

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7081 PCB CJS 19-03 State Court System Administration
SPONSOR(S): Judiciary Committee, Civil Justice Subcommittee, DiCeglie
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	16 Y, 0 N	Padgett	Poche
1) Justice Appropriations Subcommittee	8 Y, 0 N	Smith	Gusky
2) Judiciary Committee	17 Y, 0 N, As CS	Padgett	Poche

SUMMARY ANALYSIS

Court Interpreters and Mediators

The Florida Supreme Court establishes minimum standards and procedures for qualifications, certification, professional conduct, discipline, and training of foreign language court interpreters and court mediators. The Office of the State Courts Administrator (OSCA) conducts a statewide criminal history background check as part of the certification process. OSCA cannot conduct a fingerprint-based state and national criminal history background check without express statutory authority.

CS/HB 7081 requires certified court interpreter and mediator applicants to undergo a fingerprint based state and national criminal background check. Applicants are required to pay the Florida Department of Law Enforcement (FDLE) a \$37.25 processing fee for the state and national criminal history checks.

Parenting Coordination

Parenting coordinators are impartial third-parties who are appointed by the court to assist parents in developing, implementing, or resolving disputes in a parenting plan. Communications made between the parties and the parenting coordinator are generally confidential; however, there are exceptions. The bill allows otherwise confidential communications made between the parties and the parenting coordinator to be used as testimony or evidence in a misconduct or malpractice proceeding against the parenting coordinator.

The Parenting Coordinator Review Board (PCRB) is a volunteer panel of judges, qualified parenting coordinators, and family law attorneys who investigate parenting coordinators for misconduct violations. The PCRB may hire or appoint investigators, prosecutors, and others to assist in the process. The bill provides civil immunity to the members of the PCRB and any other person who is appointed or employed by the Supreme Court to assist in a parenting coordinator disciplinary proceeding.

Retirement of Justices and Judges

The Florida Constitution mandates the retirement age for judges. In the 2018 general election, voters approved an amendment to the Constitution increasing the judicial retirement age from 70 to 75. The bill revises statutory references to align with the increased retirement age of 75.

Electronic Fingerprinting

Every criminal judgment of guilty or not guilty is required to be in writing, signed by the judge, and recorded by the clerk of court. When a defendant is convicted of a felony, petit theft, or any offense under chapter 796, F.S. (relating to prostitution), the defendant's fingerprints must be taken in open court and affixed to the judgment. The judgment is then admissible in court as prima facie evidence that the fingerprints on the judgment are the fingerprints of the defendant who was convicted of the crime. The bill allows a criminal judgment to be recorded either in writing or electronically and allows the judge to take a defendant's fingerprints electronically.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2019.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7081c.JDC

DATE: 4/10/2019

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background Screening for Court Interpreters and Mediators

Background

The Florida Supreme Court establishes minimum standards and procedures for qualifications, certification, professional conduct, discipline, and training of foreign language court interpreters^{1,2} and court mediators.^{3,4} OSCA conducts a name-based statewide criminal history background check as part of the certification process. OSCA cannot conduct a fingerprint-based state and national criminal history background check because federal law requires an agency to have express statutory authority to use fingerprinting for licensure and authorizing the use of the Federal Bureau of Investigation (FBI) records for screening potential applicants.⁵

Effect of Proposed Changes

CS/HB 7081 requires certified court interpreter and mediator applicants to undergo a fingerprint-based state and national criminal background check and authorizes FDLE to forward fingerprints to the FBI for processing. This provides OSCA the express statutory authority needed to comply with federal law regarding the sharing of criminal history information. Applicants are required to pay FDLE a \$37.25 processing fee for the state and national criminal history checks.

Parenting Coordination

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;
- 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;

¹ S. 25.386, F.S.

² To become a certified court interpreter a person must pass a background check and complete certain training requirements, including a written examination and courtroom observation. Fla. R. Cert. & Reg. of Spoken Language Ct. Interpreters 14.200(b).

³ S. 44.106, F.S.

⁴ To become a certified mediator, a person must be at least 21 years old, of good moral character, and complete certain training and mentorship requirements. Fla. R. Ct. Appointed Mediators 10.100(a).

⁵ Pub. L. 92-544. From 2007-2017, OSCA conducted both national and state criminal history background checks. FDLE conducted a records compliance audit in 2017 and concluded OSCA lacked the express statutory authority required by federal law to receive national criminal history information.

- 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).⁶ 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.⁷ If the PCRB determines probable cause exists, the case is referred to a formal hearing.⁸ A prosecutor is appointed to further investigate and prosecute the case.⁹ 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.¹⁰

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 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.

Effect of Proposed Changes

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 PCRB 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 PCRB 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 immunity from civil

⁶ Fla. R. for Qualified and Ct. Appointed Parenting Coordinators Rule 15.260.

⁷ Fla. R. for Qualified and Ct. Appointed Parenting Coordinators Rule 15.290.

⁸ Fla. R. for Qualified and Ct. Appointed Parenting Coordinators Rule 15.300.

⁹ *Id.*

¹⁰ Fla. R. for Qualified and Ct. Appointed Parenting Coordinators Rule 15.320.

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

Judicial Retirement Age

Background

The Florida Constitution mandates the retirement age for judges.¹¹ In the 2018 General Election, voters approved an amendment to the Florida Constitution that increased the retirement age from 70 to 75.¹²

Effect of Proposed Changes

The bill revises references to the judicial retirement age in s. 121.052(4)(d), F.S. to conform to the newly enacted constitutional amendment.

Electronic Recording of Judgments and Fingerprints

Background

Every judgment adjudicating a person guilty or not guilty of a felony must be in writing, signed by the judge, and recorded by the clerk of court.¹³ When a defendant is convicted of a felony, the defendant's fingerprints must be taken in open court and affixed to the judgment, along with the defendant's social security number.¹⁴ The judgment is admissible in court as prima facie evidence that the fingerprints on the judgment are the fingerprints of the defendant who was convicted of the felony.¹⁵ A defendant convicted of petit theft or a crime involving prostitution is also subject to the fingerprinting requirement.¹⁶

Effect of Proposed Changes

The bill permits the electronic recording of criminal judgments in felony, petit theft, and chapter 796 (prostitution) cases. For a judgment to be electronically recorded, it must contain the judge's electronic signature¹⁷ and be recorded by the clerk of court.

For a defendant's fingerprints to be taken electronically, the fingerprints must be electronically captured and the judge must certify that the digital fingerprint record associated with the corresponding transaction control number¹⁸ contains the fingerprints of the defendant. This ensures the record accurately matches a defendant to his or her fingerprints. Digital recording of fingerprints will improve the efficiency of criminal history checks, standardize criminal justice data collection, and simplify the storage of records. With this authorization, the state courts system is eligible for federal grants to pay for the hardware and infrastructure needed to collect and store digital fingerprints.

The bill reenacts s. 775.084, F.S., to incorporate the electronic fingerprint provisions of the bill.

¹¹ Art. V, s. 8, Fla. Const.

¹² *Id.*

¹³ S. 921.241, F.S.

¹⁴ *Id.*

¹⁵ S. 921.241(3), F.S.

¹⁶ Ss. 812.014(3)(d)1., F.S. and 921.242, F.S.

¹⁷ "Electronic signature" means 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. S. 933.40(1)(d), F.S.

¹⁸ "Transaction control number" means 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.

B. SECTION DIRECTORY:

Section 1: Amends s. 25.386, F.S., relating to foreign language court interpreters.

Section 2: Amends s. 44.106, F.S., relating to standards and procedures for mediators and arbitrators; fees.

Section 3: Amends s. 61.125, F.S., relating to parenting coordination.

Section 4: Amends s. 121.052, F.S., relating to membership class of elected officers.

Section 5: Amends s. 812.014, F.S., relating to theft.

Section 6: Amends s. 921.241, F.S., relating to felony judgments; fingerprints and social security number required in record.

Section 7: Amends s. 921.242, F.S., relating to subsequent offenses under chapter 796; method of proof applicable.

Section 8: Reenacts s. 775.084, F.S., relating to violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms.

Section 9: Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

At present, applicants for court interpreter or mediator certification do not pay for criminal history background checks. The bill requires applicants to undergo a fingerprint-based state and national criminal history background check, which requires applicants to pay FDLE a fingerprint processing fee of \$37.25.

The bill permits the courts to implement an electronic fingerprinting and judgment process. Circuits that wish to implement this electronic recordkeeping will need to procure electronic Live Scan fingerprinting technology. However, federal grant money may be available to cover expenses of procurement and implementation. The courts are not seeking any state funding for this purpose.¹⁹ Costs may be offset further by workload reductions resulting from the increased efficiency of the electronic system.

¹⁹ Email from Sarah Naf Biehl, Chief of Legislative Affairs, Office of the State Courts Administrator, HB 7081, March 22, 2019.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 9, 2019, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment reenacted s. 775.084, F.S., to incorporate the electronic fingerprint provisions of the bill.

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