

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 656

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Judiciary Committee; and Senator Baxley

SUBJECT: State Court System Administration

DATE: April 23, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Dale</u>	<u>Jameson</u>	<u>ACJ</u>	<u>Recommend: Favorable</u>
3.	<u>Dale</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 656 amends multiple statutes relating to state court system administration. The bill addresses foreign language court interpreters and mediators, parenting coordination, judicial retirements, and electronic records and fingerprinting involving certain criminal cases.

Court-appointed Mediators and Foreign Language Court Interpreters

The bill provides the Office of the State Courts Administrator (OSCA) with statutory authority to conduct national background screenings for court-appointed mediators and foreign language court interpreters. This statutory change is needed to comply with requirements established by the U.S. Department of Justice and the Federal Bureau of Investigation.

Parenting Coordination

The bill permits otherwise confidential communications between the parties and a parenting coordinator to be used as testimony and evidence in professional misconduct or professional malpractice cases against a coordinator. The bill also gives members of the Parenting Coordinator Review Board and any other person who is appointed or employed by the Supreme Court to assist in a parenting coordinator disciplinary proceeding, such as a prosecutor or investigator, civil immunity for actions associated with disciplinary proceedings.

Judicial Retirements

The bill amends s. 121.052, F.S., relating to the Florida Retirement System, to clarify that only a justice and judge who reaches age 70 prior to July 1, 2019, is authorized to purchase service credit relating to (a) temporary duty as a senior judge after that date or (b) the remainder of the justice or judge's term of office.

Electronic Judgments & Fingerprinting

The bill permits, but does not require, the courts to implement the use of electronic judgments and electronic fingerprinting in certain criminal cases. The bill requires that an electronic record of a judgment of guilty include a certification by the judge that the fingerprints belong to the defendant and that the certification, in a written or electronic record, of a guilty judgment is admissible as prima facie evidence that the fingerprints on the judgment are those of the defendant.

The bill takes effect July 1, 2019.

II. Present Situation:

Foreign Language Court Interpreters and Mediators (Sections 1 and 2)

In 1988, the Florida Supreme Court was tasked with the responsibility of establishing minimum standards for qualifications, professional conduct, and training for court mediators^{1,2} and arbitrators. Before a mediator could be appointed to serve in a circuit, he or she was required to be certified by the chief judge in accordance with the Supreme Court standards.³

Similarly, in 2006, the Florida Supreme Court was given the responsibility of establishing minimum standards and procedures to qualify, certify, discipline, and train foreign language interpreters who are appointed by a court.^{4,5}

¹ A mediator is a neutral and impartial person who tries to help opposing parties reach a solution to their conflict. BLACK'S LAW DICTIONARY (10th ed. 2014).

² Generally, in order to become a certified mediator, a person must be at least 21 years old, of good moral character, and earn a designated number of points for training, education, and mentorship. Training and education requirements vary depending on whether someone seeks to become a county court, family, circuit court, dependency, or appellate mediator. Fla. R. Cert. & Ct.-Apptd. Mediators 10.100(a).

³ Ch. 87-133, s. 6, Laws of Florida.

⁴ Ch. 2006-253, s. 1, Laws of Florida.

⁵ To become certified, a court interpreter must be of good moral character, pass a background check, complete courtroom observation requirements, and pass a written and oral exam demonstrating language proficiency. Florida Courts, *Court Interpreter Certification and Regulation Program, Application for Court Interpreter Registration Renewal* (Effective July, 18, 2018), <https://www.flcourts.org/content/download/402733/3454022/application-for-court-interpreter-registration-renewal.pdf>; Florida Courts, *Court Interpreter Certification and Regulation Program, Steps to Court Interpreter Certification* <https://www.flcourts.org/content/download/217092/1968498/FINAL-Certification-Process-Flow-Chart.pdf> (last visited April 2, 2019).

The Authority of the Court Interpreter Certification and Regulation Program/Board and the Florida Dispute Resolution Center

The Supreme Court, with the assistance of the Office of the State Courts Administrator (OSCA), established two boards to oversee the responsibilities required of them by statute. The Florida Dispute Resolution Center (DRC) was established to assess the qualifications of mediators and the Court Interpreter Certification and Regulation Program/Board was established to determine the qualifications of foreign language interpreters. As part of its responsibilities, the OSCA conducted background checks to determine the suitability of applicants.

According to the OSCA, as early as 2007, both groups conducted nationwide criminal history background checks.⁶ Individuals who apply to become a certified interpreter or a certified mediator are required to go to a live scan provider to be fingerprinted at their own expense. The results of the live scan are transmitted to the FDLE and to the OSCA. Until 2015 for mediators and 2017 for interpreters, the background screen included both the state and national background checks.

In 2015 for mediators and in 2017 for interpreters, the FDLE conducted records compliance and technical audits to determine whether state entities possessed the appropriate authority to access national criminal justice information.⁷ Pursuant to s. 943.053(2), F.S., the FDLE is prohibited from disseminating criminal justice information that is not in compliance with federal and state laws, regulations, and rules. The FDLE determined that the OSCA had the authority to perform background checks as a criminal justice agency on its employees, but it did not have the authority to perform criminal history background checks on people who were not employees, such as mediators and court interpreters and therefore it could no longer require the national checks, until such time as the legislature granted them statutory authority to do so.⁸

Because the OSCA lacked the authority to have the FDLE access the national criminal history background information in the FBI databases, the OSCA could only access Florida background information.

FBI Requirements for Conducting a Criminal Record Check for a Noncriminal Justice Licensing or Employment Purpose

The FBI derives its authority to conduct a *criminal* record check for a *noncriminal* justice licensing or employment purpose from Public Law 92-544. Under that law, the FBI is authorized to exchange identification records with state and local government officials for licensing and employment purposes when authorized by a state statute. The statute must be approved by the U.S. Attorney General.⁹ The standards that the FBI relies upon in approving state authorizations

⁶ Office of the State Courts Administrator, *Judicial Branch 2019 Legislative Agenda*, 19-20, (Jan. 14, 2019) (on file with the Senate Committee on Judiciary).

⁷ *Id.*

⁸ *Id.* OSCA's position, as stated in the *Judicial Branch 2019 Legislative Agenda*, is that the Department of Justice changed its policy on what constituted the proper authority to conduct national background checks, and this change has necessitated this bill.

⁹ The Department of Justice has determined that Attorney General's authority to approve the state "statute is delegated to the FBI by Title 28, Code of Federal Regulations, Section 0.85(j)." U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, Identification Services, *Appendix B: Criminal Justice Information (CJIS) Information Letter 95-3*, 5 (July 17, 1995), <https://www.ojdp.gov/pubs/guidelines/appen-b2.html> (last visited April 2, 2019).

have been developed through a number of memoranda issued by the Office of Legal Counsel in the Department of Justice.¹⁰

An authorization consistent with the standards must:

- Be the result of a legislative enactment or its functional equivalent;
- Require fingerprinting of applicants for a license or employment;
- Expressly or by implication authorize the use of the FBI records for screening applicants;
- Not be against public policy; and
- Identify the specific category of applicants or licenses to prevent the authorization from being overly broad in scope.¹¹

Additionally, the state must designate a government agency that is authorized and will be responsible for receiving the results of the record check and screen those results to determine whether the applicant is suitable for employing or licensing.¹²

If the OSCA receives the requisite statutory authority to conduct criminal history checks for a regulatory purpose, it will be in compliance with federal law and can resume the national criminal history checks.

Level 1 and Level 2 Screening Standards

Chapter 435, F.S., establishes two levels of background screenings that employees must undergo as a condition of employment. Level 1 is the more basic screening and involves an in-state name-based background check, employment history check, statewide criminal correspondence check through the FDLE, a sex offender registry check, local criminal records check, and a domestic violence check.¹³ Level 2 screenings are more thorough because they apply to persons in positions of responsibility or trust, often involving more vulnerable people, such as children, the elderly, or the disabled. Level 2 screenings require a security background investigation that includes fingerprint-based searches for statewide criminal history records through the FDLE and a national criminal history records check through the Federal Bureau of Investigation. It may also include local criminal records checks. A level 2 screening disqualifies a person from employment if the person has a conviction or unresolved arrest for any one of more than 50 criminal offenses.¹⁴

Parenting Coordination (Section 3)

Background

Parenting coordinators are appointed by the court to assist parents in developing, implementing, or resolving disputes in a parenting plan. To be a qualified parenting coordinator, a person must complete certain training requirements and must be a:

- Licensed mental health professional;
- Licensed physician with certification by the American Board of Psychiatry and Neurology;

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Section 435.03, F.S.

¹⁴ Section 435.04, F.S.

- Certified family law mediator with a master's degree related to mental health; or
- Member of the Florida Bar.

Confidentiality

Communications made by, between, or among the parenting coordinator and involved parties are confidential. The parenting coordinator and parties cannot testify or offer evidence about these communications unless the communication is:

- Necessary to identify, authenticate, or confirm a written agreement by the parties made during the parenting coordination process;
- Necessary to identify an issue for resolution by the court;
- Limited to the subject of a party's compliance with the order of referral to parenting coordination, orders for psychological evaluation, counseling, or substance abuse counseling;
- Made after the parenting coordinator reports the case is no longer appropriate for parenting coordination;
- Made after a parenting coordinator is unable or unwilling to serve and a new parenting coordinator is appointed;
- Related to the qualifications of a parenting coordinator or an emergency;
- Related to the parenting coordinator being unqualified to resolve certain issues and the appointment of a more qualified coordinator;
- Agreed to be disclosed by the parties; or
- Necessary to prevent future domestic violence; child abuse, neglect, abandonment; or abuse, neglect, or exploitation of a disabled or elderly adult.

Parenting Coordinator Review Board

The Parenting Coordinator Review Board (PCRB) is a panel of judges, qualified parenting coordinators, and family law attorneys who investigate parenting coordinators for violations of the Florida Rules for Qualified and Court Appointed Parenting Coordinators (Rules).¹⁵ After a complaint is filed, the PCRB investigates the circumstances surrounding the complaint to determine whether probable cause exists to find that a parenting coordinator violated one of the Rules.¹⁶ If the PCRB determines probable cause exists, the case is referred to a formal hearing.¹⁷ A prosecutor is appointed to further investigate and prosecute the case.¹⁸ If the hearing panel determines that a parenting coordinator, by clear and convincing evidence, violated the Rules, the PCRB may sanction the parenting coordinator, either by reprimand, imposition of additional training requirements, or suspension.¹⁹

When investigating complaints against parenting coordinators, the PCRB may need testimony from the parties involved in the parenting coordination process to either prove or disprove a violation of the Rules. Similarly, since qualified parenting coordinators are professionals, testimony from the parties involved would likely be necessary in a civil malpractice action. However, communications between parenting coordinators and the involved parties are

¹⁵ Fla. R. for Qualified and Ct. Appointed Parenting Coordinators Rule 15.260.

¹⁶ Fla. R. for Qualified and Ct. Appointed Parenting Coordinators Rule 15.290.

¹⁷ Fla. R. for Qualified and Ct. Appointed Parenting Coordinators Rule 15.300.

¹⁸ *Id.*

¹⁹ Fla. R. for Qualified and Ct. Appointed Parenting Coordinators Rule 15.320.

confidential. There is no statutory exception to the confidentiality requirements that would allow communications between the parties and the parenting coordinator to be presented as testimony.

Judicial Retirement Age (Section 4)

State Court System Generally

The judicial power is vested in a supreme court, district courts of appeal, circuit courts, and county courts.²⁰

The Florida Supreme Court consists of seven justices who²¹ are subject to retention elections by the voters. Each of the five district courts of appeal serve a geographically defined appellate district.²² The legislature has authorized a total of 64 judgeships for the five appellate districts.²³ Supreme court justices and district court of appeal judges are appointed by the governor and continue to serve subject to retention elections. The term of office for justices and district court of appeal judges is 6 years.

Circuit courts serve each judicial circuit.²⁴ The state is divided into 20 judicial circuits.²⁵ The legislature has authorized 599 circuit court judges.²⁶ Each county has a county court.²⁷ The legislature has authorized 322 county judgeships.²⁸ Circuit court and county court judges may be either appointed by the governor or elected by the voters; the term of office is 6 years.

Age restriction on serving as a justice or judge

Article V, section 8 of the State Constitution sets out the eligibility for office of justice and judges. Until to July 1, 2019, no justice or judge may serve after attaining age 70, except upon temporary assignment or to complete a term, one-half of which has been served (at the time the judge reached age 70). Effective July 1, 2019, that restriction is modified to prohibit a justice or judge from serving after attaining age 75, regardless of whether the service is temporary or is intended to complete the judge's term.

Temporary service

A retired justice or judge may be assigned temporary duty in any court as long as the retired justice or judge was not defeated in seeking reelection to, or did not fail to be retained in a retention election of, his or her last judicial office, and is not practicing law.²⁹ Compensation as a "senior judge³⁰" is \$375 per day or portion thereof.³¹

²⁰ FLA. CONST. art. V, s. 1.

²¹ FLA. CONST. art. V., s. 3.

²² FLA. CONST. ART. V., s. 4.

²³ Section 35.06, F.S.

²⁴ FLA. CONST. art V., s. 5.

²⁵ Section 26.021, F.S.

²⁶ Section 26.031, F.S.

²⁷ FLA. CONST. V., s. 6.

²⁸ Section 34.022, F.S.

²⁹ Section 25.073(1), F.S.

³⁰ "Senior judge" is the common reference to a retired justice or judge assigned temporary duty.

³¹ Section 25.073(2)(a), F.S., provides that the compensation will not be less than \$200 per day or portion of a day. The Chief Justice of the Supreme Court has set the compensation at \$375 per day.

Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS.³² The FRS is a contributory system with active members contributing three percent of their salaries.³³

The FRS is a multi-employer plan governed by the Florida Retirement System Act in Chapter 121, F.S. As of June 30, 2018, the FRS consisted of 1,002 total employers; it is the primary retirement plan for employees of state and county government agencies, district school boards, Florida College institutions, and state universities, and also includes the 173 cities and 267 special districts that have elected to join the system.³⁴

Members of the FRS have two primary plan options available for participation:

- The defined contribution plan, also known as the Investment Plan; and
- The defined benefit plan, also known as the Pension Plan.

The membership of the FRS is divided into five membership classes: the Regular Class;³⁵ the Special Risk Class;³⁶ the Special Risk Administrative Support Class;³⁷ the Elected Officers' Class;³⁸ and the Senior Management Service Class.³⁹ The Elected Officers' Class is subdivided into three subclasses: Judicial Officers, County Officers and State Officers.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.⁴⁰ For members initially enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.⁴¹ Benefits payable under the pension plan are calculated based on the member's years of creditable service multiplied by the service accrual rate multiplied by the member's average final

³² Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2018, at p. 35. Available online at: https://www.rol.frs.state.fl.us/forms/2017-18_CAFR.pdf (Last visited January 28, 2019).

³³ Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011. Members in the Deferred Retirement Option Program do not contribute to the system.

³⁴ See *supra* note 13, at 196.

³⁵ The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

³⁶ The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. Section 121.0515, F.S.

³⁷ The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S.

³⁸ The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

³⁹ The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

⁴⁰ Section 121.021(45)(a), F.S.

⁴¹ Section 121.021(45)(b), F.S.

compensation.⁴² For judicial officers, the service accrual rate is 3.3 percent for each year of service.

Contribution Rates

Each class and subclass is funded separately based upon the costs attributable to the members of that class or subclass. Employers participating in the FRS are required to contribute a specified percentage of the member's monthly compensation. The employer contribution rate is a blended contribution rate set by statute, which is the same percentage regardless of whether the member participates in the pension plan or the investment plan.⁴³ The rate is determined annually based on an actuarial study by the Department of Management Services that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans.

The state actuary determines a rate associated with the normal cost of the pension plan (funding the prospective benefits) and a rate necessary to amortize the unfunded actuarial liabilities (UAL) over a thirty-year period. For purposes of this legislation, the relevant current employer contribution rates⁴⁴ for the Judicial Officer subclass within the Elected Officers Class are 12 percent of payroll for normal costs and 27.05 percent of payroll for the amortization of the unfunded actuarial liabilities of the FRS. Each judge also contributes three percent of his or her salary toward the cost of retirement benefits.

Purchase of service credits by judicial officers

Section 121.052, F.S., allows a judicial officer who reaches age 70 and is not permitted to complete the judicial term because of age limitation under s. 8, Art. V of the State Constitution to purchase certain service credit under the Florida Retirement System. The purchase of service credit must occur after the time period relating to the service purchased has elapsed.

If the judicial officer reaches age 70, the judicial officer may purchase, at his or her own expense, any service credit after age 70 through the end of the officer's term. The judicial officer must wait until the period purchased has elapsed. With this purchase, the judicial officer's retirement benefit will be increased prospectively.

If a judicial officer reaches age 70 and the retirement benefit is not vested, the judicial officer may purchase service credit for service as a temporary judge. Such service must be immediately following the judicial officer's last full term of service. The purchase of service credit is limited to the amount of time needed to vest retirement benefits. The purchase of such service is at the judicial officer's expense at the amount of contributions that would have been paid had the judicial officer continued in office for the time period claimed, plus 6.5 percent interest.

Assuming the salaries in effect on June 30, 2019, for each level of judicial officer and a 42.05 percent contribution rate, the table below shows the cost to purchase one month of service and 12 months of service (without the application of interest).

⁴² Section 121.091, F.S.

⁴³ Section 121.70(1), F.S.

⁴⁴ Section 121.71(4) and (5), F.S.

Level of Court	Salary	Cost of 1 month	Cost of 12 months
Supreme Court	\$220,600	\$7,730	\$92,762
District Court	\$169,554	\$5,941	\$71,297
Circuit Court	\$160,688	\$5,631	\$67,569
County Court	\$151,822	\$5,320	\$63,841

Because the age restriction in the State Constitution was changed to age 75 effective July 1, 2019, a justice or judge attaining age 70 after July 1, 2019, will not be ineligible to complete a term based on attaining age 70. Thus, no one should become eligible to purchase the service credit after July 1, 2019.

Electronic Recording of Judgments and Fingerprints (Sections 5, 6, 7)

Petit Theft and Felony Judgments

Current law requires that every criminal judgment adjudicating a person guilty or not guilty of petit theft⁴⁵ or a felony be in *writing*, signed by the judge, and recorded by the clerk of the circuit court.⁴⁶

At the time the judgment of guilty is rendered, the fingerprints of the defendant must be taken and affixed beneath the judge's signature to the judgment. Beneath the fingerprints, the judge must certify and attest that the fingerprints belong to the defendant. The judgment, with the certification, is admissible as prima facie evidence that the fingerprints are those of the defendant.⁴⁷

For a felony judgment of guilty, in addition to the defendant's fingerprints, the judge must also record the defendant's social security number and affix it to the written judgment. If the defendant is unable or unwilling to provide his or her social security number, the reason for its absence must be indicated on the written judgment.⁴⁸

Criminal Judgments under Ch. 796, F.S.

Chapter 796, F.S., governs prostitution and similar crimes. Every criminal judgment adjudicating a person guilty of a misdemeanor or felony offense governed by ch. 796, F.S., must be in *writing*, signed by the judge, and recorded by the clerk of the circuit court. Additionally, the fingerprints of the defendant must be taken and affixed beneath the judge's signature to the judgment. Beneath the fingerprints, the judge must certify and attest that the fingerprints belong to the defendant.⁴⁹ The judgment, with the certification, is admissible as prima facie evidence that the fingerprints are those of the defendant.⁵⁰

⁴⁵ A person commits petit theft if he or she steals property that is valued at \$100 but less than \$300. Petit theft is punishable as a first degree misdemeanor. Section 812.014(2)(e), F.S.

⁴⁶ Sections 812.014(3)(d)1. and 921.241(2), F.S.

⁴⁷ Sections 812.014(3)(d)2. and 921.241(2) and (3), F.S.

⁴⁸ Section 921.241(4), F.S.

⁴⁹ Section 921.242(1), F.S.

⁵⁰ Section 921.242(2), F.S.

Electronic Fingerprinting

Capturing legible fingerprint images is paramount to the administrative process. Failure to capture legible fingerprint images can lead to an increase in administrative burdens and lengthy waiting periods. Increasing use of electronically captured fingerprints is one method that has been used in efforts to improve fingerprint image quality and reduce rejection rates. Electronic live scan fingerprinting technology allows for the capture of sharper, clearer images, which helps to ensure that the images captured are legible prior to submission to law enforcement databases.⁵¹

III. Effect of Proposed Changes:

Foreign Language Court Interpreters and Mediators (Sections 1 and 2)

The bill provides the statutory language for the OSCA to comply with the federal standards for conducting background screenings. The bill requires the submission of fingerprints and provides for the submission of the fingerprints to the FBI for national processing. The bill does not appear to violate public policy and specifically identifies the categories of applicants, foreign language court interpreters and mediators, to be screened. Because the bill amends the statute sections where the Florida Supreme Court is authorized to establish minimum standards for foreign language court interpreters and mediators, it designates the government agency authorized to receive the results of the background screenings.

The bill provides that any vendor fee and state and federal processing fees shall be borne by the applicant. For records provided to a person or entity other than those excepted, the cost for state fingerprint processing is the fee authorized in s. 943.053(3)(e), F.S.

Parenting Coordination (Section 3)

Confidentiality

The bill permits communications between the parties and a parenting coordinator to be used as testimony and evidence in professional misconduct or professional malpractice cases against a coordinator. This will assist the PCRFB in conducting misconduct investigations and aligns the confidentiality exceptions for parenting coordinators with existing confidentiality exceptions for mediators.

Parenting Coordinator Review Board

The bill gives members of the PCRFB and any other person who is appointed or employed by the Supreme Court to assist in a parenting coordinator disciplinary proceeding, such as a prosecutor or investigator, civil immunity for actions associated with disciplinary proceedings. The

⁵¹ Federal Bureau of Investigation, *The National Crime Prevention and Privacy Compact Council's Civil Fingerprint Image Quality Strategy Guide*, 2-3 (Nov. 2018), available at <https://www.fbi.gov/file-repository/civil-fingerprint-image-quality-strategy-guide.pdf>.

immunity from civil liability could increase the number of people willing to serve on the PCRB and participate in the parenting coordinator disciplinary process.

Judicial Retirement Age (Section 4)

The bill amends s. 121.052, F.S., to clarify that only a judge or justice who reaches age 70 prior to July 1, 2019, is eligible to purchase certain service credit for purposes of the Florida Retirement System.

Petit Theft and Felony Judgments; Criminal Judgments; and Electronic Fingerprinting (Sections 5, 6, and 7)

Current law requires that a judgment of guilty or not guilty of petit theft or a felony or a judgment of guilty for a misdemeanor under ch. 796, F.S., be in *writing*. The bill expands this, allowing the judgments to be made in a written *or electronic* record.

The bill retains the requirement for the judgments to be signed by the judge and recorded by the clerk of the court. If an electronic record is made, the bill requires the record to contain the judge's electronic signature, which is defined in s. 933.40, F.S., as any letters, characters, symbols, or process manifested by electronic or similar means and attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.⁵²

Current law requires that the fingerprints of the defendant be taken and affixed to a guilty judgment of petit theft, any felony, or a misdemeanor under ch. 796, F.S. For a written record, the bill retains the requirements of existing law that the fingerprints be manually taken and affixed beneath the judge's signature. For an electronic record, the bill requires the fingerprints of the defendant be electronically captured and included in the judgment.

The bill provides that digital fingerprint records will be associated with a transaction control number, which is defined as the unique identifier comprised of numbers, letters, or other symbols for a digital fingerprint record which is generated by the device used to electronically capture the fingerprints. For an electronic record, the bill requires the judge to provide certification with the following language: "I hereby certify that the digital fingerprints record associated with the Transaction Control Number _____ contains the fingerprints of the defendant, _____, which were electronically captured from the defendant in my presence, in open court, this the ___ day of ___, (year)."

Current law provides that the judge's certification of a written record of a judgment of guilty for petit theft, any felony, or a misdemeanor under ch. 796, F.S., is admissible as prima facie evidence that the fingerprints included in the judgment are those of the defendant. The bill provides that the judge's certification that the digital fingerprint record associated with the transaction control number that is included in an electronic record of the judgments will be regarded in the same manner.

⁵² Section 933.40(1)(d), F.S.

The bill retains the requirement for the social security number of a defendant who is found guilty of a felony to be taken and included in the written or *electronic* record. If the defendant is unable or unwilling to provide his or her social security number, the bill requires that the reason for its absence be specified in the written or electronic record.

The bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, s. 19, of the State Constitution requires that a new state tax or fee, as well as an increased state tax or fee, must be approved by two-thirds of the membership of each house of the Legislature and must be contained in a separate bill that contains no other subject. Article VII, s. 19(d)(1) of the State Constitution defines “fee” to mean “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.”

Section 25.386, F.S. requires the Supreme Court to set fees to be charged to applicants for certification and renewal of certification as a court interpreter, and s. 44.106 authorizes the Supreme Court to set fees to be charged to mediator applicants for certification and renewal of certification.

The bill requires the national background checks be done for new applicants to be court-appointed mediators and foreign language interpreters. The fee for a state and national criminal history background check is not being increased and no new fee is authorized. See V.B. Private Sector Impact.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The total cost of the Level 1 “state” background check is approximately \$50-\$75 per person, which includes the FDLE fee of \$24.00 and the cost charged by the Livescan provider to perform the fingerprinting.⁵³ According to the fiscal analysis by the FDLE, the additional cost for a national criminal history record check is \$13.25.⁵⁴ Those seeking certification as a foreign language court interpreter or as a mediator will bear the costs associated with security background investigations.

C. Government Sector Impact:**Background Screening**

According to the OSCA, court staff currently conduct state background screenings of mediators and interpreter applicants. The inclusion of the nationwide criminal background screening will not have a significant impact on the court or court administration’s workload.⁵⁵

According to the FDLE, the state portion of the background screening fee (\$24), is deposited into the FDLE’s Operating Trust Fund. The cost to retain the information for the first year is included in the criminal history record check. The additional cost to retain a set of fingerprints is \$6 annually, which also is deposited in the FDLE’s Operating Trust Fund. The FDLE states that when it begins to participate in the federal retention program, the FBI will not require a fee for federal fingerprint retention.⁵⁶

Electronic Judgments and Fingerprinting

The bill permits, but does not require, the courts to implement an electronic fingerprinting and judgment process. Therefore, the bill does not require the expenditure of funds. Those circuits that wish to implement electronic recordkeeping will need to purchase electronic Live Scan fingerprinting technology, which will result in initial costs to implement the electronic system. However, the new technology may save money and reduce court workloads in the long run.⁵⁷

VI. Technical Deficiencies:

None.

⁵³ Court Interpreter Certification and Regulation Program (CICRP) Background Check Screening Process for Court Interpreters, <https://www.flcourts.org/content/download/402727/3453986/CICRP-background-check-announcement.pdf> (Last visited April 9, 2019.)

⁵⁴ Florida Department of Law Enforcement, *Judicial Impact Statement for SB 656* (March 8, 2019).

⁵⁵ Office of the State Courts Administrator, Senate Bill 656 Analysis (February 28, 2017) (on file with the Senate Appropriations Subcommittee on Criminal and Civil Justice).

⁵⁶ *Supra* note 16.

⁵⁷ Office of the State Courts Administrator, *2019 Judicial Impact Statement for SB 1186*, (Mar. 21, 2019) (on file with the Senate Criminal Justice Committee).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 25.386, 44.106, 61.125, 121.052, 812.014, 921.241, and 921.242.

The bill reenacts section 775.084 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Appropriations on April 18, 2019:

The committee substitute:

- Adds provisions to enhance the courts' ability to regulate parenting coordinators. Specifically, the provisions authorize communications between the parties and a parenting coordinator to be used as evidence in a professional misconduct or professional malpractice case against a coordinator, and provide volunteer members of the Parenting Coordinator Review Board with civil immunity for actions associated with disciplinary proceedings;
- Adds the substance of SB 1764, which provides that applicants for certified mediator or certified foreign language court interpreter must bear the processing costs of required fingerprinting;
- Adds the substance of SB 7028, a committee bill that makes a technical fix to Florida Retirement System provisions due to a recently adopted change to the constitutional mandatory judicial retirement age; and
- Adds the substance of SB 1186, which authorizes the use of electronic criminal judgments and fingerprints in cases in which written judgments or fingerprints are currently required.

CS by Judiciary on March 4, 2019:

The intent of this committee substitute does not differ significantly from the underlying bill; it primarily differs in form. The committee substitute differs by expressly stating the federal requirements for an entity to conduct national background screenings, which are: require fingerprinting of the applicant, authorize the use of FBI records for screening the applicant, not violate public policy, specifically identify the category of applicants or licensees to be checked so that the authorization is not too broad, and designate an authorized governmental agency for receiving and screening the results of the record check.

- B. **Amendments:**

None.

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