revocation for any reason, the court must direct the DHSMV to extend the period by *1 year*.<sup>100</sup>

Additionally, s. 322.055, F.S., permits the court to, in its own discretion, direct the DHSMV to issue a license in any of these scenarios for driving privilege restricted to business or employment purposes only.<sup>101</sup> A person who has had his or her driver license suspended or revoked in accordance with s. 322.055, F.S., who is already under a suspension or revocation for any reason, or who is not currently eligible for such license, may petition the court to reinstate the license in an unrestricted or restricted manner after 6 months.<sup>102</sup>

---

<sup>97</sup> Section 322.055(1), F.S.

<sup>98</sup> Section 322.055(2), F.S.

<sup>99</sup> Section 322.055(4), F.S.

<sup>100</sup> Section 322.055(3), F.S.

<sup>101</sup> See s. 322.055, F.S.

<sup>102</sup> Section 322.055(1) - (3), F.S.

Additionally, s. 322.056, F.S., requires, in part, the court to direct the DHSMV to suspend, revoke or withhold issuance, or extend a current suspension or revocation of a license if a person under 18 years of age is found guilty of or delinquent for a violation of:

- Section 562.11(2), F.S., which relates to misrepresentation of a person's age for the purpose of inducing any licensee to sell, give, serve, or deliver alcohol to a person under 21 years of age;
- Section 562.111, F.S., which relates to possession of alcoholic beverages by persons under 21 years of age; or
- Chapter 893, F.S., which relates to drug offenses.<sup>103</sup>

Specifically, s. 322.056, F.S., requires the court to revoke or withhold issuance of a license for *not less than 6 months and not more than 1 year* for a first violation, and *2 years*, for a subsequent violation. Additionally, if such a person's license is already under suspension or revocation the period of suspension or revocation will be extended for *not less than 6 months and not more than 1 year* for a first violation and *2 years* for a subsequent violation.<sup>104</sup>

If a person is ineligible to have a license or driving privilege, s. 322.056, F.S., requires the court to direct the DHSMV to withhold issuance of a license for *not less than 6 months and not more than 1 year* after the date he or she would otherwise have become eligible for a license.

Section 322.057, F.S., provides the court with the discretion to withhold the issuance of, suspend or revoke the driver license of a person convicted for a violation of s. 562.11(1)(a), F.S., which deals with selling, giving, or serving alcohol to a person under the age of 21.

#### Effect of the Bill

The bill amends s. 322.055, F.S., reducing the above mentioned court order-directed revocation, suspension, or withhold issuance of a driver license to *6 months, rather than 1 year*. Additionally, the bill reduces the time period that a court can extend a suspension or revocation for a drug conviction to *6 months*. The bill also authorizes the court to, upon finding a compelling circumstance, direct the DHSMV to issue a license. The bill repeals the provisions of s. 322.055, F.S., permitting a person to apply to the DHSMV for early reinstatement *6 months* into the revocation.

The bill also amends s. 322.056, F.S., repealing the driver license suspension, revocation, and withhold issuance requirement for violations of s. 562.11(2), F.S., and s. 562.111, F.S. The bill also amends ss. 562.11 and 562.111, F.S., to incorporate these changes. The bill retains the requirement in s. 322.056, F.S., for the court to direct the DHSMV to revoke or withhold issuance of a license if a person under 18 years of age is found guilty of or delinquent for a violation of ch. 893, F.S., which relates to drug offenses.

The bill amends s. 322.056, F.S., making the applicable time period for which a court must revoke, suspend, withhold issuance, or extend such suspension or revocation of a license for any conviction of a violation of ch. 893, F.S., be *6 months*. Additionally, the bill provides that the

<sup>103</sup> Section 322.056(1), F.S.

<sup>104</sup> See s. 322.056(2) and (3), F.S.

court may direct the DHSMV to issue a restricted driving license upon finding a compelling circumstance to warrant an exception.

The bill also repeals s. 322.057, F.S., related to the driver license impacts for convictions of providing alcohol to a minor.

These sections of the bill are effective October 1, 2019.

### ***Driving While License Suspended, Revoked, Canceled, or Disqualified (Section 9)***

Currently, any person who has knowledge that his or her driver license or driving privilege has been canceled, suspended, or revoked, is prohibited from driving any motor vehicle upon the highways of the state while such license or privilege is canceled, suspended, or revoked.<sup>105</sup> A second conviction is punishable as a first degree misdemeanor,<sup>106</sup> while a third or subsequent violation is a third degree felony.<sup>107</sup>

#### **Effect of the Bill**

The bill provides that a second *or subsequent* conviction is punishable as a first degree misdemeanor. The bill removes any felony penalties related to a violation of s. 322.34, F.S.

This section of the bill is effective October 1, 2019.

### ***Driver Licenses and Tobacco Possession Related Convictions (Sections 28 and 47)***

Currently, s. 569.11, F.S., requires the court to direct the DHSMV to withhold issuance or suspend or revoke the driver's license of any person under 18 years of age who knowingly possesses tobacco for a *third or subsequent* violation within 12 weeks of the first violation.<sup>108</sup> Additionally, the same penalty applies to a person under 18 years of age who misrepresents his or her age or military service for the purpose of inducing someone to give him or her tobacco.<sup>109</sup>

Additionally, s. 877.112(8), F.S., provides that a person under 18 years of age is prohibited from knowingly possessing, or misrepresenting his or her age or military service for the purpose of obtaining, any nicotine product or nicotine dispensing device. For a *third or subsequent* violation within 12 weeks of the first violation of such provisions, the court must direct the DHSMV to suspend, revoke, or withhold issuance of such a person's driver license or driving privilege.<sup>110</sup>

A court is *required* to direct the DHSMV to withhold issuance of or suspend the driver license or driving privilege of a person who fails to pay the fine required for a second or subsequent violation of either of these provisions.<sup>111</sup>

---

<sup>105</sup> Section 322.34(2), F.S.

<sup>106</sup> A first degree misdemeanor is punishable by up to one year in jail and up to a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>107</sup> Section 322.34(2), F.S. A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

<sup>108</sup> Section 569.11(1)(c), F.S.

<sup>109</sup> Section 569.11(2)(c), F.S.

<sup>110</sup> Section 877.112(6) and (7), F.S.

<sup>111</sup> See s. 877.112, F.S.

Effect of the Bill

The bill amends s. 569.11, F.S., providing that a *second or subsequent* commission of such an offense within 12 weeks of the first violation is treated with a \$25 fine.

The bill also amends s. 877.112, F.S., repealing the provision related to “third or subsequent,” instead providing that a *second or subsequent* violation of this provision within 12 weeks of the first violation is treated with a \$25 fine. The bill provides that such a direction to suspend, revoke, or withhold the issuance of a license by the court is *discretionary*, not mandatory.

These sections of the bill are effective October 1, 2019.

***Driver Licenses and Possession of a Firearm by a Minor (Section 35)***

Currently, s. 790.22, F.S., provides that a minor under 18 years of age is prohibited from possessing a firearm, other than an unloaded firearm at his or her home, unless:

- The minor is engaged in a lawful hunting activity and is:
  - At least 16 years of age; or
  - Under 16 years of age and supervised by an adult; or
- The minor is engaged in a lawful marksmanship competition or practice or other lawful recreational shooting activity and is:
  - At least 16 years of age; or
  - Under 16 years of age and supervised by an adult who is acting with the consent of the minor’s parent or guardian; or
- The firearm is unloaded and is being transported by the minor directly to or from an event authorized in s. 790.22(3)(a) or (b), F.S.<sup>112</sup>

The court is *required* to direct the DHSMV to suspend, revoke or to withhold issuance of a license of a minor who violates s. 790.22(3), F.S.<sup>113</sup>

If a minor is found to have committed an offense that involves the use or possession of a firearm, other than the above listed violation, or an offense during the commission of which the minor possessed a firearm, and the minor is not committed to a residential commitment program of the Department of Juvenile Justice, the court is *required* to direct the DHSMV to suspend, revoke or to withhold issuance of a license of a minor.<sup>114</sup>

Effect of the Bill

The bill amends s. 790.22, F.S., *authorizing*, rather than requiring, the court to direct the DHSMV to suspend, revoke, or withhold issuance of the driver license for this violation.

This section of the bill is effective October 1, 2019.

---

<sup>112</sup> Section 790.22(3), F.S.

<sup>113</sup> Section 790.22(5), F.S.

<sup>114</sup> Section 790.22(9) and (10), F.S.



***Driver Licenses and Criminal Mischief (Section 37)***

Currently, the court is *required* to direct the DHSMV to suspend, revoke or withhold issuance of a minor's driver license or driving privilege for not more than 1 year if a minor is found to have committed a delinquent act, for placing graffiti on any public property or private property.<sup>115</sup>

**Effect of the Bill**

The bill amends s. 806.13, F.S., *authorizing*, rather than requiring, the court to direct the DHSMV to suspend, revoke, or withhold issuance of the driver license for this violation.

This section of the bill is effective October 1, 2019.

***Driver Licenses and Misdemeanor Theft Conviction (Section 40)***

Section 812.0155, F.S., authorizes the court to direct the DHSMV to suspend the driver license of anyone who is adjudicated guilty of a misdemeanor violation of s. 812.014, F.S., or s. 812.015, F.S., related to theft. The suspension for a first time violation must be for *6 months*, and for *1 year* for a second or subsequent violation.<sup>116</sup> Additionally, the court may revoke, suspend, or withhold issuance of a driver license of a person less than 18 years of age who violates these theft provisions as an alternative to sentencing the person in certain circumstances.<sup>117</sup>

**Effect of the Bill**

The bill repeals 812.0155(1), F.S., which allowed the court to order the suspension of the driver license of each person adjudicated guilty of any misdemeanor violation of s. 812.014, F.S., or s. 812.015, F.S., regardless of the value of the property stolen.

However, the bill retains the portion of s. 812.0155, F.S., which allows a court to revoke, suspend, or withhold issuance of a driver license of a person less than 18 years of age who violates ss. 812.014 or 812.015, F.S., as an alternative to sentencing the person to probation.

This section of the bill is effective October 1, 2019.

**Offenses Related to Intentional Transmission of Sexually Transmitted Diseases (Sections 11-14, 32, 77, and 92)*****Human Immunodeficiency Virus (HIV)***

HIV is a virus that can lead to acquired immunodeficiency syndrome (AIDS) if not treated. Unlike some other viruses, the human body cannot get rid of HIV completely, even with treatment.<sup>118</sup> HIV is spread through specific activities that result in contact with an infected

---

<sup>115</sup> Section 806.13(7), F.S.

<sup>116</sup> Section 812.0155(1), F.S.

<sup>117</sup> Section 812.0155(2), F.S.

<sup>118</sup> The Center for Disease Control and Prevention (CDC), *About HIV/AIDS*, page updated March 1, 2019, available at <https://www.cdc.gov/hiv/basics/whatishiv.html> (last visited April 18, 2019)(hereinafter cited as "The CDC About HIV Info Sheet").

person's blood, other bodily fluids, mucous membranes, or damaged tissue.<sup>119</sup> In the United States, HIV is mainly transmitted through unprotected anal or vaginal sex and the sharing of needles and syringes, rinse water, or other equipment used to prepare drugs for injection.<sup>120</sup>

Rare methods of HIV transmission can occur if a person engages in activities with an untreated HIV positive person, such as oral sex, transfusion of blood and blood products, organ or tissue transplants contaminated with HIV, and contact with open wounds or mucus membranes of an HIV positive person.<sup>121</sup>

There is no effective cure for HIV, but antiretroviral therapy can slow or prevent the disease's progression and dramatically prolong the lifespan of an infected person.<sup>122</sup> When treated, an infected person can expect to live nearly as long as a person without HIV.<sup>123</sup> Antiretroviral therapy can also reduce the amount of HIV in a person's blood, known as the viral load.<sup>124</sup> Persons who attain an undetectable viral load have effectively no risk of transmitting HIV through sexual conduct.<sup>125</sup> In Florida, 62 percent of the 116,944 people living with HIV<sup>126</sup> had achieved an undetectable viral load.<sup>127</sup>

### ***STDs and Non-Disclosure***

Nearly two-thirds of all states criminalize certain conduct related to HIV exposure.<sup>128</sup> Under Florida law, a person commits a third degree felony<sup>129</sup> if the person knows he or she has HIV, has been informed of the risk of transmission through sexual intercourse, and has sexual intercourse with another person, unless that person consented with knowledge of the diagnosis.<sup>130</sup> A person commits a first degree felony<sup>131</sup> for a second or subsequent non-disclosure offense.<sup>132</sup> Conviction for a non-disclosure offense does not require the intent to transmit or the actual transmission of HIV.

---

<sup>119</sup> The CDC, *HIV Transmission*, October 31, 2018, available at <https://www.cdc.gov/hiv/basics/transmission.html> (last visited on April 18, 2019).

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> The CDC About HIV Info Sheet.

<sup>123</sup> The CDC, *HIV Care Saves Lives infographic*, available at <https://www.cdc.gov/vitalsigns/hiv-aids-medical-care/infographic.html> (last visited on April 18, 2019).

<sup>124</sup> The CDC About HIV Info Sheet.

<sup>125</sup> *Id.*

<sup>126</sup> Florida reported an estimated 4,949 new HIV diagnoses in 2017. The Florida Department of Health (DOH), *HIV Data Center*, November 28, 2018, available at <http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/index.html> (last visited on April 18, 2019).

<sup>127</sup> The DOH, *HIV Data Center*, available at <http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/index.html> (last visited on April 18, 2019).

<sup>128</sup> J. Stan Lehman, et al., *Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States, AIDS and Behavior*, March 15, 2014, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4019819/> (last visited on April 18, 2019).

<sup>129</sup> A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>130</sup> Sections 384.24(2) and 384.34(5), F.S.

<sup>131</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>132</sup> *Id.*

Florida law does not currently define “sexual intercourse” for purposes of offenses in violation of ch. 384, F.S. However, the Florida Supreme Court has defined sexual intercourse to include penile-vaginal penetration and acts of oral and anal intercourse.<sup>133</sup>

### ***Criminal Transmission of HIV***

A person convicted of committing or attempting to commit a specified offense involving the transmission of bodily fluids from one person to another must undergo HIV testing.<sup>134</sup> Specified offenses include:

- Sexual battery (s. 794.011, F.S.);
- Incest (s. 826.04, F.S.);
- Lewd or lascivious offenses on a person under 16 years of age (s. 800.04, F.S.);
- Assault (s. 784.011, 784.07(2)(a), and 784.08(2)(d), F.S.);
- Aggravated assault (ss. 784.021, 784.07(2)(c), and 784.08(2)(b), F.S.);
- Battery (ss. 784.03, 784.07(2)(b), 784.08(2)(c), F.S.);
- Aggravated battery (ss. 784.045, 784.07(2)(d), and 784.08(2)(a), F.S.);
- Child abuse or aggravated child abuse (s. 827.03(2), F.S.);
- Abuse of an elderly person or disabled adult or aggravated abuse of an elderly person or disabled adult (s. 825.102, F.S.);
- Sexual performance of a minor (s. 827.071, F.S.);
- Prostitution (ss. 796.07 and 796.08, F.S.);
- Donation of blood, plasma, organs, skin, or other human tissue under certain conditions (s. 381.0041(11)(b), F.S.); and
- Human trafficking (s. 787.06(3)(b), (d), (f), and (g), F.S.).<sup>135</sup>

A person who tests positive for HIV following a conviction for a specified offense, who is informed of the result, and who later commits another specified offense, commits criminal transmission of HIV.<sup>136</sup> An offender may be convicted of, and sentenced separately for, criminal transmission of HIV and for the underlying offense.<sup>137</sup> A conviction for criminal transmission of HIV does not require the intent to transmit or the actual transmission of HIV.<sup>138</sup>

### ***Organ, Blood, Plasma, Skin and Tissue Donation***

Although authorized by federal law, it is a third degree felony in Florida for an HIV-positive person to donate blood, plasma, organs, skin, or other human tissue when he or she knew of the HIV infection and was informed that transmission could occur through such donation.<sup>139</sup> Florida prohibits HIV-positive persons from donating human tissue to other HIV-positive recipients or as part of a clinical research study.<sup>140</sup>

<sup>133</sup> *Debaun v. State*, 213 So. 3d 747 (Fla. 2017).

<sup>134</sup> Section 775.0877(1), F.S.

<sup>135</sup> Section 775.0877, F.S.

<sup>136</sup> Section 775.0877(3), F.S.

<sup>137</sup> *Id.*

<sup>138</sup> Section 775.0877(5), F.S.

<sup>139</sup> Section 381.0041(11)(b), F.S.

<sup>140</sup> *Id.*

### ***Release of Information***

A person who maliciously disseminates any false information or report about the existence of any STD, including HIV, commits a third degree felony.<sup>141</sup> A person who obtains information identifying a person with an STD, including HIV, who knew or should have known the nature of the information and who maliciously, or for monetary gain, spreads such information to anyone other than a physician or a nurse employed by the DOH or to a law enforcement agency, commits a third degree felony.<sup>142</sup>

The DOH promulgates rules regulating STD testing, confidentiality of information, disease reporting, quarantine orders, and notification requirements.<sup>143</sup> A person who violates the DOH rules related to STDs<sup>144</sup> is subject to a \$500 fine for each violation.<sup>145</sup> The DOH can impose the fine in addition to other penalties provided by ch. 384, F.S.<sup>146</sup>

### ***Effect of the Bill***

#### Sexually Transmitted Disease Definitions

The bill defines two terms previously undefined by in ch. 384, F.S., related to sexually transmitted diseases. The bill amends s. 384.23, F.S., defining “sexual conduct,” to mean conduct between persons, regardless of gender, which is capable of transmitting a sexually transmissible disease, including, but not limited to, contact between a:

- Penis and a vulva or an anus; or
- Mouth and a penis, a vulva, or an anus.<sup>147</sup>

The bill defines “substantial risk of transmission” to mean a reasonable probability of disease transmission as proven by competent medical or epidemiological evidence.

#### STDs and Non-Disclosure

The bill amends s. 384.24, F.S., replacing the undefined phrase, “sexual intercourse” with the defined phrase “sexual conduct.” The bill requires the state to prove additional elements for a conviction under s. 384.24, F.S., including that the offender:

- Acted with intent to transmit HIV or another specified STD;
- Engaged in sexual conduct that poses a substantial risk of transmission of HIV or another specified STD, to another person when the other person was unaware of the HIV or specified STD diagnosis; and,
- Actually transmitted HIV or another specified STD to another person.

---

<sup>141</sup> Section 384.34(3), F.S.

<sup>142</sup> Section 384.34(6), F.S.

<sup>143</sup> Rule 64D-3, F.A.C.

<sup>144</sup> For example, r. 64D-3.029, F.A.C., requires practitioners, hospitals, and laboratories to report to the DOH diseases or conditions identified by DOH as being of public health significance, including HIV, within specified timeframes.

<sup>145</sup> Section 384.34(4), F.S.

<sup>146</sup> *Id.* Other penalties include criminal misdemeanor penalties for violations of s. 384.29, F.S., relating to the confidentiality of information and records held by the DOH, and for violations of s. 384.26, F.S., relating to the confidentiality of information gathered by the DOH during an investigation into the source and spread of an STD.

<sup>147</sup> This definition is substantively similar manner as the term was defined by the Florida Supreme Court in *DeBaun*.

Additionally, the bill provides that a person does not act with the intent to transmit HIV or a specified STD if he or she:

- In good faith, complies with a prescribed treatment regimen or with the behavioral recommendations of a health care provider or public health officials to limit the risk of transmission; or
- Offers to comply with such behavioral recommendations, but the sexual partner rejects the offer.

The bill defines the term “behavioral recommendations” for purposes of s. 384.24, F.S., to include, but not be limited to, the use of a prophylactic device to limit the risk of transmission of the disease.

Further, the bill provides that evidence of the person’s failure to comply with such a treatment regimen or such behavioral recommendations is not, in and of itself, sufficient to establish that he or she acted with the intent to transmit a specified STD.

The bill also amends s. 384.34, F.S., reducing the offense of engaging in sexual conduct while knowingly carrying HIV or other specified STD without the informed consent of the other party from a third degree felony to a first degree misdemeanor. This change makes non-disclosure of HIV the same offense level as non-disclosure of other enumerated STDs. The bill also removes the enhanced penalties for subsequent violations of engaging in such sexual conduct.

The bill also reduces the offense of maliciously disseminating false information or report concerning the existence of any STD from a third degree felony to a first degree misdemeanor.

The bill amends ss. 775.0877 and 960.003, F.S., removing the offense of donation of blood, plasma, organs, skin, or other human tissue in violation of s. 381.0041, F.S., from the list of enumerated offense for which a court must order an offender to undergo mandatory HIV or Hepatitis testing to be performed under the direction of the DOH. Therefore, the criminal penalties imposed for noncompliance with such mandatory testing and the procedures for disclosure of such test results no longer apply to persons convicted of s. 381.0041, F.S.

The bill amends s. 921.0022, F.S., confirming the offense severity ranking chart to changes made by the act.

These sections of the bill are effective October 1, 2019.

## Sexually Violent Predator Program Criminal History Records Access (Section 16)

### *Federal Criminal History Record Information Databases*

The Federal Bureau of Investigation (FBI) administers the National Crime Information Center (NCIC) database, containing information on persons subject to civil protection orders and arrest warrants, and the Interstate Identification Index (III), containing criminal history record information (CRHI). Under federal regulation, CRHI from the NCIC/III-databases is made available to criminal justice agencies for criminal justice purposes.<sup>148</sup> The exchange of CRHI between the federal government and states, however, is subject to cancellation if disseminated to unintended recipients.<sup>149</sup> The National Crime Prevention and Privacy Compact defines:

- “Criminal justice agency” as:
  - A court, and
  - A governmental agency or any subunit thereof that:
    - Performs the administration of criminal justice pursuant to statute or executive order; and
    - Allocates a substantial part of its annual budget to the administration of criminal justice.
- “Criminal justice” as activities relating to detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.<sup>150</sup>

### *Sexually Violent Predator Program*

A sexually violent predator is a person who has been convicted of a sexually violent offense<sup>151</sup> and has a mental abnormality or personality disorder that makes them likely to engage in future acts of sexual violence if not confined to a secure facility for long-term control, care, and treatment.<sup>152</sup> To address the treatment needs of these offenders, the Legislature enacted the “Involuntary Civil Commitment of Sexually Violent Predators Act,”<sup>153</sup> also known as the “Ryce Act,” in 1998.<sup>154</sup>

The Ryce Act creates a civil commitment process for sexually violent predators that is similar to the Baker Act, used to involuntarily commit and treat mentally ill persons.<sup>155</sup> Under the Ryce

<sup>148</sup> 28 C.F.R. s. 20.33(a)(1).

<sup>149</sup> 28 C.F.R. s. 20.33(b); s. 943.054, F.S.

<sup>150</sup> 42 U.S.C. s. 14616

<sup>151</sup> Section 394.912(9), F.S., defines the term “sexually violent offense” to mean murder of a human being while engaged in sexual battery in violation of s. 782.04(1)(a)2., F.S.; kidnapping or false imprisonment of a child under the age of 13 and, in the course of that offense, committing sexual battery; or a lewd, lascivious, or indecent assault or act upon or in the presence of the child; sexual battery in violation of s. 794.011, F.S.; lewd, lascivious, or indecent assault or act upon or in presence of the child in violation of ss. 800.04 or 847.0135(5), F.S.; an attempt, criminal solicitation, or conspiracy, in violation of s. 777.04, F.S., of a sexually violent offense; any conviction for a felony offense in effect at any time before October 1, 1998, which is comparable to a sexually violent offense listed above or any federal conviction or conviction in another state for a felony offense that in this state would be a sexually violent offense; or any criminal act that, either at the time of sentencing for the offense or subsequently during civil commitment proceedings under this part, has been determined beyond a reasonable doubt to have been sexually motivated.

<sup>152</sup> Section 394.912(10), F.S.

<sup>153</sup> Chapter 394, Part V, F.S.

<sup>154</sup> Chapter 98-64, L.O.F.

<sup>155</sup> Chapter 394, Part I, F.S.

Act, offenders convicted of specified sex offenses who are nearing the end of their criminal sentence are referred to the Department of Children and Families (DCF) for assessment by a multidisciplinary team as to whether the offender meets the clinical definition of a sexually violent predator. After assessment, the DCF provides a recommendation to the state attorney.<sup>156</sup>

Following receipt of the DCF's recommendation and supporting information, the state attorney determines whether to file a petition with the circuit court alleging that the offender is a sexually violent predator.<sup>157</sup> At trial, a judge or jury must determine by clear and convincing evidence that an offender meets the definition of a sexually violent predator.<sup>158</sup> A sexually violent predator must be committed to the custody of the Sexually Violent Predator Program (SVPP), within the DCF, for control, care, and treatment.<sup>159</sup>

To conduct its risk assessment and other functions, the SVPP previously had access to the NCIC/III-databases, allowing it to review a person's full criminal history. However, an FBI-conducted audit of a Florida sheriff's office concluded that the SVPP was not a criminal justice agency and therefore not entitled to access the NCIC/III CHRI. This prevents the SVPP from accessing information about out-of-state convictions, which are found in approximately 18 percent of committed sexually violent predators criminal history records.<sup>160</sup>

### ***Effect of the Bill***

The bill amends s. 394.917, F.S., requiring the DCF to provide rehabilitation of criminal offenders upon commitment of a sexually violent predator. This results in the SVPP administering a criminal justice function pursuant to statute and therefore qualifies the SVPP as a criminal justice agency under federal law, thereby authorizing the SVPP to access the NCIC/III CRHI.

This section of the bill is effective October 1, 2019.

### **Occupational Licensing (Sections 18 and 21)**

#### ***Licensure, Generally***

The Department of Business and Professional Regulation (DBPR) has twelve divisions that are tasked with the licensure and general regulation of several professions and businesses in

---

<sup>156</sup> *Id.*

<sup>157</sup> Section 394.914, F.S.

<sup>158</sup> Section 394.917, F.S.

<sup>159</sup> *Id.*

<sup>160</sup> Department of Children and Families, *Sexually Violent Predator Program (SVPP) NCIC Issue Summary*, March 8, 2019 (on file with the Senate Appropriations Committee).

Florida.<sup>161</sup> Fifteen boards<sup>162</sup> and programs exist within the Division of Professions,<sup>163</sup> two boards exist within the Division of Real Estate,<sup>164</sup> and one board exists in the Division of Certified Public Accounting.<sup>165</sup>

Sections 455.203 and 455.213, F.S., establish the DBPR's general licensing authority, including its authority to charge license fees and license renewal fees. Each board within the DBPR must determine by rule the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.<sup>166</sup> When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a "permit, registration, certificate, or license" to the licensee.<sup>167</sup>

The Construction Industry Licensing Board (CILB) within the DBPR is responsible for licensing and regulating the construction industry in this state under part I of ch. 489, F.S.<sup>168</sup> In part, ch. 489, F.S., provides for the licensing of septic tank contractors through the DBPR.

### ***Denial of Licensure and Criminal History***

Chapter 455, F.S., provides the general powers of the DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under the DBPR as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.<sup>169</sup> The DBPR may regulate professions "only for the preservation of the health, safety, and welfare of the public under the police powers of the state."<sup>170</sup> The DBPR or any board is prohibited from creating a regulation that has an unreasonable effect on job creation or job retention, or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.<sup>171</sup>

---

<sup>161</sup> See s. 20.165, F.S., creating the divisions of Administration; Alcoholic Beverages and Tobacco; Certified Public Accounting; Drugs, Devices, and Cosmetics; Florida Condominiums, Timeshares, and Mobile Homes; Hotels and Restaurants; Pari-mutuel Wagering; Professions; Real Estate; Regulation; Service Operations; and Technology.

<sup>162</sup> Section 455.01(1), F.S., defines "board" to mean any board or commission, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the DBPR, including the Florida Real Estate Commission. However, for purposes of ss. 455.201-455.245, F.S., "board" means only a board, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the Division of Certified Public Accounting, the Division of Professions, or the Division of Real Estate.

<sup>163</sup> See s. 20.165(4)(a), F.S., for the establishment of specified boards and programs, which are noted with the implementing statutes.

<sup>164</sup> See s. 20.165(4)(b), F.S. Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S., and Florida Real Estate Commission, created under part I of ch. 475, F.S.

<sup>165</sup> See s. 20.165(4)(c), F.S., which establishes the Board of Accountancy, created under ch. 473, F.S.

<sup>166</sup> Section 455.219(1), F.S.

<sup>167</sup> Section 455.01(4) and (5), F.S.

<sup>168</sup> See s. 489.107, F.S.

<sup>169</sup> See ss. 455.01(6) and 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. See s. 455.221(1), F.S.

<sup>170</sup> Section 455.201(2), F.S. Regulation is required when the potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result; the public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and less restrictive means of regulation are not available.

<sup>171</sup> Section 455.201(4)(b), F.S.



Section 112.011, F.S., outlines general guidelines for considering criminal convictions during licensure determinations. Generally, a person may be denied a professional license based on his or her prior conviction of a crime if the crime was a felony or first-degree misdemeanor that is directly related to the standards determined by the regulatory authority to be necessary and reasonably related to the protection of the public health, safety, and welfare for the specific profession for which the license is sought.<sup>172</sup>

Further, the DBPR or a pertinent regulatory board is authorized to deny an application for licensure based on the grounds set forth in s. 455.227(1), F.S., or in the profession's practice act,<sup>173</sup> including denying a licensure application for any person who was:

. . . convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.<sup>174</sup>

The CILB may also deny a license application for any person who was convicted or found guilty of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of, or the ability to practice, a licensee's profession.<sup>175</sup>

Both s. 455.227, F.S., and ch. 489, F.S., do not specifically require the DBPR, the CILB, or the ECLB to consider the passage of time since the disqualifying criminal offense before denying or granting a license or registration.

### ***Effect of the Bill***

#### **Licensing or Registration Related to Certain Professions**

The bill amends s. 455.213, F.S., relating to the licensing of certain professions, to limit the period for which the DBPR or an appropriate board may consider criminal history as an impairment to licensure to five years prior to submitting an application. However, the DBPR or an appropriate board is authorized to consider, at any time, a conviction related to:

- A crime that is a predicate to registration as a sexual predator in accordance with s. 775.21, F.S., or a forcible felony enumerated in s. 775.08, F.S., only if such criminal history has been found to relate to the practice of the applicable profession; or
- Any crime if it has been found to relate to good moral character and if the practice of the applicable profession requires such a standard.

---

<sup>172</sup> Section 112.011(1)(b) and (c), F.S. *See also, e.g., State ex rel. Sbordy v. Rowlett*, 138 Fla. 330 (1939), holding that “the preservation of the public health is one of the duties of sovereignty and in a conflict between the right of a citizen to follow a profession and the right of a sovereignty to guard the health and welfare, it logically follows that the rights of the citizen to pursue his profession must yield to the power of the State to prescribe such restrictions and regulations as shall fully protect the people from ignorance, incapacity, deception, and fraud.” Additionally, notwithstanding any law to the contrary, a state agency may not deny an application for a license based solely on the applicant's lack of civil rights.

<sup>173</sup> Section 455.227(2), F.S.

<sup>174</sup> Section 455.227(1)(c), F.S.

<sup>175</sup> Sections 489.129(1)(b) and 489.553(1)(d), F.S., providing the disciplinary grounds for construction contractors and electrical contractors, respectively.

### Registration of Septic Tank Contractors

The bill also amends s. 489.553, F.S., related to registration of septic tank contractors, to limit the period for which the DBPR may consider criminal history as an impairment to registration to five years prior to submitting an application. However, the board may consider at any time, a conviction related to:

- A crime that is a predicate to registration as a sexual predator in accordance with s. 775.21, F.S., or a forcible felony enumerated in s. 775.08, F.S., only if such criminal history has been found to relate to the practice of the applicable profession; or
- Any crime if it has been found to relate to good moral character.

### Definition of “Conviction”

The bill defines the term “conviction” in both ss. 455.213 and 489.553, F.S., to mean a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

### Ability to Apply for Licensing While Incarcerated or Under Supervision

The bill amends ss. 455.213<sup>176</sup> and 489.553, F.S., authorizing a person to apply for an occupational license or registration before he or she is lawfully released from confinement or supervision. The bill prevents the DBPR or the applicable board from charging a person an additional fee for the application merely because a person applies while incarcerated or under supervision and such status may not be the sole basis for denying a license or registration.

The DBPR or the applicable board is authorized to approve and subsequently stay the issuance of a license or registration until such time that the applicant is released from incarceration or supervision. Additionally, the applicant must notify the DBPR or the applicable board, who must subsequently verify, such release with the DOC or other applicable authority, before it issues a license or registers such applicant.

If an applicant is unable to appear in person due to confinement or supervision, the DBPR or applicable board must permit the applicant to appear by teleconference or video conference, as appropriate, at any meeting of the applicable board or other hearing concerning his or her application. Additionally, the DOC must coordinate with the DBPR or the appropriate board for such appearance, as appropriate.

### Licensure Denial Reporting Related to the Professions of Chapter 455, F.S.

The bill amends s. 455.213, requiring the DBPR and each applicable board to compile a list of crimes that do not relate to the practice of the profession or the ability to practice the profession and do not constitute grounds for denial of a license even when such crimes result in a conviction, regardless of adjudication. This bill requires the list to be made available on the DBPR website and be updated annually. Beginning October 1, 2019, each applicable board must also compile a list of crimes that although reported by an applicant for licensure, were not used as a basis for denial. The list must identify the crime reported for each license application and:

---

<sup>176</sup> All of the changes made to the authority of the DBPR in accordance with s. 455.213, F.S., referred in this analysis also apply to the relevant appropriate board’s approval of a license.

- The date of conviction or the sentencing date, whichever occurs later; and
- The date that adjudication was entered.

The DBPR and each applicable board is also required to compile a list of crimes that have been used as a basis for denial of a license in the past two years and make such lists available on the DBPR's website. Beginning October 1, 2019, the applicable board must compile a list indicating each crime used as a basis for denial and update such list quarterly thereafter. For each crime listed, the applicable board must identify:

- The date of conviction or the sentencing date, whichever occurs later; and
- The date that adjudication was entered.

The information related to licensure denials discussed above must be made available to the public upon request.

#### Registration Denial Reporting Related to Septic Tank Contractors

The bill also amends s. 489.553, F.S., requiring the DBPR to compile a list of crimes that do not relate to the practice of septic tank contracting or the ability to practice the profession and do not constitute grounds for denial of registration even when such crimes result in a conviction, regardless of adjudication. This list is required to be made available on the DBPR's website and be updated annually. Beginning October 1, 2019, and updated quarterly thereafter, the DBPR is required to add to this list any crimes that although reported by an applicant for registration, were not used as a basis for denial in the past two years. The list must identify the crime reported for each registration application and:

- The date of conviction or sentencing, whichever occurs later; and
- The date adjudication was entered.

The DBPR is required to compile a list of crimes that have been used as a basis for denial of registration in the past two years and make such information available on the DBPR's website. Beginning October 1, 2019, and updated quarterly thereafter, the DBPR is required to add to this list each crime used as a basis for denial. For each crime listed, the DBPR must identify:

- The date of conviction or sentencing, whichever occurs later; and
- The date adjudication was entered.

The information related to registration denials discussed above must be made available to the public upon request.

These sections of the bill are effective October 1, 2019.

#### **Veterinary Reporting (Section 19)**

Section 828.12, F.S., the general animal cruelty statute, holds harmless from criminal or civil liability a veterinarian licensed to practice in Florida for decisions made or services rendered under that section. Specifically, the veterinarian is immune from a lawsuit for his or her part in an investigation of cruelty to animals.<sup>177</sup>

---

<sup>177</sup> Section 828.12(4), F.S.

Section 474.2165(4), F.S., currently prohibits a veterinarian from furnishing patient records or discussing a patient's medical condition with anyone other than the client or the client's legal representative or other veterinarians involved in the care or treatment of the patient, except upon written authorization of the client. However, such records may be furnished without written authorization under the following circumstances:

- To any person, firm, or corporation that has procured or furnished such examination or treatment with the client's consent;
- In any civil or criminal action, unless otherwise prohibited by law, upon the issuance of a subpoena from a court of competent jurisdiction and proper notice to the client or the client's legal representative by the party seeking such records; or
- For statistical and scientific research, provided the information is abstracted in such a way as to protect the identity of the patient and the client, or provided written permission is received from the client or the client's legal representative.

### ***Effect of the Bill***

The bill amends s. 474.2165(4), F.S., allowing a veterinarian to report a suspected criminal violation without notice to or authorization from the client. The report may not include written medical records except upon the issuance of a court order. The veterinarian may report the criminal violation to a law enforcement officer, a certified animal control officer,<sup>178</sup> or an agent appointed under s. 828.03, F.S.

However, if a suspected violation occurs at a commercial food-producing animal operation on land classified as agricultural,<sup>179</sup> the veterinarian must provide notice to the client or the client's legal representative before reporting the suspected violation to an officer or agent.

This section of the bill is effective October 1, 2019.

### **Contractor Fraud (Section 20)**

Section 489.126(2), F.S., provides a contractor<sup>180</sup> who receives, as initial payment, money totaling more than 10 percent of the contract price for repair, restoration, improvement, or construction to residential real property must:

- Apply for permits necessary to do work within 30 days after the date payment is made, except where the work does not require a permit under the applicable codes and ordinances; and
- Start the work within 90 days after the date all necessary permits for work, if any, are issued.<sup>181</sup>

---

<sup>178</sup> Section 828.27(4)(a), F.S.

<sup>179</sup> See s. 193.461, F.S.

<sup>180</sup> Section 489.105(3), F.S., defines a contractor as a person who is qualified for, and is only responsible for, the project contracted for, and is a person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others.

<sup>181</sup> Unless the person who made the payment agreed, in writing, to a longer period to apply for the necessary permits or start the work or to longer periods for both. Section 489.126(2), F.S.

A contractor who receives money in excess of the value of the work performed must not, with intent to defraud the owner, fail or refuse to perform any work for any 90-day period. An inference that the money given in excess of the value of the work performed was taken by the contractor with the intent to defraud is made if there is proof that a contractor received money for the contracted project in excess of the value of the work performed by the contractor and:

- The contractor failed to perform any of the work for which he or she contracted during any 60-day period;
- The failure to perform any such work during the 60-day period was not related to the owner's termination of the contract or a material breach of the contract by the owner; and
- The contractor failed, for an additional 30-day period after the date of mailing of the notification to perform any work for which he or she contracted.<sup>182</sup>

A contractor who violates either s. 489.126(2) or (3), F.S., is guilty of theft and must be prosecuted pursuant to s. 812.014, F.S.<sup>183</sup> As such, the offense level for a violation depends upon the value of the property taken.<sup>184</sup>

### ***Effect of the Bill***

The bill provides that, if the contractor fails to apply for necessary permits within 30 days, start work within 90 days, or refund the payment, after receiving more than 10 percent of the contract price, he or she will be excused from liability if just cause can be shown for failing to do one of such things. However, it may be inferred that a contractor does not have just cause if he or she fails to apply for permits, begin the work, or refund payments, within 30 days of receiving written demand from the person who made the payment to complete the project contracted for.

The bill requires written demand to be made to the contractor in the form of a letter that includes a demand to apply for the necessary permits, start the work, or refund the payment. The letter must be sent via certified mail to the address listed in the contracting agreement. If no address is listed, the letter must be mailed to the address listed with the Department of Business and Professional Regulation.

The bill removes the requirement that the contractor must have *intent to defraud the owner* to hold a contractor liable if he or she receives money for the contracted project in excess of the value of the work and fails or refuses to perform any work for any *90-day period*. The bill changes the times periods for when it is prima facie evidence that a contractor received money in excess of the value of the work performed to:

- The contractor failed to perform any of the work during any *90-day period*;
- The failure to perform such work during the *90-day period* was not related to the owner's termination of the contract or a material breach of the contract by the owner; and
- The contractor failed to perform for *90 days* without just cause or terminated the contract without proper notification to the owner.

The bill provides that just cause will not be inferred if a contractor fails to perform work or refund the money received in excess of the value of the work performed within 30 days of

---

<sup>182</sup> Section 489.126(3), F.S.

<sup>183</sup> Section 489.126(4), F.S.

<sup>184</sup> See s. 812.014, F.S.

receiving written demand from the person who made the payment. As a result, a contractor must be liable to the person who made payment for the project contracted for.

The bill provides that the required intent to prosecute a contractor pursuant to this section can be shown to exist at the time that the contractor appropriated the money to his or her own use. Intent to defraud the owner is not required to be proven to exist at the time that the contractor took the money from the owner or at the time the owner made a payment to the contractor. The fact that the person charged in violation of any provision of the statute intended to return the money owed is not a defense.

The bill provides the following thresholds that will be used for the prosecution of a contractor who defrauds a person making payment for a contracted project pursuant to this section:

- A person who violates s. 489.126(2), F.S., commits:
  - A first degree misdemeanor if the total money received is less than \$1,000;
  - A third degree felony if the total money received is \$1,000 or more, but less than \$20,000;
  - A second degree felony if the total money received is \$20,000 or more, but less than \$200,000; and
  - A first degree felony if the total money received is \$200,000 or more.
- A person who violates s. 489.126(3), F.S., commits:
  - A first degree misdemeanor if the total money received exceeding the value of the work performed is less than \$1,000;
  - A third degree felony if the total money received exceeding the value of the work performed is \$1,000 or more, but less than \$20,000;
  - A second degree felony if the total money received exceeding the value of the work performed is \$20,000 or more, but less than \$200,000; and
  - A first degree felony if the total money received exceeding the value of the work performed is \$200,000 or more.

### **Mandatory Minimum Sentencing for Horse Meat Offenses (Section 22)**

Section 500.451, F.S., provides that a person commits a third degree felony with a one-year mandatory minimum sentence if he or she:

- Sells horse meat for human consumption, unless the horse meat is clearly stamped, marked, and described as horse meat for human consumption; or
- Transports, distributes, sells, purchases, or possesses horse meat for human consumption that is not clearly stamped, marked, and described as horse meat for human consumption or horse meat that is not acquired from a licensed slaughterhouse.

### ***Effect of the Bill***

The bill amends s. 500.451, F.S., removing the mandatory minimum sentence for horse meat offenses.

This section of the bill is effective October 1, 2019.

### **Liquor Offenses (Sections 26, 27, and 92)**

Currently, it is a third degree felony<sup>185</sup> to:

- Possess, make, construct, or repair any still, still piping, still apparatus, or related item designed or adapted for the manufacture of an alcoholic beverage;<sup>186</sup>
- Possess any container holding any mash, wort, wash, or fermented liquids capable of being distilled or manufactured into an alcoholic beverage, without authorization;<sup>187</sup>
- Possess any raw materials or substance intended to be used in the distillation or manufacturing of an alcoholic beverage, unless licensed;<sup>188</sup>
- Possess one gallon or more of liquor that was not made or manufactured in accordance with the law;<sup>189</sup> and
- Sell or otherwise dispose of raw materials and other substances to be used in the distillation or manufacture of an alcoholic beverage unless such person holds a license.<sup>190</sup>

### ***Effect of the Bill***

#### Penalty for Possessing Still, Still Piping, Still Apparatus, or Related Items (Sections 26 and 92)

The bill amends s. 562.27, F.S., reducing the penalty from a third degree felony to a second degree misdemeanor<sup>191</sup> for any person who violates a provision of s. 562.27, F.S. The bill also amends s. 921.0022, F.S., removing this offense from the offense severity ranking chart.

This section of the bill is effective October 1, 2019.

#### Penalty for Possessing Illegally-Made Liquor (Section 27)

The bill amends s. 562.451, F.S., reducing the penalty from a third degree felony to a first degree misdemeanor<sup>192</sup> for any person who has in his or her possession or control 1 gallon or more of liquor that was not made or manufactured in accordance with the laws in effect at the time when such liquor was made or manufactured.

This section of the bill is effective October 1, 2019.

### **Prison Releasee Reoffender (Section 30)**

A person who qualifies as a prison release reoffender is subject to a mandatory minimum sentence. A prison release reoffender is a person who is being sentenced for committing or

<sup>185</sup> A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

<sup>186</sup> Section 562.27(1) and (8), F.S.

<sup>187</sup> *Id.*

<sup>188</sup> Section 562.27(2), (8), F.S.

<sup>189</sup> Sections 562.451(2), F.S.

<sup>190</sup> Section 562.27(5), F.S.

<sup>191</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and up to a \$500 fine. Sections 775.082 and 775.083, F.S.

<sup>192</sup> A first degree misdemeanor is punishable by up to one year in jail and up to a \$1,000 fine. Sections 775.082 and 775.083, F.S.

attempting to commit a qualifying offense, such as murder, manslaughter, sexual battery, or robbery,<sup>193</sup> within three years of being released from:

- A state correctional facility operated by the DOC or a private vendor; or
- A correctional institution of another jurisdiction following incarceration for which the sentence is punishable by more than one year in Florida.<sup>194</sup>

A prison release reoffender also includes a person who commits or attempts to commit a qualifying offense while serving a prison sentence or while on escape status from a state correctional facility operated by the DOC or a private vendor or from a correctional institution of another jurisdiction.<sup>195</sup>

A court must sentence a prison release reoffender to:

- A 5-year mandatory minimum for a third degree felony;
- A 15-year mandatory minimum for a second degree felony;
- A 30-year mandatory minimum term for a first degree felony; and
- Life imprisonment for a first degree felony punishable by life or a life felony.<sup>196</sup>

Under certain circumstances, a court may sentence a person to a prison sentence, which is a term of imprisonment for a felony exceeding one year,<sup>197</sup> but the person may ultimately be released from a county detention facility<sup>198</sup> rather than prison. For example, a court must give a defendant credit for time served in the county jail when imposing a sentence.<sup>199</sup> A defendant who stayed in detention during the pendency of his or her case for two years, and was sentenced to two years in prison without credit for time served, would have served the entirety of his or her “prison” sentence in county jail and would be released from county jail. A person may also stay in a county detention facility while serving a prison sentence to resolve or testify in other pending matters, causing such person to potentially be released from county jail on a prison sentence rather than from prison.

In December of 2018, the Florida Supreme Court held that a defendant released from a county jail after having been committed to the legal custody of the DOC was not a prison release reoffender within the current meaning of that term as provided in s. 775.082, F.S.<sup>200</sup>

### ***Effect of the Bill***

The bill amends s. 775.082, F.S., providing that a person who is released from a county detention facility following incarceration for an offense for which the sentence pronounced was a prison sentence qualifies as a prison releasee reoffender if otherwise eligible. Therefore, the mandatory minimum sentences will apply to the person when sentencing on the qualifying offense.

<sup>193</sup> See s. 775.082(9)(a)3., F.S., for a complete list of qualifying offenses.

<sup>194</sup> Section 775.082(9)(a)1., F.S.

<sup>195</sup> Section 775.082(9)(a)2., F.S.

<sup>196</sup> Section 775.082(9)(a)3., F.S.

<sup>197</sup> Section 921.0024(2), F.S.

<sup>198</sup> A county detention facility is a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either a felony or misdemeanor. Section 951.23(1)(a), F.S.

<sup>199</sup> Section 921.161(1), F.S.

<sup>200</sup> *State v. Lewars*, 259 So.3d 793 (Fla. 2018).



This section of the bill is effective October 1, 2019.

### **2016 Amendments to the “10-20-Life” Statute (Section 31)**

Section 775.087, F.S., the “10-20-Life” statute, requires a judge to sentence a person convicted of a specified offense to a minimum term of imprisonment if, while committing the offense, the person possesses or discharges a firearm or destructive device<sup>201</sup> or if the discharge of the firearm results in death or great bodily harm. Specified offenses include such offenses as murder, sexual battery, robbery, and burglary.<sup>202</sup>

Under s. 775.087, F.S., a person convicted of a specified offense, or the attempt to commit such offense, must be sentenced to the following mandatory minimum term of imprisonment:

- 10 years for possession of a firearm;
- 15 years for possession of a semi-automatic/machine gun;
- 20 years for discharge of a firearm (any type); and
- 25 years to life imprisonment for discharge with great bodily injury or death.<sup>203</sup>

However, s. 775.087(2)(a)(1), provides for a minimum mandatory sentence of three years, instead of 10 years, for the possession of a firearm by a felon or burglary of a conveyance if the possession occurred during the commission of the offense.

A person sentenced under s. 775.087, F.S., is not eligible for statutory gain-time under s. 944.275, F.S.<sup>204</sup>

Section 775.087, F.S., was amended in 2016 by ch. 2016-7, L.O.F. (effective July 1, 2016). The 2016 legislation, in part, removed aggravated assault and attempted aggravated assault as predicate offenses for purposes of mandatory minimum sentencing under s. 775.087, F.S. The statute in effect immediately prior to its amendment by ch. 2016-7, L.O.F., prohibited imposing the mandatory minimum sentence for aggravated assault and attempted aggravated assault if the court made written findings that:

- The defendant had a good faith belief that the aggravated assault was justifiable pursuant to ch. 776, F.S.;
- The aggravated assault was not committed in the course of committing another criminal offense;
- The defendant does not pose a threat to public safety; and
- The totality of the circumstances involved in the offense do not justify the imposition of such sentence.<sup>205</sup>

Chapter 2016-7, L.O.F., had prospective application. At the time the 2016 legislation was enacted, Article X, section 9 of the Florida Constitution, Florida’s constitutional savings clause,

---

<sup>201</sup> The terms “firearm” and “destructive device” are defined in s. 790.001, F.S.

<sup>202</sup> For a complete list of offenses, *see* s. 775.087(3)(a)1., F.S.

<sup>203</sup> Section 775.087(2)(a)1.-3. and (3)(a)1.-3., F.S.

<sup>204</sup> Section 775.087(2)(b) and (3)(b), F.S.

<sup>205</sup> Section 775.087(6), F.S. (2015). This exception to mandatory minimum sentencing was created by ch. 2014-195, L.O.F. (effective June 20, 2014).

prohibited applying the repeal or amendment of a criminal statute to any crime committed before such repeal or amendment if this retroactive application affected punishment. However, in 2018, Florida amended Article X, section 9 of the Florida Constitution, and that amendment included removing the prohibition on retroactive application of a repeal or amendment that affects punishment. Accordingly, the Legislature is no longer constitutionally prohibited from retroactively ameliorating punishments.

### ***Effect of the Bill***

The bill amends s. 775.087, F.S., providing that it is the intent of the Legislature to retroactively apply ch. 2016-7, L.O.F., to persons who committed aggravated assault or attempted aggravated assault before July 1, 2016, the effective date of ch. 2016-7, L.O.F., which amended s. 775.087, F.S., to remove aggravated assault or attempted aggravated assault from the list of predicate offenses for mandatory minimum sentencing under s. 787.087, F.S. Chapter 2016-7, L.O.F., is retroactively applied in the following manner:

- On or after October 1, 2019, a person who committed aggravated assault or attempted aggravated assault before July 1, 2016, may not be sentenced to a mandatory minimum term of imprisonment under s. 775.087, F.S., as it existed at any time before its amendment by ch. 2016-7, L.O.F.; and
- A person who committed aggravated assault or attempted aggravated assault before July 1, 2016, who was sentenced before October 1, 2019, to a mandatory minimum term of imprisonment pursuant to s. 775.087, F.S., as it existed at any time before its amendment by ch. 2016-7, L.O.F., and who is serving such mandatory minimum term on or after October 1, 2019, shall be resentenced to a sentence without such mandatory minimum term. The person shall be resentenced to a sentence as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.

A person sentenced or resentenced as described is eligible to receive any gain-time pursuant to s. 944.275, F.S., which he or she was previously ineligible to receive because of the imposition of the mandatory minimum term of imprisonment.

This section of the bill is effective October 1, 2019.

## **Concealed Carry of Firearms by Off-Duty Law Enforcement Officers (Section 34)**

### ***Federal Law***

Congress created the Law Enforcement Officers Safety Act (Act) in 2004 authorizing *qualified* law enforcement officers and *qualified* retired law enforcement officers to carry a concealed firearm across state and other jurisdictional lines.<sup>206</sup>

Under the Act, a qualified law enforcement officer is someone who is an employee of a government agency who:

- Is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law;

<sup>206</sup> 18 U.S.C. 926B; 18 U.S.C. 926C. Subsequently, s. 943.132, F.S., was enacted which directed the Criminal Justice Standards and Training Commission (CJSTC) within the FDLE to adopt rules to implement the Act.

- Is authorized by the agency to carry a firearm;
- Is not the subject of any disciplinary action by the agency which could result in suspension or loss of police powers;
- Meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;
- Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
- Is not prohibited by Federal law from receiving a firearm.<sup>207</sup>

An individual who is a qualified law enforcement officer as defined above and who is carrying the statutorily required identification may carry a concealed firearm.<sup>208</sup> Qualified retired law enforcement officer means an individual who:

- Separated from service in good standing from service with a public agency as a law enforcement officer;
- Before such separation, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest or apprehension;
- Before such separation, served as a law enforcement officer for an aggregate of 10 years or more; or who separated from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;
- During the most recent 12-month period, has met, at the expense of the individual, the standards for qualification in firearms training for active law enforcement officers, as determined by the former agency of the individual, the State in which the individual resides or, if the State has not established such standards, either a law enforcement agency within the State in which the individual resides or the standards used by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that State;
- Has not been officially found by a qualified medical professional employed by the agency to be unqualified for reasons relating to mental health and as a result of this finding will not be issued the photographic identification as described in the law; or who has not entered into an agreement with the agency from which the individual is separating from service in which that individual acknowledges he or she is not qualified under this section for reasons relating to mental health and for those reasons will not receive or accept the photographic identification;
- Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
- Is not prohibited by Federal law from receiving a firearm.<sup>209</sup>

### ***Florida Law***

Section 790.052, F.S., provides that persons holding active certifications from the Criminal Justice Standards and Training Commission (CJSTC) as law enforcement officers or correctional

<sup>207</sup> 18 U.S.C. 926B(c).

<sup>208</sup> 18 U.S.C. 926B(a). 18 U.S.C. 926B(d), requires photographic identification issued by the governmental agency the individual is employed which identifies the employee as a police officer or law enforcement officer of the agency.

<sup>209</sup> 18 U.S.C. 926C(c).

officers<sup>210</sup> have the right to carry concealed firearms, during off-duty hours, at the discretion of their superior officers. Additionally, they may perform those law enforcement functions that they normally perform during duty hours, utilizing their weapons in a manner that is reasonably expected of on-duty officers in similar situations. The appointing or employing agency or department may establish policies limiting law enforcement officers or correctional officers from carrying concealed firearms during off-duty hours in their capacity as appointees or employees of the agency or department.<sup>211</sup>

### ***Effect of the Bill***

The bill amends s. 790.052, F.S., to provide that persons who hold active certifications from the CJSTC as law enforcement or correctional officers as defined in s. 943.10(1), (2), (6), (7), (8), or (9), F.S., meet the definition of “qualified law enforcement officer” found at 18 U.S.C. s. 926(B)(c).

The bill amends s. 790.052, F.S., providing that persons who held active certifications from the CJSTC as law enforcement or correctional officers as defined in s. 943.10(1), (2), (6), (7), (8), or (9), F.S., but who have separated from service under the conditions set forth in 18 U.S.C. s. 926(C)(c), meet the definition of “qualified law enforcement officer.”

This section of the bill is effective October 1, 2019.

### **Cyberstalking (Section 33)**

Section 784.048, F.S., punishes cyberstalking. “Cyberstalk” means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.<sup>212</sup>

Section 784.048, F.S., in part, provides that a person commits stalking, a first degree misdemeanor,<sup>213</sup> if the person willfully, maliciously, and repeatedly cyberstalks another person.<sup>214</sup>

Section 784.048, F.S., in part, also provides that a person commits aggravated stalking, a third degree felony,<sup>215</sup> if the person:

- Willfully, maliciously, and repeatedly cyberstalks another person and makes a credible threat to that person;
- After an injunction for protection against repeat violence, sexual violence, or dating violence pursuant to s. 784.046, F.S., or an injunction for protection against domestic violence pursuant to s. 741.30, F.S., or after any other court-imposed prohibition of conduct toward

<sup>210</sup> Law enforcement and correctional officers are defined in s. 943.10(1), (2), (6), (7), (8), or (9), F.S.

<sup>211</sup> Section 790.052(1), F.S.

<sup>212</sup> Section 784.048(1)(d), F.S.

<sup>213</sup> A first degree misdemeanor is punishable by up to one year in jail and up to a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>214</sup> Section 784.048(2), F.S.

<sup>215</sup> A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

the subject person or that person's property, knowingly, willfully, maliciously, and repeatedly cyberstalks another person;

- Willfully, maliciously, and repeatedly cyberstalks a child under 16 years of age; or
- After having been sentenced for a violation of s. 794.011, F.S. (sexual battery), s. 800.04, F.S. (lewd offenses against certain children), s. 847.0135(5), F.S. (lewd computer transmissions against certain children), and prohibited from contacting the victim of the offense under s. 921.244, F.S. (no-contact order), willfully, maliciously, and repeatedly cyberstalks the victim.<sup>216</sup>

### ***Effect of the Bill***

The bill amends s. 784.048, F.S., to redefine the term “cyberstalk” to include accessing or attempting to access the online accounts or Internet-connected home electronic systems of another person without that person's permission, causing substantial emotional distress to that person and serving no legitimate purpose.

This section of the bill is effective October 1, 2019.

### **Computer-Related Crimes (Section 41)**

Section 815.03, F.S., is the definitions section for ch. 815, F.S., which punishes computer-related crimes, including computer crimes involving unlawful access.<sup>217</sup> Section 815.03(1), F.S., defines the term “access” as approaching, instructing, communicating with, storing data in, retrieving data from, or otherwise making use of any resources of a computer, computer system, or computer network.

### ***Effect of the Bill***

The bill amends the definition of “access” in s. 815.03, F.S., to reference an electronic device, so unlawful access includes an electronic device.

This section of the bill is effective October 1, 2019.

### **Criminal Offenses against Computer Users (Section 42)**

Section 815.06, F.S., punishes cybercrime. Broadly defined, “cybercrime” is “any fraud or crime committed through or with the aid of computer programming or internet-related communications such as Web sites, e-mail, and chat rooms[.]”<sup>218</sup>

<sup>216</sup> Section 784.048(3)-(5) and (7), F.S. The punishment imposed under s. 748.048, F.S., runs consecutive to any former sentence imposed for a conviction for any offense under s. 794.011, F.S., s. 800.04, F.S., or s. 847.135(5), F.S. Section 784.048(8), F.S.

<sup>217</sup> See, e.g., s. 815.06(2)(a), F.S., which prohibits a person from accessing or causing to be accessed any computer system, computer network, or electronic device with knowledge that such access is denied.

<sup>218</sup> Damien Odunze, “Cyber Victimization by Hackers: A Criminological Analysis, v. 1, n. 1 (2018), p. 9, *Public Policy and Administration Research*, available at <https://pdfs.semanticscholar.org/fd89/f6fa17c03a639b7d7b9f5b3ddc492b6b49a8.pdf> (last visited on April 12, 2019).

Section 815.06(2), F.S., provides that a person commits an offense against users<sup>219</sup> of computers, computer systems, computer networks, or electronic devices if he or she willfully, knowingly, and without authorization:

- Accesses or causes to be accessed any computer, computer system, computer network, or electronic device with knowledge that such access is unauthorized;
- Disrupts or denies or causes the denial of the ability to transmit data to or from an authorized user of a computer, computer system, computer network, or electronic device, which, in whole or in part, is owned by, under contract to, or operated for, on behalf of, or in conjunction with another;
- Destroys, takes, injures, or damages equipment or supplies used or intended to be used in a computer, computer system, computer network, or electronic device;
- Destroys, injures, or damages any computer, computer system, computer network, or electronic device;
- Introduces any computer contaminant into any computer, computer system, computer network, or electronic device; or
- Engages in audio or video surveillance of an individual by accessing any inherent feature or component of a computer, computer system, computer network, or electronic device, including accessing the data or information of a computer, computer system, computer network, or electronic device that is stored by a third party.<sup>220</sup>

Generally, commission of any of these acts is a third degree felony.<sup>221</sup> However, it is a second degree felony,<sup>222</sup> if the person commits any of the acts described in s. 815.06(2), F.S., and:

- Damages a computer, computer equipment or supplies, a computer system, or a computer network and the damage or loss is at least \$5,000;
- Commits the offense for the purpose of devising or executing any scheme or artifice to defraud or obtain property;
- Interrupts or impairs a governmental operation or public communication, transportation, or supply of water, gas, or public service; or
- Intentionally interrupts the transmittal of data to or from, or gains unauthorized access to, a computer, computer system, computer network, or electronic device belonging to any mode of public or private transit.<sup>223</sup>

Further, it is a first degree felony<sup>224</sup> if the person commits any of the acts described in s. 815.06(2), F.S., and the violation:

- Endangers human life; or

---

<sup>219</sup> “User” means a person with the authority to operate or maintain a computer, computer system, computer network, or electronic device. Section 815.06(1), F.S.

<sup>220</sup> Section 815.06(2)(a)-(f), F.S.

<sup>221</sup> Section 815.06(3)(a), F.S. A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

<sup>222</sup> A second degree felony is punishable by up to 15 years imprisonment and up to a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>223</sup> Section 815.06(3)(b)1.-4., F.S.

<sup>224</sup> A first degree felony is punishable by up to 30 years imprisonment and up to a \$10,000 fine. However, when a specifically provided by statute, a first degree felony may be punished by imprisonment for a term of years not exceeding life imprisonment. Sections 775.082 and 775.083, F.S.

- Disrupts a computer, computer system, computer network, or electronic device that affects medical equipment used in the direct administration of medical care or treatment to a person.<sup>225</sup>

### ***Effect of the Bill***

The bill amends s. 815.06, F.S., to punish various acts against users of computers, computer systems, computer networks, or electronic devices which are committed willfully, knowingly, and *exceeding authorization*.

This section of the bill is effective October 1, 2019.

### **Possession of a Counterfeit Instrument (Section 44)**

The term “counterfeit” means the manufacture of or arrangement to manufacture a payment instrument<sup>226</sup> without the permission of the financial institution, account holder, or organization whose name, routing number, or account number appears on the payment instrument, or the manufacture of any payment instrument with a fictitious name, routing number, or account number.<sup>227</sup> Currently it is a third degree felony to counterfeit a payment instrument with the intent to defraud a financial institution, account holder, or any other person or organization or for any person to have any counterfeit payment instrument in any person’s possession.<sup>228</sup>

### ***Effect of the Bill***

Current law provides it is unlawful for a person to have any counterfeit payment instrument in such person’s possession, without regard to intent.<sup>229</sup> The bill amends s. 831.28, F.S., providing that a person who has possession of any counterfeit payment instrument commits a third degree felony only if he or she has the intent to defraud a financial institution, account holder, or any other person or organization. The bill also amends s. 921.0022, F.S., conforming the offense severity ranking chart to changes made by the act.

This section of the bill is effective October 1, 2019.

### **Lewd or Lascivious Exhibition in the Presence of an Employee (Section 36)**

#### ***Sexual Harassment at Correctional Facilities***

Employees, specifically females, in many correctional institutions face sexual harassment and sexual abuse directed at them by prisoners.<sup>230</sup> For example, “gunning” refers to the practice of

---

<sup>225</sup> Section 815.06(3)(c)1.-2., F.S.

<sup>226</sup> Section 560.103(29), F.S., defines “payment instrument” to mean a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit.

<sup>227</sup> Section 831.28(1), F.S.

<sup>228</sup> Section 831.28(2), F.S.

<sup>229</sup> *Id.*

<sup>230</sup> 2010 (7) AELE Mo. L. J. 301, *Civil Liability for Sexual Harassment of Female Employees by Prisoners*, pg. 301, July 2010, available at <http://www.aele.org/law/2010all07/2010-07MLJ301.pdf> (last visited April 14, 2019).

inmates exposing themselves and masturbating directly at female staff members.<sup>231</sup> Correctional agencies have a legal obligation to take reasonable measures to prevent and remedy sexual harassment in the workplace and failure to respond properly can result in extensive civil liability. Despite this fact, gunning and other lewd or lascivious conduct has been a crippling issue at both federal and state correctional institutions.<sup>232</sup>

Since 1987, the Department of Corrections (DOC) has paid more than \$5 million in settlements to state workers who alleged they were sexually harassed at work. In 2009, a class action lawsuit brought by mostly women claimed inmates would expose themselves and masturbate in front of them. The court ruled that exhibitionist masturbation, especially gunning, is sex based and highly offensive conduct. Furthermore, the court held that the jury was entitled to find that the DOC made almost no effort to protect its employees from this sex-based harassment.<sup>233</sup>

### ***Lewd or Lascivious Exhibition***

Section 800.09, F.S., was created in response to the class action lawsuit brought against the DOC in 2009, as a way to deter such lewd or lascivious conduct.<sup>234</sup> The law prohibits a person who is detained in a state correctional institution<sup>235</sup> or a private correctional facility<sup>236</sup> from doing any of the following in the presence of a person he or she knows or reasonably should know is an employee: intentionally masturbating, intentionally exposing the genitals in a lewd or lascivious manner, or intentionally committing any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to:

- Sadomasochistic abuse;
- Sexual bestiality; or
- The simulation of any act involving sexual activity.<sup>237</sup>

An “employee” is defined as:

- Any person employed by or performing contractual services for a public or private entity operating a facility;
- Any person employed by or performing contractual services for the corporation operating the prison industry enhancement programs or the correctional programs under part II, ch. 946, F.S.; or
- Any person who is a parole examiner with the Florida Commission on Offender Review.<sup>238</sup>

Any person who violates s. 800.09(2)(a), F.S., commits a third degree felony.<sup>239</sup>

---

<sup>231</sup> *Id.* at 302.

<sup>232</sup> *Id.* at 301.

<sup>233</sup> *Id.*

<sup>234</sup> Chapter 2010-64, s. 4, L.O.F.

<sup>235</sup> “State correctional institution” means any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the DOC. Section 944.02(8), F.S.

<sup>236</sup> “Private correctional facility” means any facility, which is not operated by the DOC, for the incarceration of adults or juveniles who have been sentenced by a court and committed to the custody of the DOC. Section 944.710(3), F.S.

<sup>237</sup> Section 800.09(2)(a), F.S.

<sup>238</sup> Section 800.09(1)(a), F.S.

<sup>239</sup> Section 800.09(2)(b), F.S. A third degree felony is punishable by a term of imprisonment not exceeding 5 years, a fine of \$5,000, or both. Sections 775.082 and 775.083, F.S.



### ***Effect of the Bill***

Current law prohibits lewd or lascivious exhibition in the presence of an employee in a state correctional institution or private correctional facility. The bill expands the scope of the prohibition on such conduct to include any person employed at or performing contractual work for a *county detention facility*. Additionally, the bill defines a county detention facility as a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either a felony or misdemeanor.<sup>240</sup>

This section of the bill is effective October 1, 2019.

### **Prohibited Acts in Connection with Obscene or Lewd Materials (Section 45)**

#### ***Obscenity and the Law***

The First Amendment of the U.S. Constitution states that, “Congress shall make no law ... abridging the freedom of speech...”<sup>241</sup> This language prohibits the government from having the ability to constrain the speech of citizens.<sup>242</sup> However, there are some exceptions to this outright prohibition; the Supreme Court has held that obscenity is not constitutionally protected speech.<sup>243</sup> The Court has since classified obscene material as that which “deals with sex in a manner appealing to *prurient* interest,” and defined *prurient* as “material having a tendency to excite lustful thoughts.”<sup>244</sup>

#### **Obscenity Involving Minors**

Federal law prohibits obscenity involving minors, and those who violate the law often face harsher penalties than if the offense involved adults only.<sup>245</sup> The law prohibits any individual from knowingly transferring or attempting to transfer an obscene material using any means to a minor under 16 years of age.<sup>246</sup> It is also prohibited for any person to knowingly produce, distribute, receive, or possess with intent to transfer or distribute material that appears to depict minors engaged in sexually explicit conduct and is deemed obscene.<sup>247</sup>

Material involving minors can be considered obscene if:

- It depicts an image that is, or appears to be a minor engaged in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse; and
- The image lacks serious literary, artistic, political, or scientific value.<sup>248</sup>

<sup>240</sup> This is the same definition as provided in s. 951.23(1)(a), F.S.

<sup>241</sup> U.S. CONST. amend. I.

<sup>242</sup> Kathleen Ann Ruane, *Freedom of Speech and Press: Exceptions to the First Amendment*, Congressional Research Service, summary page, (September 8, 2014), available at <https://fas.org/sgp/crs/misc/95-815.pdf> (last visited April 14, 2019).

<sup>243</sup> *Roth v. U.S.*, 354 U.S. 476, 485 (1957).

<sup>244</sup> *Id.* at 487 and n. 20.

<sup>245</sup> The United States Department of Justice, *Citizen’s Guide to U.S. Federal Law on Obscenity*, available at <https://www.justice.gov/criminal-ceos/citizens-guide-us-federal-law-obscenity> (last visited April 14, 2019).

<sup>246</sup> 18 U.S.C.A. s. 1470 (1998).

<sup>247</sup> 18 U.S.C.A. s. 1466A. (2003).

<sup>248</sup> *Id.*

The Court tends to grant greater protections to minors. In *New York v. Ferber*, the Court held that the states have a compelling interest, and thus are granted more leeway, in regulating pornographic depictions of children.<sup>249</sup> The Court reasoned that such material bears so heavily on the welfare of children engaged in its production that a balance of compelling interests are struck and, therefore, these materials are not afforded the protections of the First Amendment.<sup>250</sup>

### Florida Obscenity Laws

Current Florida law defines “obscene” to mean the status of material which:

- The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
- Depicts or describes, in a patently offensive way, sexual conduct;<sup>251</sup> and
- Taken as a whole, lacks serious literary, artistic, political, or scientific value.<sup>252</sup>

The possession, custody, or control of an obscene material<sup>253</sup> by any person who knowingly sells, lends, gives away, distributes, transmits, shows, transmutes, offers to sell, lend, give away, distribute, transmit, show, or transmute, or has in his or her possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise in any manner commits a first degree misdemeanor.<sup>254</sup> A subsequent violation is punishable as a third degree felony.<sup>255</sup>

Additionally, the possession, custody, or control of an obscene material by any person who does not have the intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise commits a second degree misdemeanor.<sup>256</sup> A subsequent violation is punishable as a first degree misdemeanor.<sup>257</sup>

<sup>249</sup> *Ferber*, 458 U.S. 747, 756 (1982).

<sup>250</sup> *Id.* at 747-48.

<sup>251</sup> “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother’s breastfeeding of her baby does not under any circumstance constitute “sexual conduct.”

Section 847.001(16), F.S.

<sup>252</sup> Section 847.001(10), F.S.

<sup>253</sup> The following materials are listed as examples of an obscene material: Any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion picture film, figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose. Section 847.011(1)(a), F.S.

<sup>254</sup> Section 847.011(1)(a), F.S. A first degree misdemeanor is punishable by a state prison term not exceeding 1 year, a fine not exceeding \$1,000, or both. Sections 775.082 and 775.083, F.S.

<sup>255</sup> Section 847.011(1)(a), F.S. A third degree felony is punishable by a state prison term not exceeding 5 years, a fine not exceeding \$5,000, or both. Sections 775.082 and 775.083, F.S.

<sup>256</sup> Section 847.011(2), F.S. A second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days, a fine not exceeding \$500, or both. Sections 775.082 and 775.083, F.S.

<sup>257</sup> Section 847.011(2), F.S.

If a violation of s. 847.011(1)(a) or (2)(b), F.S., is based on material that depicts a minor engaged in any act or conduct that is harmful to minors, such a violation is a third degree felony.<sup>258</sup> The penalty applies regardless of a person’s ignorance of a minor’s age, a minor’s misrepresentation of his or her age, a bona fide belief of a minor’s age, or a minor’s consent. Additionally, none of these circumstances may be raised as a defense in a prosecution.<sup>259</sup>

### ***Sex Dolls***

A main component in today’s sex toy industry are sex dolls – a type of sex toy that is shaped and sized to resemble a human sexual partner.<sup>260</sup> Sex dolls that resemble children are made overseas and imported into the U.S., where they are becoming increasingly prevalent.<sup>261</sup> Child-like sex dolls are robots that are made to look lifelike with prepubescent features and are engineered to warm to the human touch.<sup>262</sup>

While there is no current ban in the U.S. on importation or private possession of child-like sex dolls, there is a federal law banning the importation of obscene matters. The law makes it a crime to bring into the U.S., or any place subject to the jurisdiction of the U.S., “[A]ny obscene, lewd, lascivious, or filthy book, pamphlet, picture, motion picture film, paper, letter, writing, print, or other matter of indecent character...” In 2018, legislation was passed in the House of Representatives that prohibited the importation of child-like sex dolls, robots, or mannequins.<sup>263</sup> The Curbing Realistic Exploitative Electronic Pedophilic Robots Act of 2017 (CREEPER Act) would have been the first law preventing the selling and distributing of child-like sex dolls and robots in the U.S.<sup>264</sup>

### ***Effect of the Bill***

The bill amends s. 847.011, F.S., prohibiting a person from knowingly doing any of the following with an obscene, child-like sex doll:

- Selling, lending, giving away, distributing, transmitting, showing, or transmuting;
- Offering to sell, lend, give away, distribute, transmit, show, or transmute;
- Having in his or her possession, custody, or control with the intent to sell, lend, give away, distribute, transmit, show, or transmute; or
- Advertising in any manner.

The bill provides that a person who violates this provision commits a first degree misdemeanor and a second or subsequent violation is a third degree felony. The bill also prohibits a person

<sup>258</sup> Section 847.011(1)(c), F.S.

<sup>259</sup> Section 847.011(1)(d), F.S.

<sup>260</sup> Ally Donnelly, *Child Sex Dolls: Why Aren’t They Illegal?*, NECN, (July 23, 2018), available at <https://www.necn.com/news/new-england/Child-Sex-Dolls-Why-Arent-They-Illegal-488937711.html> (last visited April 12, 2019).

<sup>261</sup> Alice B. Lloyd, *Congressman: Child Sex Dolls Are Coming – And We’re Not Ready*, The Weekly Standard, March 15, 2018, available at <https://www.weeklystandard.com/alice-b-lloyd/congressman-child-sex-dolls-are-coming-mdash-and-were-not-ready> (last visited April 16, 2019).

<sup>262</sup> *Id.*

<sup>263</sup> H.R. 4655, 115th Congress 2d Session (2017).

<sup>264</sup> Alanna Vagianos, *House Passes Bill Banning Sex Dolls That Look Like Children*, Huffington Post, June 15, 2018, available at [https://www.huffingtonpost.com/entry/house-passes-bill-banning-sex-dolls-that-look-like-children\\_us\\_5b23c2f7e4b07cb1712dcc7d](https://www.huffingtonpost.com/entry/house-passes-bill-banning-sex-dolls-that-look-like-children_us_5b23c2f7e4b07cb1712dcc7d) (last visited April 16, 2019).

from knowingly having in his or her possession, custody, or control an obscene, child-like sex doll. A violation of this provision is punishable as a second degree misdemeanor and a subsequent violation is punishable as a first degree misdemeanor.

This section of the bill is effective October 1, 2019.

### **Gambling Offenses (Sections 46 and 92)**

It is unlawful for a person to keep, exercise, or maintain a gaming table or room, or gaming implements or apparatus, or house, booth, tent, shelter, or other place for the purpose of gaming or gambling. Furthermore, a person is prohibited from having direct or indirect control, charge, or management, either exclusive or with others, over a place that procures, suffers, or permits any person to play for money or other valuable thing at any game. Such crimes are punishable as a third degree felony.<sup>265</sup>

#### ***Effect of the Bill***

The bill reduces the penalty from a third degree felony to a second degree misdemeanor<sup>266</sup> for the commission of a gambling offense in s. 849.01, F.S. The bill also amends s. 921.0022, F.S., removing this offense from the offense severity ranking chart.

This section of the bill is effective October 1, 2019.

### **Drug Trafficking Offenses (Section 48)**

#### ***Florida's Controlled Substance Schedules***

Section 893.03, F.S., classifies controlled substances into five categories, known as schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed in the schedules. The most important factors in determining the schedule classification of a substance are the “potential for abuse”<sup>267</sup> of the substance and whether there is a currently accepted medical use for the substance in the United States.<sup>268</sup>

#### ***Drug Trafficking***

Drug trafficking, which is punished in s. 893.135, F.S., consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state (importation), or knowingly being in actual or constructive possession of, certain Schedule I or Schedule II controlled substances in a statutorily specified quantity. The statute only applies to a limited number of such controlled substances.<sup>269</sup> The controlled substance involved in the trafficking must meet a specified weight or quantity threshold.

---

<sup>265</sup> A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

<sup>266</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and up to a \$500 fine. Sections 775.082 and 775.083, F.S.

<sup>267</sup> Pursuant to s. 893.035(3)(a), F.S., “potential for abuse” means a substance has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: (1) used in amounts that create a hazard to the user’s health or the safety of the community; (2) diverted from legal channels and distributed through illegal channels; or (3) taken on the user’s own initiative rather than on the basis of professional medical advice.

<sup>268</sup> See s. 893.03(1)-(5), F.S.

<sup>269</sup> See s. 893.135, F.S., for the substances which are included in the offense if drug trafficking.

Most drug trafficking offenses are first degree felonies<sup>270</sup> and are subject to a mandatory minimum term of imprisonment<sup>271</sup> and a mandatory fine, which is determined by the weight or quantity range applicable to the weight or quantity of the substance involved in the trafficking.<sup>272</sup> For example, trafficking in 28 grams or more, but less than 200 grams, of cocaine, a first degree felony, is punishable by a 3-year mandatory minimum term of imprisonment and a mandatory fine of \$50,000.<sup>273</sup> Trafficking in 200 grams or more, but less than 400 grams, of cocaine, a first degree felony, is punishable by a 15-year mandatory minimum term of imprisonment and a mandatory fine of \$100,000.<sup>274</sup>

### ***Criminal Punishment Code***

The Criminal Punishment Code (Code) is Florida's primary sentencing policy.<sup>275</sup> Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).<sup>276</sup> Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses like a Level 7 or 8 drug trafficking offense. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.<sup>277</sup> Absent mitigation,<sup>278</sup> the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S. The statutory maximum sentence for a first-degree felony is 30 years, for a second-degree felony is 15 years, and for a third degree felony is 5 years.<sup>279</sup>

### **Mandatory Minimum Sentences and Departures**

Mandatory minimum terms of imprisonment limit judicial discretion in Code sentencing: "If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence."<sup>280</sup> As previously noted, the sentencing range under the Code is generally the scored lowest permissible sentence up to and including the statutory

<sup>270</sup> A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. However, when specifically provided by statute, a first degree felony may be punished by imprisonment for a term of years not exceeding life imprisonment. Sections 775.082 and 775.083, F.S.

<sup>271</sup> There are currently 56 mandatory minimum terms of imprisonment in s. 893.135, F.S., which range from 3 years to life imprisonment.

<sup>272</sup> See s. 893.135, F.S.

<sup>273</sup> Section 893.135(1)(b)1.a., F.S.

<sup>274</sup> Section 893.135(1)(b)1.b., F.S.

<sup>275</sup> Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

<sup>276</sup> Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

<sup>277</sup> Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

<sup>278</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>279</sup> See s. 775.082, F.S.

<sup>280</sup> Fla. R. Crim. P. 3.704(d)(26).

maximum penalty. However, if there is a mandatory minimum sentence that is longer than the scored lowest permissible sentence, the sentencing range is narrowed to the mandatory minimum sentence up to and including the statutory maximum penalty.

Prosecutors have “complete discretion” in the charging decision.<sup>281</sup> The exercise of this discretion may determine whether a defendant is subject to a mandatory minimum term or a reduced mandatory minimum term. Further, a prosecutor could move the court to reduce or suspend a sentence if the defendant renders substantial assistance.

There are few circumstances in which a court of its own accord can depart from a mandatory minimum term. A court may depart from a mandatory minimum term if the defendant is a youthful offender.<sup>282</sup> A court may also depart from a mandatory minimum term for a violation of s. 316.027(2)(c), F.S., (driver involved in a fatal crash fails to stop and remain at the scene of a crash), if the court “finds that a factor, consideration or circumstance clearly demonstrates that imposing a mandatory minimum term of imprisonment would constitute or result in an injustice.”<sup>283</sup>

### ***Pharmaceutical Drugs***

Pharmaceutical drugs are approved by the Food and Drug Administration for many medical uses. Some of these drugs may contain a controlled substance described in the s. 893.135, F.S. For example, some of these drugs may contain amphetamine, codeine, morphine, hydromorphone, hydrocodone, oxycodone, fentanyl (and some of its analogs and derivatives), and methaqualone. All of these controlled substances are described in s. 893.135, F.S.

Section 893.135, F.S., does not apply to possession, sale, etc., of a pharmaceutical drug when that possession, sale, etc., is authorized by ch. 893, F.S. (Controlled Substance Act) or ch. 499, F.S. (Florida Drug and Cosmetic Act). Section 893.135(1), F.S., which proscribes numerous drug trafficking acts, is “prefaced by the following qualification: ‘Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13[.]’”<sup>284</sup>

Prior to July 1, 2014, the following mandatory minimum terms of imprisonment were provided for trafficking in hydrocodone or oxycodone and mixtures containing either controlled substance:

- 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of \$50,000;
- 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of \$100,000;
- or
- 28 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of \$500,000.<sup>285</sup>

<sup>281</sup> “Under Florida’s constitution, the decision to charge and prosecute is an executive responsibility, and the state attorney has complete discretion in deciding whether and how to prosecute.” *State v. Bloom*, 497 So.2d 2, 3 (Fla. 1986).

<sup>282</sup> Section 958.04, F.S.

<sup>283</sup> Section 316.027(2)(g), F.S.

<sup>284</sup> *O’Hara v. State*, 964 So.2d 839, 841 (Fla. 2d. DCA 2007).

<sup>285</sup> Section 893.135(1)(c)1, F.S. (2013).

In 2014, the Legislature reduced gram weight thresholds and ranges for trafficking in hydrocodone and oxycodone and mixtures containing either controlled substance.

### *Effect of the Bill*

#### Trafficking in Pharmaceuticals Offense

The bill amends s. 893.135, F.S., to create a new drug trafficking offense called “trafficking in pharmaceuticals,” which is committed if a person knowingly sells, purchases, delivers, or brings into this state, or is knowingly in actual or constructive possession of, 120 or more dosage units containing a controlled substance described in s. 893.135, F.S.

A person who unlawfully possesses, sells, etc., 120 or more dosage units containing a controlled substance described in s. 893.135, F.S., must be prosecuted for the new “trafficking in pharmaceuticals” offense. No other drug trafficking offense can be charged.

If there are fewer than 120 dosage units involved in the trafficking, the person may not be charged with drug trafficking, though a person could be charged under s. 893.13, F.S., which also punishes controlled substance offenses. However, penalties in s. 893.13, F.S., are generally lower than penalties in s. 893.135, F.S., and most violations of s. 893.13, F.S., do not involve a mandatory minimum term of imprisonment.

The bill does not affect prosecution of any current drug trafficking offense, if the controlled substance is not contained in a dosage unit.

The new “trafficking in pharmaceuticals” offense contains 3, 7, 15, and 25-year mandatory minimum terms of imprisonment and mandatory fines. The mandatory minimum term and mandatory fine are determined by the specified dosage unit range applicable to dosage units trafficked. Specifically, the bill provides for the following penalties:

- If the quantity involved is 120 or more dosage units, but less than 500 dosage units, a person is sentenced to a mandatory minimum term of imprisonment of 3 years and is ordered to pay a fine of up to \$25,000;
- If the quantity involved is 500 or more dosage units, but less than 1,000 dosage units, a person is sentenced to a mandatory minimum term of imprisonment of 7 years and is ordered to pay a fine of up to \$50,000;
- If the quantity involved is 1,000 or more dosage units, but less than 5,000 dosage units, a person is sentenced to a mandatory minimum term of imprisonment of 15 years and is ordered to pay a fine of up to \$100,000; and
- If the quantity involved is 5,000 or more dosage units, a person is sentenced to a mandatory minimum term of imprisonment of 25 years and is ordered to pay a fine of up to \$250,000.

It is not possible to make a general comparison of trafficking penalties based upon dosage units (new “trafficking in pharmaceuticals” offense) and trafficking penalties based upon gram weight (current law),<sup>286</sup> but some drug offenders could receive a mandatory minimum term under the

---

<sup>286</sup> Gram weight of a dosage unit will vary depending on the pharmaceutical drug and its constituents, and gram weight thresholds for trafficking will vary depending on the controlled substance in the dosage units.

bill that is substantially less than the mandatory minimum term they could receive under current law. For example, the Office of Program Policy Analysis and Government Accountability determined that 215 oxycodone pills, each weighing 0.13 grams, equals 28 grams.<sup>287</sup> Under current law, trafficking in 28 grams of these pills would require a 15-year mandatory minimum term;<sup>288</sup> under the bill, 215 dosage units (pills) would require a 3-year mandatory term.

Some drug offenders could also receive a mandatory fine that is less than the mandatory fine under current law. The new trafficking in pharmaceuticals offense requires that a fine be imposed up to a specified cap (e.g., “fine of up to \$100,000”). Current trafficking offenses require a specified fine be imposed (e.g., “fine of 100,000”); there is no mandatory fine range.

Another difference between the new trafficking offense and current trafficking offense relates to ranking of offenses in the Code offense severity ranking chart.<sup>289</sup> Current trafficking offenses contain escalating (or tiered) gram weight ranges with escalating penalties and escalating rankings in the offense severity level ranking chart. For example, trafficking in “14 grams or more, but less than 28 grams” of amphetamines requires a 3-year mandatory minimum term,<sup>290</sup> and the offense is ranked in level 7 of the chart.<sup>291</sup> Trafficking in “28 grams or more, but less than 200 grams” of amphetamines requires a 7-year mandatory minimum term,<sup>292</sup> and the offense is ranked in level 8 of the chart.<sup>293</sup> The higher the ranking, the more sentence points. These sentence points are used in the calculation of the lowest permissible sentence (in prison months).<sup>294</sup>

In contrast, the bill also contains escalating ranges (or tiers) with escalating penalties for the new “trafficking in pharmaceuticals” offense, though these are dosage unit ranges rather than weight ranges. However, there is no escalation in the severity level ranking based on the dosage units tiers, and the bill does not rank the new offense. A first degree felony that is not ranked in the chart defaults to a level 7 ranking.<sup>295</sup> Therefore, regardless of the number of dosage units trafficked, the offense remains a level 7 offense. This could impact the scored lowest permissible sentence (in prison months) but would not preclude the court from imposing a sentence up to and including 30 years (the maximum penalty for a first degree felony).<sup>296</sup>

This section of the bill is effective October 1, 2019.

---

<sup>287</sup> *Opinions Are Mixed About Sentencing Laws for Painkiller Trafficking*, Report No. 12-02 (January 2012), at p. 5 (Exhibit 6), Office of Program Policy Analysis and Government Accountability, available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1202rpt.pdf> (last visited on April 12, 2019).

<sup>288</sup> Section 893.135(1)(c)3.c., F.S.

<sup>289</sup> Section 921.0022, F.S.

<sup>290</sup> Section 893.135(1)(f)1.a., F.S.

<sup>291</sup> Section 921.0022(3)(g), F.S.

<sup>292</sup> Section 893.135(1)(f)1.b., F.S.

<sup>293</sup> Section 921.0022(3)(h), F.S.

<sup>294</sup> Section 921.0024, F.S.

<sup>295</sup> Section 921.0023(3), F.S.

<sup>296</sup> Section 775.082, F.S.



### Departure for Drug Trafficking Mandatory Minimum Sentences

The bill amends s. 893.135, F.S., authorizing a court to depart from a mandatory minimum term of imprisonment and mandatory fine applicable to that offense. The departure is authorized if the court finds on the record, after the state attorney has had the opportunity to make a recommendation, that the person:

- Has not previously been convicted of a:
  - Dangerous crime as defined in s. 907.041, F.S.;<sup>297</sup> or
  - Violation specified as a predicate offense for registration as a sexual predator or offender under s. 775.21, F.S.,<sup>298</sup> or s. 943.0435, F.S.,<sup>299</sup> respectively;
- Did not use or threaten violence or possess a firearm or other dangerous weapon or induce another to do so, during the commission of the crime;
- Did not cause a death or serious bodily injury; and
- Was not engaged in a continuing criminal enterprise.<sup>300</sup>

Additionally, the bill requires the defendant to have truthfully provided to the state all information and evidence he or she has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan.

The bill applies to all drug trafficking acts (possession, sale, manufacture, delivery, and importation) and trafficking mandatory minimum terms of imprisonment (ranging from 3 years to life imprisonment).<sup>301</sup>

This section of the bill is effective October 1, 2019.

### 2014 Amendments to Certain Drug Trafficking Offenses

The bill also amends s. 893.135, F.S., to provide for retroactive application of the reduced penalties for hydrocodone trafficking and oxycodone trafficking that the Legislature provided for in ch. 2014-176, L.O.F. (“former s. 893.135(1)(c)1., F.S.”), which became effective on July 1, 2014. The 2014 legislation changed the gram weight thresholds and gram weight ranges applicable to hydrocodone and oxycodone trafficking, which are connected to mandatory minimum terms and mandatory fines. With the changes to the gram weight thresholds, fewer people were charged with trafficking. With the changes to the ranges, many persons were subject to less severe mandatory minimum terms and mandatory fines than they would have been subject to had the law not been changed. However, when the 2014 legislation was enacted, it had prospective application because retroactive amelioration of sentences was prohibited by Article

<sup>297</sup> See s. 907.041, F.S., for a complete list of offenses that are defined as “dangerous crimes.”

<sup>298</sup> See s. 775.21, F.S., for a complete list of offenses that are predicates to registration as a sexual predator.

<sup>299</sup> See s. 943.0435, F.S., for a complete list of offenses that are predicates to registration as a sexual offender.

<sup>300</sup> Section 893.20(1), F.S., provides that any person who commits three or more felonies under ch. 893, F.S., in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management and who obtains substantial assets or resources from these acts is guilty of engaging in a continuing criminal enterprise.

<sup>301</sup> The drug-trafficking statute imposes a mandatory life sentence for trafficking in especially large amounts of certain substances. However, this threshold, which triggers a mandatory life sentence, is never described as a “mandatory minimum” sentence like the other mandatory minimum sentences imposed by various threshold amounts covered by the statute. Nonetheless, the mandatory life sentence that is required for certain offenses seems to be a mandatory minimum sentence, and thus a sentence to which the bill would apply.

X, section 9 of the Florida Constitution. With the 2018 changes to this constitutional amendment, retroactive amelioration of sentences is no longer constitutionally prohibited.

The penalties, which are specified in the bill and described below, do not change the felony degree of the trafficking offense (first degree felony), because the 2014 legislation, did not change the felony degree; the bill only retroactively applies the reduced penalties in the 2014 legislation with one exception. The exception is the bill retains the mandatory fine for the highest trafficking range that was provided in s. 893.135, F.S., prior to the 2014 legislation because the 2014 legislation provided for a higher mandatory fine.

The reduced penalties apply to the following persons and require sentencing or authorize resentencing, as applicable:

- A person who committed a violation of former s. 893.135(1)(c)1., F.S., before July 1, 2014, which involved trafficking in hydrocodone or oxycodone or a mixture containing either controlled substance, but who was not sentenced for such violation before October 1, 2019, is sentenced to the reduced penalties.
- A person who was sentenced before October 1, 2019, for a violation of former s. 893.135(1)(c)1., F.S., which was committed before July 1, 2014, and which involved trafficking in hydrocodone or oxycodone or a mixture containing either controlled substance, may petition the court for resentencing to a sentence with the reduced penalties.

The reduced penalties provided in the bill are described as follows:

- If the controlled substance involved in the violation of former s. 893.135(1)(c)1., F.S., was hydrocodone or any mixture containing hydrocodone, and the quantity involved was:
  - 4 grams or more, but less than 14 grams, such person shall be sentenced or resentenced as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.;
  - 14 grams or more, but less than 28 grams, such person shall be sentenced or resentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of \$50,000;
  - 28 grams or more, but less than 50 grams, such person shall be sentenced or resentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of \$100,000;
  - 50 grams or more, but less than 200 grams, such person shall be sentenced or resentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of \$500,000; or
  - 200 grams or more, but less than 30 kilograms, such person shall be sentenced or resentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of \$500,000.
- If the controlled substance involved in the violation of former s. 893.135(1)(c)1., F.S., was oxycodone or any mixture containing oxycodone, and the quantity involved was:
  - 4 grams or more, but less than 7 grams, such person shall be sentenced or resentenced as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.;
  - 7 grams or more, but less than 14 grams, such person shall be sentenced or resentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of \$50,000;

- 14 grams or more, but less than 25 grams, such person shall be sentenced or resentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of \$100,000;
- 25 grams or more, but less than 100 grams, such person shall be sentenced or resentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of \$500,000; or
- 100 grams or more, but less than 30 kilograms, such person shall be sentenced or resentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of \$500,000.

This section of the bill is effective October 1, 2019.

### **Criminal Justice Data Transparency (Sections 49 and 59)**

Currently, Florida does not have a publicly accessible website containing comprehensive criminal justice data. Data is collected and maintained by several state departments, local agencies and local offices, including clerks of court, state attorney's offices, public defender's offices, county jails, and the Department of Corrections (DOC). Florida law currently requires some inter-agency data collection and data reporting requirements. However, each entity collects and maintains data in different ways and for different purposes and the requirements do not apply to all agencies or cover the entire criminal justice process from arrest to disposition. As a result, available criminal justice data can be fractured and unstructured and cumbersome to analyze.

Data-driven decision making in criminal justice is the objective, evidence-based decision process based on data collection. Data can be used to allow the public, as well as lawmakers, researchers, and analysts, to track how criminal cases are handled from arrest to post-conviction.<sup>302</sup> It allows users to break down data by specified information points. In addition to tracking the experience of offenders, data collection provides information on victims.<sup>303</sup>

As such, in 2018, the Legislature passed SB 1392 to standardize and consolidate the collection and reporting of criminal justice data and promote transparency.<sup>304</sup> The law included a number of definitions, which created as the types of data information points targeted for collection and reporting by the bill. The bill required specified entities, including the clerks of court, state attorneys, public defenders, county jail operators, and the DOC, to collect certain data elements and report them monthly to the Department of Law Enforcement (FDLE).<sup>305</sup> The FDLE was required to create a unique identifier for each criminal case to identify the person involved and track such person's experience in the criminal justice system. Additionally, the bill required the FDLE to publish the data on its department website and make it searchable by specified

---

<sup>302</sup> The MacArthur Foundation, *Enhancing Transparency in the Criminal Justice System*, May 23, 2017, available at <https://www.macfound.org/press/publications/enhancing-transparency-criminal-justice-system/> (last visited April 12, 2019).

<sup>303</sup> Ryan Sibley, *The benefits of criminal justice data: Beyond policing*, Sunlight Foundation, May 1, 2015, available at <https://sunlightfoundation.com/2015/05/01/the-benefits-of-criminal-justice-data-beyond-policing/> (last visited April 12, 2019).

<sup>304</sup> Chapter 2018-127, L.O.F. and s. 900.05, F.S.

<sup>305</sup> *Id.*

categories.<sup>306</sup> The bill also created a pilot program to evaluate and collaborate with the specified entities to ensure the efficiency and properness of the data points being collected.<sup>307</sup>

Some integral entities to the criminal justice system were inadvertently omitted from SB 1392 (2018), such as the Office of Criminal Conflict and Civil Regional Counsel (RCC)<sup>308</sup> and the Justice Administrative Commission (JAC).<sup>309</sup> Additionally, some relevant data points were omitted or need to be adjusted based on feedback from the pilot program.

### ***Effect of the Bill***

The bill amends s. 900.05, F.S., modifying the definitions of the data collection points and modifying the types of data that have to be reported by specified entities. The definitions added to s. 900.05, F.S., include:

- “Annual felony conflict caseload” means the total number of felony cases the office of the public defender or office of regional conflict counsel has declined or withdrawn from in the previous calendar year due to lack of qualified counsel or due to excessive caseload. The caseload shall be calculated on June 30th and reported once at the beginning of the reporting agency’s fiscal year.
- “Annual misdemeanor conflict caseload” means the total number of misdemeanor cases the office of the public defender or office of regional conflict counsel has declined or withdrawn from in the previous calendar year due to lack of qualified counsel or due to excessive caseload. The caseload shall be calculated on June 30th and reported once at the beginning of the reporting agency’s fiscal year.
- “Charge disposition” means the final adjudication for each charged crime, including, but not limited to, dismissal by state attorney, dismissal by judge, acquittal, no contest plea, guilty plea, or guilty finding at trial.
- “Disposition type” means the manner in which the charge was closed, including final judgment, adjudication, adjudication withheld, dismissal, or nolle prosequi.
- “Habitual violent felony offender flag” means an indication that a defendant is a habitual violent felony offender as defined in s. 775.084, F.S.
- “Prison releasee reoffender flag” means an indication that the defendant is a prison releasee reoffender as defined in s. 775.082, F.S., or any other statute.
- “Three-time violent felony offender flag” means an indication that the defendant is a three-time violent felony offender as defined in s. 775.084, F.S., or any other statute.
- “Violent career criminal flag” means an indication that the defendant is a violent career criminal as defined in s. 775.084, F.S., or any other statute.

---

<sup>306</sup> *Id.* and s. 943.6871, F.S.

<sup>307</sup> *Id.*

<sup>308</sup> The RCC serves indigent clients who are entitled by law to legal representation in criminal or civil cases. The Office of the Public Defender (PD) represents indigent criminal defendants, but if the PD determines that it cannot represent a defendant because of a conflict of interest, it must withdraw as counsel. In that instance, the court will appoint the RCC to represent the client. There are five RCC offices, one in each district of the district courts of appeal. *See* the RCC, *Home*, available at <https://rc1fl.com/> (last visited on April 13, 2019).

<sup>309</sup> The JAC provides administrative services on behalf of 49 judicial related offices (JROs), including the SA, the PD, the RCC, the Capital Collateral Regional Counsel, and the Statewide Guardian ad Litem Program. The JAC provides accounting, budget, financial, and human resources services. The JAC also provides compliance and financial review of billings for services provided by private court-appointed attorneys representing indigent citizens and associated due process vendors. *See* the JAC, *Home*, available at <https://www.justiceadmin.org/> (last visited April 13, 2019).

Additionally, some current definitions were amended in the following ways:

- “Annual felony caseload” and “annual misdemeanor caseload” to:
  - Include regional conflict counsel and assistant regional conflict counsel; and
  - Provide that caseload is calculated on June 30th and reported once at the beginning of the reporting agency’s fiscal year.
- “Case number” means the uniform case number, rather than the identification number, assigned by the clerk of the court to a criminal case.
- “Prior incarceration within the state” means any prior history of a defendant’s incarceration in a state correctional institution or facility.

The bill adds the RCC and JAC as entities that are required to collect certain data points and report such data points to the FDLE. The bill requires that the data must be collected and reported to the FDLE monthly, the same as is required by above mentioned entities.

The JAC must collect the following data points:

- Number of private registry attorneys representing indigent adult defendants.
- Annual felony caseload assigned to private registry contract attorneys.
- Annual misdemeanor caseload assigned to private registry contract attorneys.

The RCCs must collect the following data points:

- Number of full-time assistant regional conflict counsel handling criminal cases.
- Number of part-time assistant regional conflict counsel handling criminal cases.
- Number of contract attorneys representing indigent adult defendants.
- Annual felony caseload.
- Annual felony conflict caseload.
- Annual misdemeanor caseload.
- Annual misdemeanor conflict caseload.

The bill adds or modifies various data points required to be collected by specified entities that are currently required to collect data in accordance with s. 900.05, F.S., to the following:

- **The Clerks of the Court must:**
  - Collect the following modified data points:
    - Date the defendant is taken into physical custody by a law enforcement agency or is issued a notice to appear on a criminal charge, *without respect to whether such date is different from the date the offense is alleged to have occurred.*
    - Date that the criminal prosecution of a defendant is formally initiated, *without regard to the manner in which such case was filed.*
    - Disposition date *and disposition type.*
    - Zip code of last known address, *rather than primary residence.*
    - Qualification for specified flags, *including habitual violent felony offender flag, prison release reoffender flag, three time violent felony offender flag, or violent career criminal flag.*
    - *Each scheduled trial date.*
    - Speedy trial motion *date* and *each* hearing date, if applicable.
    - Dismissal motion *date* and *each* hearing date, if applicable.

- Sentence type and length imposed by the court, *reported in years, months, and days*, including, but not limited to, the total duration of *incarceration* in a county detention facility or state correctional institution or facility, and conditions of probation or community control supervision.
- Amount of time served in custody by the defendant related to *each charge* that is credited at the disposition of each *charge*, rather than case, and the actual amount of time the defendant will serve on the term of *incarceration*, rather than imprisonment.
- Restitution amount ordered *at sentencing, without regard to how much has been collected by the court or paid to the victim*.
- Several data points were modified to clarify that the information collected is only related to the current case.
- Collect these new data points:
  - Whether the case originated by notice to appear.
  - Charge disposition.
  - Deferred prosecution or pretrial diversion hearing, if applicable.
- No longer collect these data points:
  - County in which the offense is alleged to have occurred.
  - Outstanding balance of the defendant's court fees imposed by the court at disposition of the case.
  - Outstanding balance of the defendant's fines imposed by the court at disposition of the case.
- **The SAs must:**
  - Collect the following modified data points:
    - Identifying information of the victim *at the time of the offense*.
    - Any charge referred to the state attorney by a law enforcement agency *or sworn complainant* related to an episode of criminal activity.
    - Each charge referred to the state attorney by a law enforcement agency *or sworn complainant* related to an episode of criminal activity.
  - Collect these new data points:
    - Disposition of each referred charge, such as filed, declined, or diverted.
    - Case number, name, and date of birth.
    - Deferred prosecution or pretrial diversion agreement date, if applicable.
- **The PDs must:**
  - Collect these new data points:
    - Annual felony conflict caseload.
    - Annual misdemeanor conflict caseload.
- **The County detention facilities must:**
  - Collect these modified data points:
    - Date *an inmate, rather than defendant*, is processed *and booked* into the county detention facility subsequent to an arrest for a new violation of law, for a violation of probation or community control, *or for a violation of pretrial release*.
    - Reason why *an inmate, rather than defendant*, is processed *and booked* into the county detention facility subsequent to an arrest for a new violation of law, for a violation of probation or community control, *or for a violation of pretrial release*.

- Qualification for specified flags, *including habitual violent felony offender flag, prison release reoffender flag, three time violent felony offender flag, or violent career criminal flag.*
- Annual revenue generated for the county for the temporary detention of federal defendants or inmates.
- Collect these new data points:
  - Weekly admissions to the county detention facility for a revocation of pretrial release.
  - Identifying information, including name, date of birth, race, ethnicity, gender, case number, and identification number assigned by the county detention facility.
- **The DOC must:**
  - Collect the following modified data points:
    - Identifying information, including name, date of birth, race, ethnicity, *gender, case number*, and identification number assigned by the DOC, and such information for any offenders supervised on probation or community control.
    - *Highest level of education, without regard for vocational training.*
    - Date the inmate was admitted to the custody of the DOC *for his or her current incarceration.*
    - Qualification for specified flags, *including habitual violent felony offender flag, prison release reoffender flag, three time violent felony offender flag, or violent career criminal flag.*
  - Collect the following new data points:
    - Length of sentence served.
    - Digitized sentencing scoresheet prepared in accordance with s. 921.0024, F.S.
  - No longer collect the following data point:
    - Number of children.

The bill also changes the deadline by which the FDLE must have all data reported pursuant to the act published to the public from July 1, 2019 to January 1, 2020.

The bill amends ss. 900.05 and 943.6871, F.S., providing that all information received by the FDLE that is exempt and confidential when collected by the reporting agency remains exempt and confidential when reported to the FDLE in accordance with s. 900.05, F.S.

The bill also amends s. 943.6871, F.S., requiring the FDLE to commission a racial impact statement for each criminal justice bill that is heard before the Legislature during legislative session. The impact statement must estimate the anticipated effects the proposed criminal justice legislation may have on racial inequality among the residents of this state. The racial impact statement must indicate whether the proposed legislation would increase, decrease, or have no impact on racial inequality or indicate whether the impact is indeterminable. Additionally, to the extent feasible, the impact statement should include quantifiable data. The racial impact statement must also specify the methodologies and assumptions used in its preparation.

These sections of the bill are effective upon becoming law.

## **Constitutional Protections and Court Decisions Interpreting and Applying Those Protections (Section 50)**

The Fifth Amendment of the United States Constitution states, “No person . . . shall be compelled in any criminal case to be a witness against himself.”<sup>310</sup> Likewise, the Florida Constitution extends the same protection.<sup>311</sup> The voluntariness of a defendant’s statement and the admissibility of the statement against him or her in court is a creature of both case law and statutory law in Florida.

### ***Custodial Interrogation***

Whether a person is in custody and under interrogation is the threshold question that determines the need for a law enforcement officer to advise the person of his or her *Miranda* rights.<sup>312</sup> In *Traylor v. State*, the Supreme Court of Florida found that “[T]o ensure the voluntariness of confessions, the Self–Incrimination Clause of Article I, Section 9, Florida Constitution, requires that prior to custodial interrogation in Florida suspects must be told that they have a right to remain silent, that anything they say will be used against them in court . . . .”<sup>313</sup>

An interrogation occurs “when a person is subjected to express questions, or other words or actions, by a state agent that a reasonable person would conclude are designed to lead to an incriminating response.”<sup>314</sup>

### ***Waiver of the Right to Remain Silent***

A person subjected to a custodial interrogation is entitled to the protections of *Miranda*.<sup>315</sup> The warning must include the right to remain silent as well as the explanation that anything a person says can be used against them in court. The warning includes both parts because it is important for a person to be aware of his or her right and the consequences of waving such a right.<sup>316</sup>

### ***Admissibility of a Defendant’s Statement as Evidence***

The admissibility of a defendant’s statement is a mixed question of fact and law decided by the court during a pretrial hearing or during the trial outside the presence of the jury.<sup>317</sup> For a defendant’s statement to become evidence in a criminal case, the judge must first determine whether the statement was freely and voluntarily given to a law enforcement officer during the custodial interrogation of the defendant. The court considers, given the totality of the circumstances, whether a reasonable person in the defendant’s position would have believed he

---

<sup>310</sup> U.S. CONST. amend. V.

<sup>311</sup> “No person shall be . . . compelled in any criminal matter to be a witness against himself.” FLA. CONST. art. I, s. 9.

<sup>312</sup> In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Court established procedural safeguards to ensure the voluntariness of statements rendered during custodial interrogation.

<sup>313</sup> *Traylor v. State*, 596 So. 2d 957, 965-966 (Fla. 1992). The test to determine if a person is in custody for the purposes of one’s *Miranda* rights is whether “a reasonable person placed in the same position would believe that his or her freedom of action was curtailed to a degree associated with actual arrest.”

<sup>314</sup> *Id.* at 966 at n. 17.

<sup>315</sup> See *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

<sup>316</sup> *Sliney v. State*, 699 So. 2d 662, 669 (Fla. 1997), *cert. denied*, 522 U.S. 1129 (1998).

<sup>317</sup> *Nickels v. State*, 90 Fla. 659, 668 (1925).



or she was free to terminate the encounter with law enforcement and, therefore, was not in custody.<sup>318</sup>

The court can consider testimony from the defendant and any law enforcement officers involved, their reports, and any additional evidence such as audio or video recordings of the custodial interrogation. The court will also determine whether the defendant was made aware of his or her *Miranda* rights and whether he or she knowingly, voluntarily, and intelligently elected to waive those rights and give a statement.<sup>319</sup>

### ***Interrogation Recording in Florida and Other States***

Law enforcement agencies in Florida are not currently required to record the custodial interrogation of a crime suspect, either by audio, video, or a combination of means. Fifty-seven agencies in Florida voluntarily record custodial interrogations, at least to some extent.<sup>320</sup>

Currently twenty-three states and the District of Columbia record custodial interrogations statewide.<sup>321</sup> These states have statutes, court rules, or court cases that require law enforcement officers to make the recordings or allow the court to consider the failure to record a statement in determining the admissibility of a statement.<sup>322</sup>

### ***Effect of the Bill***

The bill creates s. 900.06, F.S., imposing a statutory requirement, and exceptions to the requirement, that a law enforcement officer conducting a custodial interrogation must record the interrogation in its entirety.

<sup>318</sup> Among the circumstances or factors the courts have considered are the manner in which the police summon the suspect for questioning; the purpose, place, and manner of the interrogation; the extent to which the suspect is confronted with evidence of his or her guilt; and whether the suspect is informed that he or she is free to leave the place of questioning. *Voorhees v. State*, 699 So. 2d 602, 608 (Fla. 1997); *Ramirez v. State*, 739 So. 2d 568, 574 (Fla. 1999).

<sup>319</sup> *Nickels*, p. 668.

<sup>320</sup> *Compendium: Electronic Recording of Custodial Interrogations*, Thomas P. Sullivan, pp. 36-37, August 2016, National Association of Criminal Defense Lawyers, available at <https://www.nacdl.org/electronicrecordingproject> (last visited on April 18, 2019). See also *Electronic Recording of Suspect Interrogations*, Interim Report 2004-123, Florida Senate Committee on Criminal Justice, available at [http://archive.flsenate.gov/data/Publications/2004/Senate/reports/interim\\_reports/pdf/2004-123cj.pdf](http://archive.flsenate.gov/data/Publications/2004/Senate/reports/interim_reports/pdf/2004-123cj.pdf) (last visited on April 18, 2019).

<sup>321</sup> *Compendium: Electronic Recording of Custodial Interrogations*, Thomas P. Sullivan, pp. 7-8, August 2016, National Association of Criminal Defense Lawyers, available at <https://www.nacdl.org/electronicrecordingproject> (last visited on April 18, 2019).

<sup>322</sup> See *Stephan v. State*, 711 P.2d 1156 (AK 1985); Ark. R. Crim. P. Rule 4.7 (2012); Cal Pen Code s. 859.5 (2016) and Cal Wel & Inst Code s. 626.8 (2014); C.R.S. 16-3-601 (2016); CT Gen. Stat. s. 54-1o (2011); D.C. Code s. 5-116.01 (2005); Hawaii was verified by the four departments that govern law enforcement in the state; 705 ILCS 405/5-401.5 (2016), 725 ILCS 5/103-2.1 (2017); Ind. R. Evid. 617 (2014); 25 M.R.S. s. 2803-B(1)(K) (2015); Md. CRIMINAL PROCEDURE Code Ann. ss. 2-401 – 2-402 (2008); MCLS ss. 763.7 – 763.9 (2013); *State v. Scales*, 518 N.W.2d 587 (MN 1994); MO Rev. Stat. s. 590.700 (2017); MT Code Ann. ss. 46-4-406 – 46-4-411 (2009); NE Rev. Stat. Ann. ss. 29-4501 – 29-4508 (2008); NJ Court Rules, R. 3:17 (2006); N.M. Stat. Ann. s. 29-1-16 (2006); N.C. Gen. Stat. s. 15A-211 (2011); OR Rev. Stat. s. 133.400 (2009); RIPAC, Accreditation Standards Manual, ch. 8, s. 8.10 (Rev. 2015); Utah R. Evid. Rule 616 (2016); 13 V.S.A. s. 5585 (2015); *State v. Jerrell C.J.*, 699 N.W.2d 110 (WI 2005); Wis. Stat. ss. 968.073 and 972.115 (2005); *Compendium: Electronic Recording of Custodial Interrogations*, Thomas P. Sullivan, August, 2016, National Association of Criminal Defense Lawyers, available at <https://www.nacdl.org/electronicrecordingproject> (last visited on April 16, 2019).

The bill provides definitions for terms used in the bill. These are:

- “Custodial interrogation” which means questioning or other conduct by a law enforcement officer which is reasonably likely to elicit an incriminating response from an individual and which occurs under circumstances in which a reasonable individual in the same circumstances would consider himself or herself to be in the custody of a law enforcement agency;
- “Electronic recording” which means an audio recording or an audio and video recording that accurately records a custodial interrogation;
- “Covered offense” which lists the following criminal offenses:
  - Arson.
  - Sexual battery.
  - Robbery.
  - Kidnapping.
  - Aggravated child abuse.
  - Aggravated abuse of an elderly person or disabled adult.
  - Aggravated assault with a deadly weapon.
  - Murder.
  - Manslaughter.
  - Aggravated manslaughter of an elderly person or disabled adult.
  - Aggravated manslaughter of a child.
  - The unlawful throwing, placing, or discharging of a destructive device or bomb.
  - Armed burglary.
  - Aggravated battery.
  - Aggravated stalking.
  - Home-invasion robbery.
  - Carjacking.
- “Place of detention” which means a police station, sheriff’s office, correctional facility, prisoner holding facility, county detention facility, or other governmental facility where an individual may be held in connection with a criminal charge that has been or may be filed against the individual; and
- “Statement” which means a communication that is oral, written, electronic, nonverbal, or in sign language.

The bill requires a custodial interrogation related to a covered offense that is conducted at a place of detention be electronically recorded in its entirety. The recording must include:

- The giving of a required warning;
- The advisement of rights; and
- The waiver of rights by the individual being questioned.

If the custodial interrogation at the place of detention is not recorded by the law enforcement officer, he or she must prepare a written report explaining the reason for not recording it.

If a law enforcement officer conducts a custodial interrogation somewhere other than a place of detention, the officer must prepare a written report as soon as practicable. The report must explain the circumstances of the interrogation in that place. The report must also summarize the custodial interrogation process and the individual’s statements at that place.

The general recording requirement does not apply if:

- There is an unforeseen equipment malfunction that prevents recording the custodial interrogation in its entirety;
- A suspect refuses to participate in a custodial interrogation if his or her statements are electronically recorded;
- An equipment operator error occurs which prevents the recording of the custodial interrogation in its entirety;
- The statement is made spontaneously and not in response to a custodial interrogation question;
- A statement is made during the processing of the arrest of a suspect;
- The custodial interrogation occurs when the law enforcement officer participating in the interrogation does not have any knowledge of facts and circumstances that would lead an officer to reasonably believe that the individual being interrogated may have committed a covered offense;
- The law enforcement officer conducting the custodial interrogation reasonably believes that electronic recording would jeopardize the safety of the officer, individual being interrogated, or others; or
- The custodial interrogation is conducted outside of the state.

If an interrogation is not recorded and no exception applies, a court must consider “the circumstances of an interrogation” in its analysis of whether to admit into evidence a statement made at the interrogation.

If the court decides to admit the statement, the defendant may require the court to give a cautionary jury instruction regarding the officer’s failure to comply with the recording requirement.

Finally, if a law enforcement agency “has enforced rules” that are adopted pursuant to the bill and that are reasonably designed to comply with the bill’s requirements, the agency is not subject to civil liability for damages arising from a violation of the bill’s requirements. The bill does not create a cause of action against a law enforcement officer.

This section of the bill is effective January 1, 2020.

### **Gain-time and the “85 Percent” Requirement (Sections 51 and 60)**

Section 921.002(1)(e), F.S., of the Criminal Punishment Code provides that for noncapital felonies offenses committed on or after October 1, 1998, the sentence imposed by the sentencing judge reflects the length of actual time to be served, shortened only by the application of incentive and meritorious gain-time as provided by law, and may not be shortened if the defendant would consequently serve less than 85 percent of his or her term of imprisonment as provided in s. 944.275(4)(b)3., F.S.<sup>323</sup>

---

<sup>323</sup> Persons sentenced for offenses committed prior to October 1, 1995 are not subject to the 85 percent requirement. *See Frequently Asked Questions Regarding Gaintime*, DOC, available at

Incentive gain-time is gain-time that the DOC may award monthly to an inmate for working diligently, participating in training, using time constructively, or otherwise engaging in positive activities. Incentive gain-time is also gain-time the department may award one-time to an inmate who is otherwise eligible and who successfully completes requirements for and is awarded a high school equivalency diploma or vocational certificate.<sup>324</sup>

For sentences imposed for offenses committed on or after October 1, 1995:

- Applicable to monthly incentive gain-time, the DOC may grant up to 10 days per month of incentive gain-time; and
- Applicable to one-time award of incentive gain-time (high school equivalency diploma or vocational certificate), 60 days of incentive gain-time.<sup>325</sup>

However, for sentences imposed for offenses committed on or after October 1, 1995, no prisoner is eligible to earn any type of gain-time in an amount that would cause a sentence to expire, end, or terminate, or that would result in a prisoner's release, prior to serving a minimum of 85 percent of the sentence imposed. Credits awarded by the court for time physically incarcerated shall be credited toward satisfaction of 85 percent of the sentence imposed. Except as provided by s. 944.275, F.S., a prisoner shall not accumulate further gain-time awards at any point when the tentative release date is the same as that date at which the prisoner will have served 85 percent of the sentence imposed. State prisoners sentenced to life imprisonment shall be incarcerated for the rest of their natural lives, unless granted pardon or clemency.<sup>326</sup>

### ***Effect of the Bill***

The bill amends s. 944.275, F.S., to increase monthly incentive gain-time awards that the DOC may grant from up to 10 days to up to 20 days for offenders sentenced for offenses committed on or after October 1, 1995. This increase applies both prospectively and retroactively.

The bill provides that gain-time of whatever form cannot reduce sentences of these offenders below 65 percent of time served if the offense is a nonviolent felony or 85 percent of time served if the offense is not a nonviolent felony. The bill specifies that "nonviolent felony" has the same meaning as provided in s. 948.08(6), F.S. Section 948.08(6), F.S., defines "nonviolent felony" as a third degree felony violation of ch. 810, F.S., or any other felony offense that is not a forcible felony.<sup>327</sup>

[https://www.floridasupremecourt.org/content/download/242696/2141005/Johnson%2013-711\(1\).pdf](https://www.floridasupremecourt.org/content/download/242696/2141005/Johnson%2013-711(1).pdf) (last visited on April 12, 2019)

<sup>324</sup> Section 944.275(4)(b) and (d), F.S. Section 944.275(4)(e), F.S., provides that for sentences imposed for offenses committed on or after October 1, 2014, the department may not grant incentive gain-time if the offense is a violation of: s. 782.04(1)(a)2.c., F.S. (murder while engaged in sexual battery); s. 787.01(3)(a)2. or 3., F.S. (sexual battery or lewd act during commission of kidnapping of child under 13); s. 787.02(3)(a)2. or 3., F.S. (sexual battery or lewd act during commission of false imprisonment of child under 13); s. 794.011, F.S. (sexual battery), excluding s. 794.011(10), F.S.; s. 800.04, F.S. (lewd acts on child); s. 825.1025, F.S. (lewd acts on elderly or disabled adult); or s. 847.0135(5), F.S. (computer transmission to child of lewd exhibition).

<sup>325</sup> Section 944.275(4)(b)3., F.S. When a prisoner is found guilty of an infraction of the laws of this state or the rules of the department, gain-time may be forfeited according to law. Section 944.275(5), F.S.

<sup>326</sup> Section 944.275(4)(b)3., F.S.

<sup>327</sup> A "forcible felony" is: treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing,

The bill also amends s. 921.002, F.S., to make conforming changes that reference the changes to s. 944.275, F.S., to indicate that gain-time of whatever form cannot reduce sentences of these offenders below 65 percent of time served if the offense is a nonviolent felony or 85 percent of time served if the offense is not a nonviolent felony.

This section of the bill is effective October 1, 2019.

## **Sealing and Expunction of Criminal History Records (Sections 52-57)**

### ***Overview***

Florida law makes adult criminal history records accessible to the public unless the record has been sealed or expunged.<sup>328</sup> Sections 943.0585 and 943.059, F.S., set forth procedures for expunging and sealing criminal history records through court-order. Florida statutes also authorize a number of additional expungement processes, including, in part, administrative expunction<sup>329</sup> and lawful self-defense.<sup>330, 331</sup>

When a criminal history record is expunged, criminal justice agencies other than the Florida Department of Law Enforcement (FDLE) must physically destroy the record.<sup>332</sup> Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order. The FDLE is required to retain expunged records.<sup>333</sup>

When a record is sealed, it is not destroyed, but access is limited to the subject of the record, his or her attorney, criminal justice agencies for their respective criminal justice purposes, judges in the state courts system for the purpose of assisting them in their case-related decision-making responsibilities, and certain other specified agencies for their respective licensing and employment purposes.<sup>334</sup>

---

placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

<sup>328</sup> Florida Department of Law Enforcement, *Seal and Expunge Process*, available at <http://www.fdle.state.fl.us/Seal-and-Expunge-Process/Seal-and-Expunge-Home.aspx> (last visited April 11, 2019). *See also* s. 943.053, F.S.

<sup>329</sup> Section 943.0581, F.S.

<sup>330</sup> Section 943.0585(5), F.S.

<sup>331</sup> Other types of expungement authorized in statute include: Juvenile diversion expunction pursuant to s. 943.0582, F.S.; Human trafficking expunction pursuant to s. 943.0583, F.S.; Automatic juvenile pursuant to s. 943.0515, F.S.; and Early juvenile pursuant to s. 943.0515(1)(b)2., F.S.

<sup>332</sup> Section 943.0585(4), F.S. Section 943.045(16), F.S., defines “expunction of a criminal history record” to mean the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order, except that criminal history records in the custody of the FDLE must be retained in all cases for purposes of evaluating subsequent requests by the subject of the record for sealing or expunction, or for purposes of recreating the record in the event an order to expunge is vacated by a court of competent jurisdiction.

<sup>333</sup> Section 943.0585(4), F.S.

<sup>334</sup> Section 943.059(4), F.S. Section 943.045(19), F.S., defines “sealing of a criminal history record” means the preservation of a record under such circumstances that it is secure and inaccessible to any person not having a legal right of access to the record or the information contained and preserved therein.

Records that have been sealed or expunged are confidential and exempt<sup>335</sup> from the public records law.<sup>336</sup>

Persons who have had their criminal history records sealed or expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment,<sup>337</sup> petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.<sup>338</sup> Additionally, a person who has his or her criminal history record sealed may not deny or fail to acknowledge the arrests covered by the sealed record if he or she is attempting to purchase a firearm and is subject to a criminal history check under state or federal law.<sup>339</sup>

Criminal history records related to certain offenses are barred from being sealed or expunged through the court-order process.<sup>340</sup>

<sup>335</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See 85-62 Fla. Op. Att’y Gen. (1985).

<sup>336</sup> Sections 943.0585(4)(c) and 943.059(4)(c), F.S.

<sup>337</sup> These include candidates for employment with a criminal justice agency; applicants for admission to the Florida Bar; those seeking a sensitive position involving direct contact with children, the developmentally disabled, or the elderly with the Department of Children and Family Services, Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice; persons seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; or a Florida seaport.

<sup>338</sup> Sections 943.0585(4)(a) and 943.059(4)(a), F.S.

<sup>339</sup> This includes when attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer. Section 943.059(4)(a)10., F.S.

<sup>340</sup> Sections 943.059 and 943.0585, F.S., both provide that a criminal history record that relates to a violation of sexual misconduct against a covered person, as defined in s. 393.135, F.S.; sexual misconduct against a patient, as defined in s. 394.4593, F.S.; luring or enticing a child, as defined in s. 787.025, F.S.; sexual battery offense, as defined in ch. 794; procuring person under age of 18 for prostitution, as defined in former s. 796.03, F.S.; lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age, as defined in s. 800.04, F.S.; voyeurism, as defined in s. 810.14, F.S.; lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person, as defined in s. 825.1025, F.S.; sexual performance by a child, as defined in s. 827.071, F.S.; protection of minors/prohibition of certain acts in connection with obscenity, as defined in s. 847.0133, F.S.; computer pornography, as defined in s. 847.0135, F.S.; selling or buying minors, as defined in s. 847.0145, F.S.; sexual misconduct of a mentally deficient or mentally ill defendant, as defined in s. 916.1075, F.S.; any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, F.S., without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, F.S.; violations of the Florida Communications Act, as defined in s. 817.034, F.S.; offenses by public officers and employees, as defined in ch. 839, F.S.; drug trafficking, as defined in s. 893.135, F.S.; and enumerated offenses included in s. 907.041, F.S. Additionally, the enumerated offenses included in s. 907.041, F.S., are: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; manufacturing any substances in violation of ch. 893, F.S.; and attempting or conspiring to commit any such crime. The list offenses preclude a person from obtaining an expunction or sealing if the defendant was found guilty of or pled guilty or nolo

### ***Process for Obtaining a Court-Ordered Sealing or Expunction***

The processes for sealing and expunging criminal history records are very similar. To qualify for a court-ordered sealing or expunction, a person must first obtain a certificate of eligibility (COE) from the FDLE.<sup>341</sup> To obtain the COE from the FDLE, a person must comply with a number of requirements, including, in part, that he or she has never been adjudicated guilty or delinquent of a:

- Criminal offense;
- Comparable ordinance violation; or
- Specified felony or misdemeanor prior to the COE application date.<sup>342</sup>

Upon receipt of a COE, the person must then petition the court to expunge or seal the criminal history record. The petition must include the COE and a sworn statement from the petitioner.<sup>343</sup> A copy of the completed petition is then served upon the appropriate state attorney or statewide prosecutor and the arresting agency, any of which may respond to the court regarding the petition.<sup>344</sup>

There is no statutory right to a court-ordered sealing or expunction and any request for such a sealing or expunction of a criminal history record may be denied at the sole discretion of the court.<sup>345</sup> The court is only authorized to order the sealing or expunction of a record that pertains to one arrest or one incident of alleged criminal activity.<sup>346</sup> However, the court may order the sealing or expunction of a record pertaining to more than one arrest if such additional arrests directly relate to the original arrest.<sup>347</sup>

---

contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or pled nolo contendere to committing, the offense as a delinquent act, regardless of whether adjudication was withheld.

<sup>341</sup> See ss. 943.0585(2) or (5) and 943.059(2), F.S.

<sup>342</sup> See ss. 943.0585(2) and 943.059(2), F.S., for full requirements for obtaining a COE. A person is specifically prohibited from obtaining a COE if he or she has been adjudicated guilty or delinquent for an offense listed in s. 943.051(3)(b), F.S., which includes assault, as defined in s. 784.011, F.S.; battery, as defined in s. 784.03, F.S.; carrying a concealed weapon, as defined in s. 790.01(1), F.S.; unlawful use of destructive devices or bombs, as defined in s. 790.1615(1), F.S.; neglect of a child, as defined in s. 827.03(1)(e), F.S.; assault or battery on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a) and (b), F.S.; open carrying of a weapon, as defined in s. 790.053 F.S.; exposure of sexual organs, as defined in s. 800.03, F.S.; unlawful possession of a firearm, as defined in s. 790.22(5), F.S.; petit theft, as defined in s. 812.014(3), F.S.; cruelty to animals, as defined in s. 828.12(1), F.S.; arson, as defined in s. 806.031(1), F.S.; and unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property as defined in s. 790.115, F.S.

<sup>343</sup> In the sworn statement, the petitioner must attest that he or she: has never, prior to the date on which the petition is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3)(b), F.S.; has not been adjudicated guilty of or adjudicated delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains; has never secured a prior sealing or expunction of a criminal history record pursuant to ss. 943.059 or 943.0585, F.S., former s. 893.14, F.S., former s. 901.33, F.S., or former s. 943.058, F.S.; and is eligible for such a sealing to the best of his or her knowledge or belief and does not have any other petition to seal or any petition to expunge pending before the court. See ss. 943.0585(1)(b)1.-4. and 943.059(1)(b)1.-4., F.S.

<sup>344</sup> Section 943.0585(3)(a), F.S.

<sup>345</sup> Section 943.0585, F.S.

<sup>346</sup> *Id.*

<sup>347</sup> *Id.* The court must articulate in writing its intention to expunge or seal a record pertaining to multiple arrests and a criminal justice agency may not expunge or seal multiple records without such written documentation. The court is also permitted to expunge or seal only a portion of a record.

A person may seek an expunction immediately, provided the person is no longer subject to court supervision, if none of the charges related to the arrest or alleged criminal activity resulted in a trial, and:

- An indictment, information, or other charging document was not filed or issued in the case (no-information); or
- An indictment, information, or other charging document was filed or issued in the case, but it was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court of competent jurisdiction (dismissal).<sup>348</sup>

### ***Effect of a Sealing or Expunction***

If the court grants a petition to seal, the clerk of the court then certifies copies of the order to the appropriate state attorney or statewide prosecutor and the arresting agency and any other agency that has received the criminal history record from the court. The arresting agency must provide the sealing order to any agencies that received the criminal history record information from the arresting agency. The FDLE must provide the sealing order to the FBI.<sup>349</sup> A criminal history record which is ordered sealed by a court is confidential and exempt from public records, and is available only to the person who is the subject of the record, the subject's attorney, criminal justice agencies for their respective criminal justice purposes, and judges in the state courts system for the purpose of assisting them in their case-related decision making responsibilities.<sup>350</sup>

Any record that the court grants the expunction of must be physically destroyed or obliterated by any criminal justice agency having such record. The FDLE, however, is required to maintain the record. That record is confidential and exempt from disclosure requirements under the public records laws. Only a court order would make the record available to a person or entity that is otherwise excluded.<sup>351</sup>

### ***Administrative Expunction***

The administrative expunction process provided for in s. 943.0581, F.S., authorizes the expunction of an arrest record if such record is subsequently determined by a law enforcement agency at its own discretion or by the final order of a court of competent jurisdiction to have been related to an arrest that was made contrary to law or by mistake.<sup>352</sup> An application for administrative expunction must include the endorsement of the head of the arresting agency or his or her designee or the state attorney of the judicial circuit in which the arrest occurred or his or her designee.<sup>353</sup>

### ***Lawful Self Defense Expunction***

In addition, an indictment, information, or other charging document which was not filed or was dismissed by the state attorney, or dismissed by the court, because it was found that the person

---

<sup>348</sup> See s. 943.0585(2), F.S.

<sup>349</sup> Section 943.059(3)(b), F.S.

<sup>350</sup> Section 943.059(4), F.S.

<sup>351</sup> Section 943.0585(4), F.S.

<sup>352</sup> See s. 943.0581, F.S.

<sup>353</sup> Section 943.0581(3), F.S.



acted in lawful self-defense pursuant to the provisions related to justifiable use of force in ch. 776, F.S., is eligible for immediate expunction. The lawful self-defense exception requires a person obtain a COE from the FDLE and file a petition for expunction with the court just as required with other petitions to expunge, but the information the person must provide to obtain an expunction based on the lawful self-defense exception is slightly different.<sup>354</sup>

### ***Effect of the Bill***

#### Court-ordered Sealing and Expunction (Sections 54-56)

The bill reorganizes the statutes related to a court-ordered sealing (s. 943.059, F.S.) and expunction (s. 943.0585, F.S.) for clarity. The bill leaves the general eligibility, process, and effect of both court-ordered sealing and expunction intact.

As mentioned above, current law provides that a person whose criminal history record that *relates to* a violation of an enumerated offense in ss. 943.0585 or 943.059, F.S., also known as a “list offense,” is ineligible for a court-ordered sealing or expunction. The bill creates s. 943.0584, F.S., providing a centralized location for these “list offenses,” which includes all the offenses currently applicable, in addition to the following new offenses:

- Assault as defined in s. 784.011, F.S., or battery as defined in s. 784.03, F.S., of one family or household member by another family or household member, as defined in s. 741.28(3), F.S.;<sup>355</sup>
- Felony battery or domestic battery by strangulation, as defined in s. 784.03, F.S., or s. 784.041, F.S., respectively;
- False imprisonment, as defined in s. 787.02, F.S.;<sup>356</sup> and
- Robbery by sudden snatching, as defined in s. 812.131, F.S.

Additionally, the bill clarifies that an ineligible criminal history record is a conviction, information, indictment, notice to appear, or arrest for any enumerated offense, as opposed to simply a record that “relates to” an enumerated offense.

These sections of the bill are effective October 1, 2019.

#### Automatic Sealing (Section 57)

The bill requires the FDLE to automatically seal certain criminal history records. Both minors and adults may be eligible for an automatic sealing. The FDLE must seal a criminal history record when:

---

<sup>354</sup> Section 943.0585(5), F.S.

<sup>355</sup> Assault and battery offenses are currently excluded as enumerated offenses through the reference to s. 943.051, F.S., however, this exclusion is related to the prohibition on issues a COE to a person who has previously been adjudicated guilty or adjudicated delinquent for such offense. The bill specifically includes assault or battery of one family or household member by another family or household member as a new “list offense” to which the criminal history record at issue cannot be related. This has not been specifically included in this manner previously.

<sup>356</sup> Currently, an offense that serves as a predicate for sexual offender registration or sexual predator registration in accordance with s. 943.0453, F.S., or s. 775.21, F.S., respectively, are prohibited as a “list offense” offense to which the criminal history record at issue cannot be related. False imprisonment as defined in s. 787.02, F.S., is included on these lists, but must be of a minor child and for a sexual purpose. This will therefore prevent all criminal history records related to the offense of false imprisonment from being sealed or expunged.

- An indictment, information, or other charging document was not filed or issued in the case giving rise to the criminal history record;
- An indictment, information, or other charging document was filed in the case giving rise to the criminal history record, but was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court of competent jurisdiction;<sup>357</sup>
- A not guilty verdict was rendered by a judge or jury;<sup>358</sup> or
- A judgment of acquittal<sup>359</sup> was rendered by a judge.

Upon the disposition of a criminal case that results in one of the above circumstances, the clerk of the court must transmit a certified copy of the disposition of the criminal history record to the FDLE, at which point the criminal history record must be sealed upon receipt of the certified copy. The automatic sealing of a criminal history record does not require such record to be sealed by the court or other criminal justice agencies, or surrendered to the court. Rather, the FDLE and other criminal justice agencies must continue to maintain such record.

The bill provides that there is no limitation on the number of times a person may obtain an automatic sealing for a criminal history record pursuant to this section. Additionally, unless otherwise specified, an automatic sealing of a criminal history record will have the same effect as a court-ordered sealing.<sup>360</sup>

This section of the bill is effective October 1, 2019.

#### Administrative Expunction (Section 53)

The bill amends the catchline of s. 943.0581, F.S., clarifying that administrative expunction is available to a person whose arrest was made contrary to law or by mistake.

This section of the bill is effective October 1, 2019.

#### Lawful Self-Defense Expunction (Section 52)

The bill creates s. 943.0578, F.S., moving the provision for lawful self-defense expunction from s. 943.0585(5), F.S., to an independent statutory section. This new section does not make any substantive changes to the eligibility for or process of lawful self-defense expunction.

This section of the bill is effective October 1, 2019.

---

<sup>357</sup> However, a person is not eligible for an automatic sealing pursuant to s. 943.0595, F.S., if the dismissal was pursuant to s. 916.145, F.S. or s. 985.19, F.S. Both of these sections relate to the dismissal of a criminal case due to a defendant being adjudicated as incompetent to proceed.

<sup>358</sup> However, a person is not eligible for an automatic sealing pursuant to s. 943.0595, F.S., if the defendant was found not guilty by reason of insanity.

<sup>359</sup> A judgment of acquittal is rendered when a court determines the evidence is insufficient to sustain a conviction. Cornell Law School Legal Information Institute, *Rule 29: Motion for a Judgment of Acquittal*, available at [https://www.law.cornell.edu/rules/frcrmp/rule\\_29](https://www.law.cornell.edu/rules/frcrmp/rule_29) (last visited April 14, 2019).

<sup>360</sup> See s. 943.059(4), F.S.

### **DNA Database (Section 58)**

Section 943.325, F.S., created the DNA database within the FDLE in 1989 and required persons convicted of certain sex crimes to provide blood samples to be tested for genetic markers for the purpose of personal identification of the person submitting the sample.<sup>361</sup> The results from the blood samples were then entered into a DNA database maintained by the FDLE to be available in a statewide automated personal identification system for classifying, matching, and storing DNA analyses.<sup>362</sup>

#### ***Legislative Intent in Section 943.325, F.S.***

Section 943.325(1)(b), F.S., contains the following legislative findings:

The Legislature also finds that upon establishment of the Florida DNA database a match between casework evidence DNA samples from a criminal investigation and DNA samples from a state or federal DNA database of certain offenders may be used to find probable cause for the issuance of a warrant to obtain the DNA sample from an offender.

Once the law enforcement officer serves the search warrant on the person, the officer can then obtain a DNA sample from the suspect that will be compared to the sample from the crime scene and the match sample from a DNA database. The timetable for the laboratory comparison of the three DNA samples cannot be stated with certainty. If the known sample confirms that the match is accurate, the officer may then arrest the suspect. This is at best a two-step process for the law enforcement officer who must first obtain the suspect's sample, wait for results from a lab confirming the three DNA profiles match one another (crime scene, database, and officer-obtained suspect sample), and then arrest the suspect.<sup>363</sup>

#### ***Case Law***

In a factual scenario similar to the one that may result under the bill, a Florida court has found that a DNA sample in the FDLE database and a match to DNA crime scene evidence is "sufficient to create probable cause to arrest the defendant."<sup>364</sup> In the case, a voluntary DNA swab was obtained from the defendant during the investigation of an unrelated crime. The DNA – a known sample – was then analyzed and stored in the FDLE DNA database. Crime scene DNA evidence from an unsolved sexual battery, also in the database, and the defendant's known DNA sample matched.<sup>365</sup>

The defendant was arrested for the unsolved sexual battery based on the DNA match. At the police station, subsequent to his arrest, the defendant provided another known DNA sample, for identification confirmation. Later, the defendant argued that the second known sample should not be admissible at trial because the "cold DNA hit does not constitute probable cause to arrest a

---

<sup>361</sup> Chapter 89-335, L.O.F.

<sup>362</sup> *Id.*

<sup>363</sup> Information based upon Senate Criminal Justice Committee staff conversations with law enforcement officer representatives on March 7, 8, and 12, 2019, and a conference call with law enforcement representatives and the FDLE representatives on March 8, 2019.

<sup>364</sup> *Myles v. State*, 54 So.3d 509 (Fla. 3d DCA, 2010), rev.den. (Fla. 2011).

<sup>365</sup> *Id.*

defendant.”<sup>366</sup> The court found that the defendant’s arrest was legal and the second known sample, post-arrest, was admissible at trial.<sup>367</sup>

### ***Effect of the Bill***

The bill amends s. 943.325(1)(b), F.S., to allow a law enforcement officer to seek an arrest warrant based upon probable cause found in a match between crime scene DNA evidence and a DNA sample stored in a database. This creates the potential for the officer to by-pass the identification confirmation DNA sample currently taken from the suspect pursuant to a search warrant, prior to arrest.

This section of the bill is effective October 1, 2019.

### **Contraband at State Correctional Facilities and County Detention Facilities (Sections 61, 75, and 92)**

Cell phones in state correctional institutions are a pervasive and documented problem, with DOC confiscating more than 9,000 cell phones between 2017 and 2018. Although the introduction of contraband can often be attributed to criminal gang activity or visitors, in 2018 there were at least 19 state correctional officers and staff who were accused of misconduct relating to contraband.<sup>368</sup> Four state correctional officers and a former chaplain have been arrested for introducing contraband into a correctional institution in 2019.<sup>369</sup>

Florida law prohibits introduction of contraband into state correctional institutions and county detention facilities. Sections 944.47 and 951.22, F.S., both list the items that constitute contraband if they are introduced or possessed *without authorization* at these facilities. Introduction of contraband is either a second or third degree felony, depending on the type of contraband introduced and the facility.

### ***Introduction of Contraband at State Correctional Facilities***

It is a third degree felony<sup>370</sup> for a person to introduce into a state correctional facility, one of the following items:

- Any written or recorded communication or any currency or coin given or transmitted, or intended to be given or transmitted, to any inmate of any state correctional institution.
- Any article of food or clothing given or transmitted, or intended to be given or transmitted, to any inmate of any state correctional institution; or

---

<sup>366</sup> *Id.*

<sup>367</sup> *Id.*

<sup>368</sup> Dan Sullivan, *Spice and cell phones: Florida’s prisons see new wave of contraband*, Tampa Bay Times, November 5, 2018, available at [https://www.tampabay.com/news/publicsafety/crime/Spice-and-cell-phones-Florida-s-prisons-see-new-wave-of-contraband\\_172879515](https://www.tampabay.com/news/publicsafety/crime/Spice-and-cell-phones-Florida-s-prisons-see-new-wave-of-contraband_172879515) (last visited April 12, 2019).

<sup>369</sup> Florida Department of Corrections, FDC Press Releases and Announcements, available at <http://www.dc.state.fl.us/comm/press/2019/index.html> (last visited April 12, 2019).

<sup>370</sup> A third degree felony is punishable by up to 5 years’ incarceration and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

- Any cellular telephone or other portable communication device intentionally and unlawfully introduced inside the secure perimeter of any state correctional institution without prior authorization or consent from the officer in charge of such correctional institution.<sup>371</sup>

The term “portable communication device” is defined to mean any device carried, worn, or stored which is designed or intended to receive or transmit verbal or written messages, access or store data, or connect electronically to the Internet or any other electronic device and which allows communications in any form. Such devices include, but are not limited to, portable two-way pagers, hand-held radios, cellular telephones, Blackberry-type devices, personal digital assistants or PDA’s, laptop computers, or any components of these devices which are intended to be used to assemble such devices. The term also includes any new technology that is developed for similar purposes. Excluded from this definition is any device having communication capabilities that has been approved or issued by the department for investigative or institutional security purposes or for conducting other state business.<sup>372</sup>

Additionally, it is a second degree felony<sup>373</sup> for a person to introduce into a state correctional facility any intoxicating beverage or beverage which causes or may cause an intoxicating effect, controlled substance<sup>374</sup> or any prescription or nonprescription drug having a hypnotic, stimulating, or depressing effect, or firearm or weapon of any kind or any explosive substance.<sup>375</sup>

Florida law does not enhance the penalties for a violation of introduction of contraband into state correctional facilities based on the position of the person who commits the offense, such as an officer.

### ***Introduction of Contraband at County Detention Facilities***

The items specifically prohibited from being introduced at a county detention facility include written or recorded communications, currency and coins, food and clothing, tobacco products, intoxicating beverages, various drugs and controlled substances, firearms and dangerous weapons, and items that may aid escape attempts. However, cellular or other portable communication devices are not enumerated as an item that carries criminal penalties for introduction at county detention facilities.

It is a third degree felony to “introduce” or possess “contraband” at a county detention facility, regardless of the item.<sup>376, 377</sup>

---

<sup>371</sup> Section 944.47(2), F.S.

<sup>372</sup> Section 944.47(1)(a)6., F.S.

<sup>373</sup> A second degree felony is punishable by up to 15 years imprisonment and up to a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>374</sup> As defined in s. 893.02(4), F.S.

<sup>375</sup> Section 944.47(2), F.S.

<sup>376</sup> Section 951.22, F.S.

<sup>377</sup> A person who commits a third degree felony may be imprisoned for up to 5 years and fined up to \$5,000. Sections 775.082 and 775.083, F.S.

### *Effect of the Bill*

#### State Correctional Institutions (Sections 61 and 92)

The bill amends s. 944.47, F.S., reclassifying the introduction of contraband into a state correctional facility to the next offense severity ranking level than is provided for in the offense severity ranking chart when the introduction occurs by an employee, as defined in s. 944.115(2)(b), F.S., who uses or attempts to use the powers, rights, privileges, duties, or position of his or her employment. This results in the offense being ranked as level 7 or level 8 offenses instead of level 6 or level 7 offenses.<sup>378</sup>

The bill also amends s. 921.0022, F.S., providing that the offense of introduction of a cellphone into a correctional institution is a level 4 offense on the offense severity ranking chart.

This section of the bill is effective October 1, 2019.

#### County Detention Facilities (Sections 75 and 92)

The bill reduces the penalty to a first degree misdemeanor for some of the less dangerous items, including written or recorded communications, currency and coins, food and clothing, tobacco products, and intoxicating beverages.<sup>379</sup> The bill retains the third degree felony status for various drugs and controlled substances, firearms and dangerous weapons, and items that may aid escape attempts.

The bill also adds cellular phones and portable communication devices, as defined in s. 944.47, F.S., to the list of contraband items, and makes it a third degree felony for a person to introduce or possess them at a county detention facility.

The bill also amends s. 921.0022, F.S., reducing the level of the offenses of introducing an intoxicating drug, cellular telephone, or instrumentality to aid escape from level 6 to level 4 on the offense severity ranking chart, but retaining the offense of introduction of firearm or weapon into a county detention facility as a level 6.

This section of the bill is effective October 1, 2019.

### **State Inmates Admission Process, Facility Placement, Available Programming, and Transition and Release (Sections 62-64)**

#### *General Admission Process*

Once sentenced to the DOC, an inmate will first go to a reception center for diagnostic tests and evaluations. During reception, an inmate's custody level is determined, health care, programming needs are assessed, and the rules and regulations of prison life are taught.<sup>380</sup> All

---

<sup>378</sup> As provided in s. 921.0022, F.S., or s. 921.0023, F.S.

<sup>379</sup> A first degree misdemeanor is punishable by up to 1 year in the county detention facility and a fine not to exceed \$1,000. Sections 775.082 and 775.083, F.S.

<sup>380</sup> See The DOC, *Inmate Orientation Handbook, Reception Center Processing, NII-091*, p. 2-3, December 2, 2016, available at <http://www.dc.state.fl.us/pub/files/InmateOrientationHandbook.pdf> (last visited April 15, 2019)(hereinafter cited as "Inmate Handbook").

inmates are screened at reception and assessed and placed into programs using the Correctional Integrated Needs Assessment System (CINAS).<sup>381</sup> The CINAS is administered to inmates at reception and again at 42 months from release. Additionally, the DOC conducts updates every six months thereafter to evaluate the inmate's progress and ensure enrollment in needed programs. The DOC's use of the CINAS allows for development and implementation of programs that increase the likelihood of successful transition through the selection of services that are matched to the offender's learning characteristics and then to the offender's stage of change readiness.<sup>382</sup>

The inmate is then sent to a major institution (prison)<sup>383</sup> that can accommodate his or her custody level and needs. The custody evaluation is based upon factors such as the sentence structure, outstanding detainers or warrants, age, education, and recent employment history. Background factors such as previous terms of incarceration, previous escapes, and past disciplinary problems also affect the decision. The result of the evaluation is called a custody assignment.<sup>384</sup>

An inmate's custody assignment is important because it determines the type of institution in which an inmate must be housed. After completing the orientation process at a reception center, inmates are transferred to a "permanent facility." Placement is based on institutional and individual need such as programs, education, health, and availability of bed space.<sup>385</sup>

As the inmate serves his sentence, he or she will be reevaluated whenever something happens that could change the inmate's custody, including positive or negative events. An example of a positive change is earning gain-time that reduces the time remaining to serve. Alternatively, an example of a negative event is an inmate receiving a disciplinary report for a rule violation. When the custody assignment changes, so can the inmate's location and it is possible for an inmate to be moved to a different prison. When possible, the DOC will assign an inmate to an institution in the vicinity of his/her home to encourage family support.<sup>386</sup>

The DOC reports that 65 percent of its beds are located in Region 1 or Region 2, located in Northwest Florida and Northeast Florida, respectively. In FY 2017-18, the DOC received approximately 27,916 new admissions of which 64 percent were from the Region 3 or Region 4 area, which are the Central and South Florida areas, respectively.<sup>387</sup>

---

<sup>381</sup> The DOC, *Agency Analysis for SB 1222 (2018)*, p. 2, January 18, 2018 (on file with the Senate Criminal Justice Committee)(hereinafter cited as "The DOC SB 1222 Analysis").

<sup>382</sup> The DOC SB 1222 Analysis, p. 2. The DOC reports that it matches factors that influence an inmate's responsiveness to different types of services with programs that are proven to be effective within an inmate population.

<sup>383</sup> All major institutions, or prisons, are similar to small towns in that they have their own academic and vocational schools, places of worship, medical services, maintenance facilities, parks (for visiting family), and often their own water supplies. The DOC, *Annual Report Fiscal Year 2017-18*, p. 13, available at [http://www.dc.state.fl.us/pub/annual/1718/FDC\\_AR2017-18.pdf](http://www.dc.state.fl.us/pub/annual/1718/FDC_AR2017-18.pdf) (last visited April 15, 2019)(hereinafter cited a "Annual Report").

<sup>384</sup> *Id.*

<sup>385</sup> All major institutions, or prisons, are similar to small towns in that they have their own academic and vocational schools, places of worship, medical services, maintenance facilities, parks (for visiting family), and often their own water supplies. The DOC, *Annual Report Fiscal Year 2017-18*, p. 13, available at [http://www.dc.state.fl.us/pub/annual/1718/FDC\\_AR2017-18.pdf](http://www.dc.state.fl.us/pub/annual/1718/FDC_AR2017-18.pdf) (last visited April 15, 2019)(hereinafter cited a "Annual Report").

<sup>386</sup> The DOC, *Victim Services, What Happens After Sentencing?*, available at <http://www.dc.state.fl.us/vict/index.html> (last visited April 15, 2019).

<sup>387</sup> The DOC SB 642 Analysis, p. 2. A map of the DOC's regions is available at <http://www.dc.state.fl.us/ci/index.html> (last visited April 15, 2019).

### ***Determining an Inmate's Classification Level***

Section 944.1905, F.S., requires each inmate placed in the custody of the DOC to be classified or reclassified based upon the inmate's risk level. An inmate's initial classification is determined by a number of factors including, but not limited to, length of sentence, criminal history, any history of violence, and escape history.<sup>388</sup> Classification levels impact the facility placement and programming that an inmate is eligible to participate in while incarcerated.<sup>389</sup>

### ***Programming Offered to Inmates in the Custody of the DOC***

Chapter 944, F.S., requires the DOC to provide a variety of services and programming to inmates committed to the custody of the DOC, including:

- Substance abuse treatment programs;<sup>390</sup>
- Transitional services;<sup>391</sup>
- Educational and vocational programs;<sup>392</sup> and
- Faith- and character-based programs.<sup>393</sup>

These services and programs provide inmates with skills and tools to assist with an inmate's successful transition into the community upon release. These services are not offered at all prisons, therefore, services that an inmate needs to best provide rehabilitative programming are paramount to placement decisions.<sup>394</sup>

### ***Education for State Prisoners***

Section 944.801(1), F.S., establishes a Correctional Education Program (CEP), which must be composed of the educational facilities and services of all institutions, and facilities housing inmates operated by the DOC. The duties of the CEP, in part, include:

- Developing guidelines for collecting education-related information during the inmate reception process and for disseminating such information to the classification staff of the DOC.<sup>395</sup>
- Approving educational programs of the appropriate levels and types in the correctional institutions and developing procedures for the admission of inmate students into such programs.<sup>396</sup>

<sup>388</sup> Inmate Handbook, at 8; *See also* s. 944.1905(1)-(3), F.S.

<sup>389</sup> Inmate Handbook, at 7.

<sup>390</sup> Section 944.473(2), F.S., requires each inmate to be assessed to determine if he or she qualifies to receive mandated substance-abuse treatment while incarcerated. The DOC provides four levels of inmate substance abuse programming, including intensive outpatient, residential therapeutic community, program centers, and work release centers. In FY 2017-18, a total of 10,844 inmates participated in some form of substance abuse treatment. *See* Annual Report, p. 45.

<sup>391</sup> Sections 944.701-944.708, F.S.

<sup>392</sup> Section 944.801, F.S. In FY 2017-18, the DOC had 16,630 inmates participating in educational programs, 18,734 in academic programs, and 6,328 in vocational programs. Annual Report, at 33.

<sup>393</sup> Section 944.803, F.S., encourages the DOC to operate faith- and character-based facilities, which emphasize the importance of personal responsibility, meaningful work, education, substance abuse treatment, and peer support.

<sup>394</sup> Annual Report, at 33.

<sup>395</sup> Section 944.801(3)(a), F.S., also provides that the information collected must include the inmate's areas of educational or vocational interest, vocational skills, and level of education.

<sup>396</sup> Section 944.801(3)(d), F.S.



- Entering into agreements with public or private school districts, entities, community colleges, junior colleges, colleges, or universities as may be deemed appropriate for the purpose of carrying out the CEP duties.<sup>397</sup>
- Ensuring that such local agreements require minimum performance standards and standards for measurable objectives, in accordance with established Department of Education (DOE) standards.<sup>398</sup>
- Developing and maintaining complete and reliable statistics on the number of high school equivalency diplomas and vocational certificates issued by each institution in each skill area, the change in inmate literacy levels, and the number of inmate admissions to and withdrawals from education courses.<sup>399</sup>

### ***Prison Entrepreneurship Programs***

In 2011, the University of Virginia's Darden School of Business implemented a prison entrepreneurship program at a medium-security prison housing more than 1,000 inmates. 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>400</sup> Texas has a prison entrepreneurship program at one of its facilities in Houston and approximately 800 inmates graduate from the program annually.<sup>401</sup>

Though not statutorily mandated, the DOC partners with several educational institutions to offer inmates job training and readiness skills, including, but not limited to, Stetson University, Florida State University, University of Central Florida, and University of West Florida.<sup>402</sup> Additionally, the DOC operates an entrepreneurship education program at Hardee Correctional Institution.<sup>403</sup>

### ***Reentry and Transitional Services***

The DOC is required to provide a wide range of transitional services, including the areas of employment, life skills training, and job placement, for the purpose of increasing the likelihood of the inmate's successful reentry into society, thereby reducing recidivism.<sup>404</sup>

Section 944.704, F.S., requires the DOC to provide a transition assistance specialist at each of its major prison institutions to assist an inmate with specified assistance, including, in part, obtaining job placement information.<sup>405</sup>

---

<sup>397</sup> Section 944.801(3)(e), F.S.

<sup>398</sup> *Id.*

<sup>399</sup> Section 944.801(3)(g), F.S.

<sup>400</sup> University of Virginia, UVA Today, Carlos Santos, *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 April 15, 2019).

<sup>401</sup> *Id.* Of its graduates, 106 have founded businesses and the recidivism rate of those inmates is less than 7 percent. *See also* The Prison Entrepreneurship Program, *Releasing Potential*, available at <http://www.pep.org/releasing-potential/> (last visited April 15, 2019).

<sup>402</sup> Email and attachments from the DOC Staff (February 22, 2018)(on file with the Senate Criminal Justice Committee).

<sup>403</sup> *Id.*

<sup>404</sup> *See* ss. 944.701-708, F.S.

<sup>405</sup> Section 944.704, F.S., further provides that correctional officers and correctional probation officers are prohibited from serving in the role of the transition assistance specialist.

Section 944.705, F.S., requires the DOC to establish a standard release orientation program available to every eligible inmate.<sup>406</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>407</sup>

To provide these services, the DOC may contract with outside public or private entities, including faith-based service groups.<sup>408</sup>

### *Effect of the Bill*

#### Transition Assistance Staff (Section 62)

The bill amends s. 944.704, F.S., authorizing the DOC to increase the number of transition assistance specialists in proportion to the number of inmates served at each of the major institutions. Also, the DOC is authorized to increase the number of employment specialists per judicial circuit based on the number of released inmates served under community supervision in that circuit, subject to appropriations.

The bill adds language requiring that transition assistance specialists also provide inmates with information about identifying any job assignment credentialing or industry certifications for which the inmate is eligible.

This section of the bill is effective October 1, 2019.

#### Release Orientation Program (Section 63)

The bill amends s. 944.705, F.S., requiring the DOC to establish a toll-free hotline for the benefit of released inmates. The hotline must provide information to released inmates seeking to obtain post-release referrals for community based reentry services. The bill also requires the DOC to provide each inmate with a comprehensive community reentry resource directory organized by the county to which the inmate is being released with specified information related to providers and portals of entry<sup>409</sup> and to expand the use of the Spectrum system to provide inmates and offenders with community-specific reentry service provider referrals.

---

<sup>406</sup> Sections 944.703 and 944.7031, F.S., provide that all inmates released from the custody of the DOC are eligible to receive transition services. However, the law instructs the DOC 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 the DOC for an inmate in a state correctional facility.

<sup>407</sup> Section 944.705(2), F.S.

<sup>408</sup> Section 944.705(5), F.S.

<sup>409</sup> The directory must include the name, address, telephone number and a description of services offered by each provider and also include the name, address, and telephone number of existing portals of entry.

The DOC must allow a nonprofit faith-based or professional business, or a civic or community organization, to apply to be registered under this section to provide inmate reentry services. The DOC must also adopt policies and procedures for screening, approving, and registering an organization that applies to be registered to provide inmate reentry services. The DOC may deny approval and registration of an organization or a representative from an organization if it determines that the organization or representative does not meet such policies or procedures. The bill defines reentry services as services that include, but are limited to counseling; providing information on housing and job placement; money management assistance; and programs addressing substance abuse, mental health, or co-occurring conditions.

The bill also authorizes the DOC to contract with a public or private educational institution's Veteran's Advocacy Clinic or Veteran's Legal Clinic to assist qualified veteran inmates in applying for veteran's assistance benefits upon release.

This section of the bill is effective October 1, 2019.

#### Prison Entrepreneurship Program (Section 64)

The bill amends s. 944.801, F.S., authorizing the Correctional Education Program to develop a Prison Entrepreneurship Program (PEP). The PEP must include at least 180 days of in-prison education with curriculum that includes 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 provides that transitional and post release continuing education services may be offered to graduate student inmates on a voluntary basis and are not required for completion of the PEP.

The PEP must be funded within existing resources and the DOC is required to enter into agreements with public or private community colleges, junior colleges, colleges, universities, or other non-profit entities to implement the program. The bill provides rulemaking authority and authority to adopt procedures for admitting student inmates.

This section of the bill is effective October 1, 2019.

#### **Probation and Community Control (Sections 65-70)**

##### ***Forms of Supervision through the Department of Corrections***

At sentencing, a judge may place an offender on probation or community control in lieu of or in addition to incarceration.<sup>410</sup> The DOC supervises more than 166,000 offenders on active community supervision. This includes offenders released from prison on parole, conditional release, or conditional medical release and offenders placed on court ordered supervision including probation, drug offender probation, sex offender probation, and community control.<sup>411</sup>

---

<sup>410</sup> Section 948.01, F.S.

<sup>411</sup> The DOC, *Probation Services*, available at <http://www.dc.state.fl.us/cc/index.html> (last visited April 15, 2019).

### Probation

Probation is a form of community supervision requiring specified contacts with probation officers and other conditions a court may impose.<sup>412</sup> There are also specialized forms of supervision such as drug offender probation<sup>413</sup> and mental health probation.<sup>414</sup> Section 948.03, F.S., provides that a court must determine the terms and conditions of probation. Standard conditions of probation that are enumerated in s. 948.03, F.S., are not required to be announced on the record, but the court must orally pronounce, as well as provide in writing, any special conditions of probation imposed.

### Administrative Probation

Section 948.013, F.S., provides that the DOC may establish procedures for transferring an offender to administrative probation. Administrative probation is defined in s. 948.001(1), F.S., to mean a form of no contact, nonreporting supervision to which an offender may be transferred upon the satisfactory completion of certain conditions. Administrative probation is only for offenders that are a low-risk of harm to the community and there are specified underlying offenses that are prohibited from being transferred to administrative probation.<sup>415</sup>

### Community Control

Section 948.001(3), F.S., defines “community control” as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads.<sup>416</sup> The community control program is rigidly structured and designed to accommodate offenders who, in the absence of such a program, will be committed to the custody of the DOC or a county jail.<sup>417</sup> A person on community control (controlee) has an individualized program and is restricted to his or her home or noninstitutional residential placement, unless working, attending school, performing public service hours, participating in treatment or another special activity that has been approved in advance by his or her parole and probation officer.<sup>418</sup>

Conditions of community control are determined by the court when the offender is placed on such supervision. There are standard conditions of community control with which all controlees must comply.<sup>419</sup> A person may be placed on additional terms of supervision as part of his or her community control sentence.<sup>420</sup>

---

<sup>412</sup> Section 948.001(8), F.S. Terms and conditions of probation are provided in s. 948.03, F.S.

<sup>413</sup> Section 948.001(4), F.S., defines “drug offender probation” as a form of intensive supervision that emphasizes treatment of drug offenders in accordance with individualized treatment plans administered by probation officers with reduced caseloads.

<sup>414</sup> Section 948.001(5), F.S., “mental health probation” means a form of specialized supervision that emphasizes mental health treatment and working with treatment providers to focus on underlying mental health disorders and compliance with a prescribed psychotropic medication regimen in accordance with individualized treatment plans.

<sup>415</sup> See s. 948.013(2) and (3), F.S.

<sup>416</sup> Section 948.10(2), F.S., provides that caseloads must be no more than 30 cases per officer.

<sup>417</sup> Section 948.10(1), F.S.

<sup>418</sup> *Id.*

<sup>419</sup> See s. 948.101(1), F.S., for the standard conditions of community control.

<sup>420</sup> Section 948.101(2), F.S.

### ***Early Termination and Other Court Action***

Termination of supervision, whether by court order or scheduled expiration of the term, releases the offender from all supervision and liability to sentence on the underlying charge or charges.<sup>421</sup>

The court may discharge an offender from supervision at any time if the court is satisfied that doing so is in the best interests of justice and the welfare of society.<sup>422</sup> The DOC may recommend early termination of supervision to the court at any time before the scheduled termination date when a probationer:

- Performed satisfactorily;
- Has not been found in violation of any terms or conditions of supervision; and
- Met all financial sanctions imposed by the court.<sup>423</sup>

Additionally, a court may at any time require a probationer or controlee to appear before it to be admonished or commended, and, when satisfied that its action will be for the best interests of justice and the welfare of society, it may discharge the probationer or controlee from further supervision.<sup>424</sup>

Florida law is silent as to whether a probationer or controlee can petition the court for early termination on its own motion, as well as specific incentives to reduce a probationer's or controlee's supervision sentence, similar to gain-time, that can be used to promote good behavior. However, the DOC currently uses a system of incentives to reward offenders for positive behavior and compliance with the terms of supervision. These incentives include:

- Allowing certain eligible offenders to report by mail and phone in lieu of having to report in person to the probation office.
- Recommending reduction of supervision type to the court.
- Recommending reduced reporting to the court.
- Recommending early termination of supervision to the court.<sup>425</sup>

The DOC reports successful outcomes from this strategy, motivating offenders to both comply with the terms of supervision and complete all requirements ahead of schedule.<sup>426</sup>

### ***Violations of Probation or Community Control***

If an offender violates the terms of his or her probation or community control, the supervision can be revoked in accordance with s. 948.06, F.S.<sup>427</sup> A violation of probation (VOP) or violation of community control (VOCC) can be the result of a new violation of law or a technical violation of the conditions imposed. If reasonable grounds exist to believe that an offender on probation or community control has violated his or her terms of supervision in a material respect, an offender may be arrested without a warrant by a:

---

<sup>421</sup> Section 948.04(2), F.S.

<sup>422</sup> Section 948.05, F.S.

<sup>423</sup> Section 944.04(3), F.S. The financial obligations include, but are not limited to, fines, court costs, and restitution.

<sup>424</sup> Section 948.05, F.S.

<sup>425</sup> The DOC, *Community Corrections Strategies To Increase Offender Success and Reduce Recidivism*, December 2017 (on file with the Senate Appropriations Committee).

<sup>426</sup> *Id.*

<sup>427</sup> Section 948.10(3), F.S.

- Law enforcement officer who is aware of the inmate’s supervised community release status;
- Probation officer; or
- County or municipal law enforcement officer upon request by a probation officer.<sup>428</sup>

The offender must be returned to the court granting such probation or community control.<sup>429</sup> Additionally, the committing court judge may issue a warrant, upon the facts being made known to him or her by affidavit of one having knowledge of such facts, for the arrest of the offender.<sup>430</sup>

Upon a finding through a VOP or VOCC hearing, a court may revoke, modify, or continue the supervision. If the court chooses to revoke the supervision, it may impose any sentence originally permissible before placing the offender on supervision.<sup>431</sup> In addition, 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>432</sup> The VFOSC status also accrues sentence points under the Code, which affects the scoring of the lowest permissible sentence.<sup>433</sup>

### ***Alternative Sanctioning Programs***

In FY 2017-18 a total of 64,672 technical violations were reported.<sup>434</sup> Many of these violations resulted in the offender returning to some form of supervision or serving a county jail sentence.<sup>435</sup> Prior to 2016, the DOC developed and implemented an alternative sanctioning program (ASP) in twelve counties within six judicial circuits.<sup>436</sup> An ASP allows for an alternative resolution of technical violations of probation that ensures a swift and certain response without initiating the court process or arresting and booking the offender. Section 948.06, F.S., was amended during the 2016 Legislative Session to codify the ASPs.<sup>437</sup> The use of such programs has substantially increased since enactment of the ASP option. As of February 2019, 16 circuits (including 49 of 67 counties) have established ASPs by administrative order. These participating jurisdictions have resolved 3,740 violations through ASPs.<sup>438</sup>

<sup>428</sup> Section 948.06(1)(a), F.S.

<sup>429</sup> *Id.*

<sup>430</sup> Section 948.06(1)(b), F.S. The committing trial court judge may also issue a notice to appear if the probationer or controlee has never been convicted of committing, and is not currently alleged to have committed, a qualifying offense as enumerated in s. 948.06(8)(c), F.S.

<sup>431</sup> Section 948.06(2)(b), F.S.

<sup>432</sup> See s. 948.06(8)(a), F.S., for all VFOSC qualifications and enumerated list of felonies that are considered qualifying offenses. See also ch. 2007-2, L.O.F.

<sup>433</sup> Section 921.0024, F.S.

<sup>434</sup> Email from Jenny Nimer, Assistant Secretary of Community Corrections, the DOC, *Re: ASP Status*, February 28, 2019 (on file with the Senate Criminal Justice).

<sup>435</sup> The DOC, *Copy of Tech Violations and Disposition 02-16-18* (on file with the Senate Criminal Justice Committee),

<sup>436</sup> The DOC, *Agency Analysis for SB 642*, p. 6, February 27, 2019 (hereinafter cited as “The DOC SB 642 Analysis”); See also the DOC, *Agency Analysis HB 1149 (2016)*, p. 2, January 20, 2016 (all documents on file with the Senate Criminal Justice Committee).

<sup>437</sup> Chapter 2016-100, L.O.F.

<sup>438</sup> Email from the DOC Staff (February 26, 2019)(on file with the Senate Criminal Justice Committee). The circuits that have enacted administrative orders include the: Third (Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee, and Taylor Counties); Fourth (Duval County); Fifth (Citrus, Hernando, Lake, Marion, and Sumter Counties); Sixth (Pasco and Pinellas Counties); Seventh (Flagler, Putnam, St. Johns and Volusia Counties); Eighth (Alachua, Baker, Bradford, Gilchrist, Levy, and Union Counties); Tenth (Hardee, Highlands, and Polk Counties); Twelfth (DeSoto, Manatee, and Sarasota Counties); Thirteenth (Hillsborough County); Fourteenth (Bay, Calhoun, Gulf, Holmes, Jackson, and Washington Counties); Fifteenth

Section 948.06(1)(h), F.S., authorizes the chief judge of each judicial circuit to establish an ASP, in consultation with the State Attorney, Public Defender, and the DOC to address technical VOPs and VOCCs. A technical violation is defined to include any alleged violation of supervision that is not a new felony offense, misdemeanor offense, or criminal traffic offense.<sup>439</sup> Once an ASP administrative order is signed establishing the terms<sup>440</sup> of the program, the DOC may enforce specified sanctions for certain technical violations with court approval.

Common sanctions issued through the ASP include increased reporting requirements, which can be in person or via phone, community service hours, imposition or modification of a curfew, electronic monitoring, drug evaluation and treatment, employment searches and workforce training.<sup>441</sup> As of January 2018, two circuits and Brevard County had included short jail sentences as a possible ASP sanction through administrative order.<sup>442</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>443</sup> If the offender waives participation, the violation proceeds through the court resolution process.<sup>444</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;
- 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; and
- Receive a written statement from a factfinder as to the evidence relied on and the reasons for the sanction imposed.<sup>445</sup>

Upon the offender admitting to the technical violation and agreeing with the probation officer's recommended sanction, the probation officer must submit the recommended sanction to the court for approval. The submission to the court must include documentation related to the offender's admission to the technical violation and agreement with the recommended sanction. The court

---

(Palm Beach County); Eighteenth (Brevard and Seminole Counties); and Nineteenth (Indian River, Martin, Okeechobee, and St. Lucie Counties).

<sup>439</sup> Section 946.08(2)(h)1., F.S.

<sup>440</sup> Section 948.06(1)(h)2., F.S., provides that the administrative order must address which technical violations are eligible for alternative sanctioning, offender eligibility criteria, permissible sanctions, and the process for reporting technical violations.

<sup>441</sup> The Third Judicial Circuit, *Administrative Order 2016-003, Criminal Alternative Sanctioning Program*, available at

[http://www.jud3.flcourts.org/Admin\\_Orders/All/2016-003-Criminal%20Alternative%20Sanctioning%20Program.pdf](http://www.jud3.flcourts.org/Admin_Orders/All/2016-003-Criminal%20Alternative%20Sanctioning%20Program.pdf)

Thirteenth Judicial Circuit, *Administrative Order S-2016-019, Alternative Sanctioning Program*, available at

<http://www.fljud13.org/Portals/0/AO/DOCS/S-2016-019.pdf?ver=2016-06-07-104033-303> (all sites last visited April 15, 2019).

<sup>442</sup> The Eighth and Tenth circuits offer short county jail time as a sanction and Brevard County offers weekends with the Brevard County Sheriff's Work Farm. Email and pdf attachment from the DOC Staff (February 22, 2018)(on file with Senate Criminal Justice Staff).

<sup>443</sup> Section 948.06(1)(h)3., F.S.

<sup>444</sup> Section 948.06(1)(h)3.a., F.S.

<sup>445</sup> Section 948.06(1)(h)3.b., F.S.

may impose the recommended sanction or may direct the DOC to submit a violation report, affidavit, and warrant.<sup>446</sup>

Participation in an ASP is voluntary. Additionally, the offender may elect to waive or discontinue participation in an ASP at any time before the issuance of a court order imposing the recommended sanction. The offender's prior admission to the technical violation may not be used as evidence in subsequent proceedings.<sup>447</sup>

### ***Conditions of Probation in the Florida Crime Information Center***

The Florida Crime Information Center (FCIC) is the state's central database for tracking crime related information. 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>448</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 within Florida is eligible for access to the FCIC.<sup>449</sup> Access is divided into limited access and full access. 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>450</sup> Currently, an officer may run a driver license, warrant, or person query in the FCIC and the results will include information on whether the individual is currently on probation.<sup>451</sup> However, in general, a law enforcement officer will only see that the person is on probation. The FCIC will not include the specific terms of probation.<sup>452</sup>

The DOC sends a probationer's data electronically to the Florida Department of Law Enforcement (FDLE) through a real time direct data pipeline. To include a probationer's conditions, the DOC will enter the information into a "Miscellaneous Field of the Status Record" field available in the FCIC.<sup>453</sup> However, the DOC reports that it includes a number of special conditions of probation as prioritized by the FDLE, but that the current FDLE system only

<sup>446</sup> Section 948.06(1)(h)4. and 5., F.S.

<sup>447</sup> Section 948.06(1)(h)6. and 7., F.S.

<sup>448</sup> The FDLE, *Criminal Justice Information System, Limited Access Certification Course*, p. 7, available at <http://www.fdle.state.fl.us/Limited-Access/Documents/Limited-Access-v5-2018-1.aspx> (last visited April 15, 2019).

<sup>449</sup> The FDLE, *FDLE Frequently Asked Questions, What is criminal history information and how do I obtain it?*, available at <http://www.fdle.state.fl.us/FAQ-s/Frequently-Asked-Questions.aspx> (last visited on April 15, 2019).

<sup>450</sup> *Id.*

<sup>451</sup> The FDLE, *FDLE Frequently Asked Questions, What is criminal history information and how do I obtain it?*, available at <http://www.fdle.state.fl.us/FAQ-s/Frequently-Asked-Questions.aspx> (last visited on April 15, 2019).

<sup>452</sup> Email from Florida Sheriffs Association (FSA) Staff (February 22, 2018)(on file with Senate Criminal Justice Committee).

<sup>453</sup> The DOC SB 642 Agency Analysis, p. 6. *See also* Email from the DOC Staff (February 23, 2018)(on file with the Senate Criminal Justice Committee). The DOC currently includes the specified conditions of probation for each probationer in the data it sends to the FDLE, including, but not limited to: 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 driver 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.



allows a smaller, specified amount of data and typically does not allot enough space to include all special conditions of probation.<sup>454</sup>

A court has authority to modify or alter conditions of probation based on a probationer's particular circumstances.<sup>455</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 the DOC databases in order to update in real time any exceptions to the individual's probation in the FCIC.<sup>456</sup>

### ***Effect of the Bill***

#### **Administrative Probation (Sections 65 and 66)**

The bill amends ss. 948.001(1) and 948.013, F.S., relating to administrative probation to authorize the department to transfer an offender to administrative probation if the offender presents a low risk of harm to the community and to restructure the placement of relevant language. These changes do not appear to have a substantive impact on the laws applicable to administrative probation.

This section of the bill is effective October 1, 2019.

#### **Conditions of Probation in the FCIC (Section 67)**

The bill requires the DOC to input into the FCIC all of a probationer's specific conditions of probation as determined by the court.

This section of the bill is effective October 1, 2019.

#### **Mandatory Early Termination or Conversion to Administrative Probation (Section 68)**

For person's placed on probation on or after October 1, 2019, the bill authorizes the probationer or probation officer to motion the court to consider early termination. The bill requires the court to either early terminate the probationer's supervision or convert the supervisory term to administrative probation if:

- The probationer has completed at least half of the term of probation to which he or she was sentenced.
- The probationer has successfully completed all other conditions of probation.
- The court has not found the probationer in violation of probation pursuant to a filed affidavit of violation of probation at any point during the current supervisory term.
- The parties did not specifically exclude the possibility of early termination or conversion to administrative probation as part of a negotiated sentence.
- The probationer does not qualify as a violent felony offender of special concern.<sup>457</sup>

---

<sup>454</sup> *Id.*

<sup>455</sup> Section 948.039, F.S.

<sup>456</sup> The DOC SB 642 Agency Analysis, p. 6.

<sup>457</sup> See present s. 948.06(7)(b), F.S., for the definition of "violent felony offender of special concern."

The bill authorizes the court to decline to early terminate the probationary term or convert the term to administrative probation for an offender who is otherwise eligible, upon making written findings that continued reporting probation is necessary to protect the community or the interests of justice.

The bill specifically excludes controlee's from these provisions. Additionally, if a controlee is subsequently placed on probation, he or she must complete half of the probationary term to which he or she was sentenced, without receiving credit for time served on community control, before being eligible for mandatory early termination or conversion to administrative probation under this section.

This section of the bill is effective October 1, 2019.

#### Graduated Sanctions (Section 69)

Similarly to the statutory construct of incentive gain-time, the bill creates a graduated incentives program that results in the reductions of specified conditions of supervision that are ordered by the court. The bill requires the DOC to implement a system of graduated incentives to promote compliance with the terms of supervision and prioritize the highest levels of supervision for offenders presenting the greatest risk of recidivism. As part of the graduated incentives system, the DOC may, without leave of court, offer the specified incentives to a compliant offender, including:

- Up to 25 percent reduction of required community service hours;
- Waiver of supervision fees;
- Reduction in frequency of reporting;
- Permission to report by mail or phone; or
- Transfer of an eligible offender to administrative probation.

Additionally, the bill authorizes the DOC to incentivize positive behavior and compliance with recommendations to the court to modify the terms of supervision, including recommending:

- Permission to travel;
- Reduction of supervision type;
- Modification or cessation of curfew;
- Reduction or cessation of substance abuse testing; or
- Early termination of supervision.

The bill also provides that an offender who commits a subsequent violation of probation may forfeit any previously earned probation incentive, as determined appropriate by his or her probation officer.

This section of the bill is effective October 1, 2019.

#### Alternative Sanctioning Programs (ASP) and Low-Risk Technical Violations (Section 70)

The bill amends s. 948.06, F.S., *requiring* each judicial circuit to establish an ASP and providing specific guidelines for the types of technical violations and sanctions that can be provided for in an ASP. The bill authorizes a court, by administrative order, to define additional sanctions or

eligibility criteria and specify the process for reporting technical violations. For each instance that a technical violation of probation or violation of community control is alleged to have been committed, the DOC is required to determine whether such person is eligible for the ASP. If eligible, the probation officer may submit recommended sanctions to the court, with documentation of the probationer's admission to the violation and agreement with the recommended sanction for its approval in lieu of filing an affidavit of violation with the court. The bill maintains the same definition for technical violations as is in current law and limits ASPs to resolving technical violations.

The bill classifies technical violations eligible for an ASP as low-risk and moderate risk. Specifically:

- A low-risk violation includes:
  - 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 on any required probation condition, including, but not limited to, making restitution payments, payment of court costs, or completing community service hours;
  - Leaving the county without permission;
  - Failure to report a change in employment;
  - Associating with a person engaged in criminal activity; or
  - Any other violation as determined by administrative order of the chief judge of the circuit.
- A moderate-risk violation includes:
  - A low-risk violation listed above, which is 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 within the current term of supervision; or
  - Any other violation as determined by administrative order by the chief judge of the circuit.

The bill excludes certain probationers or offenders on community control from participating in an ASP if any of the following criteria apply:

- The offender is a violent felony offender of special concern.
- The violation is absconding.
- The violation is of a stay-away order or no-contact order.
- The violation is not identified as low-risk or moderate-risk under the bill or by administrative order.
- He or she has a prior moderate-risk level violation during the current term of supervision.
- He or she has three prior low-risk level violations during the same term of supervision.
- The term of supervision is scheduled to terminate in less than 90 days.
- The terms of the sentence prohibit the use of an ASP.

An eligible person who has committed a first or second low-risk technical violation within his or her current term of supervision may be offered one or more of the following as a sanction:

- Up to five days in a county jail;
- Up to 50 additional community service hours;
- Counseling or treatment;
- Support group attendance;
- Drug testing;
- Loss of travel or other privileges;
- Curfew for up to 30 days;
- House arrest for up to 30 days; or
- Any other sanction as determined by administrative order by the chief judge of the circuit.

An eligible person who has committed a first time moderate-risk violation within the current term of supervision may be offered, provided the probation officer receives approval from his or her supervisor, one or more of the following as a sanction:

- Up to 21 days in the county jail;
- Curfew for up to 90 days;
- House arrest for up to 90 days;
- Electronic monitoring for up to 90 days;
- Residential treatment for up to 90 days;
- Any other sanction available for a low-risk violation; or
- Any other sanction as determined by administrative order of the chief judge of the circuit.

The bill retains current law regarding the ability of an offender to enter or waive his or her participation in the program; the process for an offender to acknowledge his or her desire to participate in the program, including the specified rights that must be waived; the ability of a court to approve the sanction and the effect of a court not approving the probation officer's recommendation; the effect of an offender's discontinued participation in the program; and the prohibition on the court using a prior admission to a technical violation as evidence in subsequent proceedings.<sup>458</sup> However, if an offender waives, discontinues participation, or fails to successfully complete the alternative sanction within the 90-day timeframe, the probation officer may submit a violation report, affidavit, and warrant to the court.

For certain probationers who have a first VOP filed for a low-risk technical violation, the bill requires the court to modify or continue, rather than revoke, a probationary term in specified instances. A probationer is always able to waive the applications of these provisions.

Specifically, the bill requires modification of probation under when:

- The term of supervision is probation, rather than community control.
- The probationer does not qualify as a violent felony offender of special concern.
- The violation is a low-risk technical violation.
- The court has not previously found the probationer in violation of probation during the current term of supervision.

---

<sup>458</sup> See s. 948.06(1)(h)4.-7., F.S. (2017), for the relevant provisions retained in the bill.

The bill also provides that a probationer who has successfully completed sanctions through the ASP is eligible for mandatory modification or continuation of his or her probation upon the filing of his or her first VOP warrant.

The bill imposes a maximum length on the amount of jail time that a court may order for a first-time, low-risk technical violator to up to 90 days as a special condition of probation. However, a court may revoke rather than modify the probationary term when a first-time, low-risk technical violator has substantially completed his or her term of probation and has only 90 days or fewer remaining on his or her term of supervision. If a court revokes a term of probation under this provision, it may only sentence the probationer to a maximum of 90 days in county jail and cannot take into account the sentencing requirements of the Criminal Punishment Code.

The bill allows a court to grant a probationer credit for only time served in the county jail since his or her most recent arrest for a violation of probation when imposing a capped jail sentence. Normally, a court must give a defendant all credit for time served in a case. The bill ensures that a probationer may receive a sentence of up to 90 days in jail upon a first-time, low-risk technical violation, in addition to any previously served credit.

The bill provides clarification that the court is prohibited from exceeding the statutory maximum sentence.

This section of the bill is effective October 1, 2019.

### **Youthful Offenders (Section 76)**

Current law provides an alternative sentencing scheme for certain youthful offenders convicted of a felony. A court may sentence a person as a youthful offender if he or she:

- Was found guilty of, or plead nolo contendere or guilty to a felony;<sup>459</sup>
- Is younger than 21 years of age at the time the sentence is imposed; and
- Has not previously been sentenced as a youthful offender.<sup>460</sup>

If a court elects to sentence a person as a youthful offender, it must sentence the youthful offender to any combination of the following penalties:

- Placement of the youthful offender on probation or in a community control program for no more than 6 years. Under this sentencing option, the court can choose to withhold adjudication of guilt or impose adjudication of guilt.
- Incarcerate the youthful offender for no more than 364 days. The incarceration must take place in a specified facility and is a condition of probation or community control.
- Incarcerate the youthful offender for a specified period followed by a term of probation or community control. If the incarceration is in specified DOC facilities, it cannot be for less than 1 year or longer than 4 years. The period of incarceration and probation or community control cannot exceed 6 years.

---

<sup>459</sup> A person who has been found guilty of a capital or life felony may not be sentenced as a youthful offender under s. 958.04, F.S.

<sup>460</sup> Section 958.04(1)(a)-(c), F.S.

- Incarcerate the youthful offender for no more than 6 years.<sup>461</sup>

### ***Effect of the Bill***

The bill amends s. 958.04, F.S., permitting a court to impose a sentence as a youthful offender if a person committed a felony *before they turned 21 years of age*. Current law requires the person to be under 21 years of age at the time of sentencing. As a result, a larger group of people will now be eligible for a youthful offender sentence.

This section of the bill is effective October 1, 2019.

### **Victim Assistance (Sections 78-81)**

The Division of Victim Services within the Department of Legal Affairs (DLA) both serves as an advocate for crime victims and victims' rights and administers a compensation program to ensure financial assistance for innocent victims of crimes.<sup>462</sup> Within the division is the Crime Victims' Services Office, which is tasked with, among other things, administering federally funded victim assistance service programs.<sup>463</sup>

### ***Effect of the Bill***

#### Filing of Claims for Compensation (Section 78)

Currently, s. 960.07, F.S., provides that a claim for compensation must be filed by a person eligible for compensation not later than *1 year* after the:

- Occurrence of the crime upon which the claim is based;
- Death of the victim or intervenor; or
- Death of the victim or intervenor is determined to be the result of the crime and the crime occurred after June 30, 1994.<sup>464</sup>

However, the DLA may extend the time for filing for a period *not exceeding 2 years* after such occurrence for good cause.<sup>465</sup> The bill extends these time constraints to *5 years* and *7 years*, respectively.

Further, s. 960.07(3), F.S., allows the victim or intervenor who was under the age of 18 at the time the crime occurred, to file a claim *within 1 year* of 18 and the DLA may extend this time period for an additional period not to exceed *1 year*, upon a showing of good cause. The bill extends these time constraints to *5 years* and *2 years*, respectively.

---

<sup>461</sup> Section 958.04(2)(a)-(d), F.S. Any of these sentencing combinations cannot exceed the maximum sentence for the offense for which the youthful offender was found guilty. If a youthful offender is sentenced to a period of incarceration, the court must adjudicate the youthful offender guilty.

<sup>462</sup> Office of the Attorney General, *Crime Victims' Services: Division of Victim Services*, available at <http://myfloridalegal.com/pages.nsf/main/1c7376f380d0704c85256cc6004b8ed3!OpenDocument> (last visited April 12, 2019).

<sup>463</sup> Section 960.05(2)(c), F.S.

<sup>464</sup> Section 960.07(1) and (2), F.S.

<sup>465</sup> *Id.*

A victim of a sexually violent offense can file a claim for compensation for counseling or other mental health services within *1 year* after the filing of a petition pursuant to s. 394.914, F.S., to involuntarily civilly commit the individual who perpetrated the sexually violent offense.<sup>466</sup> The bill extends this time period to *5 years*.

This section of the bill is effective October 1, 2019.

#### Awards (Section 79)

Section 960.13, F.S., provides that the DLA must confirm that a crime was committed that directly resulted in personal injury to, psychiatric or psychological injury to, or death of, the victim or intervenor and that such crime was promptly reported to the proper authorities in order to give a financial award. A report must be made *within 72 hours* after the occurrence of such crime in order to be eligible for an award.<sup>467</sup>

The bill amends s. 960.13, F.S., extending this time period to *5 days*.

This section of the bill is effective October 1, 2019.

#### Awards to Elderly Persons or Disabled Adults for Property Loss (Section 80)

Section 960.195, F.S., provides that the DLA may award money to an elderly or disabled person who suffered a property loss as a result of a criminal or delinquent act that caused a substantial diminution in their quality of life, provided the criminal or delinquent act is reported to law enforcement within *72 hours*.<sup>468</sup>

The bill amends s. 960.195, F.S., extending this time period to *5 days*.

This section of the bill is effective October 1, 2019.

#### Relocation Assistance for Victims of Human Trafficking (Section 81)

Section 960.196, F.S., permits the DLA to provide money to a victim of human trafficking who needs urgent assistance to escape from an unsafe environment directly related to the human trafficking offense provided the crime was reported to the proper authorities and the claim for such assistance was filed *within 1 year, or 2 years with good cause*.<sup>469</sup>

The bill extends these time periods to *5 years* and *7 years*, respectively.

This section of the bill is effective October 1, 2019.

---

<sup>466</sup> Section 960.07(4), F.S.

<sup>467</sup> Section 960.13(1), F.S.

<sup>468</sup> Section 960.195(1), F.S.

<sup>469</sup> Section 960.196(1) and (2)

### **Department of Juvenile Justice (Sections 82-84)**

Diversion refers to a program that is designed to keep a juvenile from entering the juvenile justice system through the legal process.<sup>470</sup> The term diversion has been broadly used over the years, but typically refers to the placement of an individual on a track that is less restrictive and affords more opportunities for rehabilitation and restoration. Whether it is a prearrest or postarrest diversion program, the goal of the program is to maximize the opportunity for success and minimize the likelihood of recidivism.<sup>471</sup>

Section 985.12, F.S., requires that a civil citation or similar prearrest diversion program for misdemeanor offenses be established in each judicial circuit in the state. The state attorney and public defender of each circuit, the clerk of the court for each county in the circuit, and representatives of participating law enforcement agencies in the circuit are required to create the program and develop its policies and procedures.

In addition to the circuit program, current law permits a sheriff, police department, county, municipality, or public or private educational institution to operate an independent civil citation or similar prearrest diversion program if such program is reviewed by the state attorney and determined to be substantially similar to the circuit program. Additionally, the people tasked with creating the program for the judicial circuit may look to an existing independent program as a model for the development of the circuit program.<sup>472</sup>

The Juvenile Justice Information System includes Prevention Web, which is utilized to track children participating in prevention programs that do not involve arrest, such as admission and release dates for Children in Need of Services and Families in Need of Services placements, among others.<sup>473</sup> Additionally, the record of a child's participation in a civil citation program is also maintained in Prevention Web in a separate module. Prevention Web data is highly confidential and is kept completely separate from delinquency data.

Section 985.12(2)(f), F.S., requires a copy of each civil citation or similar prearrest diversion program notice to be provided to the DJJ and thereupon requires the information of a child with a first-time misdemeanor offense be entered into Prevention Web. This would eliminate the ability to properly screen, assess, and track a child, which negatively impacts public safety.<sup>474</sup>

---

<sup>470</sup> Florida Department of Juvenile Justice, *Glossary*, available at <http://www.djj.state.fl.us/youth-families/glossary> (last visited April 14, 2019).

<sup>471</sup> Center for Health & Justice at TASC, *A National Survey of Criminal Justice Diversion Programs and Initiatives*, pg. 6, December 2013, available at [http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report\\_web.pdf](http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report_web.pdf) (last visited April 14, 2019).

<sup>472</sup> Section 985.12(2), F.S.

<sup>473</sup> Email from Rachel Moscoso, Department of Juvenile Justice Legislative Affairs Director, April 15, 2019 (on file with the Senate Appropriations Committee).

<sup>474</sup> Department of Juvenile Justice, *Prevention Web Letter to Providers*, August 1, 2018 (on file with the Senate Appropriations Committee).



### ***Effect of the Bill***

#### Civil Citation or Similar Prearrest Diversion Program (Section 82)

The bill amends s. 985.12, F.S., adding “locally authorized entity” to the list of individuals or entities that are authorized to operate an independent civil citation or similar prearrest diversion program, provided such program is determined to be substantially similar to the program developed by the circuit. The bill makes the same addition to the list of authorized programs in which a judicial circuit can model its program after.

The bill repeals the requirement related to inputting specified information into the Prevention Web and instead provides that each civil citation or similar prearrest diversion program must enter the appropriate youth data into Prevention Web within 7 days of the admission of the youth into the program.

This section of the bill is effective upon becoming law.

#### Diversion Program Data Collection (Section 83)

Currently, s. 985.126, F.S., requires the issuing law enforcement officer to send a copy of documentation requiring a minor to participate in a diversion program, to the diversion program and the DJJ.<sup>475</sup> The bill removes the requirement to send this documentation to the DJJ and requires the diversion program to enter such information into Prevention Web within 7 days of the youth’s admission into the program.

Section 985.126(3)(a), F.S., also requires certain data be submitted to the DJJ quarterly. The bill removes this requirement and provides that such data must be entered in Prevention Web within 7 days of the youth’s admission into the program.

This section of the bill is effective upon becoming law.

#### Responsibilities of the Department During Intake (Section 84)

Prevention Web is used to maintain records on all children referred for prevention services.<sup>476</sup> Section 985.145(1)(f), F.S., requires the DJJ to enter information related to a child with a first-time misdemeanor offense into the Prevention Web. This is not consistent with the uses of the system and therefore the bill repeals this provision.

This section of the bill is effective upon becoming law.

---

<sup>475</sup> Section 985.126(2), F.S.

<sup>476</sup> Department of Juvenile Justice, *Juvenile Justice Information System Business Rule*, March 9, 2012, available at [http://www.djj.state.fl.us/docs/jjis-business-rules/prevention-web-12-001-\(r06-2015\).pdf?sfvrsn=2](http://www.djj.state.fl.us/docs/jjis-business-rules/prevention-web-12-001-(r06-2015).pdf?sfvrsn=2) (last visited April 12, 2019).

## Prosecution of a Child in Adult Court (Sections 85 and 86)

### *Transfer of a Child to Adult Court*

There are three methods of transferring a child to adult court for prosecution: judicial waiver,<sup>477</sup> indictment,<sup>478</sup> or direct filing an information.

Direct file is the process whereby a state attorney files an information charging a child in adult court. Pursuant to s. 985.557, F.S., direct file can be either discretionary or mandatory and is accomplished exclusively by the state attorney without requiring the court's approval. Direct file is the predominant method of transfer to adult court, accounting for 96.2 percent (870 children) of the transfers in 2017-18.<sup>479</sup>

### Discretionary Direct File

Section 985.557(1), F.S., provides the state attorney with discretion to file a case in adult court for certain cases when he or she believes the offense requires that adult sanctions be considered or imposed. Specifically, the state attorney may direct file a child when he or she is:

- 14 or 15 years of age and is charged for the commission of, attempt to commit, or conspiracy to commit an enumerated felony offense;<sup>480</sup>
- 16 or 17 years of age and is charged with any felony offense;<sup>481</sup> or
- 16 or 17 years of age and is charged with a misdemeanor, provided the child has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which was a felony.<sup>482</sup>

Current law does not permit the court to review a decision made by a state attorney to direct file a child. If a child who has been transferred to adult court pursuant to discretionary direct file is found to have committed a violation of state law or a lesser included offense for which he or she was charged as part of the criminal episode, the court may sentence the child as an adult, as a juvenile, or pursuant to ch. 958, F.S.<sup>483</sup>

---

<sup>477</sup> Judicial waiver is the process in which a child or a state attorney may, or in some cases must, waive the jurisdiction of the juvenile courts and have the case transferred to adult court for prosecution. The three types of judicial waiver are voluntary, involuntary discretionary, and involuntary mandatory. *See* s. 985.556, F.S.

<sup>478</sup> A grand jury can indict a child of any age who is charged with an offense punishable by death or life imprisonment. Upon indictment, the child's case must be transferred to adult court for prosecution. *See* s. 985.56, F.S.

<sup>479</sup> Department of Juvenile Justice, *2019 Legislative Bill Analysis for SB 1260*, March 13, 2019 (on file with the Senate Appropriations Committee).

<sup>480</sup> The enumerated felonies are: arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated assault; aggravated stalking; murder; manslaughter; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary in violation of s. 810.02(2)(b), F.S.; burglary of a dwelling or structure in violation of s. 810.02(2)(c), F.S.; burglary with an assault or battery in violation of s. 810.02(2)(a), F.S.; aggravated battery; any lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age; carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony; grand theft in violation of s. 812.014(2)(a), F.S.; possessing or discharging any weapon or firearm on school property in violation of s. 790.115, F.S.; home invasion robbery; carjacking; grand theft of a motor vehicle in violation of s. 812.014(2)(c)6., F.S.; and grand theft of a motor vehicle valued at \$20,000 or more in violation of s. 812.014(2)(b), F.S., if the child has a previous adjudication for grand theft of a motor vehicle in violation of s. 812.014(2)(c)6. or (2)(b), F.S. *See* s. 985.557(1)(a)1.-19., F.S.

<sup>481</sup> Section 985.557(1)(b), F.S.

<sup>482</sup> *Id.*

<sup>483</sup> Section 985.565(4)(a)2., F.S.

Mandatory Direct File

Section 985.557(2), F.S., requires the state attorney to file a case in adult court when the child is:

- 16 or 17 years of age at the time of the alleged offense and:
  - Is charged with a second or subsequent violent crime against a person and has been previously adjudicated delinquent for an enumerated felony;<sup>484</sup>
  - Is charged with a forcible felony<sup>485</sup> and has been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred at least 45 days apart from each other;<sup>486</sup> or
  - Is charged with committing or attempting to commit an offense listed in s. 775.087(2)1.a.-p., F.S.,<sup>487</sup> and during the commission of the offense the child actually possessed or discharged a firearm or destructive device;<sup>488</sup> or
- Any age and is alleged to have committed an act that involves stealing a vehicle in which the child, while possessing the vehicle, caused serious bodily injury or death to a person who was not involved in the underlying offense.

If the state attorney is required to direct file a child, the court must impose adult sanctions. Any sentence imposing adult sanctions is presumed appropriate and the court is not required to specify findings or criteria as the basis for its decision to impose such sanctions.<sup>489</sup>

***Effect of the Bill***Due Process Hearing

The bill amends s. 985.557, F.S., requiring the court to hold an evidentiary hearing to determine whether a child transferred to adult court pursuant to discretionary direct file should remain in adult court or be transferred back to juvenile court.

The purpose of the hearing is to determine whether it is necessary for the community's protection that the child is prosecuted in adult court. The bill requires the judge to conduct the

---

<sup>484</sup> The enumerated felonies include: murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, or aggravated assault. *See* s. 985.557(2)(a), F.S.

<sup>485</sup> Section 776.08, F.S., defines "forcible felony" as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the threat of physical force or violence against any individual.

<sup>486</sup> Section 985.557(2)(b), F.S., provides that this provision does not apply when the state attorney has good cause to believe that exceptional circumstances exist which preclude the just prosecution of the child in adult court.

<sup>487</sup> The offenses include murder; sexual battery; robbery; burglary; arson; aggravated battery; kidnapping; escape; aircraft piracy; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; home-invasion robbery; aggravated stalking; trafficking in cannabis; trafficking in cocaine; capital importation of cocaine; trafficking in illegal drugs; capital importation of illegal drugs; trafficking in phencyclidine; capital importation of phencyclidine; trafficking in methaqualone; capital importation of methaqualone; trafficking in amphetamine; capital importation of amphetamine; trafficking in flunitrazepam; trafficking in gamma-hydroxybutyric acid (GHB); trafficking in 1,4-Butaneidol; trafficking in Phenethylamines; or any other violation of s. 893.135(1), F.S. Section 775.087(2)(a)1.a.-p., F.S.

<sup>488</sup> The terms "firearm" and "destructive device" are defined in s. 790.001, F.S.

<sup>489</sup> Section 985.565(4)(a)3. and 4., F.S.

hearing within 30 days of the filing of the information, excluding weekends and legal holidays, unless good cause is shown for a delay. The judge must consider all of the following:

- Evaluations and assessments completed by the DJJ;
- The sophistication and maturity of the child, including:
  - The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the child's participation in the alleged offense;
  - The child's age, maturity, intellectual capacity, and mental and emotional health at the time of the alleged offense; and
  - The effect, if any, of characteristics attributable to the child's youth on the child's judgment.
- The record and history of the child, including:
  - Prior contacts with the DJJ, the Department of Corrections (DOC), the Department of Children and Families, other law enforcement agencies, or the courts;
  - Prior periods of probation;
  - Prior adjudications that the child committed a delinquent act or violation of law, with greater weight being given if the child has previously been found by a court to have committed a delinquent act or violation of law involving violence to persons;
  - Prior commitments to institutions of the DJJ, the DOC, or agencies under contract with either department;
  - History of trauma, abuse or neglect, foster care placements, failed adoption, fetal alcohol syndrome, exposure to controlled substances at birth, or below-average intellectual functioning; and
  - Identification of the child as a student requiring exceptional student education or having previously received psychological services.
- The nature of the alleged offense and the child's participation, including:
  - Whether the alleged offense is punishable by death or life imprisonment;
  - Whether the alleged offense was against persons or property;
  - Whether the alleged offense is alleged to have been committed in an aggressive, violent, or premeditated manner;
  - The extent of the child's alleged participation in the alleged offense; and
  - The effect, if any, of familial pressure or peer pressure on the child's actions.
- The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child, if the child is found to have committed the alleged offense:
  - By the use of procedures, services, and facilities currently available to the juvenile court; and
  - By the use or procedures, services, and facilities currently available to the adult court, including whether the lowest permissible sentence under the Criminal Punishment Code is a nonstate prison sanction.
- Whether the child could obtain habilitative or rehabilitative services available in the juvenile justice system;
- Whether the child could receive a sentence in juvenile court that would provide adequate safety and protection for the community; and
- Whether the child's best interests would be served by prosecuting the child in juvenile court.

The bill permits the judge to consider any reports, including prior pre-disposition reports, psycho-social assessments, individualized educational programs, developmental assessments,

school records, abuse or neglect reports, home studies, protective investigations, or psychological or psychiatric evaluations, to assist him or her in reaching a decision of whether to keep the child in adult court. The bill provides the child, the child's parents or legal guardians, the child's defense counsel, and the state attorney with the right to examine such records and question the parties responsible for creating them at the hearing.

Unless the court finds by a preponderance of the evidence that consideration of the factors listed above support returning the child to juvenile court, the adult court will retain jurisdiction. The adult court must render an order including specific findings of fact and reasons for its decision. The prosecution and defense may seek immediate review of the order through interlocutory appeal and the order is reviewable on appeal pursuant to the Florida Rules of Appellate Procedure.

#### Detention of a Direct File Child in a County Detention Facility

The bill amends s. 985.265, F.S., providing that a child who has been transferred for prosecution as an adult pursuant to discretionary direct file cannot be held in a jail or other facility intended or used for the detention of adults prior to a finding that the child should be prosecuted as an adult pursuant to the above-mentioned evidentiary hearing.

#### Discretionary Direct File

Further, conspiring to commit one of the enumerated offenses in s. 985.557(1) (a), F.S.,<sup>490</sup> would no longer render a child eligible for transfer to adult court pursuant to discretionary direct file.

Additionally, the bill requires that, in order to be eligible for discretionary direct file, a 16 or 17 year old who committed a misdemeanor must have two previous adjudications for delinquent acts, one of which was a felony. Therefore, such a child with adjudications withheld would no longer meet the criteria for transfer to adult court pursuant to discretionary direct file.

#### Mandatory Direct File

Current law authorizes a state attorney to transfer a child to adult court pursuant to mandatory or discretionary direct file. The bill repeals all provisions relating to mandatory direct file.

These sections of the bill are effective October 1, 2019.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

#### **Recording of Custodial Interrogations (Section 50)**

It is possible that the requirements of the bill related to electronic recording could result in local fund expenditures for equipment, maintenance, and operation. However, because any such local funding resulting from the requirements of the bill will directly relate to

<sup>490</sup> Section 985.557(1)(a)1.-19., F.S.

the defense and prosecution of criminal offenses, under Article VII, subsection 18(d) of the Florida Constitution, it appears there is no unfunded mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

**Prohibited Acts in Connection with Obscene or Lewd Materials (Section 45)**

The First Amendment of the U.S Constitution prevents the government from creating laws that restrict the speech of citizens.<sup>491</sup> The bill makes it a crime to knowingly possess, intend to sell or lend, among other things, an obscene child-like sex doll. To the extent that this prohibition restricts a person's right to free speech, the bill may implicate the First Amendment. However, such a provision would likely be upheld as the courts have routinely not extended protection to obscene speech.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

---

<sup>491</sup> U.S. CONST. amend. I.

C. Government Sector Impact:

SB 642 Section	Statute	Description/Summary	Fiscal Impact
1	Creating s. 25.025, F.S.	<p><b><u>Supreme Court Headquarters</u></b>                      Provides that the Chief Justice of the Florida Supreme Court shall, at the request of a justice:</p> <ul style="list-style-type: none"> <li>• Coordinate and designate a courthouse or other appropriate facility in the justice’s district as his or her official headquarters and private chambers; and</li> <li>• Reimburse the justice for travel and subsistence while in Tallahassee to the extent funding is available.</li> </ul>	<p>The cost of travel reimbursement for justices who have private chambers outside Leon County in his or her district of residence may be paid only to the extent appropriated funds are available. An appropriation of \$209,930 recurring general revenue was made to the Supreme Court specifically for this purpose in the Fiscal Year 2018-19 General Appropriations Act. SB 2500, First Engrossed, the Senate’s proposed 2019-20 General Appropriations Bill, continues the funding for this purpose.</p>
2	Section 26.031, F.S.	<p><b><u>Circuit Judgeships</u></b>                      Adds two circuit court judgeships, one in the 9th and one in the 12th Judicial Circuit.</p>	<p>The cost to fund two circuit court judgeships, two judicial assistants, and two law clerks is: \$794,782 in salaries and benefits (recurring).                      \$30,666 in expense (non-recurring)                      \$1,218 for Human Resource Services (recurring)                      \$826,666</p> <p>Article V, s. 14(c) of the Florida Constitution and s. 29.008, F.S., require counties to provide the court system, including the state attorney and the public defender, with facilities, security, and communication services, including information</p>

			<p>technology. Under the bill, the counties would incur an indeterminate amount of costs associated with providing those services to the new judges and judicial staff. SB 2500, First Engrossed, the Senate’s proposed 2019-20 General Appropriations Bill, includes funding for these positions.</p>
3	Section 43.51, F.S.	<p><b><u>Problem-solving Courts Reports</u></b>                  Requires OSCA to provide an annual report to the President of the Senate and the Speaker of the House of Representatives detailing the number of participants in each problem-solving court for each fiscal year the court has been operating. The report must also include the types of services provided, the source of funding for each court, and provide performance outcomes.</p>	<p>The additional reporting requirements will be absorbed within existing resources. No fiscal impact.</p>
4	Section 57.105, F.S.	<p><b><u>Attorney Fees for Repeat, Dating, Sexual Violence (s. 784.046 F.S.), or Stalking (s. 784.0485, F.S.)</u></b>                  Prohibits awarding attorney fees in injunction proceedings for repeat, dating, sexual violence, or stalking unless the court finds by clear and convincing evidence that the petitioner knowingly made a false statement or allegation in</p>	<p>No fiscal impact.</p>



		the petition with regard to a material matter.	
5	Section 212.15, F.S.	<p><b><u>Threshold Values for Theft of State Funds Increases certain threshold values for theft of state funds.</u></b></p> <p>Increases certain threshold values for theft of state funds.</p> <ul style="list-style-type: none"> <li>• 2nd degree misdemeanor threshold raised from &lt;\$300 to &lt;\$1,000.</li> <li>• 3rd degree felony threshold raised from ≥\$300 but &lt;\$20,000 to ≥\$1,000 but &lt;\$20,000. Does not change the thresholds for first or second degree felony offenses.</li> </ul>	EDR Estimate Negative Insignificant - Decrease of 10 or fewer prison beds. At \$56.96 per diem, this is a savings of up to \$207,904. Per DOC, in FY 17-18 there was 1 offender sentenced for a third or subsequent conviction of a theft of state funds under \$300, with no offenders sentenced to prison. There were 23 offenders sentenced for the theft of state funds \$300 or more, but less than \$20,000, with 1 offender sentenced to prison.
6	Section 322.055, F.S.	<p><b><u>Driver License (DL) Suspension for Controlled Substances Offense</u></b></p> <p>Reduces the suspension of driving privileges for a person possessing, selling, trafficking, or conspiring to possess, sell, or traffic in a controlled substance from 1 year to 6 months.</p>	No Fiscal impact. The only change is the length of the suspension. According to the FDLE, 30,396 people were convicted for violations of ss. 893.13 and 893.135, F.S. ( <i>controlled substances offenses i.e. possessing, selling, trafficking, or conspiring to possess, sell or traffic in controlled substances</i> ), in FY 2017-18.
7	Section 322.056, F.S.	<p><b><u>DL Suspension for a Minor Found Guilty of a Substance or Alcohol Offense</u></b></p> <p>Makes revocation of driving privileges for a first-time conviction for a controlled substance offense or alcohol offense 6 months and repeals all grounds for revocation based on alcohol offenses or failure to comply with penalties for tobacco violations.</p>	In Calendar Year 2017, the Department of Highway Safety and Motor Vehicles (DHSMV) reported 100 total suspensions for possession of alcohol by a minor and possession of tobacco by a minor. This will have a negative, insignificant impact on revenues.

<p>8</p>	<p>Section 322.057, F.S.</p>	<p><b><u>DL Suspension for Providing Alcohol to a Minor</u></b>                  Repeals the discretionary DL suspension for providing alcohol to a minor.</p>	<p>According to the Department of Highway Safety and Motor Vehicles (DHSMV), deleting section 322.057, F.S. will have a negative insignificant revenue impact. According to the FDLE, there were only 7 people convicted in relation to s. 562.11(1)(a) (<i>this is the specific subsection referenced in s. 322.057</i>) in FY 2017-18.</p>
<p>9</p>	<p>Section 322.34, F.S</p>	<p><b><u>Driving while license suspended, revoked, cancelled, or disqualified</u></b>                  Changes the penalty for a 3rd or subsequent conviction of driving while license suspended, revoked, canceled, or disqualified from a 3rd degree felony to a misdemeanor of the first degree.</p>	<p>EDR estimates project a 5 year cumulative reduced need of 398 prison beds and \$9.41M in savings. According to the FDLE 2,000 people were convicted of s. 322.34(2)(c), F.S. (<i>third or subsequent violations</i>) in FY 2017-18. According to DOC, 286 people were sentenced to prison for driving with a suspended, revoked, cancelled, or disqualified license.</p>
<p>10</p>	<p>Creating s. 322.75, F.S</p>	<p><b><u>Drivers' License Reinstatement Days</u></b>                  Requires each clerk of court to establish a DL Reinstatement Days program for reinstating suspended DLs. Clerks may work collaboratively with DHSMV, the state attorney's office, the public defender's office, the circuit and country courts, and any interested community organizations. Participants pay the reinstatement fee unless waived by the clerk. Certain individuals are ineligible for the program, and clerks must report specified data.</p>	<p>The bill may assist the clerks in recouping outstanding court costs and fees not otherwise recoverable, as participants would still be required to pay the reinstatement fee. The bill also allows the clerks to reduce or waive fees and costs to facilitate reinstatement; therefore, the total impact to local government revenues is indeterminate. DHSMV expects no fiscal impact.</p>

<p>11</p>	<p>Section 381.0041, F.S.</p>	<p><b><u>Donation and transfer of human tissue; testing requirements</u></b>                  Adds to the current language that any person infected with HIV, who knowingly donates blood or other human tissue for the use in another person, who is also infected with HIV , commits a felony of the third degree.</p>	<p>No fiscal impact</p>
<p>12</p>	<p>Section 384.23, F.S.</p>	<p><b><u>Definitions</u></b>                  Adds definitions for sexual conduct and substantial risk of transmission</p>	<p>No fiscal impact</p>
<p>13</p>	<p>Section 384.24, F.S.</p>	<p><b><u>Unlawful Acts</u></b>                  Requires the state to prove additional elements for a conviction under s. 384.24, F.S. Provides that a person who does not act with the intent to transmit HIV or a specified STD if he or she does certain things. Provides that evidence of the person’s failure to comply with treatment regimen or behavioral recommendations is not, in and of itself, sufficient to establish that he or she acted with the intent to transmit a specified STD.</p>	<p>EDR Estimate Negative                  Insignificant - Decrease of 10 or fewer prison beds.</p>
<p>14</p>	<p>Section 384.34, F.S.</p>	<p><b><u>Penalties</u></b>                  Any who maliciously disseminates any false information concerning the existence of any sexually transmissible disease commits a misdemeanor of the first degree.</p>	<p>EDR Estimate Negative                  Insignificant - Decrease of 10 or fewer prison beds.</p>

<p>15</p>	<p>Section 394.47891, F.S.</p>	<p><b><u>Veterans Treatment Courts</u></b>                  Expands eligibility for veterans' treatment courts to individuals who are current or former U.S. Department of Defense contractors or military members of a foreign allied country.</p>	<p>EDR Estimate Negative Insignificant - Decrease of 10 or fewer prison beds. At \$56.96 per diem, this is a savings of up to \$207,904. The expansion of veterans' courts in the four judicial circuits that do not have a veterans' court will not create a fiscal impact on state funds. Recurring appropriations for problem-solving courts are allocated by the TCBC and an appropriation is included in the base budget.</p>
<p>16</p>	<p>Section 394.917, F.S.</p>	<p><b><u>Sexually Violent Predators</u></b>                  Adds a statutory mandate for the Florida Department of Children and Families (DCF) to provide rehabilitation of criminal offenders upon commitment of a sexually violent predator. This will allow SVPP to administer a criminal justice function pursuant to statute and therefore qualify as a criminal justice agency under federal law. As a criminal justice agency, SVPP will be able to access criminal history record information from the FBI's national and interstate criminal databases.</p>	<p>No fiscal impact. DCF has indicated this language has no fiscal impact and will serve to allow DCF to conduct national criminal history checks.</p>
<p>17</p>	<p>Section 397.334, F.S.</p>	<p><b><u>Pretrial Drug Court</u></b>                  Clarifies when a court may order an eligible offender into pretrial drug court.</p>	<p>No fiscal impact.</p>

<p>18</p>	<p>Section 455.213, F.S.</p>	<p><b><u>Occupational Licensing (DBPR)</u></b>                  Limits the period for which a DBPR licensing board may consider an applicant's criminal history as an impairment to licensure. Permits a person to apply for a license while incarcerated or under supervision and requires a board to permit an applicant to appear by teleconference or video conference at a license application hearing. Requires the Department of Corrections (DOC) to coordinate with the board to facilitate the applicant's hearing appearance. Requires boards to post a list of crimes for which conviction does not impair an applicant's qualifications for licensure on DBPR's website.</p>	<p>According to the Department of Business and Professional Regulation, implementation costs will be minimal. The Department of Corrections indicated that teleconference equipment should be available for use at each institution. If an inmate needs to appear in person, transportation costs would be minimal.</p>
<p>19</p>	<p>Section 474.2165, F.S.</p>	<p><b><u>Veterinary Reporting</u></b>                  Permits a veterinarian to report a suspected criminal violation relating to a dog or cat to law enforcement, animal control, or an approved animal cruelty investigator, without notice to or authorization from a client.</p>	<p>Indeterminate. It is unknown how many new criminal violations would be reported by veterinarians.</p>

<p>20</p>	<p>Section 489.126, F.S.</p>	<p><b><u>Construction Contracting Fraud</u></b>                  The bill provides a just cause defense to contracting fraud, removes the specific intent to defraud element required under the second form of contracting fraud above, and modifies the offense thresholds applicable to contracting fraud.</p>	<p>EDR Estimate: Positive / Negative Indeterminate. While it is not known how many theft offenses were committed by contractors, this bill's inclusion of higher monetary thresholds and lower felony levels could lower incarceration rates for future offenders. The clarification of "intent" could make it easier to prosecute such offenses.</p>
<p>21</p>	<p>Section 489.553</p>	<p><b><u>Occupational Licensing (DOH)</u></b>                  Limits the period for which DOH may consider criminal history as an impairment to licensure. Permits a person to apply for a license while incarcerated or under supervision and requires DOH to permit an applicant to appear by teleconference or video conference at a license application hearing. Requires DOC to coordinate with DOH to facilitate the applicant's hearing appearance. Requires DOH to post a list of crimes for which a conviction does not impair an applicant's qualifications for licensure on its website.</p>	<p>The Department of Business and Professional Regulation indicates that implementation costs would be minimal. The Department of Corrections indicated that teleconference equipment should be available for use at each institution. If an inmate needs to appear in person, transportation costs would be minimal.</p>
<p>22</p>	<p>Section 500.451, F.S.</p>	<p><b><u>Mandatory Minimum Sentences for Unlabeled Horse Meat</u></b>                  Abolishes mandatory minimum sentences for horse meat crimes.</p>	<p>EDR Estimate: Negative Insignificant -Decrease of 10 or fewer prison beds. Per DOC, in FY 17-18, no one was sentenced for horse meat offenses.</p>

<p>23</p>	<p>Section 509.151, F.S.</p>	<p><b><u>Threshold Values for Intent to Defraud Operator of Public Food Service Establishment or Transient Establishment</u></b>                  Increases the threshold values for obtaining food, lodging, or other accommodations at any public food service establishment, or at any transient establishment, with the intent to defraud the operator thereof.</p> <ul style="list-style-type: none"> <li>· 2nd degree misdemeanor threshold raised from &lt;\$300 to &lt;\$1,000.</li> <li>· 3rd degree felony threshold raised from ≥\$300 to ≥\$1,000.</li> </ul>	<p>EDR Estimate: Negative Insignificant - Decrease of 10 or fewer prison beds. At \$56.96 per diem, this is a savings of up to \$207,904. Per DOC, in FY 17-18, there were 23 offenders sentenced for obtaining food or lodging with intent to defraud for \$300 or more, with no offenders sentenced to prison.</p>
<p>24</p>	<p>Section 562.11, F.S.</p>	<p><b><u>DL Suspension for Providing Alcohol to a Person under 21 or Misrepresenting Age to Obtain Alcohol</u></b>                  Repeals DL suspensions for providing alcohol to an underage person and misrepresenting age to obtain alcohol.</p>	<p>DHSMV indicated that in Calendar Year 2017, there were 74 suspensions for misrepresenting age to obtain alcohol and suspensions for providing alcohol to minors. This results in a negative, insignificant revenue impact to DHSMV.</p>
<p>25</p>	<p>Section 562.111, F.S.</p>	<p><b><u>DL Suspension for Underage Possession of Alcohol</u></b>                  Repeals the mandatory DL suspension for a person convicted or found delinquent of possessing alcohol underage.</p>	<p>The DHSMV indicated that in Calendar Year 2017, there were 5 suspensions for underage possession of alcohol. This results in a negative insignificant revenue impact to DHSMV.</p>

26	Section 562.27, F.S.	<p><b><u>Penalty for Possessing a Still, Still Piping, Still Apparatus, or Related Items</u></b>                  Reduces the penalty from a third degree felony to a second degree misdemeanor.</p>	EDR Estimate: Negative Insignificant -Decrease of 10 or fewer prison beds. Per DOC, in FY 17-18, no one was sentenced for possessing a still or still apparatus.
27	Section 562.451, F.S.	<p><b><u>Penalty for Possessing Illegally-Made Liquor</u></b>                  Reduces the penalty for possessing one gallon or more of liquor that was not legally made or manufactured from a third degree felony to a first degree misdemeanor.</p>	EDR Estimate: Negative Insignificant -Decrease of 10 or fewer prison beds. Per DOC, in FY 17-18, there were no sentences for owning or possessing a gallon or more of illegally made or manufactured liquor.
28	Section 569.11, F.S.	<p><b><u>Drivers License Suspension for Tobacco Possession</u></b>                  Repeals the mandatory DL revocation for a minor who commits a third or subsequent tobacco possession or misrepresentation of age to obtain tobacco in a 12-week period.</p>	In Calendar Year 2017, there were 95 suspensions for a person under 18 found to have committed a third or subsequent violation of nicotine possession. This results in a negative insignificant revenue impact to DHSMV.
29	Section 713.69, F.S.	<p><b><u>Threshold Values for Removing Liened Property</u></b>                  Increases the threshold values for removing liened property from a hotel or other listed establishment without paying or having written consent.</p> <ul style="list-style-type: none"> <li>· 2nd degree misdemeanor threshold increased from ≥\$50 to &lt;\$1,000.</li> <li>· 3rd degree felony threshold increased from &gt;\$50 to ≥\$1,000.</li> </ul>	EDR Estimate: Negative Insignificant -Decrease of 10 or fewer prison beds. The FDLE has indicated that in FY 2017-18 there were zero (0) convictions for violations of s. 713.69, F.S.



<p>30</p>	<p>Section 775.082, F.S.</p>	<p><b><u>Prison Releasee Reoffender</u></b> Amends the definition of prison release reoffender to include a person released from a county detention facility for a prison sentence.</p>	<p>EDR Estimate: Positive Indeterminate - Unquantifiable increase in prison beds. Per DOC, in FY 17-18, there were 484 releasee reoffenders admitted to the DOC. For potential reoffenders impacted by this language, in FY 17-18, there were roughly 570 offenders that were sentenced to time served and released before coming to prison. While each year following release there is a certain percentage of people returning to prison, many of the offenses listed under s. 775.082, F.S., are already receiving extended prison sentences that might not be impacted for many years. At the same time, it is not known how many of the offenders released under time served in jail eventually commit these offenses as reoffenders, nor can it be determined how many of those would receive a prison sentence as a releasee reoffender who would have been given a different sentence prior to this bill. State attorneys have discretion on whether or not to pursue sentencing under this statute and it is not known how often they choose this form of sentencing for an eligible offender. Due to these factors, the prison impact cannot be quantified.</p>
-----------	----------------------------------	---	---

<p>31</p>	<p>Section 775.087, F.S.</p>	<p><b><u>10/20/Life</u></b>                  Retroactively applies chapter 2016-7, L.O.F., to remove aggravated assault before July 1, 2016, from the list of predicate offenses for mandatory minimum term of imprisonment.</p>	<p>EDR Estimate: Negative Indeterminate - Unquantifiable negative prison bed impact. Per DOC, there are currently 150 cases eligible under this criterion, though it is unknown how their new sentences would be structured. At \$56.96 per diem, this is a savings of up to \$3,118,500.</p>
<p>32</p>	<p>Section 775.0877, F.S.</p>	<p><b><u>Criminal transmission of HIV; procedures; penalties</u></b>                  Removes the offense of donation of blood, plasma, organs, skin, or other human tissue as a violation of s. 381.0041, F.S., from the list of enumerated offense for which a court must order an offender to undergo mandatory HIV or Hepatitis testing to be performed under the direction of the DOH.</p>	<p>EDR Estimate: Negative Insignificant -Decrease of 10 or fewer prison beds.</p>

<p>33</p>	<p>Section 784.048, F.S.</p>	<p><b><u>Cyberstalking</u></b>                  Defines cyberstalking to include accessing, or attempting to access, the online accounts or Internet-connected home electronic systems of another person without that person’s permission.</p>	<p>EDR Estimate: Positive Indeterminate- Unquantifiable increase in prison beds. Per DOC, in FY 17-18, there were 138 offenders sentenced for aggravated stalking and making a credible threat, and 44 of these offenders were sentenced to prison. There were 179 offenders sentenced for aggravated stalking, violation of injunction or court order, and 72 of these offenders were sentenced to prison. There were also 11 offenders sentenced for aggravated stalking of person under 16, and 5 of these offenders were sentenced to prison. Finally, there were 4 offenders sentenced for aggravated stalking, prohibited from contacting victim of sexual offender, and 3 of these offenders were sentenced to prison. The number of offenders sentenced for cyberstalking cannot be determined from the available data. Furthermore, it is not known how many additional offenders would be added with the expansion of the cyberstalking definition.</p>
<p>34</p>	<p>Creating s. 790.052, F.S.</p>	<p><b><u>Concealed Carry of Firearms by Off-Duty Law Enforcement Officers</u></b>                  Authorizes qualified active or retired law enforcement or correctional officers to carry a concealed firearm in any state.</p>	<p>No fiscal impact.</p>

35	Section 790.22, F.S.	<p><b><u>Drivers' License Suspension for Possession of a Firearm by a Minor</u></b>                  Makes DL suspension discretionary for a conviction for possession of a firearm by a minor or an offense involving the use or possession of a firearm by a minor.</p>	<p>This change from mandatory to discretionary suspensions results in a negative insignificant revenue impact to DHSMV.</p>
36	Section 800.09, F.S.	<p><b><u>Lewd or Lascivious Exhibition in the Presence of an Employee</u></b>                  Extends the crime of lewd or lascivious exhibition in the presence of an employee to cover conduct in a county detention facility.</p>	<p>EDR Estimate: Positive Insignificant - Increase of 10 or fewer prison beds. Per DOC, in FY 17-18, 5 offenders were sentenced under the current statute, with 2 offenders sentenced to prison.</p>
37	Section 806.13, F.S.	<p><b><u>DL Revocation for Graffiti</u></b>                  Makes DL revocation discretionary for a minor placing graffiti on public or private property.</p>	<p>This change from mandatory to discretionary suspensions results in a negative insignificant revenue impact to DHSMV.</p>
38	Section 812.014, F.S.	<p><b><u>Theft Thresholds</u></b>                  Increases threshold values for specified theft offenses:</p> <ul style="list-style-type: none"> <li>• 2nd degree petit theft threshold increased from &lt;\$100 to &lt;\$500.</li> <li>• 1st degree petit theft threshold increased from ≥\$100, but &lt;\$300 to ≥\$500, but &lt;\$1,000.</li> <li>• 3rd degree grand theft threshold increased from ≥\$300, but &lt;\$20,000 to ≥\$1,000, but &lt;\$20,000.</li> <li>• 3rd degree grand theft of property from a dwelling or its enclosed curtilage increased from ≥\$100, but &lt;\$300</li> </ul>	<p>EDR Estimate: Negative Significant - Decrease of 25 or more prison beds. At \$56.96 per diem, this would result in a savings of more than \$519,750.</p>

		to ≥\$1,000, but <\$5,000.	
39	Section 812.015, F.S.	<p><b><u>Retail Theft Thresholds</u></b>                  Extends the aggregation period for multiple thefts from 48 hours to 30 days.                  Increases the threshold value for retail theft:</p> <ul style="list-style-type: none"> <li>• 2nd degree misdemeanor threshold increased from &lt;\$100 to &lt;\$50</li> <li>• 1st degree misdemeanor threshold increased from ≥\$100, but &lt;\$300 to ≥\$500, but &lt;\$1,000.</li> <li>• 3rd degree grand theft threshold increased from ≥\$300 to ≥\$1,000</li> </ul>	EDR Estimate: Positive / Negative Indeterminate. The number of offenders that currently fall within the proposed changes to the s. 812.015, F.S., threshold cannot be differentiated from the current threshold, and it is not known how much the changes to definitions will impact sentencing.
40	Section 812.0155, F.S.	<p><b><u>DL Suspension for Misdemeanor Theft Conviction</u></b>                  Repeals the court’s authority to suspend a DL for a misdemeanor theft conviction when a person is 18 or older. A court retains authority to suspend a DL in lieu of other penalties when the person is younger than 18 years of age.</p>	In Calendar Year 2017, there were 59 suspensions due to a misdemeanor theft conviction. This will result in a negative insignificant revenue impact to DHSMV.
41	Section 815.03, F.S.	<p><b><u>Computer-Related Crimes</u></b>                  Expands the term “access” for the purpose of computer-related crimes to include acts involving an electronic device.</p>	See fiscal impact in Section 28.
42	Section 815.06, F.S.	<p><b><u>Criminal Offenses Against Computer Users</u></b>                  Includes acts “exceeding authorization” as offenses against users of computers, computer systems,</p>	See fiscal impact in Section 28. EDR Estimate: Positive Insignificant - Increase of 10 or fewer prison beds.

		computer networks, or electronic devices	
43	Section 817.413, F.S.	<p><b><u>Threshold Value for Misrepresenting Motor Vehicle Goods as New</u></b>                  Increases the offense threshold value for knowingly misrepresenting that motor vehicle goods are new:</p> <ul style="list-style-type: none"> <li>• 2nd degree misdemeanor threshold increased to &lt;\$1,000</li> <li>• 3rd degree felony threshold increased from &gt;\$100 to ≥\$1,000</li> </ul>	EDR Estimate: Negative Insignificant - Decrease of 10 or fewer prison beds. Per DOC, in FY 17-18, no one was sentenced for selling used motor vehicle goods as new for greater than \$100.
44	Section 831.28, F.S.	<p><b><u>Possession of a Counterfeit Instrument</u></b>                  Adds an element of intent to defraud to the crime.</p>	<p>Per DOC, in FY 17-18, there were 64 offenders sentenced under s. 831.28(2)(a), F.S., with 16 of these offenders sentenced to prison. It is not known how many were sentenced for possession without intent to defraud who would no longer be sentenced under this new definition.</p> <p>EDR Estimate: Negative Insignificant - Decrease of 10 or fewer beds. At \$56.96 per diem, this is a savings of up to \$207,904.</p>
45	Section 847.011, F.S.	<p><b><u>Child-Like Sex Dolls</u></b>                  Criminalizes possessing, selling, lending, giving away, distributing, transmitting, showing, or advertising an obscene, child-like sex doll. Simple possession is a second degree misdemeanor for a first offense and a first degree misdemeanor for a second or subsequent offense. Possession with</p>	EDR Estimate: Positive Insignificant - Increase of 10 or fewer prison beds. At \$56.96 per diem, this could result in increased cost of up to \$207,904.

		intent to sell and other acts are first degree misdemeanors. A second or subsequent offense, other than simple possession, is a third degree felony.	
46	Section 849.01, F.S.	<b><u>Gaming or Gambling</u></b> Reduces the penalty for keeping, exercising, maintaining, or permitting a gaming table, room, implement, or apparatus, or a gaming or gambling establishment from a third degree felony to a second degree misdemeanor.	Per DOC, in FY 17-18, no one was sentenced for keeping a gambling house.  EDR Estimate: Negative Insignificant - Decrease of 10 or fewer prison beds.
47	Section 877.112, F.S.	<b><u>Driver's License Revocation for Possession of Nicotine by a Minor</u></b> Repeals revocation of a Driver's License for a person under 18 found to have committed a third or subsequent violation of nicotine possession or misrepresenting age to obtain nicotine.	No fiscal impact

<p>48</p>	<p>Section 893.135, F.S.</p>	<p><b><u>Trafficking; Mandatory Sentences; Suspension or Reduction of Sentences</u></b>                  Provides that the sale, purchase, manufacture, delivery or actual or constructive possession of fewer than 120 dosage units containing any controlled substance is not a violation of any other provision of this section.                  -120 or more dosage units commits a felony of the first degree;                  -120 or more dosage units, but less than 500, is 3 years in prison and \$25,000 fine;                  -500 or more dosage units, but less than 1,000, is 7 years in prison and \$50,000 fine;                  -1,000 or more units, but less than 5,000, is 25 years in prison and \$250,000 fine</p>	<p>Given how hydrocodone and oxycodone were initially recorded under trafficking in illegal drugs, it is not known how many would be eligible for resentencing, nor is it known how offenders are currently sentenced when hydrocodone and oxycodone fall below their trafficking thresholds. However, both sentence length and incarceration rates are significantly lower for offenses under s. 893.13, F.S., when compared to the trafficking in illegal drugs threshold where these drug types initially were (4 grams or more, less than 14 grams), and could impact resentencing decisions for those who are eligible. EDR Estimate: Negative Indeterminate fiscal impact on prison beds.</p>
<p>49</p>	<p>Section 900.05, F.S.</p>	<p><b><u>Criminal Justice Data Collection</u></b>                  Revises the data required to be collected and reported to FDLE by the certain offices and adds the Offices of Criminal Conflict and Civil Regional Counsel to the list of offices required to report data.</p>	<p>Preliminary Estimated fiscal impact on JAC: Indeterminate</p>



<p>50</p>	<p>Section 900.06, F.S.</p>	<p><b><u>Recording of Custodial Interrogations for Certain Offenses</u></b>                  Requires that a custodial interrogation at a place of detention, including the giving of a required warning, the advisement of the rights of the individual, must be electronically recorded in its entirety if the interrogation is related to a covered offense.</p>	<p>No fiscal impact</p>
<p>51</p>	<p>Section 921.002, F.S.</p>	<p><b><u>Criminal Punishment Code</u></b>                  Provides that an inmate's sentence cannot be shortened by meritorious gain-time to be less than 65 percent of time served.</p>	<p>The Florida Commission on Offender Review (FCOR) is likely to see an initial workload increase in addiction recovery supervision cases from the pool of existing inmates who have already served 65% of their sentences and have earned enough gain-time to be released. Additionally, there is potential for an annual workload increase due to the higher number of offenders exiting prison and being placed on addiction recovery supervision. It should also be noted that offenders who are released from prison after serving 65% of their sentences will be under the supervision of FCOR for a longer period of time than those who are released after serving 85%. The per unit cost for Addiction Recovery and Conditional Release decisions is \$63.86.</p>

52	Creating s. 943.0578, F.S.	<b><u>Lawful Self-Defense Expunction</u></b> Moves provision for lawful self-defense expunction from s. 943.0585(5) to a separate statutory section for clarity without substantive change.	No fiscal impact
53	Section 943.0581, F.S.	<b><u>Administrative Expunction</u></b> Amends the section's title to clarify that administrative expunction is available to a person whose arrest was made contrary to law or mistake.	No fiscal impact
54	Creating s. 943.0584, F.S.	<b><u>Sealing and Expunction</u></b> Creates a new section of law listing ineligible offenses for court-ordered sealing and expunction by name and statute number for clarity and improved readability. Clarifies that an ineligible criminal history record is a conviction, information, indictment, notice to appear, or arrest for any enumerated offense.	No fiscal impact
55	Section 943.0585, F.S.	<b><u>Court-Ordered Expunction</u></b> Reorganizes section to improve readability.	No fiscal impact.
56	Section 943.059, F.S.	<b><u>Court-Ordered Sealing</u></b> Reorganizes section to improve readability.	No fiscal impact.

<p>57</p>	<p>Section 943.0595, F.S.</p>	<p><b><u>Automatic Sealing</u></b>                  Creates an automatic sealing process for any criminal history record in which:                  (1) charges were not filed;                  (2) charges were dismissed, unless dismissal was due to incompetency to proceed; or                  (3) the defendant was acquitted, by either a verdict of not guilty or a judgment of acquittal.</p>	<p>According to FDLE, the automatic sealing of records may deter some persons from seeking a court-ordered seal of their criminal history record. As a result, they will not pay the \$75 application fee for a Certificate of Eligibility. However, the amount of human resource work and associated cost required of FDLE to issue a Certificate of Eligibility often far exceeds the \$75 fee collected for this service.</p> <p>There will be costs associated with required changes to the Computerized Criminal History System (CCH) for the automatic sealing of criminal history records. The estimated costs associated with changes to the CCH changes are \$125,000.</p>
<p>58</p>	<p>Section 943.325, F.S.</p>	<p><b><u>DNA Database</u></b>                  Provides authority to law enforcement to seek an arrest warrant based on an initial DNA database match. A judge must still determine that the initial DNA match is sufficient probable cause for an arrest and has the option to issue a search warrant to acquire a second sample.</p>	<p>No fiscal impact</p>
<p>59</p>	<p>Section 943.6871, F.S.</p>	<p><b><u>Criminal Justice Data Transparency</u></b>                  Clarifies that information that is confidential and exempt retains its confidentiality. Requires the department to commission a</p>	<p>The cost of the contract has not been determined, but will be a negative fiscal impact to FDLE.</p>

		racial impact statement for each criminal justice bill heard in the Senate or House.	
60	Section 944.275, F.S.	<p><b><u>Gain-Time</u></b>                      For sentences imposed for offenses committed on or after October 1, 1995 and retroactive to October 1, 1995, the department may grant up to 20 days per month of incentive gain-time that except that: the time cannot result in the prisoner serving less than 65 percent of the sentence imposed.</p>	<p>EDR Estimate - Negative Significant</p> <p><u>Estimate</u>    <u>Beds</u>  <u>Operating Costs</u>                      FY 2019-20 - (7,596)                      (\$73,963,151)                      FY 2020-21 - (1,237)                      (\$174,234,039)</p>
61	Section 944.47, F.S.	<p><b><u>Contraband in State Correctional Institutions</u></b>                      Increases the offense level for introducing a cell phone to a level four offense on the offense severity ranking chart. Provides enhanced penalties if a correctional institution employee uses his or her position of employment to introduce contraband.</p>	<p>EDR Estimate: Positive Insignificant - Increase of 10 or fewer beds.</p>
62	Section 944.704, F.S.	<p><b><u>DOC Transition Assistance</u></b>                      Authorizes DOC to increase the number of transition assistance specialists in proportion to the number of inmates served at each of the major institutions. Requires job placement information to include any job assignment credentialing or industry certifications for which the inmate is eligible. Authorizes DOC to increase the number of employment specialists per judicial circuit based on the number of</p>	<p>Due to the authorization for DOC to increase the number of employment specialists per judicial circuit, the fiscal impact could be significant.</p>

		<p>released inmates served under community supervision.</p>	
<p>63</p>	<p>Section 944.705, F.S.</p>	<p><b><u>DOC Reentry Programming Requires DOC to:</u></b></p> <ul style="list-style-type: none"> <li>• Provide inmates with a comprehensive community reentry resource directory before release;</li> <li>• Establish a telephone hotline for reentry resource referrals;</li> <li>• Expand the use of Spectrum to notify inmates about reentry resources;</li> <li>• Allow nonprofit faith-based, business and professional, civic, and community organizations to apply for registration to provide inmate reentry services and adopt policies for screening, approving, and registering organizations that apply.</li> </ul> <p>Authorizes DOC to:</p> <ul style="list-style-type: none"> <li>• Contract with public or private educational institutions to assist veteran inmates in applying for certain benefits; and</li> <li>• Contract with public or private organizations to establish transitional employment programs.</li> </ul>	<p>According to DOC, there is currently no existing programming capability to provide an application method for business and organizations to be registered. It will likely need two FTE Government Operations Consultant I positions and six Data Entry Operators at a total cost of approximately \$391,364.</p>

<p>64</p>	<p>Section 944.801, F.S.</p>	<p><b><u>Prison Entrepreneurship Program</u></b>                  Authorizes DOC to expand the use of job assignment credentialing and industry certifications. Requires DOC to develop a Prison Entrepreneurship Program and adopt procedures for inmate admission. The program includes in-prison and post release services including a component on developing a business plan, procedures for graduation, and at least 90 days of transitional and postrelease continuing education.</p>	<p>The DOC estimates that the fiscal impact for this provision, including contracted staff, materials, and supplies is \$200,000 per location.</p>
<p>65</p>	<p>Section 948.001, F.S.</p>	<p><b><u>Administrative Probation</u></b>                  Redefines administrative probation as a form of nonreporting supervision that a court may order or that results from DOC transfer, as authorized by law.</p>	<p>No fiscal impact</p>
<p>66</p>	<p>Section 948.013, F.S.</p>	<p><b><u>Administrative Probation</u></b>                  Clarifies when DOC may transfer an offender to administrative probation.</p>	<p>EDR Estimate: No fiscal impact</p>
<p>67</p>	<p>Section 948.03, F.S.</p>	<p><b><u>Terms and Conditions of Probation</u></b>                  The DOC must include in the Florida Crime Information Center system all conditions of probation as determined by the court for each probationer.</p>	<p>Preliminary Estimate: Indeterminate fiscal impact</p>

<p>68</p>	<p>Section 948.04, F.S.</p>	<p><b><u>Early Termination or Conversion to Administrative Probation</u></b>                  Requires a court, subject to certain exceptions, to either early terminate or convert to administrative probation if an eligible offender has successfully completed half of his or her probation term, including all conditions, with no violations.</p>	<p>FDLE must modify FCIC to accept conditions of probation. These modifications can be made using existing staff resources. Preliminary EDR Estimate: No impact</p>
<p>69</p>	<p>Section 948.05, F.S.</p>	<p><b><u>Graduated Incentives</u></b>                  Codifies existing DOC practice by requiring DOC to implement a system of graduated incentives to promote positive compliance with probation terms. Authorizes DOC to implement some incentives without leave of court.</p>	<p>No fiscal impact</p>
<p>70</p>	<p>Section 948.06, F.S.</p>	<p><b><u>Alternative Sanctioning Program (ASP)</u></b>                  Creates a uniform statewide ASP, identifying eligible offenders, eligible violations, and permissible sanctions. Enumerated technical violations are classified as low-risk or moderate-risk. Certain offenders and certain violations are ineligible for the program. Participation is voluntary. The violation proceeds to a court resolution process if the offender withdraws or fails to complete the sanction within 90 days. The court must modify or continue probation, rather than revoke, for a first time, low-risk technical violation,</p>	<p>Preliminary EDR Estimate: No fiscal impact</p>

		and may include no more than 90 days of jail as a special condition of probation for such modification.	
71	Section 948.08, F.S.	<p><b><u>Pretrial Drug Court</u></b>                  Expands eligibility for a pretrial drug court program to a person with up to two prior nonviolent felony convictions. Admission is mandatory for an eligible person with no prior convictions, but discretionary for a person with prior felony convictions. Expands eligibility for veterans’ pretrial intervention programs to individuals who are current or former U.S. Department of Defense contractors or military members of a foreign allied country.</p>	<p>Per DOC, in FY 17-18, there were 8,377 offenders admitted to pretrial intervention, with 148 of these offenders admitted for veterans’ treatment intervention. It is not known how many more eligible offenders there would be under this new language, so the number of offenders diverted from prison cannot be quantified.</p> <p>EDR Estimate: Negative Indeterminate impact on prison beds</p>
72	Creating s. 948.081, F.S.	<p><b><u>Community Courts</u></b>                  Allows each judicial circuit to establish a community court program for defendants charged with certain misdemeanors designated by the chief judge.</p>	<p>This section encourages each judicial circuit to establish a community court program, and establishes guidelines for the program. The circuits that choose to establish the program will be required to fund it with sources of funding other than the State for costs not assumed by the State pursuant to s.29.004, F.S.                  Preliminary Estimate: Negative Indeterminate impact on prison beds</p>



<p>73</p>	<p>Section 948.16, F.S.</p>	<p><b><u>Veterans’ Pretrial Intervention Programs</u></b>                  Expands eligibility for veterans’ pretrial intervention programs to individuals who are current or former U.S. Department of Defense contractors or military members of a foreign allied country.</p>	<p>Per DOC, in FY 17-18, there were 8,377 offenders admitted to pretrial intervention, with 148 of these offenders admitted for veterans’ treatment intervention. It is not known how many more eligible offenders there would be under this new language, so the number of offenders diverted from prison cannot be quantified.</p> <p>Preliminary Estimate: Negative Indeterminate impact on prison beds</p>
<p>74</p>	<p>Section 948.21, F.S.</p>	<p><b><u>Veterans’ Treatment Programs</u></b>                  Expands eligibility for post adjudicatory veterans’ treatment programs to individuals who are current or former U.S. Department of Defense contractors or military members of a foreign allied country.</p>	<p>Preliminary Estimate: Negative Indeterminate impact on prison beds</p>
<p>75</p>	<p>Section 951.22, F.S.</p>	<p><b><u>Contraband in County Detention Facilities</u></b>                  Prohibits cell phones and other portable communication devices in a county detention facility. Introduction of a cell phone into a county detention facility is a third degree felony and a level four offense. Introduction of the following items is reclassified from a third degree felony to a first degree misdemeanor: (1) written or recorded communication;</p>	<p>While data can be identified for state correctional institutions for these specific offenses, a similar breakdown cannot be developed for county detention facilities. It is not known if each contraband offense contributes comparable shares of prison sentences for events occurring at county detention facilities. If the proportions were the same, the number of offenders sentenced to prison could be shifted in similar directions with the passage of this bill.</p>

		<p>(2) currency or coin;                  (3) food or clothing;                  (4) tobacco products, cigarette, or cigar; and                  (5) intoxicating beverage.</p>	<p>Furthermore, sentencing data is not available for tobacco. Data on contraband recovery indicate a high level of demand at correctional facilities; however, it is not known how reducing this to a misdemeanor or lower level felony might impact prison sentences originating from events at county detention facilities. Therefore, the quantity and the direction of the prison bed impact cannot be determined.</p> <p>EDR Estimate: Negative Indeterminate impact on prison beds.</p>
76	Section 958.04, F.S.	<p><b><u>Youthful Offenders</u></b>                  Authorizes a court to sentence a person meeting all other criteria as a youthful offender if he or she was 21 or younger at the time of the offense, regardless of age at the time of sentencing.</p>	EDR Estimate: No fiscal impact
77	Section 960.003, F.S.	<p><b><u>Hepatitis and HIV testing for persons charged with or alleged by petition for delinquency to have committed certain offenses</u></b>                  Removes the offense of donation of blood, plasma, organs, skin, or other human tissue as a violation of s. 381.0041, F.S., from the list of enumerated offense for which a court must order an offender to undergo mandatory HIV or Hepatitis testing to be performed</p>	No fiscal impact

		under the direction of the DOH.	
78	Section 960.07, F.S.	<b><u>Filing of Claims for Compensation</u></b> Increases the timeframe for filing a crime victim compensation claim from 1 year to 5 years and 7 years in certain instances.	Will result in more crime victim compensation claims to be paid from the Department of Legal Affairs (DLA) Crimes Compensation Trust Fund. The fiscal impact is indeterminate at this time.
79	Section 960.13, F.S.	<b><u>Awards</u></b> Increases the timeframe for prompt reporting of a crime to be eligible for a victim compensation award from 72 hours to 5 days.	Will result in more crime victim compensation claims to be paid from the Department of Legal Affairs (DLA) trust funds. The fiscal impact is indeterminate at this time.
80	Section 960.195, F.S.	<b><u>Awards to Elderly Persons or Disabled Adults for Property Loss</u></b> Increases the timeframe for reporting a criminal act resulting in property loss of an elderly person or disabled adult from 72 hours to 5 days for the purpose of receiving compensation awards.	Will result in more crime victim compensation claims to be paid from the Department of Legal Affairs (DLA) trust funds. The fiscal impact is indeterminate at this time.
81	Section 960.196, F.S.	<b><u>Relocation assistance for Victims of Human Trafficking</u></b> Increases the timeframe to report certain human trafficking offenses to be eligible for a victim relocation assistance award from 1 year to 5 years or 7 years with good cause.	Will result in more crime victim compensation claims to be paid from the Department of Legal Affairs (DLA) trust funds. The fiscal impact is indeterminate at this time.
82	Section 985.12, F.S.	<b><u>Civil Citation or Similar Prearrest Diversion Programs</u></b> Provides that locally authorized entities may continue to operate an independent civil citation or similar prearrest diversion	No fiscal impact

		program that is in operation as of October 1, 2018.	
83	Section 985.126, F.S.	<b><u>Diversion Programs; Data Collection; Denial of Participation or Expunged Record</u></b> Removes the requirement for LEOs to submit a copy of documentation requiring a minor to participate in a diversion program to the DJJ instead requiring it to be entered into the Juvenile Justice Information System Prevention Web by the entity operating the Diversion Program within 7 days of admission.	No fiscal impact
84	Section 985.145, F.S.	<b><u>Responsibilities of the Department During Intake; Screenings and Assessments</u></b> Deletes the requirement that DJJ must enter certain information into the Juvenile Justice Information System Prevention Web in specified instances.	No fiscal impact
85	Section 985.265, F.S.	<b><u>Detention transfer and release</u></b> A child who has been transferred for prosecution as an adult pursuant to discretionary direct file cannot be held in a jail or other facility intended or used for the detention of adults prior to a finding that the child should be prosecuted as an adult pursuant to the above-mentioned evidentiary hearing.	No fiscal impact

<p>86</p>	<p>Section 985.557, F.S.</p>	<p><b><u>Direct File</u></b>                  Requires the court to hold an evidentiary hearing to determine whether a child transferred to adult court pursuant to discretionary direct file should remain in adult court or be transferred back to juvenile court. Also repeals all mandatory direct file provisions, allowing but not requiring a state attorney to direct file an information against a child meeting discretionary direct file criteria.</p>	<p>Given the existence of the involuntary discretionary waiver and involuntary mandatory waiver giving the state attorney different options to transfer a child to adult court (14 or older), as well as the ability to indict (child of any age), and without data on how many juveniles are sentenced to prison through each channel (direct file/waiver/indictment), the numerical impact that this bill would have on prison beds is not known. While DOC would see a reduction in juvenile inmates, DJJ would see an increase in juvenile commitments.</p> <p>EDR Estimate: Negative Significant - Decrease of more than 25 prison beds</p>
<p>87</p>	<p>Section 776.09, F.S.</p>	<p><b><u>Retention of Criminal History Records for Persons Found to be Acting in Lawful Self-Defense</u></b>                  Cross-reference changes.</p>	<p>No fiscal impact</p>
<p>88</p>	<p>Section 893.03, F.S.</p>	<p><b><u>Standards and Schedules for Controlled Substances</u></b>                  Cross-reference changes.</p>	<p>No fiscal impact</p>
<p>89</p>	<p>Section 943.053, F.S.</p>	<p><b><u>Dissemination of Criminal Justice Information - Fees</u></b>                  Cross-reference changes.</p>	<p>No fiscal impact</p>
<p>90</p>	<p>Section 943.0582, F.S.</p>	<p><b><u>Diversion Program Expunction</u></b>                  Cross-reference changes.</p>	<p>No fiscal impact</p>
<p>91</p>	<p>Section 985.565, F.S.</p>	<p><b><u>Mandatory Direct File</u></b>                  Removes statutory</p>	<p>No fiscal impact</p>

		references to mandatory direct file.	
92	Section 921.0022, F.S.	<p><b><u>Offense Severity Ranking Chart</u></b>                  Conforms the offense severity ranking chart to changes made by the bill. Ranks the new offense of introduction of, or possession upon the ground of a county detention facility, of a cellular telephone or other portable communication device as a level four offense.</p>	No fiscal impact
93-173	Section 322.05, 316.027, 907.041, 910.035, 509.161, 790.065, 794.056, 847.0141, 901.41, 938.08, 938.085, 943.325, 948.06, 948.062, 960.001, 985.265, 1006.147, 316.0775, 95.18, 373.6055, 400.9935, 550.6305, 627.743, 634.421, 642.038,	<p><b><u>Reenactments</u></b></p>	No fiscal impact

	705.102, 812.14, 893.138, 538.09, 538.23, 1006.147, 316.80, 775.30, 775.33, 782.04, 934.07, 772.102, 847.02, 847.03, 847.09, 895.02, 933.02, 933.03, 943.325, 849.02, 373.6055, 397.4073, 414.095, 772.12, 775.087, 782.04,	-	
--	--	---	--

	810.02, 893.13, 893.1351, 900.05, 903.133, 907.041, 921.141, 921.142, 944.026, 944.4731, 447.203, 921.187, 948.012, 948.10, 948.20, 958.14, 796.07, 944.026, 948.036, 394.4792, 397.334, 910.035, 910.035, 958.03, 958.045, 958.046,  95.565, 985.15, 985.26, 985.265, 985.556, F.S	-	
174		<u>Effective Date</u>	No fiscal impact

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 212.15, 322.055, 322.056, 322.34, 381.0041, 384.23, 384.24, 384.34, 394.47891, 394.917, 397.334, 455.213, 474.2165, 489.126, 489.553, 500.451, 562.11, 562.111, 562.27, 562.451, 569.11, 713.69, 775.082, 775.087, 784.046, 784.048, 784.0485, 790.052, 790.22, 800.09, 806.13, 812.014, 812.015, 812.0155, 815.03, 815.06, 817.413, 831.28, 847.011, 849.01, 877.112, 893.135, 900.05, 900.06, 921.002, 921.0022, 943.0578, 943.0581, 943.0585, 943.059, 943.0595, 943.325, 943.6871, 944.275, 944.704, 944.705, 944.801, 948.001, 948.013, 948.03, 948.04, 948.05, 948.06, 948.08, 948.16, 948.21, 951.22, 958.04, 960.003, 960.07, 960.13, 960.195, 960.196, 985.12, 985.126, 985.145, 985.265, and 985.557.

The bill creates the following sections of the Florida Statutes: 25.025, 26.031, 43.51, 322.75, 900.06, 943.0578, 943.0584, 943.0595, and 948.081.

The bill repeals section 322.057 of the Florida Statutes.

The bill reenacts the following sections of the Florida Statutes: 95.18, 316.027, 316.0775, 316.80, 322.05, 373.6055, 394.47892, 397.334, 397.4073, 400.9935, 414.095, 447.203, 509.161, 538.09, 538.23, 550.6305, 627.743, 634.421, 642.038, 705.102, 772.102, 772.12, 775.087, 775.30, 775.33, 782.04, 790.065, 794.056, 796.07, 810.02, 812.14, 847.0141, 847.02, 847.03, 843.09, 849.02, 893.13, 893.1351, 893.138, 900.05, 901.41, 903.133, 907.041, 910.035, 921.141, 921.142, 921.187, 933.02, 933.03, 934.07, 938.08, 938.085, 943.325, 944.026, 944.4731, 948.012, 948.036, 948.06, 948.062, 948.10, 948.20, 958.03, 958.045, 958.046, 958.14, 960.001, 985.02, 985.265, 985.15, 985.26, 985.265, 985.565, and 1006.147.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

**CS/CS by Appropriations on April 18, 2019:**

The committee substitute:

- Requires, at the request of any justice permanently residing outside of Leon County, the Chief Justice of the Florida Supreme Court to designate and coordinate a location in the justice's district for the justice's private chambers pursuant to s. 112.061, F.S.;
- Adds a circuit court judgeship to both the Ninth Judicial Circuit Court and the Twelfth Judicial Circuit Court;
- Requires the Office of the State Courts Administrator to provide an annual report to the detailing the number of participants in each problem-solving court for each fiscal year of operation;
- Allows each judicial circuit to establish a community court program for defendants charged with certain misdemeanor offenses and specifies program requirements;
- Requires the chief judge of each judicial circuit to establish a Veterans' court;
- Expands eligibility beyond veterans and active duty servicemembers to include individuals who are current or former United States Department of Defense contractors and current or former military members of a foreign allied country for

- veteran treatment courts, pretrial drug courts, and veteran pretrial intervention and treatment programs;
- Increases the threshold amounts of various theft offenses;
  - Requires the Office of Program Policy Analysis and Government Accountability to review specified threshold amounts periodically and report its findings to the Governor, President of the Senate, and Speaker of the House of Representatives;
  - Requires the clerk of court to establish a Driver License Reinstatement Day Program to assist people seeking to have their driver license reinstated;
  - Modifies several provisions relating to the revocation and suspension of a driver license;
  - Removes any felony criminal penalties for a subsequent violation of driving while license suspended, revoked, etc.
  - Reduces the offense of engaging in sex while knowingly positive for the Human Immunodeficiency Virus (HIV) without the informed consent of the sexual partner from a third degree felony to a first degree misdemeanor;
  - Requires the state to prove additional elements to convict for the crime of transmitting a specified sexually transmitted disease (STD);
  - Provides that a good faith effort to comply with a treatment regimen or behavioral recommendations is an affirmative defense to the charge of intending to transmit an STD;
  - Removes the donation of blood, plasma, organs, skin, or other human tissue from the list of specified offenses involving the transmission of bodily fluids that require mandatory Hepatitis and HIV testing at a victim's request in certain situation;
  - Reduces certain STD transmission related offenses from a third degree felony to a first degree misdemeanor;
  - Ensures the Sexually Violent Predator Program is considered to serve a criminal justice function to maintain its access to the National Crime Information Center database;
  - Prohibits specified entities from considering convictions that have occurred more than five years from the date of a licensure or registration application from being a basis for denial of an occupational license or registration;
  - Allows a veterinarian to report a certain suspected criminal violation to the appropriate authorities without notice to the client;
  - Provides a just cause defense for criminal offenses and disciplinary violations against a contractor for failure to do certain things within a specified amount of time;
  - Increases the felony thresholds applicable to the fraud provisions related to contractors;
  - Removes the mandatory minimum sentence for horse meat offenses;
  - Ensures that a person released from a county detention facility following incarceration for an offense for which the sentence pronounced was a prison sentence qualifies as a prison releasee reoffender if otherwise eligible;
  - Retroactively applies legislative changes that removed aggravated assault and attempted aggravated assault as predicate offenses for mandatory minimum sentencing under the "10-20-Life" statute;
  - Ensures that attorney's fees cannot be awarded in injunction proceedings for repeat, dating, or sexual violence or stalking unless specified findings are made;

- Provides that cyberstalking includes accessing or attempting to access the online accounts or Internet-connected home electronic systems of another person without that person's permission, causing substantial emotional distress to that person and serving no legitimate purpose;
- Specifies that a person who holds or held an active certification from the Criminal Justice Standards and Training Commission as a law enforcement or correctional officer and who meets other specified criteria meets the definition of "qualified law enforcement officer" found at 18 U.S.C. s. 926(B) and (C), thereby authorizing such person to carry a concealed firearm in Florida in accordance with federal requirements;
- Prohibits lewd or lascivious exhibition in the presence of any person employed at or performing contractual work for a county detention facility;
- Amends the definition of "access," relating to computer crimes, to reference an electronic device, so unlawful access includes unlawfully accessing an electronic device;
- Provides for punishment of computer-related crimes when those crimes are committed willfully, knowingly, and exceeding authorization;
- Prohibits a person from selling, lending, giving away, distributing, transmitting, showing, transmuting, or possessing a child-like sex doll;
- Reduces the penalties from a third degree felony to a second degree misdemeanor for certain alcohol and gambling offenses;
- Creates a new drug trafficking offense called "trafficking in pharmaceuticals," which will apply to trafficking in a specified number of dosage units containing a controlled substance specified in the drug trafficking statute;
- Authorizes a court to depart from the imposition of a mandatory minimum sentence in drug trafficking cases if certain circumstances are met;
- Retroactively applies ameliorative sentencing changes to trafficking in hydrocodone and oxycodone and mixtures containing either controlled substance;
- Modifies a number of definitions and data collection points necessary for efficient data collection in accordance with the Criminal Justice Data Transparency Act;
- Ensures that data collected in accordance with s. 900.05, F.S., maintains the necessary confidential and exempt status when such data is reported to the Florida Department of Law Enforcement;
- Requires the FDLE to commission racial impacts statement for all criminal justice related bills heard by the Legislature during legislative session;
- Requires the recording of custodial interrogations for specified offenses;
- Increases monthly incentive gain-time awards that the DOC may grant from up to 10 days to up to 20 days for offenders sentenced for offenses committed on or after October 1, 1995;
- Reduces the amount of a sentence that must be served by a prisoner convicted of a nonviolent felony from no less than 85 percent to no less than 65 percent;
- Maintains the provision that requires a prisoner to serve no less than 85 percent of his or her sentence if convicted of a violent felony;
- Reorganizes the court-ordered sealing and expunction statutes for clarity;
- Creates an automatic sealing process for certain criminal history records of a minor or adult;

- Moves the provision for lawful self-defense to a separate statutory section for clarity;
- Allows matches between casework evidence DNA samples and DNA databases of offenders for an additional purpose of finding probable cause to obtain a warrant for an offender's arrest;
- Enhances the Criminal Punishment Code ranking level for an employee who uses such position to introduce contraband into a state correctional facility;
- Adds cellular telephones to the list of items that are prohibited from being introduced into a county detention facility and applying criminal penalties for introducing such items;
- Authorizes the DOC to increase the number of transition assistance specialists;
- Requires transition assistance specialists to inform inmates about relevant job credentialing or industry certifications and expanding the use of such credentialing;
- Requires the DOC to create a toll-free hotline for released inmates to obtain information about community-based reentry services;
- Expands the use of the Spectrum program to provide inmates and offenders with community-specific reentry service provider referrals;
- Requires the DOC to provide inmates with a comprehensive community reentry resource directory that includes specified information related to services and portals available in the county to which the inmate is to be released;
- Permits specified entities to apply with the DOC to be registered to provide inmate reentry services and requiring the DOC to create a process for screening, approving, and registering such entities;
- Authorizes the DOC to contract with specified entities to assist veteran inmates in applying for veteran's benefits upon release;
- Authorizes the DOC to develop, within its existing resources, a Prison Entrepreneurship Program (PEP) that includes education with specified curriculum;
- Authorizes the court to order or the DOC to transfer offenders to administrative probation if the offender presents a low risk of harm to the community and has completed at least half of their term of probation;
- Requires a court to early terminate or transfer to administrative probation certain compliant probationers upon certain factors being met and providing for exceptions to such requirement;
- Codifies the DOC's current practice of using graduated incentives to promote compliance with probationers and offenders on community control on supervision with the DOC;
- Requires the court to modify or continue the supervision term of certain low-risk offenders with a first filed violation of probation and providing modification terms and exceptions;
- Requires each circuit to create an alternative sanctions program to handle specified types and occurrences of technical violations of probation or community control with the judge's concurrence;
- Requires the DOC to include in the Florida Crime Information Center system all conditions of probation as determined by the court;
- Permits a court to impose a sentence as a youthful offender if a person committed a felony before they turned 21 years of age;

- Increases the relevant timeframes in which a person who is eligible for financial compensation through the Department of Legal Affairs Crime Victim Services may apply for such compensation;
- Includes locally authorized entity in the list of entities that may operate an independent civil citation or similar prearrest diversion program in addition to a circuit program;
- Removes the requirement for the Department of Juvenile Justice to enter information related to a civil citation or prearrest diversion program into the Juvenile Justice Information System Prevention Web;
- Requires the court to hold an evidentiary hearing, within 30 days of the direct filing decision, to determine whether a child transferred to adult court pursuant to discretionary direct file should remain in adult court or be transferred back to juvenile court;
- Prohibits a child who has been transferred for prosecution as an adult pursuant to discretionary direct file from being held in a jail or other facility intended or used for the detention of adults prior to a finding of the appropriateness of such transfer in accordance with the evidentiary hearing required by the bill; and
- Repeals all provisions related to transferring a child to adult court for prosecution pursuant to mandatory direct file.

**CS by Criminal Justice on March 4, 2019:**

The Committee Substitute:

- Modifies the intent language providing that the DOC must attempt to place an inmate 300 miles, rather than 150 miles, from their primary residence.
- Clarifies the types of businesses offering reentry services that may register with the DOC to provide such services.
- Requires the DOC and county detention facilities to provide written notification of all outstanding terms of an offender's sentence upon release from imprisonment, probation, or community control.

**B. Amendments:**

None.