

Tab 1	SB 356 by Hutson ; (Similar to H 0387) Mental or Physical Disabilities					
Tab 2	SB 850 by Bradley ; (Similar to H 0549) Offenses Concerning Racketeering and Illegal Debts					
Tab 3	CS/SB 936 by CJ, Ring ; (Compare to CS/CS/H 1043) Criminal Justice System Interviews of Persons with Autism, an Autism Spectrum Disorder, or a Related Developmental Disability					
479128	D	S	RCS	ACJ, Hutson	Delete everything after	02/19 03:57 PM
Tab 4	SB 1212 by Flores ; (Compare to CS/H 0949) Appointed Counsel for Children					
545258	D	S	L RCS	ACJ, Flores	Delete everything after	02/19 03:57 PM
Tab 5	CS/SB 1256 by CJ, Brandes ; (Identical to CS/H 1149) Alternative Sanctioning					
Tab 6	CS/SB 1454 by EP, Hutson ; (Similar to CS/H 0703) Vessels					
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Tab 8	SB 7046 by TR (CO-INTRODUCERS) Thompson, Joyner ; (Similar to CS/H 0207) Penalties and Fees					

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
APPROPRIATIONS SUBCOMMITTEE ON CRIMINAL AND
CIVIL JUSTICE
Senator Negrón, Chair
Senator Joyner, Vice Chair

MEETING DATE: Wednesday, February 17, 2016
TIME: 10:00 a.m.—12:00 noon
PLACE: Mallory Horne Committee Room, 37 Senate Office Building

MEMBERS: Senator Negrón, Chair; Senator Joyner, Vice Chair; Senators Bradley, Evers, Flores, Hutson, and Soto

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 356 Hutson (Similar H 387)	Mental or Physical Disabilities; Citing this act as "Carl's Law"; deleting enhanced penalties for crimes evidencing prejudice based on mental or physical disability; deleting the definition of the term "mental or physical disability"; defining the term "mental or physical disability"; creating enhanced penalties for crimes evidencing prejudice based on mental or physical disability, etc. CJ 02/01/2016 Favorable ACJ 02/17/2016 Favorable AP	Favorable Yeas 7 Nays 0
2	SB 850 Bradley (Similar H 549)	Offenses Concerning Racketeering and Illegal Debts; Specifying the earliest date that incidents constituting a pattern of racketeering activity may have occurred; authorizing an investigative agency to institute a civil proceeding for forfeiture in a circuit court in certain circumstances; authorizing a court to order the forfeiture of other property of the defendant up to the value of unavailable property in certain circumstances; deleting the definition of "investigative agency" for purposes of provisions relating to civil investigative subpoenas, etc. CJ 02/01/2016 Favorable ACJ 02/11/2016 Not Considered ACJ 02/17/2016 Favorable AP	Favorable Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations Subcommittee on Criminal and Civil Justice
 Wednesday, February 17, 2016, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	CS/SB 936 Criminal Justice / Ring (Compare CS/CS/H 1043)	Criminal Justice System Interviews of Persons with Autism, an Autism Spectrum Disorder, or a Related Developmental Disability; Citing this act as the "The Wes Kleinert Fair Interview Act"; encouraging the use of certain state-of-the-art digital devices for the purposes of identification and notification; requiring that certain professionals with experience in treating, teaching, or assisting persons with autism, an autism spectrum disorder, or a related developmental disability be present during an interview of a person with autism, an autism spectrum disorder, or a related developmental disability conducted by specified persons unless extenuating circumstances exist, etc. CJ 02/01/2016 Fav/CS ACJ 02/11/2016 Not Considered ACJ 02/17/2016 Fav/CS AP	Fav/CS Yeas 4 Nays 2
4	SB 1212 Flores (Compare CS/H 949)	Appointed Counsel for Children; Revising the conditions under which an attorney must be appointed for a dependent child; requiring the Justice Administrative Commission to contract with a not-for-profit organization to establish the Quality Counsel Program, etc. JU 01/26/2016 Favorable ACJ 02/17/2016 Fav/CS AP	Fav/CS Yeas 7 Nays 0
5	CS/SB 1256 Criminal Justice / Brandes (Identical CS/H 1149)	Alternative Sanctioning; Authorizing the chief judge of each judicial circuit, in consultation with specified entities, to establish an alternative sanctioning program; authorizing an offender who allegedly committed a technical violation of supervision to waive participation in or elect to participate in the program, admit to the violation, agree to comply with the recommended sanction, and agree to waive certain rights; authorizing the court to impose the recommended sanction or direct the Department of Corrections to submit a violation report, affidavit, and warrant to the court; specifying that an offender's participation in an alternative sanctioning program is voluntary, etc. CJ 02/01/2016 Fav/CS ACJ 02/11/2016 Not Considered ACJ 02/17/2016 Favorable AP	Favorable Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations Subcommittee on Criminal and Civil Justice
Wednesday, February 17, 2016, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	CS/SB 1454 Environmental Preservation and Conservation / Hutson (Similar CS/H 703)	Vessels; Requiring the issuance and use of a safety inspection decal under certain circumstances; prohibiting law enforcement officers from stopping a vessel for a specified purpose under certain circumstances; providing an exception, etc. EP 02/09/2016 Fav/CS ACJ 02/17/2016 Favorable FP	Favorable Yeas 7 Nays 0
7	SB 7044 Governmental Oversight and Accountability	Retirement Benefits for Certain Judges; Authorizing certain retired members of the Florida Retirement System subsequently serving in a specified judicial office covered by the Elected Officers' Class to transfer all or a portion of benefits and interest accrued during participation in the Deferred Retirement Option Program to the investment plan; requiring the State Board of Administration and the Department of Management Services to request a private letter ruling from the United States Internal Revenue Service, etc. ACJ 02/17/2016 Favorable AP	Favorable Yeas 7 Nays 0
8	SB 7046 Transportation (Similar CS/H 207, Compare CS/H 835, S 1522)	Penalties and Fees; Revising requirements relating to the payment of court-related fines or other monetary penalties, fees, charges, and costs; requiring traffic citation forms to include certain language relating to payment of a penalty; requiring a court to inquire regarding a person's ability to pay at the time a certain civil penalty is ordered; decreasing the period for revocation or suspension of, or delay of eligibility for, driver licenses or driving privileges for certain persons convicted of certain drug offenses, etc. ACJ 02/11/2016 Not Considered ACJ 02/17/2016 Favorable AP	Favorable Yeas 7 Nays 0
	Discussion related to operation of community work release centers and re-entry centers in the Department of Corrections.		Discussed
	Other Related Meeting Documents		

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: SB 356

INTRODUCER: Senator Hutson

SUBJECT: Mental or Physical Disabilities

DATE: February 17, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Favorable
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 356 removes prejudice based on mental or physical disability as a factor for reclassifying a criminal offense or having a civil cause of action under s. 775.085, F.S., Florida's hate crimes statute. Section 775.085, F.S., reclassifies the felony or misdemeanor degree of an offense if the commission of the offense evidences prejudice based on any of ten specified characteristics of the victim, including mental or physical disability. It also provides that a person or organization who is coerced, intimidated, or threatened in violation of the statute has a civil cause of action. The bill creates a new section of law, s. 775.0851, F.S., which may be cited as "Carl's Law," to establish a separate hate crime statute specifically for crimes evidencing prejudice based on mental or physical disability. This new section's language is substantively identical to the language currently in s. 775.085, F.S., with respect to evidencing prejudice based on mental or physical disability.

The Criminal Justice Impact Conference estimates that SB 356 will not have a prison bed impact.

The effective date of the bill is October 1, 2016.

II. Present Situation:

Section 775.085, F.S., Florida's hate crimes statute, reclassifies the felony or misdemeanor degree of an offense if the commission of the offense evidences prejudice based on race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, *mental or physical disability*,¹ or advanced age of the victim.² It is an essential element of proof for the record to reflect that the defendant perceived, knew, or had reasonable grounds to know or

¹ "Mental or physical disability" means that the victim suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, and has one or more physical or mental limitations that restrict the victim's ability to perform the normal activities of daily living. Section 775.085(1)(b)1., F.S.

² Section 775.08(1), F.S.

perceive that the victim was within one of the delineated classes.³ This is commonly referred to as the “hate crime” statute. Offenses are reclassified as follows:

- A second degree misdemeanor⁴ is reclassified to a first degree misdemeanor.⁵
- A first degree misdemeanor is reclassified to a third degree felony.⁶
- A third degree felony is reclassified to a second degree felony.⁷
- A second degree felony is reclassified to a first degree felony.⁸
- A first degree felony is reclassified to a life felony.⁹

Reclassification of the degree of an offense increases the minimum and maximum penalties that a judge may impose for an offense.

Section 775.085, F.S., also provides that a person or organization that establishes by clear and convincing evidence that it has been coerced, intimidated, or threatened in violation of this section has a civil cause of action for treble damages, an injunction, or any other appropriate relief in law or in equity. Upon prevailing in such civil action, the plaintiff may recover reasonable attorney’s fees and costs.¹⁰

It is an essential element of proof in either a criminal or civil action under the statute for the record to reflect that the defendant perceived, knew, or had reasonable grounds to know or perceive that the victim was within one of the delineated classes.¹¹

III. Effect of Proposed Changes:

The bill removes prejudice based on mental or physical disability as a factor for reclassifying an offense or having a civil cause of action under s. 775.085, F.S., Florida’s hate crimes statute. The bill creates a new section of law, s. 775.0851, F.S., which may be cited as “Carl’s Law,” to establish a separate hate crime statute specifically for crimes evidencing prejudice based on mental or physical disability. This new section’s language is substantively identical to the language currently in s. 775.085, F.S., with respect to evidencing prejudice based on mental or physical disability. This highlights the offense by placing it in a separate statutory section, but does not change the effect of the law.

³ Section. 775.085(3), F.S.

⁴ A second degree misdemeanor is punishable by up to 60 days in county jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

⁵ A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

⁶ A third degree felony is punishable by up to five years in state prison and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S. However, if the third degree felony is not a forcible felony (excluding any third degree felony violation under ch. 810, F.S.) and if total sentence points are 22 points or fewer, the court must sentence the defendant to a nonstate prison sanction, unless the court makes written findings that a nonstate prison sanction could present a danger to the public. Section 775.082(10), F.S.

⁷ A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

⁸ A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

⁹ A life felony is generally punishable by life imprisonment or a term of years not exceeding life imprisonment and a fine of up to \$15,000. Sections 775.082 and 775.083, F.S.

¹⁰ Section 775.085(2), F.S.

¹¹ Section 775.085(3), F.S.

The effective date of the bill is October 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the official estimate of the prison bed impact, if any, of legislation, estimates that SB 356 will not have a prison bed impact. There will also be no fiscal impact in other areas of the criminal or civil justice systems.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the Florida Attorney General's Office, in 2014 (the latest year for which data is reported), there were two reported hate crimes in Florida motivated by the victim's mental disability (2.7% of reported hate crimes). No hate crimes were reported under the physical disability category.¹²

¹² *Hate Crimes in Florida (January 1, 2014 – December 31, 2014)*, Florida Attorney General's Office, [http://myfloridalegal.com/webfiles.nsf/WF/MNOS-A5QNXL/\\$file/2014HateCrimesinFloridaReport.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MNOS-A5QNXL/$file/2014HateCrimesinFloridaReport.pdf) (last visited on February 11, 2016).

In August 2015, a thirty-six-year-old autistic St. Augustine resident named Carl Starke was followed home and murdered by several individuals who were reportedly looking for cars to steal.¹³ During the investigation that resulted in the days following Carl Starke's murder, the St. Johns County Sheriff, David Shoar, stated that Starke was victimized because he was seen as a "soft target" by these individuals.¹⁴

VIII. Statutes Affected:

This bill substantially amends section 775.085 of the Florida Statutes.

This bill creates section 775.0851 of the Florida Statutes.:

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

¹³ Jenna Carpenter, "Shoar: Suspects in Vista Cove Killing Targeted Autistic Man," *The St. Augustine Record* (August 21, 2015), <http://staugustine.com/news/local-news/2015-08-21/two-suspects-identified-tuesday-homicide#.Vk9nSk3ltHh> (last visited on February 11, 2016).

¹⁴ *Id.*

By Senator Hutson

6-00364-16

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1 A bill to be entitled
2 An act relating to mental or physical disabilities;
3 providing a short title; amending s. 775.085, F.S.;
4 deleting enhanced penalties for crimes evidencing
5 prejudice based on mental or physical disability;
6 deleting the definition of the term "mental or
7 physical disability"; creating s. 775.0851, F.S.;
8 defining the term "mental or physical disability";
9 creating enhanced penalties for crimes evidencing
10 prejudice based on mental or physical disability;
11 creating a cause of action for a person or
12 organization that is threatened with certain
13 violations; providing an essential element for such
14 cause of action; providing an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. This act may be cited as "Carl's Law."

19 Section 2. Subsection (1) of section 775.085, Florida
20 Statutes, is amended to read:

21 775.085 Evidencing prejudice while committing offense;
22 reclassification.-

23 (1) (a) The penalty for any felony or misdemeanor shall be
24 reclassified as provided in this subsection if the commission of
25 such felony or misdemeanor evidences prejudice based on the
26 race, color, ancestry, ethnicity, religion, sexual orientation,
27 national origin, homeless status, ~~mental or physical disability,~~
28 or advanced age of the victim:

29 1. A misdemeanor of the second degree is reclassified to a

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30 misdemeanor of the first degree.

31 2. A misdemeanor of the first degree is reclassified to a
32 felony of the third degree.

33 3. A felony of the third degree is reclassified to a felony
34 of the second degree.

35 4. A felony of the second degree is reclassified to a
36 felony of the first degree.

37 5. A felony of the first degree is reclassified to a life
38 felony.

39 (b) As used in paragraph (a), the term:

40 ~~1. "Mental or physical disability" means that the victim~~
41 ~~suffers from a condition of physical or mental incapacitation~~
42 ~~due to a developmental disability, organic brain damage, or~~
43 ~~mental illness, and has one or more physical or mental~~
44 ~~limitations that restrict the victim's ability to perform the~~
45 ~~normal activities of daily living.~~

46 1.2. "Advanced age" means that the victim is older than 65
47 years of age.

48 2.3. "Homeless status" means that the victim:

49 a. Lacks a fixed, regular, and adequate nighttime
50 residence; or

51 b. Has a primary nighttime residence that is:

52 (I) A supervised publicly or privately operated shelter
53 designed to provide temporary living accommodations; or

54 (II) A public or private place not designed for, or
55 ordinarily used as, a regular sleeping accommodation for human
56 beings.

57 Section 3. Section 775.0851, Florida Statutes, is created
58 to read:

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59 775.0851 Evidencing prejudice while committing offense
60 against persons with mental or physical disabilities;
61 reclassification.-

62 (1) As used in this section, the term "mental or physical
63 disability" means that the victim suffers from a condition of
64 physical or mental incapacitation due to a developmental
65 disability, organic brain damage, or mental illness and has one
66 or more physical or mental limitations that restrict the
67 victim's ability to perform the normal activities of daily
68 living.

69 (2) The penalty for any felony or misdemeanor shall be
70 reclassified as provided in this subsection if the commission of
71 the felony or misdemeanor evidences prejudice based on the
72 mental or physical disability of the victim:

73 (a) A misdemeanor of the second degree is reclassified to a
74 misdemeanor of the first degree.

75 (b) A misdemeanor of the first degree is reclassified to a
76 felony of the third degree.

77 (c) A felony of the third degree is reclassified to a
78 felony of the second degree.

79 (d) A felony of the second degree is reclassified to a
80 felony of the first degree.

81 (e) A felony of the first degree is reclassified to a life
82 felony.

83 (3) A person or organization that establishes by clear and
84 convincing evidence that it has been coerced, intimidated, or
85 threatened in violation of this section has a civil cause of
86 action for treble damages, an injunction, or any other
87 appropriate relief in law or in equity. Upon prevailing in such

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88 civil action, the plaintiff may recover reasonable attorney fees
89 and costs.

90 (4) It is an essential element of this section that the
91 record reflect that the defendant perceived, knew, or had
92 reasonable grounds to know or perceive that the victim had a
93 mental or physical disability.

94 Section 4. This act shall take effect October 1, 2016.



The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Appropriations Subcommittee on Criminal and Civil Justice

Subject: Committee Agenda Request

Date: February 4, 2016

I respectfully request that **Senate Bill #356**, relating to Mental or Physical Disabilities , be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in blue ink that reads "Travis Hutson".

Senator Travis Hutson
Florida Senate, District 6

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: SB 850

INTRODUCER: Senator Bradley

SUBJECT: Offenses Concerning Racketeering and Illegal Debts

DATE: February 17, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Favorable
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 850 amends civil enforcement provisions of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act. Major features of the bill include:

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

- Providing that an investigative subpoena issued pursuant to the Florida RICO Act is confidential for 120 days after the date of issuance, unless extended by the court upon a showing of good cause by the investigating agency;
- Providing that the list of claims for which a court directs distribution of forfeiture funds includes claims for restitution by RICO victims; and
- Providing that where the forfeiture action was brought by the Department of Legal Affairs, the restitution is distributed through the Legal Affairs Trust Fund (otherwise, the restitution is distributed by the clerk of the circuit court).

The Department of Legal Affairs indicates that the new civil penalties for Florida RICO Act violations may have an indeterminate positive revenue impact on the General Revenue Fund. Changes regarding recovery of the value of property subject to forfeiture that has become unavailable may also increase forfeiture proceeds by an indeterminate amount.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Florida RICO Act

The “Florida RICO Act” is the short title for ss. 895.01-895.06, F.S. “Racketeering activity” means committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any of a number of offenses listed in the definition.¹ Section 895.03, F.S., punishes as a first degree felony:

- With criminal intent receiving any proceeds derived, directly or indirectly, from a pattern of racketeering activity² or through the collection of an unlawful debt³ to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise;⁴
- Through a pattern of racketeering activity or through the collection of an unlawful debt, acquiring or maintaining, directly or indirectly, any interest in or control of any enterprise or real property;

¹ Section 895.02(1), F.S. These offenses include violations of specified Florida laws (e.g., Medicaid fraud, kidnapping, human trafficking, and drug offenses) as well as any conduct defined as “racketeering activity” under 18 U.S.C. § 1961(1).

² “Pattern of racketeering activity” means engaging in at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurred after the effective date of this act and that the last of such incidents occurred within five years after a prior incident of racketeering conduct. Section 895.02(4), F.S.

³ An “unlawful debt” is any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted in violation of any law listed in the definition. Section 895.02(2), F.S. These offenses include violations of specified Florida laws (e.g., various gambling offenses) as well as any gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law.

⁴ An “enterprise” is any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity. The definition includes: illicit as well as licit enterprises; governmental, as well as other, entities; and a criminal gang, as defined in s. 874.03, F.S. Section 895.02(3), F.S.

- If employed by, or associated with, any enterprise, conducting or participating, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt; and
- Conspiring or endeavoring to violate any of the aforementioned unlawful acts.⁵

In addition to criminal penalties, the Florida RICO Act imposes civil liability for violations of the act, including forfeiture to the state of all property, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of the act.⁶

Recovery of Property Unavailable for Forfeiture

Section 895.05, F.S., provides that if property subject to forfeiture is conveyed, alienated, disposed of, or otherwise rendered unavailable for forfeiture after the filing of a RICO lien notice⁷ or after the filing of a civil or criminal proceeding pursuant to the act, whichever is earlier, an investigative agency may institute an action to recover an amount equal to the fair market value of the property, together with investigative costs and attorney's fees incurred by the investigative agency in the action.⁸ “[I]f a defendant conveys or otherwise disposes of property subject to forfeiture before the filing of a civil RICO action or the filing of a RICO lien notice, or if the property's value has been diminished, no money judgment can be obtained against the defendant for the dissipated or devalued property and the property in question cannot be forfeited.”⁹

Investigative Subpoenas

Section 895.06, F.S., provides that an investigating agency may subpoena witnesses or materials during the course of a civil enforcement investigation. “The purpose of the subpoena power under section 895.06 is to allow an investigative agency to investigate, collect evidence and determine if a RICO violation has occurred.”¹⁰ An investigative agency may apply ex parte to a circuit court for an order directing that a person or entity who has been subpoenaed not disclose the existence of the subpoena for a period of 90 days to anyone except the attorney for the subpoenaed person or entity.¹¹ The 90-day time limit may be extended by the court for good cause shown by the investigative agency.¹²

⁵ Section 895.03(1)-(4), F.S. (prohibited activities).

⁶ Section 895.05(2), F.S.

⁷ An investigative agency may file a RICO lien notice in the county records when it initiates a civil proceeding. The RICO lien notice creates a lien in favor of the state on the real property or beneficial interest situated in the county where the lien is filed. Section 895.07, F.S. An “investigative agency” is the Department of Legal Affairs, the Office of Statewide Prosecution, or the office of a state attorney. Section 895.02(7), F.S.

⁸ Section 895.05(2), F.S.

⁹ Analysis of SB 850 (January 20, 2016), Department of Legal Affairs (on file with the Senate Committee on Criminal Justice). This analysis is cited hereafter as “Department of Legal Affairs Analysis.”

¹⁰ *Check 'N Go of Florida, Inc. v. State*, 790 So.2d 454, 457 (Fla. 5th DCA 2001).

¹¹ Section 895.06(3), F.S. “Investigative subpoenas issued by the enforcement agency can be disclosed unless the agency obtains a court order preventing disclosure of the subpoena for 90 days.” Department of Legal Affairs Analysis.

¹² *Id.*

Omissions Relevant to Civil Enforcement

Current law does not:

- Specify where an action may be filed if personal property involved in a Florida RICO Act violation is subject to forfeiture;
- Address civil penalties in a Florida RICO Act enforcement action;
- Address consent decrees or settlement agreements in civil actions for Florida RICO Act violations; and
- Authorize restitution to RICO victims.

Public Records Exemption

In 2015, the Legislature created s. 895.06(7), F.S.¹³ Section 895.06(7)(a), F.S., provides that information held by an investigative agency pursuant to an investigation of a violation of s. 895.03, F.S., is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Information made confidential and exempt under paragraph (a) may be disclosed by the investigative agency to a government entity in the performance of its official duties and to a court or tribunal.¹⁴ This information is no longer confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law.¹⁵ An investigation is considered complete once the investigative agency either files an action or closes its investigation without filing an action.¹⁶

III. Effect of Proposed Changes:

The bill amends civil enforcement provisions of the Florida RICO Act to:

- Authorize an investigative agency, on behalf of the state, to institute a RICO civil proceeding for forfeiture in the circuit court for the judicial circuit in which the real or personal tangible property¹⁷ is located, or in a circuit court in the state for intangible property;¹⁸
- Authorize an investigative agency to pursue an action to recover fair market value of unavailable property regardless of when the property is conveyed, alienated, disposed of, diminished in value, or otherwise rendered unavailable for forfeiture;
- Authorize a court to order the forfeiture of any other property of the defendant up to the value of the unavailable property (as an alternative to the court ordering forfeiture of an amount equal to the fair market value of the unavailable property);
- Authorize the Department of Legal Affairs to bring an action for a Florida RICO Act violation to obtain injunctive relief, civil penalties, attorney fees, and costs incurred in the investigation and prosecution of any action under the Florida RICO Act;

¹³ Ch. 2015-99, L.O.F.

¹⁴ Section 895.06(7)(b), F.S.

¹⁵ Section 895.06(7)(c), F.S.

¹⁶ Section 895.06(7)(d), F.S.

¹⁷ The bill states that the terms “real or personal tangible property” and “intangible property” are described in s. 895.05(2)(a), F.S. This paragraph states that all property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of a provision of ss. 895.01-895.05, F.S., is subject to civil forfeiture to the state.

¹⁸ *Id.*

- Provide that a natural person who violates the Florida RICO Act may be subject to a civil penalty of up to \$100,000 and any other person who violates the act may be subject to a civil penalty of up to \$1 million and require that moneys recovered for civil penalties be deposited into the General Revenue Fund;
- Require that moneys recovered by the Department of Legal Affairs for attorney fees and costs under the Florida Rico Act be deposited into the Legal Affairs Revolving Trust Fund and authorize use of those funds to investigate Florida RICO Act violations and enforce the act;
- Authorize any party to a Florida RICO Act civil action to petition the court for entry of a consent decree or for approval of a settlement agreement;
- Require that the proposed decree or settlement specify the alleged violations, the future obligations of the parties, the relief agreed upon, and the reasons for entering into the consent decree or settlement agreement;
- Provide that current law relating to the suspension of the running of the period of limitations with respect to certain causes of action will apply to actions for injunctive relief, civil penalties, attorney fees, and costs incurred in the investigation and prosecution of any Florida RICO Act violation;¹⁹
- Provide that an investigative subpoena issued pursuant to the Florida RICO Act is confidential for 120 days after the date of issuance, unless the period is extended by the court upon a showing of good cause by the investigating agency;
- Prohibit a subpoenaed person or entity from disclosing the existence of the subpoena to any person or entity other than the attorney of the subpoenaed person or entity during the 120-day period;
- Require that the subpoena include a reference to the confidentiality of the subpoena and a notice to the recipient of the subpoena that disclosure of the existence of the subpoena to any person or entity other than the attorney of the subpoenaed person or entity is prohibited;
- Authorize an investigative agency to stipulate to protective orders with respect to documents and information submitted in response to an investigative subpoena;
- Provide that the list of claims for which a court directs distribution of forfeiture funds includes claims for restitution by RICO victims; and
- Provide that if the forfeiture action was brought by the Department of Legal Affairs, the restitution is distributed through the Legal Affairs Trust Fund (otherwise, the restitution is distributed by the clerk of the court).

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁹ A criminal or civil action or proceeding under the Florida RICO Act may be commenced at any time within five years after the conduct in violation of the act terminates or the cause of action accrues. If a criminal prosecution or civil action or other proceeding is brought, or intervened in, to punish, prevent, or restrain any violation of the act, the running of the period of limitations prescribed with respect to certain causes of action (e.g., an action for damages brought by the state) which is based in whole or in part upon any matter complained of in any such prosecution, action, or proceeding is suspended during the pendency of such prosecution, action, or proceeding and for two years following its termination. Section 895.05(10), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Department of Legal Affairs, “[t]he civil penalties of up to \$100,000 for a natural person and up to \$1 million for any other person for RICO Act violations created by the bill may have an indeterminate positive revenue impact on the General Revenue Fund.”²⁰ Changes regarding recovery of the value of property subject to forfeiture that has become unavailable may also increase forfeiture proceeds by an indeterminate amount.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 16.53, 16.56, 895.05, 895.06, 895.09, and 905.34, Florida Statutes.

This bill reenacts provisions of the sections 16.53, 27.345, and 92.142, Florida Statutes to incorporate the amendment made to s. 895.05, F.S, in references to that statute.

²⁰ Department of Legal Affairs Analysis, *supra* note 9.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

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

By Senator Bradley

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1 A bill to be entitled
2 An act relating to offenses concerning racketeering
3 and illegal debts; reordering and amending s. 895.02,
4 F.S.; specifying the earliest date that incidents
5 constituting a pattern of racketeering activity may
6 have occurred; conforming a cross-reference; amending
7 s. 895.05, F.S.; authorizing an investigative agency
8 to institute a civil proceeding for forfeiture in a
9 circuit court in certain circumstances; adding
10 diminution in value as a ground for an action under
11 certain circumstances; removing certain grounds for an
12 action; authorizing a court to order the forfeiture of
13 other property of the defendant up to the value of
14 unavailable property in certain circumstances;
15 authorizing the Department of Legal Affairs to bring
16 an action for certain violations to obtain specified
17 relief, fees, and costs for certain purposes;
18 providing for civil penalties for natural persons and
19 other persons who commit certain violations; providing
20 for deposit of moneys received for certain violations;
21 authorizing a party to a specific civil action to
22 petition the court for entry of a consent decree or
23 for approval of a settlement agreement; providing
24 requirements for such decrees or agreements; amending
25 s. 895.06, F.S.; deleting the definition of
26 "investigative agency" for purposes of provisions
27 relating to civil investigative subpoenas; providing
28 that a subpoena must be confidential for a specified
29 time; restricting to whom the subpoenaed person or

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30 entity may disclose the existence of the subpoena;
31 requiring certain information be included in the
32 subpoena; authorizing the investigative agency to
33 apply for an order extending the amount of time the
34 subpoena remains confidential rather than having it
35 extended by the court for a specified period;
36 providing that the investigative agency has the
37 authority to stipulate to protective orders with
38 respect to documents and information submitted in
39 response to a subpoena; amending s. 895.09, F.S.;
40 conforming a cross-reference; providing for
41 distribution of forfeiture proceeds to victims;
42 amending ss. 16.56 and 905.34, F.S.; conforming cross-
43 references; amending s. 16.53, F.S., and reenacting
44 subsection (4) and paragraph (5)(a), relating to the
45 Legal Affairs Revolving Trust Fund, to incorporate the
46 amendment made by the act to s. 895.05, F.S., a
47 reference thereto; conforming a cross-reference;
48 reenacting ss. 27.345(1) and 92.142(3), F.S., relating
49 to the State Attorney RICO Trust Fund and witness pay,
50 respectively, to incorporate the amendment made by the
51 act to s. 895.05, F.S., in references thereto;
52 providing an effective date.

53
54 Be It Enacted by the Legislature of the State of Florida:

55
56 Section 1. Section 895.02, Florida Statutes, is reordered
57 and amended to read:

58 895.02 Definitions.—As used in ss. 895.01-895.08, the term:

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59 (8)~~(1)~~ "Racketeering activity" means to commit, to attempt
60 to commit, to conspire to commit, or to solicit, coerce, or
61 intimidate another person to commit:

62 (a) Any crime that is chargeable by petition, indictment,
63 or information under the following provisions of the Florida
64 Statutes:

65 1. Section 210.18, relating to evasion of payment of
66 cigarette taxes.

67 2. Section 316.1935, relating to fleeing or attempting to
68 elude a law enforcement officer and aggravated fleeing or
69 eluding.

70 3. Section 403.727(3)(b), relating to environmental
71 control.

72 4. Section 409.920 or s. 409.9201, relating to Medicaid
73 fraud.

74 5. Section 414.39, relating to public assistance fraud.

75 6. Section 440.105 or s. 440.106, relating to workers'
76 compensation.

77 7. Section 443.071(4), relating to creation of a fictitious
78 employer scheme to commit reemployment assistance fraud.

79 8. Section 465.0161, relating to distribution of medicinal
80 drugs without a permit as an Internet pharmacy.

81 9. Section 499.0051, relating to crimes involving
82 contraband and adulterated drugs.

83 10. Part IV of chapter 501, relating to telemarketing.

84 11. Chapter 517, relating to sale of securities and
85 investor protection.

86 12. Section 550.235 or s. 550.3551, relating to dogracing
87 and horseracing.

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- 88 13. Chapter 550, relating to jai alai frontons.
- 89 14. Section 551.109, relating to slot machine gaming.
- 90 15. Chapter 552, relating to the manufacture, distribution,
91 and use of explosives.
- 92 16. Chapter 560, relating to money transmitters, if the
93 violation is punishable as a felony.
- 94 17. Chapter 562, relating to beverage law enforcement.
- 95 18. Section 624.401, relating to transacting insurance
96 without a certificate of authority, s. 624.437(4)(c)1., relating
97 to operating an unauthorized multiple-employer welfare
98 arrangement, or s. 626.902(1)(b), relating to representing or
99 aiding an unauthorized insurer.
- 100 19. Section 655.50, relating to reports of currency
101 transactions, when such violation is punishable as a felony.
- 102 20. Chapter 687, relating to interest and usurious
103 practices.
- 104 21. Section 721.08, s. 721.09, or s. 721.13, relating to
105 real estate timeshare plans.
- 106 22. Section 775.13(5)(b), relating to registration of
107 persons found to have committed any offense for the purpose of
108 benefiting, promoting, or furthering the interests of a criminal
109 gang.
- 110 23. Section 777.03, relating to commission of crimes by
111 accessories after the fact.
- 112 24. Chapter 782, relating to homicide.
- 113 25. Chapter 784, relating to assault and battery.
- 114 26. Chapter 787, relating to kidnapping or human
115 trafficking.
- 116 27. Chapter 790, relating to weapons and firearms.

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117 28. Chapter 794, relating to sexual battery, but only if
118 such crime was committed with the intent to benefit, promote, or
119 further the interests of a criminal gang, or for the purpose of
120 increasing a criminal gang member's own standing or position
121 within a criminal gang.

122 29. Former s. 796.03, former s. 796.035, s. 796.04, s.
123 796.05, or s. 796.07, relating to prostitution.

124 30. Chapter 806, relating to arson and criminal mischief.

125 31. Chapter 810, relating to burglary and trespass.

126 32. Chapter 812, relating to theft, robbery, and related
127 crimes.

128 33. Chapter 815, relating to computer-related crimes.

129 34. Chapter 817, relating to fraudulent practices, false
130 pretenses, fraud generally, and credit card crimes.

131 35. Chapter 825, relating to abuse, neglect, or
132 exploitation of an elderly person or disabled adult.

133 36. Section 827.071, relating to commercial sexual
134 exploitation of children.

135 37. Section 828.122, relating to fighting or baiting
136 animals.

137 38. Chapter 831, relating to forgery and counterfeiting.

138 39. Chapter 832, relating to issuance of worthless checks
139 and drafts.

140 40. Section 836.05, relating to extortion.

141 41. Chapter 837, relating to perjury.

142 42. Chapter 838, relating to bribery and misuse of public
143 office.

144 43. Chapter 843, relating to obstruction of justice.

145 44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or

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- 146 s. 847.07, relating to obscene literature and profanity.
- 147 45. Chapter 849, relating to gambling, lottery, gambling or
- 148 gaming devices, slot machines, or any of the provisions within
- 149 that chapter.
- 150 46. Chapter 874, relating to criminal gangs.
- 151 47. Chapter 893, relating to drug abuse prevention and
- 152 control.
- 153 48. Chapter 896, relating to offenses related to financial
- 154 transactions.
- 155 49. Sections 914.22 and 914.23, relating to tampering with
- 156 or harassing a witness, victim, or informant, and retaliation
- 157 against a witness, victim, or informant.
- 158 50. Sections 918.12 and 918.13, relating to tampering with
- 159 jurors and evidence.
- 160 (b) Any conduct defined as "racketeering activity" under 18
- 161 U.S.C. s. 1961(1).
- 162 (12)~~(2)~~ "Unlawful debt" means any money or other thing of
- 163 value constituting principal or interest of a debt that is
- 164 legally unenforceable in this state in whole or in part because
- 165 the debt was incurred or contracted:
- 166 (a) In violation of any one of the following provisions of
- 167 law:
- 168 1. Section 550.235 or s. 550.3551, relating to dogracing
- 169 and horseracing.
- 170 2. Chapter 550, relating to jai alai frontons.
- 171 3. Section 551.109, relating to slot machine gaming.
- 172 4. Chapter 687, relating to interest and usury.
- 173 5. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.
- 174 849.25, relating to gambling.

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175 (b) In gambling activity in violation of federal law or in
176 the business of lending money at a rate usurious under state or
177 federal law.

178 (5)~~(3)~~ "Enterprise" means any individual, sole
179 proprietorship, partnership, corporation, business trust, union
180 chartered under the laws of this state, or other legal entity,
181 or any unchartered union, association, or group of individuals
182 associated in fact although not a legal entity; and it includes
183 illicit as well as licit enterprises and governmental, as well
184 as other, entities. A criminal gang, as defined in s. 874.03,
185 constitutes an enterprise.

186 (7)~~(4)~~ "Pattern of racketeering activity" means engaging in
187 at least two incidents of racketeering conduct that have the
188 same or similar intents, results, accomplices, victims, or
189 methods of commission or that otherwise are interrelated by
190 distinguishing characteristics and are not isolated incidents,
191 provided at least one of such incidents occurred after October
192 1, 1977, ~~the effective date of this act~~ and that the last of
193 such incidents occurred within 5 years after a prior incident of
194 racketeering conduct.

195 (4)~~(5)~~ "Documentary material" means any book, paper,
196 document, writing, drawing, graph, chart, photograph,
197 phonorecord, magnetic tape, computer printout, other data
198 compilation from which information can be obtained or from which
199 information can be translated into usable form, or other
200 tangible item.

201 (10)~~(6)~~ "RICO lien notice" means the notice described in s.
202 895.05(13) ~~s. 895.05(12)~~ or in s. 895.07.

203 (6)~~(7)~~ "Investigative agency" means the Department of Legal

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204 Affairs, the Office of Statewide Prosecution, or the office of a
205 state attorney.

206 (1)~~(8)~~ "Beneficial interest" means any of the following:

207 (a) The interest of a person as a beneficiary under a trust
208 established pursuant to s. 689.07 or s. 689.071 in which the
209 trustee for the trust holds legal or record title to real
210 property;

211 (b) The interest of a person as a beneficiary under any
212 other trust arrangement pursuant to which a trustee holds legal
213 or record title to real property for the benefit of such person;
214 or

215 (c) The interest of a person under any other form of
216 express fiduciary arrangement pursuant to which any other person
217 holds legal or record title to real property for the benefit of
218 such person.

219
220 The term "beneficial interest" does not include the interest of
221 a stockholder in a corporation or the interest of a partner in
222 either a general partnership or a limited partnership. A
223 beneficial interest shall be deemed to be located where the real
224 property owned by the trustee is located.

225 (9) "Real property" means any real property or any interest
226 in such real property, including, but not limited to, any lease
227 of or mortgage upon such real property.

228 (11)~~(10)~~ "Trustee" means any of the following:

229 (a) Any person acting as trustee pursuant to a trust
230 established under s. 689.07 or s. 689.071 in which the trustee
231 holds legal or record title to real property.

232 (b) Any person who holds legal or record title to real

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233 property in which any other person has a beneficial interest.

234 (c) Any successor trustee or trustees to any or all of the
235 foregoing persons.

236
237 However, the term "trustee" does not include any person
238 appointed or acting as a personal representative as defined in
239 s. 731.201 or appointed or acting as a trustee of any
240 testamentary trust or as a trustee of any indenture of trust
241 under which any bonds have been or are to be issued.

242 (3)~~(11)~~ "Criminal proceeding" means any criminal proceeding
243 commenced by an investigative agency under s. 895.03 or any
244 other provision of the Florida RICO Act.

245 (2)~~(12)~~ "Civil proceeding" means any civil proceeding
246 commenced by an investigative agency under s. 895.05 or any
247 other provision of the Florida RICO Act.

248 Section 2. Subsections (2), (5), and (8) through (12) of
249 section 895.05, Florida Statutes, are amended to read:

250 895.05 Civil remedies.—

251 (2) (a) All property, real or personal, including money,
252 used in the course of, intended for use in the course of,
253 derived from, or realized through conduct in violation of a
254 ~~provision of~~ ss. 895.01-895.05 is subject to civil forfeiture to
255 the state.

256 (b) An investigative agency may, on behalf of the state,
257 institute a civil proceeding for forfeiture in the circuit court
258 for the judicial circuit in which the real or personal tangible
259 property, as described in paragraph (a), is located. An
260 investigative agency may, on behalf of the state, institute a
261 civil proceeding for forfeiture in a circuit court in the state

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262 regarding intangible property as described in paragraph (a).

263 (c) Upon the entry of a final judgment of forfeiture in
264 favor of the state, the title of the state to the forfeited
265 property shall relate back:

266 1. In the case of real property or a beneficial interest,
267 to the date of filing of the RICO lien notice in the official
268 records of the county where the real property or beneficial
269 trust is located; if no RICO lien notice is filed, then to the
270 date of the filing of any notice of lis pendens under s.
271 895.07(5) (a) in the official records of the county where the
272 real property or beneficial interest is located; and if no RICO
273 lien notice or notice of lis pendens is filed, then to the date
274 of recording of the final judgment of forfeiture in the official
275 records of the county where the real property or beneficial
276 interest is located.

277 2. In the case of personal property, to the date the
278 personal property was seized by the investigating agency.

279 (d) If property subject to forfeiture is conveyed,
280 alienated, disposed of, diminished in value, or otherwise
281 rendered unavailable for forfeiture ~~after the filing of a RICO~~
282 ~~lien notice or after the filing of a civil proceeding or~~
283 ~~criminal proceeding, whichever is earlier~~, the investigative
284 agency may, on behalf of the state, institute an action in any
285 circuit court against the person named in the RICO lien notice
286 or the defendant in the civil proceeding or criminal proceeding,
287 and the court shall enter final judgment against the person
288 named in the RICO lien notice or the defendant in the civil
289 proceeding or criminal proceeding in an amount equal to the fair
290 market value of the property, together with investigative costs

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291 and attorney ~~attorney's~~ fees incurred by the investigative
292 agency in the action. As an alternative, the court may order the
293 forfeiture of any other property of a defendant up to the value
294 of the property subject to forfeiture. If a civil proceeding is
295 pending, such action shall be filed only in the court where the
296 civil proceeding is pending.

297 (e) ~~(e)~~ The state shall dispose of all forfeited property as
298 soon as commercially feasible. If property is not exercisable or
299 transferable for value by the state, it shall expire. All
300 forfeitures or dispositions under this section shall be made
301 with due provision for the rights of innocent persons. The
302 proceeds realized from such forfeiture and disposition shall be
303 promptly distributed in accordance with the provisions of s.
304 895.09.

305 (5) The Department of Legal Affairs, any state attorney, or
306 any state agency having jurisdiction over conduct in violation
307 of a provision of this chapter ~~act~~ may institute civil
308 proceedings under this section. In any action brought under this
309 section, the circuit court shall proceed as soon as practicable
310 to the hearing and determination. Pending final determination,
311 the circuit court may at any time enter such injunctions,
312 prohibitions, or restraining orders, or take such actions,
313 including the acceptance of satisfactory performance bonds, as
314 the court may deem proper.

315 (8) A final judgment or decree rendered in favor of the
316 state in any criminal proceeding under this chapter ~~act~~ or any
317 other criminal proceeding under state law shall estop the
318 defendant in any subsequent civil action or proceeding under
319 this chapter ~~act~~ or under s. 772.104 as to all matters as to

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320 which such judgment or decree would be an estoppel as between
321 the parties.

322 (9) The Department of Legal Affairs may bring an action for
323 a violation of s. 895.03 to obtain injunctive relief, civil
324 penalties as provided in this subsection, attorney fees, and
325 costs incurred in the investigation and prosecution of any
326 action under this chapter.

327 (a) A natural person who violates s. 895.03 is subject to a
328 civil penalty of up to \$100,000. Any other person who violates
329 s. 895.03 is subject to a civil penalty of up to \$1 million.
330 Moneys recovered for civil penalties under this paragraph shall
331 be deposited into the General Revenue Fund.

332 (b) Moneys recovered by the Department of Legal Affairs for
333 attorney fees and costs under this subsection shall be deposited
334 into the Legal Affairs Revolving Trust Fund, which may be used
335 to investigate and enforce this chapter.

336 (c) In a civil action brought under this subsection by the
337 Department of Legal Affairs, any party to such action may
338 petition the court for entry of a consent decree or for approval
339 of a settlement agreement. The proposed decree or settlement
340 shall specify the alleged violations, the future obligations of
341 the parties, the relief agreed upon, and the reasons for
342 entering into the consent decree or settlement agreement.

343 (10)~~(9)~~ The Department of Legal Affairs may, upon timely
344 application, intervene in any civil action or proceeding brought
345 under subsection (6) or subsection (7) if it certifies that, in
346 its opinion, the action or proceeding is of general public
347 importance. In such action or proceeding, the state shall be
348 entitled to the same relief as if the Department of Legal

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349 Affairs had instituted the action or proceeding.

350 (11)~~(10)~~ Notwithstanding any other provision of law, a
351 criminal or civil action or proceeding under this chapter act
352 may be commenced at any time within 5 years after the conduct in
353 violation of ~~a provision of this chapter act~~ terminates or the
354 cause of action accrues. If a criminal prosecution or civil
355 action or other proceeding is brought, or intervened in, to
356 punish, prevent, or restrain any violation of ~~the provisions of~~
357 this chapter act, the running of the period of limitations
358 prescribed by this section with respect to any cause of action
359 arising under subsection (6), ~~or~~ subsection (7), or subsection
360 (9) which is based in whole or in part upon any matter
361 complained of in any such prosecution, action, or proceeding
362 shall be suspended during the pendency of such prosecution,
363 action, or proceeding and for 2 years following its termination.

364 (12)~~(11)~~ The application of one civil remedy under any
365 provision of this chapter act does not preclude the application
366 of any other remedy, civil or criminal, under this chapter act
367 or any other provision of law. Civil remedies under this chapter
368 act are supplemental, and not mutually exclusive.

369 (13)~~(12)~~(a) In addition to the authority to file a RICO
370 lien notice set forth in s. 895.07(1), the Department of Legal
371 Affairs, the Office of Statewide Prosecution, or the office of a
372 state attorney may apply ex parte to a criminal division of a
373 circuit court and, upon petition supported by sworn affidavit,
374 obtain an order authorizing the filing of a RICO lien notice
375 against real property upon a showing of probable cause to
376 believe that the property was used in the course of, intended
377 for use in the course of, derived from, or realized through

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378 conduct in violation of ~~a provision of~~ ss. 895.01-895.05. If the
379 lien notice authorization is granted, the department shall,
380 after filing the lien notice, forthwith provide notice to the
381 owner of the property by one of the following methods:

382 1. By serving the notice in the manner provided by law for
383 the service of process.

384 2. By mailing the notice, postage prepaid, by ~~registered or~~
385 certified mail to the person to be served at his or her last
386 known address and evidence of the delivery.

387 3. If neither of the foregoing can be accomplished, by
388 posting the notice on the premises.

389 (b) The owner of the property may move the court to
390 discharge the lien, and such motion shall be set for hearing at
391 the earliest possible time.

392 (c) The court shall discharge the lien if it finds that
393 there is no probable cause to believe that the property was used
394 in the course of, intended for use in the course of, derived
395 from, or realized through conduct in violation of ~~a provision of~~
396 ss. 895.01-895.05 or if it finds that the owner of the property
397 neither knew nor reasonably should have known that the property
398 was used in the course of, intended for use in the course of,
399 derived from, or realized through conduct in violation of ~~a~~
400 ~~provision of~~ ss. 895.01-895.05.

401 (d) No testimony presented by the owner of the property at
402 the hearing is admissible against him or her in any criminal
403 proceeding except in a criminal prosecution for perjury or false
404 statement, nor shall such testimony constitute a waiver of the
405 owner's constitutional right against self-incrimination.

406 (e) A lien notice secured under ~~the provisions of~~ this

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407 subsection is valid for a period of 90 days from the date the
408 court granted authorization, which period may be extended for an
409 additional 90 days by the court for good cause shown, unless a
410 civil proceeding is instituted under this section and a lien
411 notice is filed under s. 895.07, in which event the term of the
412 lien notice is governed by s. 895.08.

413 (f) The filing of a lien notice, whether or not
414 subsequently discharged or otherwise lifted, shall constitute
415 notice to the owner and knowledge by the owner that the property
416 was used in the course of, intended for use in the course of,
417 derived from, or realized through conduct in violation of a
418 ~~provision of~~ ss. 895.01-895.05, such that lack of such notice
419 and knowledge shall not be a defense in any subsequent civil or
420 criminal proceeding under this chapter.

421 Section 3. Section 895.06, Florida Statutes, is amended to
422 read:

423 895.06 Civil investigative subpoenas; public records
424 exemption.—

425 ~~(1) As used in this section, the term "investigative~~
426 ~~agency" means the Department of Legal Affairs, the Office of~~
427 ~~Statewide Prosecution, or the office of a state attorney.~~

428 (1)~~(2)~~ If, pursuant to the civil enforcement provisions of
429 s. 895.05, an investigative agency has reason to believe that a
430 person or other enterprise has engaged in, or is engaging in,
431 activity in violation of this chapter act, the investigative
432 agency may administer oaths or affirmations, subpoena witnesses
433 or material, and collect evidence.

434 (2)~~(3)~~ A subpoena issued pursuant to this chapter is
435 confidential for 120 days after the date of its issuance. The

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436 subpoenaed person or entity may not disclose the existence of
437 the subpoena to any person or entity other than his or her
438 attorney during the 120-day period. The subpoena must include a
439 reference to the confidentiality of the subpoena and a notice to
440 the recipient of the subpoena that disclosure of the existence
441 of the subpoena to any person or entity other than the
442 subpoenaed person's or entity's attorney is prohibited. The
443 investigative agency may apply ex parte to the circuit court for
444 the circuit in which a subpoenaed person or entity resides, is
445 found, or transacts business for an order directing that the
446 subpoenaed person or entity not disclose the existence of the
447 subpoena to any other person or entity except the subpoenaed
448 person's attorney for an additional a period of time 90 days,
449 ~~which time may be extended by the court~~ for good cause shown by
450 the investigative agency. The order shall be served on the
451 subpoenaed person or entity with the subpoena, and the subpoena
452 must ~~shall~~ include a reference to the order and a notice to the
453 recipient of the subpoena that disclosure of the existence of
454 the subpoena to any other person or entity in violation of the
455 order may subject the subpoenaed person or entity to punishment
456 for contempt of court. Such an order may be granted by the court
457 only upon a showing:

458 (a) Of sufficient factual grounds to reasonably indicate a
459 violation of ss. 895.01-895.06;

460 (b) That the documents or testimony sought appear
461 reasonably calculated to lead to the discovery of admissible
462 evidence; and

463 (c) Of facts that ~~which~~ reasonably indicate that disclosure
464 of the subpoena would hamper or impede the investigation or

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465 would result in a flight from prosecution.

466 (3)~~(4)~~ If matter that the investigative agency seeks to
467 obtain by the subpoena is located outside the state, the person
468 or enterprise subpoenaed may make such matter available to the
469 investigative agency or its representative for examination at
470 the place where such matter is located. The investigative agency
471 may designate representatives, including officials of the
472 jurisdiction in which the matter is located, to inspect the
473 matter on its behalf and may respond to similar requests from
474 officials of other jurisdictions.

475 (4)~~(5)~~ Upon failure of a person or enterprise, without
476 lawful excuse, to obey a subpoena issued under this section or a
477 subpoena issued in the course of a civil proceeding instituted
478 pursuant to s. 895.05, and after reasonable notice to such
479 person or enterprise, the investigative agency may apply to the
480 circuit court in which such civil proceeding is pending or, if
481 no civil proceeding is pending, to the circuit court for the
482 judicial circuit in which such person or enterprise resides, is
483 found, or transacts business for an order compelling compliance.
484 Except in a prosecution for perjury, an individual who complies
485 with a court order to provide testimony or material after
486 asserting a privilege against self-incrimination to which the
487 individual is entitled by law shall not have the testimony or
488 material so provided, or evidence derived therefrom, received
489 against him or her in any criminal investigation or proceeding.

490 (5)~~(6)~~ A person who fails to obey a court order entered
491 pursuant to this section may be punished for contempt of court.

492 (6) The investigative agency may stipulate to protective
493 orders with respect to documents and information submitted in

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494 response to a subpoena issued under this section.

495 (7) (a) Information held by an investigative agency pursuant
496 to an investigation of a violation of s. 895.03 is confidential
497 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
498 Constitution.

499 (b) Information made confidential and exempt under
500 paragraph (a) may be disclosed by the investigative agency to:

501 1. A government entity in the performance of its official
502 duties.

503 2. A court or tribunal.

504 (c) Information made confidential and exempt under
505 paragraph (a) is no longer confidential and exempt once all
506 investigations to which the information pertains are completed,
507 unless the information is otherwise protected by law.

508 (d) For purposes of this subsection, an investigation is
509 considered complete once the investigative agency either files
510 an action or closes its investigation without filing an action.

511 (e) This subsection is subject to the Open Government
512 Sunset Review Act in accordance with s. 119.15 and shall stand
513 repealed on October 2, 2020, unless reviewed and saved from
514 repeal through reenactment by the Legislature.

515 Section 4. Paragraph (b) of subsection (1) of section
516 895.09, Florida Statutes, is amended, and paragraph (d) is added
517 to that subsection, to read:

518 895.09 Disposition of funds obtained through forfeiture
519 proceedings.—

520 (1) A court entering a judgment of forfeiture in a
521 proceeding brought pursuant to s. 895.05 shall retain
522 jurisdiction to direct the distribution of any cash or of any

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523 cash proceeds realized from the forfeiture and disposition of
524 the property. The court shall direct the distribution of the
525 funds in the following order of priority:

526 (b) Any claims against the property by persons who have
527 previously been judicially determined to be innocent persons,
528 pursuant to s. 895.05(2) (e) ~~the provisions of s. 895.05(2) (e)~~,
529 and whose interests are preserved from forfeiture by the court
530 and not otherwise satisfied. Such claims may include any claim
531 by a person appointed by the court as receiver pending
532 litigation.

533 (d) Any claims for restitution by victims of racketeering
534 activity. If the forfeiture action was brought by the Department
535 of Legal Affairs, the restitution shall be distributed through
536 the Legal Affairs Revolving Trust Fund; otherwise, the
537 restitution shall be distributed by the clerk of the court.

538 Section 5. Paragraph (a) of subsection (1) of section
539 16.56, Florida Statutes, is amended to read:

540 16.56 Office of Statewide Prosecution.—

541 (1) There is created in the Department of Legal Affairs an
542 Office of Statewide Prosecution. The office shall be a separate
543 "budget entity" as that term is defined in chapter 216. The
544 office may:

545 (a) Investigate and prosecute the offenses of:

546 1. Bribery, burglary, criminal usury, extortion, gambling,
547 kidnapping, larceny, murder, prostitution, perjury, robbery,
548 carjacking, and home-invasion robbery;

549 2. Any crime involving narcotic or other dangerous drugs;

550 3. Any violation of the Florida RICO (Racketeer Influenced
551 and Corrupt Organization) Act, including any offense listed in

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552 the definition of racketeering activity in s. 895.02(8)(a)
553 ~~895.02(1)(a)~~, providing such listed offense is investigated in
554 connection with a violation of s. 895.03 and is charged in a
555 separate count of an information or indictment containing a
556 count charging a violation of s. 895.03, the prosecution of
557 which listed offense may continue independently if the
558 prosecution of the violation of s. 895.03 is terminated for any
559 reason;

560 4. Any violation of the Florida Anti-Fencing Act;

561 5. Any violation of the Florida Antitrust Act of 1980, as
562 amended;

563 6. Any crime involving, or resulting in, fraud or deceit
564 upon any person;

565 7. Any violation of s. 847.0135, relating to computer
566 pornography and child exploitation prevention, or any offense
567 related to a violation of s. 847.0135 or any violation of
568 chapter 827 where the crime is facilitated by or connected to
569 the use of the Internet or any device capable of electronic data
570 storage or transmission;

571 8. Any violation of chapter 815;

572 9. Any criminal violation of part I of chapter 499;

573 10. Any violation of the Florida Motor Fuel Tax Relief Act
574 of 2004;

575 11. Any criminal violation of s. 409.920 or s. 409.9201;

576 12. Any crime involving voter registration, voting, or
577 candidate or issue petition activities;

578 13. Any criminal violation of the Florida Money Laundering
579 Act;

580 14. Any criminal violation of the Florida Securities and

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581 Investor Protection Act; or

582 15. Any violation of chapter 787, as well as any and all
583 offenses related to a violation of chapter 787;

584
585 or any attempt, solicitation, or conspiracy to commit any of the
586 crimes specifically enumerated above. The office shall have such
587 power only when any such offense is occurring, or has occurred,
588 in two or more judicial circuits as part of a related
589 transaction, or when any such offense is connected with an
590 organized criminal conspiracy affecting two or more judicial
591 circuits. Informations or indictments charging such offenses
592 shall contain general allegations stating the judicial circuits
593 and counties in which crimes are alleged to have occurred or the
594 judicial circuits and counties in which crimes affecting such
595 circuits or counties are alleged to have been connected with an
596 organized criminal conspiracy.

597 Section 6. Subsection (3) of section 905.34, Florida
598 Statutes, is amended to read:

599 905.34 Powers and duties; law applicable.—The jurisdiction
600 of a statewide grand jury impaneled under this chapter shall
601 extend throughout the state. The subject matter jurisdiction of
602 the statewide grand jury shall be limited to the offenses of:

603 (3) Any violation of the provisions of the Florida RICO
604 (Racketeer Influenced and Corrupt Organization) Act, including
605 any offense listed in the definition of racketeering activity in
606 s. 895.02(8)(a) ~~895.02(1)(a)~~, providing such listed offense is
607 investigated in connection with a violation of s. 895.03 and is
608 charged in a separate count of an information or indictment
609 containing a count charging a violation of s. 895.03, the

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610 prosecution of which listed offense may continue independently
611 if the prosecution of the violation of s. 895.03 is terminated
612 for any reason;

613
614 or any attempt, solicitation, or conspiracy to commit any
615 violation of the crimes specifically enumerated above, when any
616 such offense is occurring, or has occurred, in two or more
617 judicial circuits as part of a related transaction or when any
618 such offense is connected with an organized criminal conspiracy
619 affecting two or more judicial circuits. The statewide grand
620 jury may return indictments and presentments irrespective of the
621 county or judicial circuit where the offense is committed or
622 triable. If an indictment is returned, it shall be certified and
623 transferred for trial to the county where the offense was
624 committed. The powers and duties of, and law applicable to,
625 county grand juries shall apply to a statewide grand jury except
626 when such powers, duties, and law are inconsistent with the
627 provisions of ss. 905.31-905.40.

628 Section 7. For the purpose of incorporating the amendment
629 made by this act to section 895.05, Florida Statutes, in a
630 reference thereto, subsection (4) and paragraph (a) of
631 subsection (5) of section 16.53, Florida Statutes, are
632 reenacted, and subsection (6) of that section is amended, to
633 read:

634 16.53 Legal Affairs Revolving Trust Fund.—

635 (4) Subject to the provisions of s. 895.09, when the
636 Attorney General files an action pursuant to s. 895.05, funds
637 provided to the Department of Legal Affairs pursuant to s.
638 895.09(2)(a) or, alternatively, attorneys' fees and costs,

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639 whichever is greater, shall be deposited in the fund.

640 (5) (a) In the case of a forfeiture action pursuant to s.
641 895.05, the remainder of the moneys recovered shall be
642 distributed as set forth in s. 895.09.

643 (6) "Moneys recovered" means damages or penalties or any
644 other monetary payment, including monetary proceeds from
645 property forfeited to the state pursuant to s. 895.05 remaining
646 after satisfaction of any valid claims made pursuant to s.
647 895.09(1)(a)-(d) ~~895.09(1)(a)-(e)~~, which damages, penalties, or
648 other monetary payment is made by any defendant by reason of any
649 decree or settlement in any Racketeer Influenced and Corrupt
650 Organization Act or state or federal antitrust action prosecuted
651 by the Attorney General, but excludes attorney ~~attorneys'~~ fees
652 and costs.

653 Section 8. For the purpose of incorporating the amendment
654 made by this act to section 895.05, Florida Statutes, in a
655 reference thereto, subsection (1) of section 27.345, Florida
656 Statutes, is reenacted to read:

657 27.345 State Attorney RICO Trust Fund; authorized use of
658 funds; reporting.—

659 (1) Subject to the provisions of s. 895.09, when a state
660 attorney files an action pursuant to s. 895.05, funds provided
661 to the state attorney pursuant to s. 895.09(2)(a) or,
662 alternatively, attorneys' fees and costs, whichever is greater,
663 shall be deposited in the State Attorney RICO Trust Fund.

664 Section 9. For the purpose of incorporating the amendment
665 made by this act to section 895.05, Florida Statutes, in a
666 reference thereto, subsection (3) of section 92.142, Florida
667 Statutes, is reenacted to read:

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668 92.142 Witnesses; pay.-

669 (3) Any witness subpoenaed to testify on behalf of the
670 state in any action brought pursuant to s. 895.05 or chapter 542
671 who is required to travel outside his or her county of residence
672 and more than 50 miles from his or her residence, or who is
673 required to travel from out of state, shall be entitled to per
674 diem and travel expenses at the same rate provided for state
675 employees under s. 112.061 in lieu of any state witness fee.

676 Section 10. This act shall take effect July 1, 2016.



The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Appropriations Subcommittee on Criminal and Civil Justice

Subject: Committee Agenda Request

Date: February 2, 2016

I respectfully request that **Senate Bill # 850**, relating to Offenses Concerning Racketeering and Illegal Debts, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Rob Bradley", written over a horizontal line.

Senator Rob Bradley
Florida Senate, District 7

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/17/16

Meeting Date

850

Bill Number (if applicable)

Topic R&LO

Amendment Barcode (if applicable)

Name Andrew Fay

Job Title Special Counsel

Address PL 07

Phone 245-055

Street

Dellcross PL

City

State

Zip

Email Andrew.fay@mybar.civilegals.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Office of the Attorney General

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/CS/SB 936 (549324)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice; Criminal Justice Committee and Senator Ring

SUBJECT: Criminal Justice System Interviews of Persons with Autism, an Autism Spectrum Disorder, or a Related Developmental Disability

DATE: February 19, 2016 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 936 provides that a law enforcement officer, correctional officer or public safety officer shall, upon the request of an individual with autism (or an autism spectrum disorder) or his or her parent or guardian, make a good faith effort to ensure that a psychiatrist, psychologist, mental health counselor, special education instructor, clinical social worker, or related professional is present at all interviews of the individual. The bill describes the qualifications the professional must have to serve in this capacity. In addition, the bill provides that the failure to have a professional present at the time of the interview is not a basis for suppression of the statement or the contents of the interview or for a cause of action against the officer or agency. The bill requires that law enforcement agencies develop appropriate policies to implement bill's provisions and that officers be trained based on these policies.

The bill does not have a fiscal impact; the cost of the autism professional is borne by the requesting individual.

The bill has an effective date of July 1, 2016.

II. Present Situation:

The Center for Disease Control (CDC) estimates that one in 68 children have been identified with Autism Spectrum Disorder (ASD).¹ The CDC defines “Autism spectrum disorder” as a developmental disability that can cause significant social, communication, and behavioral challenges. Though there is nothing about how persons who have been diagnosed with ASD look that sets them apart from other people, the CDC states that people with ASD may communicate, interact, behave, and learn in ways that are different from most other people. The range of abilities of people with ASD can span from gifted to severely challenged.²

Though formerly diagnosed separately, autistic disorder, pervasive developmental disorder, and Asperger syndrome are now included in the diagnosis of ASD.³

Florida law includes the following definitions:

“Autism” is a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.⁴

“Developmental disability” is a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.⁵

“Autism spectrum disorder” is any of the following disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association:

1. Autistic disorder;
2. Asperger’s syndrome; and
3. Pervasive developmental disorder not otherwise specified.⁶

III. Effect of Proposed Changes:

The bill, cited as the “Wes Kleinert Fair Interview Act,” provides that a law enforcement officer, correctional officer or public safety officer must, upon the request of an individual with autism (or an autism spectrum disorder) or his or her parent or guardian, make a good faith effort to ensure that a psychiatrist, psychologist, mental health counselor, special education instructor, clinical social worker, or related professional is present at all interviews of the individual. The

¹ Data from the Autism and Developmental Disabilities Monitoring (ADDM) Network. <http://www.cdc.gov/ncbddd/autism/research.html> (last visited January 26, 2016).

² <http://www.cdc.gov/ncbddd/autism/facts.html> (last visited January 26, 2016).

³ Id.

⁴ Section 393.063(3), F.S.

⁵ Section 393.063(9), F.S.

⁶ Sections 627.6686(2)(b) and 641.31098(2), F.S.

bill describes the qualifications the professional must have to serve in this capacity – experience in treating, teaching, or assisting clients diagnosed with autism or related disability or a certification in special education focused on autism.

The bill also provides that the expenses related to the professional must be borne by the requesting parent, guardian, or individual and that the failure to have a professional present at the time of the interview is not a basis for suppression of the statement or the contents of the interview or for a cause of action against the law enforcement officer or agency.

Finally, the bill requires that law enforcement agencies develop appropriate policies to implement bill's provisions and that officers be trained based on these policies.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

An individual with autism, an autism spectrum disorder or a related developmental disability will be responsible for the expenses of the requested professional. The cost of a professional required by PCS/CS/SB 936 is unknown.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 943.0439 of the Florida Statutes.

This bill creates an undesignated section of Florida law.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on February 17, 2016:

- Provides that an autism professional shall be provided by law enforcement only upon request of the individual with autism.
- Amends the current bill to provide that the law enforcement agency make a “good faith effort” to ensure an autism professional is present during the interview.
- Provides that failure to have a professional present at the time of the interview is not a basis for suppression of the statement or contents of the interview or for a cause of action against the law enforcement officer or agency.
- Provides that law enforcement agencies develop appropriate policies to implement bill’s provisions and that officers are trained based on these policies.

CS by Criminal Justice on February 1, 2016:

The Committee Substitute includes speech therapists in the list of trained professionals that can be present to assist law enforcement and other public safety officials whether the individual being interviewed is the victim of a crime, the suspect in a crime, or the defendant formally accused of a crime. It provides for law enforcement officers or other public safety officers to document the interview in writing when a professional is not available and make a professional available as soon as practicable. It provides that the cost of the professional shall be borne by the individual.

B. Amendments:

None.



479128

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2016	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. This act may be cited as "The Wes Kleinert Fair
Interview Act."

Section 2. Section 943.0439, Florida Statutes, is created
to read:

943.0439 Interviews of victims, suspects, or defendants
with autism or an autism spectrum disorder.-A law enforcement



479128

11 officer, a correctional officer, or another public safety
12 official shall, upon the request of an individual diagnosed with
13 autism or an autism spectrum disorder or his or her parent or
14 guardian, make a good faith effort to ensure that a
15 psychiatrist, psychologist, mental health counselor, special
16 education instructor, clinical social worker, or related
17 professional is present at all interviews of the individual. The
18 professional must have experience treating, teaching, or
19 assisting patients or clients who have been diagnosed with
20 autism or an autism spectrum disorder or related developmental
21 disability or must be certified in special education with a
22 concentration focused on persons with autism or an autism
23 spectrum disorder. All expenses related to the attendance of the
24 professional at interviews shall be borne by the requesting
25 parent, guardian, or individual. Failure to have a professional
26 as defined by this subsection present at the time of the
27 interview is not a basis for suppression of the statement or the
28 contents of the interview or for a cause of action against the
29 law enforcement officer or agency. This subsection applies to
30 such an individual who is the victim, a suspect, or a defendant
31 formally accused of a crime.

32 (2) Each law enforcement agency must ensure that
33 appropriate policies are developed which implement this section
34 and that training is provided to its law enforcement and
35 correctional officers based on those policies.

36 Section 3. This section shall take effect July 1, 2016.

37
38 ===== T I T L E A M E N D M E N T =====

39 And the title is amended as follows:



479128

40 Delete everything before the enacting clause
41 and insert:

42 A bill to be entitled
43 An act relating to criminal justice system interviews
44 of individuals with autism or an autism spectrum
45 disorder; providing a short title; creating s.
46 943.0439, F.S.; requiring a law enforcement officer,
47 correctional officer, or another public safety
48 official to make a good faith effort, upon the request
49 of a parent, a guardian, or the individual, to ensure
50 that specified professionals are present at all
51 interviews of an individual diagnosed with autism or
52 an autism spectrum disorder; providing specifications
53 for the professional; specifying that the parent,
54 guardian, or individual bears the expense of hiring
55 the professional; specifying that not having a
56 professional present is not a basis for suppressing
57 statements or for bringing a cause of action;
58 providing applicability; requiring law enforcement
59 agencies to develop and implement appropriate policies
60 and provide training; providing an effective date.

By the Committee on Criminal Justice; and Senator Ring

591-02915-16

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1 A bill to be entitled
2 An act relating to criminal justice system interviews
3 of persons with autism, an autism spectrum disorder,
4 or a related developmental disability; providing a
5 short title; encouraging the use of certain state-of-
6 the-art digital devices for the purposes of
7 identification and notification; requiring that
8 certain professionals with experience in treating,
9 teaching, or assisting persons with autism, an autism
10 spectrum disorder, or a related developmental
11 disability be present during an interview of a person
12 with autism, an autism spectrum disorder, or a related
13 developmental disability conducted by specified
14 persons unless extenuating circumstances exist;
15 requiring a law enforcement officer, a correctional
16 officer, or another public safety official to document
17 in writing any extenuating circumstances; authorizing
18 a law enforcement officer, a correctional officer, or
19 another public safety official to hold persons with
20 autism, an autism spectrum disorder, or a related
21 developmental disability for a reasonable period of
22 time under certain circumstances; providing that the
23 cost of retaining a professional must be borne by such
24 persons; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. This act may be cited as "The Wes Kleinert Fair
29 Interview Act."

30 Section 2. (1) The Legislature encourages the use of state-
31 of-the-art digital devices, such as bracelets, necklaces, and
32 pocket cards that are similar to those kept upon the person of

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33 individuals who have certain medical conditions or age-related
34 disabilities, to assist law enforcement, correctional, or other
35 public safety officials and other concerned persons in quickly
36 identifying individuals who have been diagnosed with autism, an
37 autism spectrum disorder, or a related developmental disability
38 and notifying the family members, caregivers, and primary
39 intervention professionals of such individuals when a crisis
40 occurs.

41 (2) Unless extenuating circumstances exist, a psychiatrist,
42 psychologist, mental health counselor, special education
43 instructor, clinical social worker, speech therapist, or related
44 professional, each of whom must have experience treating,
45 teaching, or assisting patients or clients who have been
46 diagnosed with autism, an autism spectrum disorder, or a related
47 developmental disability, or must be certified in special
48 education with a concentration focused on persons with autism,
49 an autism spectrum disorder, or a related developmental
50 disability, must be present to assist a law enforcement officer,
51 a correctional officer, or another public safety official during
52 all interviews of an individual with autism, an autism spectrum
53 disorder, or a related developmental disability, whether the
54 individual being interviewed is the victim of a crime, the
55 suspect in a crime, or the defendant formally accused of a crime
56 or is otherwise involved in the criminal justice system. If
57 extenuating circumstances exist and it is not possible to delay
58 the interview until such a professional is available, a law
59 enforcement officer, a correctional officer, or another public
60 safety official must document the circumstances in writing and
61 make a professional available as soon as practicable. An

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62 individual with autism, an autism spectrum disorder, or a
63 related developmental disability may be held for a reasonable
64 period of time until a professional is retained by the
65 individual or his or her representative. The cost of the
66 professional must be borne by the individual.

67 Section 3. This act shall take effect July 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Chair*
Judiciary, *Vice Chair*
Appropriations
Appropriations Subcommittee on Education
Children, Families, and Elder Affairs
Commerce and Tourism

SENATOR JEREMY RING

29th District

February 4, 2016

Senator Joe Negron, Chair
Appropriations Subcommittee on Criminal and Civil Justice
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron,

I am writing to respectfully request your cooperation in placing Senate Bill 936, relating to Criminal Justice System Interviews of Persons with Autism, an Autism Spectrum Disorder, or a Related Developmental Disability, on the Appropriations Subcommittee on Criminal and Civil Justice agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring
Senator District 29

cc: Tim Sadberry, Staff Director
Michelle Sanders, Committee Administrative Assistant

REPLY TO:

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.17.16

Meeting Date

936

Bill Number (if applicable)

Topic Interviews of Persons with Autism

Amendment Barcode (if applicable)

Name RON DRAA

Job Title Director of External Affairs

Address 2331 Phillips Road

Phone 410.7020

Street

Tall

FL

32308

Email RONALDDRAA@FDLE.STATE.FL.US

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FDLE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
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2/17/14
Meeting Date

SB 0936
Bill Number (if applicable)

Topic C/PS Interviews of Autism

Amendment Barcode (if applicable)

Name DENNIS STRANGE

Job Title Captain

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Street

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Delmido FL 32804
City State Zip

Email dennis.strange@ocfl.net

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Orange County Sheriff's Office

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/17/2016

Meeting Date

936

Bill Number (if applicable)

479128

Amendment Barcode (if applicable)

Topic Criminal Justice System Interviews of Persons with Autism, an Autism Spectrum Disorder, or a Related Developmental Disability

Name Sarrah Carroll

Job Title Lobbyist

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Tallahassee

City

FL

State

32301

Zip

Phone 850-671-4401

Email carroll@sostrategy.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/17/2016 Meeting Date

SB 0936 Bill Number (if applicable)

Topic CRIMINAL JUSTICE SYSTEM INTERVIEWS OF PERSONS WITH AUTISM

Amendment Barcode (if applicable)

Name SERGEANT RICHARD FORTEN

Job Title SERGEANT VOLUSIA COUNTY SHERIFFS OFFICE

Address 101 EAST CANAL STREET Street Phone 386-423-3301

New Smyrna FL 32168 City State Zip Email R.FORTEN@VOLUSIA.US

Speaking: [X] For [] Against [] Information

Waive Speaking: [X] In Support [] Against (The Chair will read this information into the record.)

Representing FLORIDA SHERIFFS ASSOCIATION

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/SB 1212 (723066)

INTRODUCER: Recommended by Appropriations Subcommittee on Criminal and Civil Justice and Senator Flores

SUBJECT: Appointed Counsel for Children

DATE: February 19, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Maida</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Fav/CS
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1212 amends section 39.01305, Florida Statutes, to expand the right to appointed counsel to include dependent children under the age of 8 who have been prescribed psychotropic medication and to dependent children who cannot be represented by the Statewide Guardian ad Litem Office due to a conflict of interest. The bill also provides for appointment of substitute counsel in the event of an attorney's withdrawal or discharge.

Further, the bill requires the Justice Administrative Commission (JAC) to contract with a not-for-profit organization to create the Quality Counsel Program. The program must review and analyze, for quality improvement purposes, information submitted by appointed attorneys detailing the activities performed and results obtained on behalf of each child. In addition, the program must annually report collected data and recommendations to the President of the Florida Senate, Speaker of the Florida House of Representatives, Governor, Justice Administrative Commission, the Statewide Guardian ad Litem Office, and the Office of the State Courts Administrator.

The bill will increase the number of dependent children appointed an attorney; however, the number of additional children who will be appointed an attorney is unknown. As a result, the fiscal impact of the bill is unknown. *See* Section V.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Dependent Children

A court-determined “dependent child” is considered dependent on the state for care and protection.¹ By statute, a “dependent” child is found:

- To have been abandoned, abused, or neglected by parents or legal custodians;
- To have been surrendered to the Department of Children & Family Services (DCF) or a licensed child-placing agency for adoption;
- To have been voluntarily placed with a licensed child-placing agency for adoption;
- To have been voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, an adult relative, or the DCF, and after being placed a case plan expired and the parents or legal custodian failed to substantially comply with the plan;
- To have been voluntarily placed with a licensed child-placing agency for adoption and a parent or parents have signed a consent;
- To have no parent or legal custodian capable of providing supervision and care;
- To be at substantial risk of imminent abuse, abandonment or neglect by the parents or legal custodians; or
- To have been sexually exploited and to have no parent, legal custodian, or responsible adult relative currently known and capable of providing necessary and appropriate supervision and care.²

The dependency process in Florida begins with a call to the Florida Abuse Hotline (hotline).³ If accepted by the hotline, the call is referred to a child protective investigator who conducts an on-site investigation of the allegations of abuse, neglect, or abandonment.⁴ If warranted, a dependency petition is filed with the court by DCF.⁵ A child may be taken into custody and placed in a shelter without a prior hearing if there is probable cause of imminent danger or injury to the child, the parent or legal custodian, responsible adult relative has materially violated a condition of placement, or the child has no parent, legal custodian, or responsible adult relative immediately known and able to provide supervision and care.⁶ In that instance, a judicial hearing must be held within 24 hours after removal of the child from the home.⁷ A Guardian ad Litem (GAL) must be appointed at the time of the shelter hearing.⁸ If needed, an Attorney ad Litem may be appointed at this time as well.⁹

If a petition for dependency is filed, whether or not the child is taken into custody, the circuit court assigned to hear dependency cases (dependency court) will schedule an adjudicatory

¹ See *In re M.F.*, 770 So. 2d 1189, 1193 (Fla. 2000) (stating that the “purpose of a dependency proceeding is not to punish the offending parent but to protect and care for a child who has been neglected, abandoned, or abused”).

² Section 39.01(15), F.S.

³ Section 39.201(2)(a), F.S.

⁴ Section 39.301(1), F.S.

⁵ Section 39.501(1) and (3)(c), F.S.

⁶ Section 39.402(1), F.S.

⁷ Section 39.402(8)(a), F.S.

⁸ Section 39.822(1), F.S.

⁹ The term “ad Litem” means literally “for the suit.” In practice, it means a representative, either lay (guardian) or lawyer (attorney) appointed for the limited purposes of a particular lawsuit.

hearing to determine whether the child is dependent, based on a preponderance of the evidence.¹⁰ If a court finds a child dependent, a disposition hearing is held to determine appropriate services and placement settings for the child.¹¹ At this hearing, the court also reviews and approves a case plan outlining services and desired goals for the child.¹²

The dependency court holds periodic judicial reviews to determine the child's status, progress in following the case plan, and the status of the goals and objectives of the case plan. These reviews will generally occur every 6 months.¹³ If after 12 months, case plan goals have not been met, the court holds a permanency hearing to determine the child's permanent placement goal.¹⁴

Lawyers for Children in the Dependency System

In general, the federal and state approach to safeguarding the legal needs of children in the dependency system relies upon the appointment of guardians ad litem (GAL) or attorneys ad litem (GAL attorney). The Federal Child Abuse Prevention and Treatment Act (CAPTA) requires states to document in their case plans provisions for appointing guardian ad litem to represent the child's best interest in every case of child abuse or neglect which results in a judicial proceeding.¹⁵ The funds of the Florida guardian ad litem program support both lay volunteers who assist children in dependency proceedings and attorneys ad litem. The guardian ad litem program has succeeded in recruiting attorneys who wish to satisfy their pro bono expectations by representing children with various legal needs in dependency court.¹⁶ When there are insufficient pro bono lawyers available and there are sufficient resources to do so, the guardian ad litem program may contract with legal aid, other programs, or private attorneys for the provision of these services.¹⁷

Florida law requires the appointment of a guardian ad litem for every child who is the subject of a dependency proceeding.¹⁸ While the guardian ad litem program has requested funds to allow it to meet this mandate, the Statewide Guardian ad Litem Office indicates it has not been fully funded. As of November 2015, there were 31,399 dependent children under court supervision, of whom 25,157 (80 percent) had been appointed a guardian ad litem.¹⁹ The GAL program also funds the current attorney ad litem program. The GAL attorney is required by program standards to request the appointment of an attorney ad litem in any case where doing so would further the best interests of the child. In addition, the court on its own motion or upon motion of any party, including the child, can appoint an attorney ad litem at any point in the dependency process.²⁰ Common reasons for seeking appointment of an attorney ad litem in dependency court include

¹⁰ Section 39.507(1)(a) and (b), F.S.

¹¹ Section 39.521(1), F.S.

¹² Section 39.521(1)(a), F.S.

¹³ Section 39.521(1)(d), F.S.

¹⁴ Section 39.621(1), F.S.

¹⁵ 42 U.S.C. ss. 5101 *et seq.*

¹⁶ The Florida Bar has an expectation that its members perform *pro bono* services. This term literally means "for good," and is applied to services performed without compensation by lawyers.

¹⁷ Office of the Florida Guardian ad Litem, email, (March 13, 2014).

¹⁸ Sections 39.402(8)(c)1, 39.807(2), and 39.822(1), F.S.

¹⁹ Florida Statewide Guardian ad Litem Office, Bill Analysis for Senate Bill 1212 (Dec. 30, 2015) (on file with the Senate Committee on Judiciary).

²⁰ Fla. R. Juv. P. 8.217(a).

cases in which a child needs legal guardianship or where special expertise is needed in areas such as immigration law, disability law, or administrative forums. No statewide tracking mechanism exists for the appointment of attorneys ad litem for dependent children, because attorneys are appointed at the court circuit level.

Unlike parents, children have been found to have no constitutional right to representation by counsel in dependency court.²¹ By statute,²² however, an attorney is appointed for a dependent child who:

- Resides in a skilled nursing facility or is being considered for placement in a skilled nursing home;
- Is prescribed psychotropic medication but declines assent to the psychotropic medication;
- Has a diagnosis of a developmental disability as defined in s. 393.063, F.S.;²³
- Is being placed in a residential treatment center or being considered for placement in a residential treatment center; or
- Is a victim of human trafficking as defined in s. 787.06(2)(d), F.S.²⁴

In Fiscal Year 2014-2015, the legislature provided \$1,500,000, from recurring general revenue funds and \$2,700,000, from nonrecurring general revenue funds for the JAC to contract with lawyers to represent the children pursuant to the provisions of s. 27.40 and 27.5304, F.S.²⁵ Pursuant to the statute, the lawyers' compensation must include both fees and costs.²⁶ Attorney fees may not exceed \$1,000 per child per year.²⁷ The legislature directed the JAC to consult with the GAL to develop a registry of attorneys as compensated counsel for children with the identified special needs and to provide the registry to each judicial circuit's chief judge for inclusion that judicial circuit's registry.²⁸ The GAL was also required to develop the minimum criteria for education, experience and training for attorney's inclusion in the registry.²⁹ Lastly, the DCF was given the responsibility to develop procedures to identify the children with the special needs who require appointment of an attorney.³⁰

In addition to the services of the attorneys ad litem through the guardian ad litem program, other options exist for legal services for children. The Florida Bar Foundation provides grants to legal service providers, several law schools have clinics which serve children, and several Children's Councils³¹ fund lawyers for children.

²¹ *In the Interest of D.B. and D.S.*, 385 So. 2d. 83, 90-91 (Fla. 1980), *In the Interest of C.T.*, 503 So. 2d 972, 973 (Fla. 4th DCA 1987).

²² Section 39.01305(3)(a)-(e), F.S.

²³ Under Section 393.063, F.S., a "developmental disability" means a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome, that: 1) manifests before the age of 18, and 2) the constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

²⁴ Under Section 787.06(2)(d), F.S., "human trafficking" means transporting soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining other person for the purpose of exploitation of that person.

²⁵ Section 794, conference report on HB5001 (2014 Reg. Session).

²⁶ Section 39.01305(5), F.S.

²⁷ *Id.*

²⁸ Section 794, conference report on HB5001 (2014 Reg. Session).

²⁹ *Id.*

³⁰ Section 39.01305(6), F.S.

³¹ Florida Children's Councils, or Children's Services Councils, are locally established special taxing districts designed to provide services to children and families. Chapter 125, F.S., governs their creation and operation. The first Council was

Dependent Children in Nursing Homes

The state is currently party to a lawsuit related to the placement of medically complex children in more restrictive settings such as nursing homes. The United States Department of Justice joined the lawsuit which alleges the state violated the Americans with Disabilities Act (ADA).³² The Agency for Health Care Administration (AHCA) has worked with the families of over 200 children in nursing homes under the Medicaid program to ensure they are aware of and are provided in home health services. In addition, the DCF and the Agency for Persons with Disabilities (APD) have worked with medically complex children and their families to ensure the least restrictive placement.

Dependent Children and Psychotropic Drugs

Florida law requires the DCF to obtain consent from parents or a court order before administering psychotropic drugs to a child, barring an emergency.³³ The statute directs, unless parental rights have been terminated, parents should be involved in decision-making regarding administration of these drugs. By rule, when a child of sufficient age, understanding, and maturity refuses psychotropic medication, the dependency case manager or child protective investigator must request Children's Legal Services to request an attorney for the child.³⁴

Dependent Children and Residential Treatment Facilities

No information is available about the number of children being considered for placement in a residential treatment facility. Placement of a dependent child in a residential treatment facility is governed by the provisions of s. 39.407(6), F.S. This section provides placement must be the least restrictive alternative for the child and requires an immediate appointment of a guardian ad litem for the child if a guardian ad litem is not already provided. In addition, the Florida Rules of Juvenile Procedure requires if a child does not agree with placement in a residential treatment facility, the court must appoint an attorney for the child, if one has not already been appointed.³⁵

III. Effect of Proposed Changes:

SB 1212 amends s. 39.01305, F.S., to expand the right to appointed counsel to:

- Dependent children under the age of 8 who have been prescribed psychotropic medication. Under current law, children prescribed a psychotropic medication are entitled to appointed counsel only if they decline the medication. This revision provides for appointed counsel for children under 8 years of age regardless of the child's assent to the medication.
- Dependent children who cannot be represented by the Statewide Guardian ad Litem Office due to a conflict of interest.

approved in 1946 in Pinellas County. There are currently Councils (with slight variances in names) in Broward, Duval, Martin, Miami-Dade, Palm Beach, and St. Lucie counties. <http://flchildrenscouncil.org/about-the-council/overview/> and <http://flchildrenscouncil.org/about-cscs/member-cscs/> (last visited January 24, 2016).

³² *A.R. et al. v. Dudek et al, United States V. Florida*, Consolidated Case No. 0:12-cv-60460-RSR, U.S. District Court for the Southern District of Florida.

³³ Section 39.407(3)(a)1., F.S.

³⁴ Rule 65C-35.005(3)(b), F.A.C.

³⁵ Fla. R. Juv. P. 8.350(6).

The bill further requires a court to appoint substitute counsel if an attorney appointed to represent any dependent child withdraws or is discharged from the representation. This requirement does not grant the court any discretion regarding this appointment even if the basis for the initial appointment no longer applies or if pro bono counsel is available.

Attorneys appointed under s. 39.01305, F.S., must submit a quarterly report to the Quality Counsel Program detailing the activities performed and results obtained on behalf of each dependent child. The JAC is directed to prescribe the form of this report.

Finally, the bill creates s. 27.406, F.S., which requires the JAC to contract with a non-profit entity establish a Quality Counsel Program to ensure dependent children receive quality representation from attorneys appointed under ch. 39, F.S. The Quality Counsel Program must:

- Be established and operational by June 30, 2018.
- Review and analyze the information submitted by appointed attorneys for quality improvement purposes.
- Annually report the data collected from appointed counsel pursuant to s. 39.01305, F.S., and recommendations to enhance the program to the President of the Florida Senate, Speaker of the Florida House of Representatives, Governor, Justice Administrative Commission, the Statewide Guardian ad Litem Office, and the Office of the State Courts Administrator.

The bill has an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

PCS/SB 1212 requires appointed attorneys to report activities performed and results obtained on behalf of each dependent child, which potentially increases attorneys' workload but would not have a private sector fiscal impact.

C. Government Sector Impact:

Pursuant to s. 39.01305, F.S., the attorneys fees for each additional child may not exceed \$1,000 per year; “all appointed attorneys... must be provided with access to funding for expert witnesses, depositions and other costs of litigation.” The bill will increase the number of dependent children appointed an attorney; however, the number of additional new appointments are unknown. As a result, the fiscal impact of the bill is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 39.01305, 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.)

Recommended CS by Appropriations Criminal and Civil Justice Subcommittee on February 17, 2017:

- Expands the right to appointed counsel to dependent children under the age of 8 who have been prescribed psychotropic medication and dependent children who cannot be represented by the Statewide Guardian ad Litem Office due to a conflict of interest.
- Requires a court to appoint substitute counsel if an attorney appointed to represent any dependent child withdraws or is discharged from the representation.
- Establishes a Quality Counsel Program to ensure dependent children receive quality representation from appointed attorneys. The program must create a quality improvement program as well as annually report on the results obtained on behalf of each dependent child and provide recommendations to enhance the quality of dependent children’s representation.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2016	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Flores) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 39.01305, Florida Statutes, is amended
to read:

39.01305 Appointment of an attorney for a dependent child
~~with certain special needs.~~

(1) (a) The Legislature finds that:

1. All children in proceedings under this chapter have



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11 important interests at stake, such as health, safety, and well-
12 being and the need to obtain permanency.

13 2. A dependent child who has certain special needs has a
14 particular need for an attorney to represent the dependent child
15 in proceedings under this chapter, as well as in fair hearings
16 and appellate proceedings, so that the attorney may address the
17 child's medical and related needs and the services and supports
18 necessary for the child to live successfully in the community.

19 (b) The Legislature recognizes the existence of
20 organizations that provide attorney representation to children
21 in certain jurisdictions throughout the state. Further, the
22 statewide Guardian Ad Litem Program provides best interest
23 representation for dependent children in every jurisdiction in
24 accordance with state and federal law. The Legislature,
25 therefore, does not intend that funding provided for
26 representation under this section supplant proven and existing
27 organizations representing children. Instead, the Legislature
28 intends that funding provided for representation under this
29 section be an additional resource for the representation of more
30 children in these jurisdictions, to the extent necessary to meet
31 the requirements of this chapter, with the cooperation of
32 existing local organizations or through the expansion of those
33 organizations. The Legislature encourages the expansion of pro
34 bono representation for children. This section is not intended
35 to limit the ability of a pro bono attorney to appear on behalf
36 of a child.

37 (2) As used in this section, the term "dependent child"
38 means a child who is subject to any proceeding under this
39 chapter. The term does not require that a child be adjudicated



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40 dependent for purposes of this section.

41 (3) An attorney shall be appointed for a dependent child
42 ~~who~~:

43 (a) Who resides in a skilled nursing facility or is being
44 considered for placement in a skilled nursing home;

45 (b) Who is prescribed a psychotropic medication and is
46 under the age of 8 or who ~~but~~ declines assent to the
47 psychotropic medication;

48 (c) Who has a diagnosis of a developmental disability as
49 defined in s. 393.063;

50 (d) Who is being placed in a residential treatment center
51 or is being considered for placement in a residential treatment
52 center; ~~or~~

53 (e) Who is a victim of human trafficking as defined in s.
54 787.06(2) (d); or

55 (f) If the statewide Guardian Ad Litem Program certifies
56 that it has a conflict of interest that precludes the program
57 from providing the child with a guardian ad litem.

58 (4) ~~(a)~~ Before a court may appoint an attorney, who may be
59 compensated pursuant to this section, the court must request a
60 recommendation from the Statewide Guardian Ad Litem Office for
61 an attorney who is willing to represent a child without
62 additional compensation. If such an attorney is available within
63 15 days after the court's request, the court must appoint that
64 attorney. However, the court may appoint a compensated attorney
65 within the 15-day period if the Statewide Guardian Ad Litem
66 Office informs the court that it will not be able to recommend
67 an attorney within that time period.

68 (5) ~~(b)~~ After an attorney is appointed, the appointment



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69 continues in effect until the attorney is allowed to withdraw,
70 the attorney ~~or~~ is discharged by the court, or ~~until~~ the case is
71 dismissed. If an attorney withdraws or is discharged, substitute
72 counsel shall be appointed by the court. An attorney who is
73 appointed under this section to represent the child shall
74 provide the complete range of legal services, from the removal
75 from home or from the initial appointment through all available
76 appellate proceedings. With the permission of the court, the
77 attorney for the dependent child may arrange for supplemental or
78 separate counsel to represent the child in appellate
79 proceedings. A court order appointing an attorney under this
80 section must be in writing.

81 (6) ~~(5)~~ Unless ~~Except~~ if the attorney has agreed to provide
82 pro bono services, an appointed attorney or organization must be
83 adequately compensated. All appointed attorneys and
84 organizations must be ~~and~~ provided with access to funding for
85 expert witnesses, depositions, and other costs of litigation.
86 Payment to an attorney is subject to appropriations and subject
87 to review by the Justice Administrative Commission for
88 reasonableness. The Justice Administrative Commission shall
89 contract with attorneys appointed by the court. Attorney fees
90 may not exceed \$1,000 per child per year.

91 (7) Appointed attorneys shall, on a quarterly basis, report
92 to the Quality Counsel Program pursuant to s. 27.406 on the
93 activities performed and results obtained on behalf of each
94 dependent child to the extent that such information does not
95 violate any applicable privilege. The form of the report shall
96 be prescribed by the Justice Administrative Commission.

97 (8) ~~(6)~~ The department shall develop procedures to identify



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98 a dependent child who has a special need specified under
99 subsection (3) and to request that a court appoint an attorney
100 for the child.

101 (9)~~(7)~~ The department may adopt rules to administer this
102 section.

103 (10)~~(8)~~ This section does not limit the authority of the
104 court to appoint an attorney for a dependent child in a
105 proceeding under this chapter.

106 (11)~~(9)~~ Implementation of this section is subject to
107 appropriations expressly made for that purpose.

108 Section 2. Section 27.406, Florida Statutes, is created to
109 read:

110 27.406 Quality Counsel Program.—

111 (1) To ensure that dependent children receive quality
112 representation under chapter 39, the Justice Administrative
113 Commission shall contract with a nonprofit entity to establish
114 the Quality Counsel Program.

115 (2) The Quality Counsel Program must, at a minimum:

116 (a) Create a quality improvement program using the
117 information provided by appointed attorneys under s. 39.01305,
118 including a review and analysis of the attorney's advocacy.

119 (b) Annually report to the Governor, the President of the
120 Senate, the Speaker of the House of Representatives, the Justice
121 Administrative Commission, the statewide Guardian Ad Litem
122 Program, and the Office of the State Courts Administrator on the
123 information provided by appointed attorneys under s. 39.01305,
124 the results obtained on behalf of each dependent child, and
125 recommendations to enhance the quality of dependent children's
126 representation.



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127 Section 3. The establishment of the Quality Counsel Program
128 pursuant to s. 27.406, Florida Statutes, as created by this act,
129 must be complete and the program must be fully operational by
130 June 30, 2018.

131 Section 4. This act shall take effect July 1, 2016.

132
133 ===== T I T L E A M E N D M E N T =====

134 And the title is amended as follows:

135 Delete everything before the enacting clause
136 and insert:

137 A bill to be entitled
138 An act relating to attorneys for dependent children;
139 amending s. 39.01305, F.S.; revising requirements for
140 a dependent child to be appointed an attorney;
141 requiring that a court appoint an attorney for certain
142 dependent children; requiring that the court appoint
143 substitute counsel if an attorney withdraws or is
144 discharged by the court; providing that all appointed
145 attorneys and organizations are entitled to funding
146 for litigation costs; requiring appointed attorneys to
147 quarterly report certain information to the Quality
148 Counsel Program; requiring the Justice Administrative
149 Commission to prescribe the form of the report;
150 creating s. 27.406, F.S.; requiring the Justice
151 Administrative Commission to contract with a nonprofit
152 entity to establish the Quality Counsel Program;
153 requiring a quality improvement program; requiring an
154 annual report; requiring the Quality Counsel Program
155 to be established and fully operational by a specified



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156

date; providing an effective date.

By Senator Flores

37-00764A-16

20161212__

1 A bill to be entitled
2 An act relating to appointed counsel for children;
3 amending s. 39.01305, F.S.; revising the conditions
4 under which an attorney must be appointed for a
5 dependent child; requiring the court to appoint
6 substitute counsel under certain circumstances;
7 requiring the Justice Administrative Commission to
8 contract with a not-for-profit organization to
9 establish the Quality Counsel Program; requiring all
10 compensated counsel to keep contemporaneous time
11 records and submit an itemized hourly statement to the
12 commission; specifying a date by which the program
13 must be completed and operational; specifying minimum
14 program requirements; providing an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Subsection (3), paragraph (b) of subsection (4),
19 and subsection (5) of section 39.01305, Florida Statutes, are
20 amended, and subsection (6) of that section is republished, to
21 read:

22 39.01305 Appointment of an attorney for a dependent child
23 with certain special needs.—

24 (3) An attorney shall be appointed for a dependent child
25 who:

26 (a) Resides in a skilled nursing facility or is being
27 considered for placement in a skilled nursing home;

28 (b) Is prescribed a psychotropic medication but declines
29 assent to the psychotropic medication;

30 (c) Has a diagnosis of a developmental disability as
31 defined in s. 393.063;

32 (d) Is being placed in a residential treatment center or

37-00764A-16

20161212__

33 being considered for placement in a residential treatment
34 center; ~~or~~

35 (e) Is a victim of human trafficking as defined in s.
36 787.06(2)(d); or

37 (f) Has been identified by the court as having need for
38 legal representation.

39 (4)

40 (b) After an attorney is appointed, the appointment
41 continues in effect until the attorney is allowed to withdraw or
42 is discharged by the court or until the case is dismissed. If an
43 attorney withdraws or is discharged, the court shall appoint
44 substitute counsel. An attorney who is appointed under this
45 section to represent the child shall provide the complete range
46 of legal services, from the removal from home or from the
47 initial appointment through all available appellate proceedings.
48 With the permission of the court, the attorney for the dependent
49 child may arrange for supplemental or separate counsel to
50 represent the child in appellate proceedings. A court order
51 appointing an attorney under this section must be in writing.

52 (5) Except if the attorney has agreed to provide pro bono
53 services, an appointed attorney or organization must be
54 adequately compensated. All appointed attorneys or organizations
55 must be ~~and~~ provided with access to funding for expert
56 witnesses, depositions, and other costs of litigation. In order
57 to ensure that children receive quality representation, the
58 Justice Administrative Commission shall contract with a not-for-
59 profit organization to establish the Quality Counsel Program.

60 Payment to an attorney is subject to appropriations and subject
61 to review by the Justice Administrative Commission for

37-00764A-16

20161212__

62 reasonable. The commission ~~Justice Administrative Commission~~
63 shall contract with attorneys appointed by the court. Attorney
64 fees may not exceed \$1,000 per child per year. All compensated
65 counsel must keep contemporaneous time records and must submit
66 an itemized hourly statement that complies with the commission
67 policies and provisions with each billing submission.

68 (6) The department shall develop procedures to identify a
69 dependent child who has a special need specified under
70 subsection (3) and to request that a court appoint an attorney
71 for the child.

72 Section 2. The establishment of the Quality Counsel Program
73 in s. 39.01305(5), Florida Statutes, may begin upon the
74 effective date of this act and must be completed and operational
75 by June 30, 2018. The Quality Counsel Program must, at a
76 minimum:

77 (1) Require all compensated counsel to keep contemporaneous
78 time records and submit an itemized hourly statement with each
79 billing submission. This requirement applies to all new
80 appointments made after June 30, 2016.

81 (2) Issue payment for services for the legal work
82 performed.

83 (3) Incentivize organizational legal service providers to
84 use teams that include individuals who are not attorneys to
85 provide holistic high-quality representation.

86 (4) Create a Quality Counsel Improvement Program that
87 includes attorney performance evaluation with individual file
88 review and courtroom observation.

89 Section 3. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

R12
Bill Number (if applicable)

Meeting Date _____
Topic lawyer regulation
Name Elizabeth Willis
Job Title Lawyer
Address 3160 Blanton Court
Street
Tallahassee
City State Zip

Amendment Barcode (if applicable)

Phone 877-0062
Email EBWILLIS@comcast.net

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/17/10
Meeting Date

SB 1212
Bill Number (if applicable)

Topic Counsel for Kids

Amendment Barcode (if applicable)

Name Nikki Fried

Job Title attorney

Address 3980 W. Broward Blvd

Phone 954-739-3799

Fort Lauderdale, FL
City State Zip

Email nfried@coldnyfall.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida's Children First

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 1256

INTRODUCER: Criminal Justice Committee and Senator Brandes

SUBJECT: Alternative Sanctioning

DATE: February 17, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Cannon</u>	<u>CJ</u>	Fav/CS
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Favorable
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1256 creates an alternative sanctioning program (“program”) for technical violations of probation. The bill defines “technical violation” as any alleged violation of supervision that is not a new felony offense, misdemeanor offense, or criminal traffic offense. The bill allows the chief judge of each judicial circuit, in consultation with the state attorney, public defender, and Department of Corrections, to establish an alternative sanctioning program and determine which technical violations will be eligible for alternative sanctioning.

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

The bill has a positive indeterminate fiscal impact on state and local funds.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Probation

Any person who is found guilty by a jury or the court sitting without a jury or who enters a plea of guilty or nolo contendere may be placed on probation regardless of whether adjudication is withheld.¹ The court determines the terms and conditions of probation. The standard conditions of probation that do not require oral pronouncement, include:

- Report to the probation and parole supervisors as directed;
- Permit such supervisors to visit him or her at his or her home or elsewhere;
- Work faithfully at suitable employment insofar as may be possible;
- Remain within a specified place;
- Live without violating any law;
- Make reparation or restitution to the aggrieved party;
- Repayment of debt to a county or municipal detention facility for medical care, treatment received;
- Payment of any fees due;
- Not associate with persons engaged in criminal activities; and
- Submit to random testing.²

When a defendant is placed on probation the Department of Corrections (“department”) provides immediate officer supervision. Private entities may not provide probationary or supervision services to felony or misdemeanor offenders sentenced or placed on probation or other supervision by the circuit court.³

Section 948.06, F.S., provides procedures regarding a violation of the terms and conditions required of a person on probation. Upon violation, the probationer is arrested and brought before the sentencing court. At the first hearing on the violation, the probationer is advised of the charge. If the probationer admits the charge, the court may immediately revoke, modify, or continue the probation or place the probationer into a community control program.

If the probationer denies having violated the terms of the probation, the court may commit him or her to jail or release him or her with or without bail to await further hearing, or it may dismiss the charge of probation violation. Unless dismissed, the court must conduct a hearing and determine whether the probationer has violated the terms of his or her probation. If the court finds that the probationer has violated, the court may immediately revoke, modify, or continue the probation or place the probationer into a community control program.

If probation is revoked, the court must adjudicate the probationer guilty of the offense charged and proven or admitted, unless he or she has previously been adjudicated guilty. The court may then impose any sentence that it might have originally imposed for the offense for which the probationer was placed on probation or into community control.

¹ Section 948.01(1) F.S.

² Section 948.03(1), F.S.

³ Section 948.01(1)(a), F.S.

Technical Violations

Section 948.06(1)(g), F.S., provides that the chief judge of each judicial circuit may direct the department to use a notification letter of a technical violation in lieu of a violation report when the alleged violation is not a new felony or misdemeanor.

During Fiscal Year 2014-2015, approximately 94,000 violation reports were submitted to the court due to probation violations. Of this number, 61,777 (or 66%) were technical violations. Because of overcrowded court dockets, it often takes weeks and multiple hearings for a probationer to be sentenced as the result of a violation of probation. If the probationer is charged with a technical violation, these hearings often result in the court reinstating or modifying the probation with additional sanctions imposed. If the probationer is held in jail pending a violation hearing, he or she may lose employment and be unable to pay victim restitution, attend treatment, or comply with supervision requirements.⁴

In an effort to improve the violation of probation process, the department's Office of Community Corrections developed the Alternative Sanctions Program to reduce recidivism for supervised probationers by utilizing collaborative efforts between courts, probation, and law enforcement. The program, created through administrative order in each circuit, allows a technical violation to be addressed immediately with the probationer through an administrative process. Circuit court judges in 12 counties within six judicial circuits have agreed to implement the Alternative Sanctions Program via administrative order, including Alachua, Brevard, Desoto, Flagler, Manatee, Palm Beach, Pinellas, Putnam, Sarasota, Seminole, St. Johns, and Volusia.⁵

III. Effect of Proposed Changes:

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

If an eligible offender on probation is alleged to have committed a technical violation, the offender may either waive participation in the program or elect to participate. By participating in the program, the offender admits to the violation, agrees to the probation officer's recommended sanction, and waives the right to:

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

⁴ Department of Corrections Legislative Bill Analysis 2016 SB 1256. (On file with the Florida Senate Criminal Justice Committee.)

⁵ Id.

Before imposing the sanction, the probation officer must submit the recommended sanction and documentation of the offender's admission of violation and agreement with the sanction to the court. The court has the discretion to impose the recommended sanction or to direct the department to submit a violation report, affidavit, and warrant like a normal case not in the program. Any participation by the offender in the program is solely voluntary and the offender may elect to discontinue participation in the program as long as it is before the issuance of the court order imposing the recommended sanction. When an offender quits the program, the probation officer may submit a violation report, affidavit, and warrant to the court concerning the violation. Any prior admission by the offender may not be used as evidence in subsequent proceedings.

The chief judge, in order to establish the program, must issue an administrative order specifying eligibility, which technical violations will be eligible for program, which sanctions may be recommended by a probation officer, and the process for reporting violations of the program.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the department, alternative sanctioning programs may decrease expenditures by reducing law enforcement arrests, jail incarceration of offenders pending technical violation hearings, probation officer time spent at these violation hearings, and court personnel involved in the violation hearing process. The Criminal Justice Impact Conference from January 29, 2016, concluded that CS/SB 1256 has a negative indeterminate impact on prison beds meaning a positive indeterminate impact on state general revenue funds as well as a positive impact on local funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 948.06 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on February 1, 2016:

Makes a technical change by replacing the word “paragraph” for “section.”

B. Amendments:

None.

By the Committee on Criminal Justice; and Senator Brandes

591-02916-16

20161256c1

1 A bill to be entitled
2 An act relating to alternative sanctioning; amending
3 s. 948.06, F.S.; authorizing the chief judge of each
4 judicial circuit, in consultation with specified
5 entities, to establish an alternative sanctioning
6 program; defining the term "technical violation";
7 requiring the chief judge to issue an administrative
8 order when creating an alternative sanctioning
9 program; specifying requirements for the order;
10 authorizing an offender who allegedly committed a
11 technical violation of supervision to waive
12 participation in or elect to participate in the
13 program, admit to the violation, agree to comply with
14 the recommended sanction, and agree to waive certain
15 rights; requiring the probation officer to submit the
16 recommended sanction and certain documentation to the
17 court if the offender admits to committing the
18 violation; authorizing the court to impose the
19 recommended sanction or direct the Department of
20 Corrections to submit a violation report, affidavit,
21 and warrant to the court; specifying that an
22 offender's participation in an alternative sanctioning
23 program is voluntary; authorizing a probation officer
24 to submit a violation report, affidavit, and warrant
25 to the court in certain circumstances; providing an
26 effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:

29
30 Section 1. Paragraph (h) of subsection (1) of section
31 948.06, Florida Statutes, is redesignated as paragraph (i), and
32 a new paragraph (h) is added to that subsection, to read:

591-02916-16

20161256c1

33 948.06 Violation of probation or community control;
34 revocation; modification; continuance; failure to pay
35 restitution or cost of supervision.—

36 (1)

37 (h)1. The chief judge of each judicial circuit, in
38 consultation with the state attorney, the public defender, and
39 the department, may establish an alternative sanctioning program
40 in which the department, after receiving court approval, may
41 enforce specified sanctions for certain technical violations of
42 supervision. For purposes of this paragraph, the term "technical
43 violation" means any alleged violation of supervision that is
44 not a new felony offense, misdemeanor offense, or criminal
45 traffic offense.

46 2. To establish an alternative sanctioning program, the
47 chief judge must issue an administrative order specifying:

48 a. Eligibility criteria.

49 b. The technical violations that are eligible for the
50 program.

51 c. The sanctions that may be recommended by a probation
52 officer for each technical violation.

53 d. The process for reporting technical violations through
54 the alternative sanctioning program, including approved forms.

55 3. If an offender is alleged to have committed a technical
56 violation of supervision that is eligible for the program, the
57 offender may:

58 a. Waive participation in the alternative sanctioning
59 program, in which case the probation officer may submit a
60 violation report, affidavit, and warrant to the court in
61 accordance with this section; or

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62 b. Elect to participate in the alternative sanctioning
63 program after receiving written notice of an alleged technical
64 violation and a disclosure of the evidence against the offender,
65 admit to the technical violation, agree to comply with the
66 probation officer's recommended sanction if subsequently ordered
67 by the court, and agree to waive the right to:

68 (I) Be represented by legal counsel.

69 (II) Require the state to prove his or her guilt before a
70 neutral and detached hearing body.

71 (III) Subpoena witnesses and present to a judge evidence in
72 his or her defense.

73 (IV) Confront and cross-examine adverse witnesses.

74 (V) Receive a written statement from a factfinder as to the
75 evidence relied on and the reasons for the sanction imposed.

76 4. If the offender admits to committing the technical
77 violation and agrees with the probation officer's recommended
78 sanction, the probation officer must, before imposing the
79 sanction, submit the recommended sanction to the court as well
80 as documentation reflecting the offender's admission to the
81 technical violation and agreement with the recommended sanction.

82 5. The court may impose the recommended sanction or may
83 direct the department to submit a violation report, affidavit,
84 and warrant to the court in accordance with this section.

85 6. An offender's participation in an alternative
86 sanctioning program is voluntary. The offender may elect to
87 waive or discontinue participation in an alternative sanctioning
88 program at any time before the issuance of a court order
89 imposing the recommended sanction.

90 7. If an offender waives or discontinues participation in

591-02916-16

20161256c1

91 an alternative sanctioning program, the probation officer may
92 submit a violation report, affidavit, and warrant to the court
93 in accordance with this section. The offender's prior admission
94 to the technical violation may not be used as evidence in
95 subsequent proceedings.

96 Section 2. This act shall take effect July 1, 2016.



The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Appropriations Subcommittee on Criminal and Civil Justice

Subject: Committee Agenda Request

Date: February 1, 2016

I respectfully request that **Senate Bill #1256**, relating to **Alternative Sanctioning**, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 22

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/17/2016

Meeting Date

1256

*Bill Number (if applicable)*Topic Alternative Sanctions*Amendment Barcode (if applicable)*Name Bruce MillerJob Title Public Defender, 1st CircuitAddress 190 Governmental CenterPhone 850.595.4100*Street*PensacolaFL32502Email bruce_miller@pd1.fl.gov*City**State**Zip*Speaking: For Against InformationWaive Speaking: In Support Against
*(The Chair will read this information into the record.)*Representing Florida Public Defender Association, Inc.Appearing at request of Chair: Yes NoLobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/17/16.
Meeting Date

SB. 1256.
Bill Number (if applicable)

Topic (waive in support) SB 1256 - Alternative Sanctioning. Amendment Barcode (if applicable)

Name Jared Torres

Job Title Legislative Affairs Director.

Address 501 S. Calhoun ST. Phone 850-717-3030.

Street

Tallahassee
City

FL
State

32399.
Zip

Email Torres. Jared@mail.rc.state.fl.us.

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FL Department of Corrections (FDC).

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/17/16

Meeting Date

CS/SB 1256

Bill Number (if applicable)

Topic CS/SB 1256 - Alt. Sanctioning

Amendment Barcode (if applicable)

Name Ellie Piloseno

Job Title

Address 106 N. Brownough St.

Phone 850-222-5052

Tallahassee FL 32301

Email

Speaking: For Against Information

Waive Speaking: In Support Against (The Chair will read this information into the record.)

Representing Florida Tax Watch

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 1454

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Hutson

SUBJECT: Vessels

DATE: February 17, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	Fav/CS
2.	Harkness	Sadberry	ACJ	Recommend: Favorable
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1454 revises what constitutes careless operation of a vessel and requires the issuance of safety inspection decals by law enforcement officers to operators of vessels that have been found, during a safety inspection initiated by a law enforcement officer, to be in compliance with the safety equipment carriage and use requirements. The bill prohibits law enforcement officers from stopping a vessel solely for the purpose of inspection safety equipment carriage requirements if the vessel has a properly displayed valid safety inspection decal, unless there is reasonable suspicion that a violation of the safety equipment carriage or use requirements is occurring or has occurred.

The bill has a negative, but indeterminate, fiscal impact due to bill's requirement that the Fish and Wildlife Conservation Commission (FWC) create and administer safety inspection decals.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Reckless or Careless Operation of a Vessel

A person who operates a vessel in willful or wanton disregard for the safety of persons or property at a speed or in a manner as to endanger, or likely to endanger, life or limb, or damage

the property of, or injure any person is guilty of reckless operation of a vessel.¹ The penalty for committing reckless operation of a vessel is a misdemeanor of the first degree, which is punishable by maximum imprisonment of one year or a maximum fine of \$1,000.²

A person who fails to operate a vessel in a reasonable and prudent manner, having regard for other waterborne traffic, posted speed and wake restrictions, and all other attendant circumstances so as not to endanger the life, limb, or property of any person is guilty of careless operation of a vessel. Careless operation of a vessel is a noncriminal violation, which is punishable by a civil penalty of \$50.³

Inspections, Enforcement, and Safety Decals

The U.S. Constitution protects people from unreasonable searches and seizures by the government.⁴ The Fourth Amendment provides that “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated....”⁵ The extent to which an individual is protected by the Fourth Amendment depends on the location of the search or seizure. None of the similar safeguards that are applicable to stops of motor vehicles on less than a probable cause are necessary predicates to stop a vessel.⁶

Under Florida law, officers are authorized to cause any inspections to be made of all vessels in accordance with the Florida Vessel Safety Law, as well as the vessel titling, certificate, and registration requirements.⁷ Additionally, the Fish and Wildlife Conservation Commission (FWC) or any other law enforcement agency is authorized to make any investigation necessary to secure information required to carry out and enforce the Florida Vessel Safety Law, as well as the vessel titling, certificate, and registration requirements.⁸

The following items are examples of what an officer may check for as part of safety inspection:

- Visible distress signals.
- Fire extinguishers.
- Navigation lights.
- Personal floatation devices
- Sound-producing devices.⁹

An officer is prohibited from boarding a vessel to make a safety inspection if the owner or operator is not aboard.¹⁰ If the owner or operator is aboard, an officer is authorized to board a vessel with the consent or when the officer has probable cause or knowledge to believe that a

¹ Section 327.33(1), F.S.

² Section 327.33(1), F.S.

³ Sections 327.33(2) and 327.73(1)(h), F.S.

⁴ U.S. CONST. amend. IV.

⁵ *Id.*

⁶ U.S. Government Publishing Office, *Amendment 4-Searches and Seizures*, pg. 1423 (Oct. 5, 2014) available at <https://www.congress.gov/content/conan/pdf/GPO-CONAN-REV-2014-10-5.pdf>.

⁷ Section 327.70(1), F.S.

⁸ Section 327.70(4), F.S.; s. 328.18, F.S.

⁹ FWC, *Boating Regulations, Equipment and Lighting Requirements*, <http://myfwc.com/boating/regulations/#nogo> (last visited Feb. 10, 2016).

¹⁰ Section 327.56, F.S.

violation of the Florida Vessel Safety Law is occurring.¹¹ An officer may board a vessel if the operator refuses or is unable to display the safety equipment required by law, if requested to do so by an officer, or when the safety equipment to be inspected is permanently installed and is not visible for inspection unless the officer boards the vessel.¹²

The Florida Vessel Safety Law, as well as the vessel titling, certificate, and registration requirements are required to be enforced by the following entities or officers:

- The Division of Law Enforcement of the FWC and its officers;
- The sheriffs of the various counties and their deputies;
- The municipal police officers; and
- Any other law enforcement officer described in s. 943.10, F.S.¹³

The United States Coast Guard offers Vessel Safety Checks (VSC) free of charge.¹⁴ Boats that pass the examination are awarded a distinctive VSC Decal that alerts the Coast Guard, Harbor Patrol, and other law enforcement agencies that the boat was found to be in full compliance with all Federal and State boating laws for that year.¹⁵ The decal is to be immediately affixed to a portion of the boat where it is readily visible to law enforcement authorities.¹⁶

2014 Uniform Boating Citation Summary

Citation	FWC	Other
<p><u>Negligent Operation of a Vessel</u></p> <ul style="list-style-type: none"> • Reckless operation of a vessel • Careless operation of a vessel • Navigation rule violation resulting in an accident • Navigation rule violation not resulting in an accident • Failure to report an accident 	802	468
<p><u>Registration and Numbering</u></p> <ul style="list-style-type: none"> • Operation of unregistered/unnumbered vessels • Application, certificate, number or decal violation • Special manufacturer and dealer numbers • Violation relating to vessel titling • Violation relating to Hull Identification Numbers 	1,052	416
<p><u>Safety Equipment and Regulations</u></p> <ul style="list-style-type: none"> • Equipment and lighting requirements 	3,416	525

¹¹ *Id.*

¹² *Id.*

¹³ Section 327.70, F.S.; s. 943.10, F.S., defines the term “law enforcement officer” as “any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state...”

¹⁴ U.S. Coast Guard Auxiliary, *Vessel Safety Check Website*, <http://wow.uscgaux.info/content.php?unit=V-DEPT&category=welcome> (last visited Feb. 9, 2016).

¹⁵ U.S. Coast Guard, *Vessel Safety Check Manual*, pg. 2-4, 2-5 (Oct. 2014) available at http://vdept.cgau.org/pdf-files/CIM_16796_8A_Printable_Version.pdf.

¹⁶ *Id.*

III. Effect of Proposed Changes:

Section 1 amends s. 327.33, F.S., to revise what constitutes careless operation of a vessel to only apply if a person is operating a vessel in an unreasonable or imprudent manner so as to endanger the life, limb, or property of another person outside of the vessel or endanger the life, limb, or property of any person due to vessel overloading or excessive speed.

Section 2 amends s. 327.70, F.S., to:

- Require a law enforcement officer to issue a safety inspection decal to the operator of a vessel upon demonstrated compliance with safety equipment carriage and use requirements during a safety inspection initiated by the law enforcement officer.
- Provide that a safety inspection decal signifies that the vessel is deemed to have met the safety equipment carriage and use requirements as provided in chapter 327, F.S., at the time and location of the inspection.
- Provide the following display requirements for a safety inspection decal, if displayed:
 - Must be located within six inches of the vessel's properly displayed vessel registration decal; or
 - For non-motorized vessels which are not required to be registered, must be located on the forward half of the port side of the vessel above the waterline.
- Prohibit law enforcement officers from stopping a vessel solely for the purpose of inspecting safety equipment carriage and use requirements if the vessel has a properly displayed valid safety inspection decal, created or approved by the Division of Law Enforcement of the Fish and Wildlife Conservation Commission, except when there is a reasonable suspicion that a violation of the safety equipment carriage or use requirements is occurring or has occurred.
- Clarify that the intent of the subsection is not to restrict vessel stops for any other unlawful purpose.

The bill is effective July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 1454 requires the Fish and Wildlife Conservation Commission to create and administer safety inspection decals. The cost of creating such decals is unknown at this time.

VI. Technical Deficiencies:

The bill clarifies that the intent is not to restrict vessel stops for any other “unlawful purpose.” This should be amended to say “lawful purpose.”

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 327.33 and 327.70.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on February 9, 2016:

The CS removes the revision as to what constitutes the reckless operation of a vessel and reinstates the authority of law enforcement officers to inspect vessels in accordance with chapters 327 and 327, F.S., and cause any investigation necessary to secure information required to carry out and enforce the provisions of chapters 327 and 328, F.S.

The CS requires a law enforcement officer, upon demonstrated compliance with safety equipment carriage and use requirements during a safety inspection initiated by a law enforcement officer, to issue a safety inspection decal to the operator of such vessel. The CS provides display requirements for the safety inspection decal, if displayed. The CS prohibits law enforcement officers from stopping a vessel solely for the purpose of inspecting safety equipment carriage requirements if the vessel has a properly displayed valid safety inspection decal, except when there is a reasonable suspicion that a violation of the safety equipment carriage or use requirements is occurring or has occurred.

B. Amendments:

None.

By the Committee on Environmental Preservation and Conservation;
and Senator Hutson

592-03277-16

20161454c1

1 A bill to be entitled

2 An act relating to vessels; amending s. 327.33, F.S.;
3 revising provisions relating to careless operation of
4 a vessel; amending s. 327.70, F.S.; requiring the
5 issuance and use of a safety inspection decal under
6 certain circumstances; prohibiting law enforcement
7 officers from stopping a vessel for a specified
8 purpose under certain circumstances; providing an
9 exception; providing an effective date.

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 Section 1. Subsection (2) of section 327.33, Florida
14 Statutes, is amended to read:

15 327.33 Reckless or careless operation of vessel.—

16 (2) A Any person who operates any ~~operating~~ a vessel upon
17 the waters of this state shall operate the vessel in a
18 reasonable and prudent manner, having regard for other
19 waterborne traffic, posted speed and wake restrictions, and all
20 other attendant circumstances so as not to endanger the life,
21 limb, or property of another any person outside the vessel or
22 endanger the life, limb, or property of any person due to vessel
23 overloading or excessive speed. The failure to operate a vessel
24 in a manner described in this subsection constitutes careless
25 operation. However, vessel wake and shoreline wash resulting
26 from the reasonable and prudent operation of a vessel ~~shall,~~
27 absent negligence, does not constitute damage or endangerment to
28 property. A Any person who violates the provisions of this
29 subsection commits a noncriminal violation as defined in s.
30 775.08.

31 Section 2. Subsections (2), (3), and (4) of section 327.70,

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32 Florida Statutes, are amended to read:

33 327.70 Enforcement of this chapter and chapter 328.—

34 (2)(a) The operator of a vessel, upon demonstrated
35 compliance with safety equipment carriage and use requirements
36 as provided in this chapter during a safety inspection initiated
37 by a law enforcement officer, shall be issued a safety
38 inspection decal signifying such compliance. The safety
39 inspection decal, if displayed, must be located within 6 inches
40 of the inspected vessel's properly displayed vessel registration
41 decal and shall signify that the vessel is deemed to have met
42 safety equipment carriage and use requirements as provided in
43 this chapter at the time and location of inspection. For non-
44 motorized vessels which are not required to be registered, the
45 safety inspection decal, if displayed, must be located on the
46 forward half of the port side of the vessel above the waterline.

47 (b) Law enforcement officers may not stop a vessel solely
48 for the purpose of inspecting safety equipment carriage
49 requirements when the vessel properly displays a valid safety
50 inspection decal, created or approved by the Division of Law
51 Enforcement of the Fish and Wildlife Conservation Commission,
52 except when there is reasonable suspicion that a violation of a
53 safety equipment carriage or use requirement has occurred or is
54 occurring. Nothing herein is intended to restrict vessel stops
55 for any other unlawful purpose.

56 (3)(a) Noncriminal violations of the following statutes may
57 be enforced by a uniform boating citation mailed to the
58 registered owner of an unattended vessel anchored, aground, or
59 moored on the waters of this state:

60 1. Section 327.33(3)(b), relating to navigation rules.

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61 2. Section 327.44, relating to interference with
62 navigation.

63 3. Section 327.50(2), relating to required lights and
64 shapes.

65 4. Section 327.53, relating to marine sanitation.

66 5. Section 328.48(5), relating to display of decal.

67 6. Section 328.52(2), relating to display of number.

68 (b) Citations issued to livery vessels under this
69 subsection shall be the responsibility of the lessee of the
70 vessel if the livery has included a warning of this
71 responsibility as a part of the rental agreement and has
72 provided to the agency issuing the citation the name, address,
73 and date of birth of the lessee when requested by that agency.
74 The livery is not responsible for the payment of citations if
75 the livery provides the required warning and lessee information.

76 (4)~~(3)~~ Such officers shall have the power and duty to issue
77 such orders and to make such investigations, reports, and
78 arrests in connection with any violation of the provisions of
79 this chapter and chapter 328 as are necessary to effectuate the
80 intent and purpose of this chapter and chapter 328.

81 (5)~~(4)~~ The Fish and Wildlife Conservation Commission or any
82 other law enforcement agency may make any investigation
83 necessary to secure information required to carry out and
84 enforce the provisions of this chapter and chapter 328.

85 Section 3. This act shall take effect July 1, 2016.

86

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: SB 7044

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: Retirement Benefits for Certain Judges

DATE: February 17, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	GO Submitted as Committee Bill
1.	<u>Loe</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Favorable
2.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 7044 allows certain judges who have reached the end of their Deferred Retirement Option Program participation period (typically 60 months) to transfer the accumulated DROP proceeds to the Florida Retirement System investment plan. In the investment plan, the judges will be permitted to direct the investment of these retirement benefits.

The fiscal impact on the Florida Retirement System Trust Fund is indeterminate.

The bill is effective upon becoming law.

II. Present Situation:

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, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.¹ The FRS is a contributory system, with most members contributing three percent of their salaries.²

¹ The Florida Retirement System Pension Plan and Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2014, at p. 29. Available online at: https://www.rol.frs.state.fl.us/forms/2013-14_CAFR.pdf.

² Prior to 1975, members of the FRS were required to make employee contributions of either four percent for Regular Class employees or six 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.

The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in Chapter 121, F.S. As of June 30, 2014, the FRS had 622,089 active members, 363,034 annuitants, 16,137 disabled retirees, and 38,058 active participants of the Deferred Retirement Option Program (DROP).³ As of June 30, 2014, the FRS consisted of 1,014 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 186 cities and 262 special districts that have elected to join the system.⁴

The membership of the FRS is divided into five membership classes:

- The Regular Class⁵ consists of 537,993 active members, plus 5,402 in renewed membership;
- The Special Risk Class⁶ includes 68,593 active members;
- The Special Risk Administrative Support Class⁷ has 84 active members;
- The Elected Officers' Class⁸ has 2,040 active members, plus 147 in renewed membership; and
- The Senior Management Service Class⁹ has 7,607 members, plus 184 in renewed membership.¹⁰

Investment Plan

In 2000, the Legislature created the Public Employee Optional Retirement Program (investment plan), a defined contribution plan offered to eligible employees as an alternative to the FRS Pension Plan.

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and earnings. Benefits are provided through employee-directed investments offered by approved investment providers.

A member vests immediately in all employee contributions paid to the investment plan.¹¹ With respect to the employer contributions, a member vests after completing one work year of employment with an FRS employer.¹² Vested benefits are payable upon termination or death as a

³ Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2014, at 112.

⁴ *Id.*, at 146.

⁵ The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

⁶ 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.

⁷ 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.

⁸ 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.

⁹ 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.

¹⁰ All figures from Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2014, at 115.

¹¹ Section 121.4501(6)(a), F.S.

¹² If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, then any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. Section 121.4501(6)(b) – (d), F.S.

lump-sum distribution, direct rollover distribution, or periodic distribution.¹³ The investment plan also provides disability coverage for both in-line-of-duty and regular disability retirement benefits.¹⁴ An FRS member who qualifies for disability while enrolled in the investment plan must apply for benefits as if the employee were a member of the pension plan. If approved for retirement disability benefits, the member is transferred to the pension plan.¹⁵

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.¹⁶ The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.¹⁷

Pension Plan

The pension plan is administered by the secretary of the Department of Management Services (DMS) through the Division of Retirement.¹⁸ Investment management is handled by the SBA.

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.¹⁹ For members enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.²⁰ 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 compensation.²¹ For most members of the pension plan, normal retirement occurs at the earliest attainment of 30 years of service or age 62.²² For public safety employees in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.²³ Members initially enrolled in the pension plan on or after July 1, 2011, have longer vesting requirements. For members initially enrolled after that date, the member must complete 33 years of service or attain age 65, and members in the Special Risk classes must complete 30 years of service or attain age 60.²⁴

Deferred Retirement Option Program

The Deferred Retirement Option Program (DROP) is available under the Florida Retirement System Pension Plan when the member first reaches eligibility for normal retirement. The DROP allows a member to retire while continuing employment for up to 60 months. While in the

¹³ Section 121.591, F.S.

¹⁴ See s. 121.4501(16), F.S.

¹⁵ Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate an in-line-of-duty disabled member up to 65 percent of the average monthly compensation as of the disability retirement date for special risk class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If the disability occurs other than in the line of duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date.

Section 121.091(4)(f), F.S.

¹⁶ Section 121.4501(8), F.S.

¹⁷ Fla. Const., art IV, s. 4.

¹⁸ Section 121.025, F.S.

¹⁹ Section 121.021(45)(a), F.S.

²⁰ Section 121.021(45)(b), F.S.

²¹ Section 121.091, F.S.

²² Section 121.021(29)(a)1., F.S.

²³ Section 121.021(29)(b)1., F.S.

²⁴ Sections 121.021(29)(a)2. and (b)2., F.S.

DROP, the member's retirement benefits accumulate in the Florida Retirement System Trust Fund (increased by a cost-of-living adjustment each July, as applicable) and earn monthly interest equivalent to an annual rate of 1.3 percent. (DROP participants with an effective DROP begin date before July, 2011, earn monthly interest equivalent to an annual rate of 6.5 percent.) The election to participate in the DROP must be made within 12 months of the member's normal retirement date, unless the member is eligible to defer the election. To participate for the maximum DROP period, the member must enter the DROP upon first reaching eligibility for normal retirement, or upon reaching an eligible deferral date as described below:

- A special risk class member who reaches his or her normal retirement date based upon years of service before reaching age 52 may defer DROP entry up to age 52 and still participate for 60 months. Also, a member of the Special Risk Administrative Support Class who has at least the number of years of Special Risk Class service required to be vested and reaches his or her normal retirement date based upon years of service before reaching age 52 may defer DROP entry up to age 52 and still participate for 60 months.
- A member of the Regular Class, Elected Officers' Class, or the Senior Management Services Class who reaches his or her normal retirement date before reaching age 57 may defer DROP entry until age 57 and still participate for 60 months. A member of the Special Risk Administrative Support Class who does not have the number of years of Special Risk Class service required to be vested would be subject to these deferral requirements.
- A member who reaches his or her normal retirement date during a term of office may defer the DROP election until the next succeeding term in that office and still participate for up to 60 months or until the end of that succeeding term, whichever is less.
- A member who is employed as K-12 instructional personnel as defined in section 1012.01(2), Florida Statutes, may elect to participate in the DROP at any time after reaching his or her normal retirement date and still participate for 60 months.

Upon termination, the DROP account is paid out as a lump sum payment, a rollover, or a combination partial lump sum payment and rollover, and monthly benefits are paid to the member in the amount as calculated upon entry into the DROP, plus cost-of-living adjustments for intervening years.

In most cases, the DROP participant must cease employment after a maximum of 60 months in the DROP, must satisfy the termination requirements for retirement, and must comply with applicable reemployment restrictions thereafter. However, certain exceptions apply:

- Effective July 1, 2002, a DROP participant who holds an elective office may end DROP participation and postpone compliance with termination requirements and reemployment limitations until he or she no longer holds the elective office (including consecutive terms in the same office). For the period between the end of DROP participation and termination, no retirement credit is earned and the member's DROP accumulation accrues no additional monthly benefits. If DROP participation began before July 1, 2010, the member's DROP accumulation continues to earn interest after participation ends and before termination. If DROP participation begins on or after July 1, 2010, the DROP accumulation does not earn interest during the period after DROP participation ends and termination.
- K-12 instructional personnel employed with a district school board, the Florida School for the Deaf and the Blind, or a developmental research school of a state university may be allowed to extend their DROP participation for up to an additional 36 months beyond their initial 60-month DROP participation period. To qualify for the extension, the DROP

participant must receive authorization from the employer and be approved by the Division of Retirement. If authorized to extend DROP participation, a participant must remain employed in an eligible position during the period of DROP extension.

III. Effect of Proposed Changes:

The bill allows certain judges who have reached the end of their DROP participation period to transfer the accumulated DROP proceeds to the FRS investment plan. In the investment plan, the judges will be permitted to direct the investment of these retirement benefits.

Section 1 amends section 121.053, F.S., to allow, at the end of the DROP participation period and before termination from covered employment, an eligible officer to transfer all or a portion of his or her DROP benefits and interest into the FRS investment plan. An eligible officer is defined as a county or circuit judge who is a participant of the DROP and has attained the applicable normal retirement age (age 62 or 65 depending when the judge initially enrolled in the FRS).

Section 2 amends section 121.091, F.S., to clarify that an eligible officer who transfers the DROP benefits to the investment plan may not receive the DROP proceeds from the investment plan until the officer has terminated all employment relationships with covered employers and completed all other requirements relating to the processing of the payments.

Section 3 amends section 121.4501, F.S., to expand the membership of the investment plan to include the eligible elected officers that have the option to transfer DROP benefits prior to termination of employment. The section is also amended to allow the investment plan to receive the transfer of the DROP benefits prior to the officer terminating employment. This transfer must constitute a “direct trustee-to-trustee transfer” under the federal tax code.

Section 4 requires the SBA and the DMS to request a private letter ruling to ensure that the changes made to the FRS are consistent with the federal tax code regarding the qualified status of the pension plan. If the SBA or the DMS receives notification that the pension plan may be disqualified based on these changes, that portion of the bill does not apply.

Section 5 provides that the act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 7044 has an indeterminate fiscal impact to the private sector. Eligible officers will be permitted to direct the investment of accrued DROP benefits after the expiration of the DROP period (typically 60 months). Based on the investment experience, the eligible officers may enjoy additional investment earnings or may lose a portion of the principal DROP benefits.

C. Government Sector Impact:

The bill has an indeterminate fiscal impact to the government sector. According to the State Board of Administration, to the extent that eligible officers remain in office beyond the 60-month DROP period and the FRS investments are positive relating to the accumulated DROP balances, the FRS Trust Fund investment earnings may be decreased. On the other hand, if the FRS pension plan incurs investment losses on accumulated DROP balances, the FRS Trust Fund will not have to use other funds to offset the losses of principal associated with DROP benefits.²⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 121.053, 121.091, and 121.4501 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

²⁵ State Board of Administration, *Senate Proposed Committee Bill 7044 Fiscal Analysis* (Jan. 19, 2016) (on file with the Senate Appropriations Subcommittee on Criminal and Civil Justice).

B. Amendments:

None.

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

By the Committee on Governmental Oversight and Accountability

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1 A bill to be entitled
2 An act relating to retirement benefits for certain
3 judges; amending s. 121.053, F.S.; authorizing certain
4 retired members of the Florida Retirement System
5 subsequently serving in a specified judicial office
6 covered by the Elected Officers' Class to transfer all
7 or a portion of benefits and interest accrued during
8 participation in the Deferred Retirement Option
9 Program to the investment plan; prohibiting transfer
10 of funds to the Florida Retirement System Trust Fund
11 after the election is made; prohibiting distribution
12 of transferred funds until the member ceases all
13 employment relationships and completes certain
14 requirements; defining the term "eligible officer";
15 amending ss. 121.091 and 121.4501, F.S.; conforming
16 provisions to changes made by the act; requiring the
17 State Board of Administration and the Department of
18 Management Services to request a private letter ruling
19 from the United States Internal Revenue Service;
20 providing for applicability in the event of an
21 unfavorable private letter ruling; providing an
22 effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Paragraph (a) of subsection (7) of section
27 121.053, Florida Statutes, is amended to read:

28 121.053 Participation in the Elected Officers' Class for
29 retired members.—

30 (7) A member who is elected or appointed to an elective
31 office and who is participating in the Deferred Retirement
32 Option Program is not subject to termination as defined in s.

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33 121.021, or reemployment limitations as provided in s.
34 121.091(9), until the end of his or her current term of office
35 or, if the officer is consecutively elected or reelected to an
36 elective office eligible for coverage under the Florida
37 Retirement System, until he or she no longer holds an elective
38 office, as follows:

39 (a) At the end of the 60-month DROP period:

40 1. The officer's DROP account may not accrue additional
41 monthly benefits, but does continue to earn interest as provided
42 in s. 121.091(13). However, an officer whose DROP participation
43 begins on or after July 1, 2010, may not continue to earn such
44 interest.

45 2. Retirement contributions, except for unfunded actuarial
46 liability and health insurance subsidy contributions required in
47 ss. 121.71(5) and 121.76, are not required of the employer of
48 the elected officer, and additional retirement credit may not be
49 earned under the Florida Retirement System.

50 3. Before termination, an eligible officer may elect to
51 transfer all or a portion of the benefits and interest accrued
52 during DROP participation to the investment plan pursuant to s.
53 121.4501(21). Once the eligible officer transfers funds to the
54 investment plan, the eligible officer may not elect to transfer
55 funds back to the Florida Retirement System Trust Fund. A
56 distribution of the funds transferred to the investment plan may
57 not occur until the member has ceased all employment
58 relationships as provided in s. 121.021(39) and completed all
59 the requirements under s. 121.091(13) for a distribution under
60 the program. For purposes of this subparagraph, the term
61 "eligible officer" means a member of the pension plan

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62 participating in DROP who is serving as a county judge or
63 circuit judge and has:

64 a. Attained age 62, if initially enrolled in the pension
65 plan before July 1, 2011; or

66 b. Attained age 65, if initially enrolled in the pension
67 plan on or after July 1, 2011.

68 Section 2. Paragraph (c) of subsection (13) of section
69 121.091, Florida Statutes, is amended to read:

70 121.091 Benefits payable under the system.—Benefits may not
71 be paid under this section unless the member has terminated
72 employment as provided in s. 121.021(39) (a) or begun
73 participation in the Deferred Retirement Option Program as
74 provided in subsection (13), and a proper application has been
75 filed in the manner prescribed by the department. The department
76 may cancel an application for retirement benefits when the
77 member or beneficiary fails to timely provide the information
78 and documents required by this chapter and the department's
79 rules. The department shall adopt rules establishing procedures
80 for application for retirement benefits and for the cancellation
81 of such application when the required information or documents
82 are not received.

83 (13) DEFERRED RETIREMENT OPTION PROGRAM.—In general, and
84 subject to this section, the Deferred Retirement Option Program,
85 hereinafter referred to as DROP, is a program under which an
86 eligible member of the Florida Retirement System may elect to
87 participate, deferring receipt of retirement benefits while
88 continuing employment with his or her Florida Retirement System
89 employer. The deferred monthly benefits shall accrue in the
90 Florida Retirement System on behalf of the member, plus interest

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91 compounded monthly, for the specified period of the DROP
92 participation, as provided in paragraph (c). Upon termination of
93 employment, the member shall receive the total DROP benefits and
94 begin to receive the previously determined normal retirement
95 benefits. Participation in the DROP does not guarantee
96 employment for the specified period of DROP. Participation in
97 DROP by an eligible member beyond the initial 60-month period as
98 authorized in this subsection shall be on an annual contractual
99 basis for all participants.

100 (c) *Benefits payable under DROP.*—

101 1. Effective on the date of DROP participation, the
102 member's initial normal monthly benefit, including creditable
103 service, optional form of payment, and average final
104 compensation, and the effective date of retirement are fixed.
105 The beneficiary established under the Florida Retirement System
106 is the beneficiary eligible to receive any DROP benefits payable
107 if the DROP participant dies before completing the period of
108 DROP participation. If a joint annuitant predeceases the member,
109 the member may name a beneficiary to receive accumulated DROP
110 benefits payable. The retirement benefit, the annual cost of
111 living adjustments provided in s. 121.101, and interest accrue
112 monthly in the Florida Retirement System Trust Fund. For members
113 whose DROP participation begins:

114 a. Before July 1, 2011, the interest accrues at an
115 effective annual rate of 6.5 percent compounded monthly, on the
116 prior month's accumulated ending balance, up to the month of
117 termination or death, except as provided in s. 121.053(7).

118 b. On or after July 1, 2011, the interest accrues at an
119 effective annual rate of 1.3 percent, compounded monthly, on the

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120 prior month's accumulated ending balance, up to the month of
121 termination or death, except as provided in s. 121.053(7).

122 2. Each employee who elects to participate in DROP may
123 elect to receive a lump-sum payment for accrued annual leave
124 earned in accordance with agency policy upon beginning
125 participation in DROP. The accumulated leave payment certified
126 to the division upon commencement of DROP shall be included in
127 the calculation of the member's average final compensation. The
128 employee electing the lump-sum payment is not eligible to
129 receive a second lump-sum payment upon termination, except to
130 the extent the employee has earned additional annual leave
131 which, combined with the original payment, does not exceed the
132 maximum lump-sum payment allowed by the employing agency's
133 policy or rules. An early lump-sum payment shall be based on the
134 hourly wage of the employee at the time he or she begins
135 participation in DROP. If the member elects to wait and receive
136 a lump-sum payment upon termination of DROP and termination of
137 employment with the employer, any accumulated leave payment made
138 at that time may not be included in the member's retirement
139 benefit, which was determined and fixed by law when the employee
140 elected to participate in DROP.

141 3. The effective date of DROP participation and the
142 effective date of retirement of a DROP participant shall be the
143 first day of the month selected by the member to begin
144 participation in DROP, provided such date is properly
145 established, with the written confirmation of the employer, and
146 the approval of the division, on forms required by the division.

147 4. Normal retirement benefits and any interest continue to
148 accrue in DROP until the established termination date of DROP or

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149 until the member terminates employment or dies before such date,
150 except as provided in s. 121.053(7). Although individual DROP
151 accounts may not be established, a separate accounting of each
152 member's accrued benefits under DROP shall be calculated and
153 provided to the member.

154 5. At the conclusion of the member's participation in DROP,
155 the division shall distribute the member's total accumulated
156 DROP benefits, subject to the following:

157 a. The division shall receive verification by the member's
158 employer or employers that the member has terminated all
159 employment relationships as provided in s. 121.021(39).

160 b. The terminated DROP participant or, if deceased, the
161 member's named beneficiary, shall elect on forms provided by the
162 division to receive payment of the DROP benefits in accordance
163 with one of the options listed below. If a member or beneficiary
164 fails to elect a method of payment within 60 days after
165 termination of DROP, the division shall pay a lump sum as
166 provided in sub-sub-subparagraph (I).

167 (I) Lump sum.—All accrued DROP benefits, plus interest,
168 less withholding taxes remitted to the Internal Revenue Service,
169 shall be paid to the DROP participant or surviving beneficiary.

170 (II) Direct rollover.—All accrued DROP benefits, plus
171 interest, shall be paid from DROP directly to the custodian of
172 an eligible retirement plan as defined in s. 402(c)(8)(B) of the
173 Internal Revenue Code. However, in the case of an eligible
174 rollover distribution to the surviving spouse of a deceased
175 member, an eligible retirement plan is an individual retirement
176 account or an individual retirement annuity as described in s.
177 402(c)(9) of the Internal Revenue Code.

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178 (III) Partial lump sum.—A portion of the accrued DROP
179 benefits shall be paid to DROP participant or surviving spouse,
180 less withholding taxes remitted to the Internal Revenue Service,
181 and the remaining DROP benefits must be transferred directly to
182 the custodian of an eligible retirement plan as defined in s.
183 402(c)(8)(B) of the Internal Revenue Code. However, in the case
184 of an eligible rollover distribution to the surviving spouse of
185 a deceased member, an eligible retirement plan is an individual
186 retirement account or an individual retirement annuity as
187 described in s. 402(c)(9) of the Internal Revenue Code. The
188 proportions must be specified by the DROP participant or
189 surviving beneficiary.

190
191 An eligible officer, as defined in s. 121.053(7), who
192 transferred accrued DROP benefits and interest to the investment
193 plan must meet the requirements of s. 121.4501(21), which
194 include the termination of all employment relationships as
195 provided in s. 121.021(39), and complete the requirements of
196 this sub-subparagraph to process the payment of any accrued DROP
197 benefits and interest retained in the Florida Retirement System
198 Trust Fund.

199 c. The form of payment selected by the DROP participant or
200 surviving beneficiary must comply with the minimum distribution
201 requirements of the Internal Revenue Code.

202 d. A DROP participant who fails to terminate all employment
203 relationships as provided in s. 121.021(39) shall be deemed as
204 not retired, and the DROP election is null and void. Florida
205 Retirement System membership shall be reestablished
206 retroactively to the date of the commencement of DROP, and each

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207 employer with whom the member continues employment must pay to
208 the Florida Retirement System Trust Fund the difference between
209 the DROP contributions paid in paragraph (i) and the
210 contributions required for the applicable Florida Retirement
211 System class of membership during the period the member
212 participated in DROP, plus 6.5 percent interest compounded
213 annually.

214 6. The retirement benefits of any DROP participant who
215 terminates all employment relationships as provided in s.
216 121.021(39) but is reemployed in violation of the reemployment
217 provisions of subsection (9) are suspended during those months
218 in which the retiree is in violation. Any retiree in violation
219 of this subparagraph and any employer that employs or appoints
220 such person without notifying the division to suspend retirement
221 benefits are jointly and severally liable for any benefits paid
222 during the reemployment limitation period. The employer must
223 have a written statement from the retiree that he or she is not
224 retired from a state-administered retirement system. Any
225 retirement benefits received by a retiree while employed in
226 violation of the reemployment limitations must be repaid to the
227 Florida Retirement System Trust Fund, and his or her retirement
228 benefits shall remain suspended until payment is made. Benefits
229 suspended beyond the end of the reemployment limitation period
230 apply toward repayment of benefits received in violation of the
231 reemployment limitation.

232 7. The accrued benefits of any DROP participant, and any
233 contributions accumulated under the program, are not subject to
234 assignment, execution, attachment, or any legal process except
235 for qualified domestic relations court orders, income deduction

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236 orders as provided in s. 61.1301, and federal income tax levies.

237 8. DROP participants are not eligible for disability
238 retirement benefits as provided in subsection (4).

239 Section 3. Paragraphs (e) and (i) of subsection (2) and
240 subsection (21) of section 121.4501, Florida Statutes, are
241 amended to read:

242 121.4501 Florida Retirement System Investment Plan.—

243 (2) DEFINITIONS.—As used in this part, the term:

244 (e) "Eligible employee" means an officer or employee, as
245 defined in s. 121.021, who:

246 1. Is a member of, or is eligible for membership in, the
247 Florida Retirement System, including any renewed member of the
248 Florida Retirement System initially enrolled before July 1,
249 2010; or

250 2. Participates in, or is eligible to participate in, the
251 Senior Management Service Optional Annuity Program as
252 established under s. 121.055(6), the State Community College
253 System Optional Retirement Program as established under s.
254 121.051(2)(c), or the State University System Optional
255 Retirement Program established under s. 121.35.

256
257 The term does not include any member participating in the
258 Deferred Retirement Option Program established under s.
259 121.091(13), except as provided in paragraph (21)(b), a retiree
260 of a state-administered retirement system initially reemployed
261 in a regularly established position on or after July 1, 2010, or
262 a mandatory participant of the State University System Optional
263 Retirement Program established under s. 121.35.

264 (i) "Member" or "employee" means an eligible employee who

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265 enrolls in the investment plan as provided in subsection (4), a
266 terminated Deferred Retirement Option Program member as
267 described in paragraph (21)(a), an eligible elected officer as
268 described in paragraph (21)(b) subsection (21), or a beneficiary
269 or alternate payee of a member or employee.

270 (21) PARTICIPATION BY ~~TERMINATED~~ DEFERRED RETIREMENT OPTION
271 PROGRAM MEMBERS.—

272 (a) Notwithstanding any other provision of law, members in
273 the Deferred Retirement Option Program offered under part I may,
274 after conclusion of their participation in the program and
275 meeting the definition of termination in s. 121.021, elect to
276 roll over or authorize a direct trustee-to-trustee transfer to
277 an account under the investment plan of their Deferred
278 Retirement Option Program proceeds distributed as provided under
279 s. 121.091(13)(c)5. The transaction is considered ~~must~~
280 ~~constitute~~ an "eligible rollover distribution" within the
281 meaning of s. 402(c)(4) of the Internal Revenue Code.

282 (b)1. After his or her benefits cease to accrue in the
283 Deferred Retirement Option Program and before meeting the
284 definition of termination in s. 121.021, an eligible officer, as
285 defined in s. 121.053(7)(a)3., may elect to transfer all or a
286 portion of the total accumulated Deferred Retirement Option
287 Program benefits plus interest to the investment plan subject to
288 the terms of s. 121.053(7)(a)3. The transaction must constitute
289 a "direct trustee-to-trustee transfer" under the Internal
290 Revenue Code.

291 2. After the eligible officer has ceased all employment
292 relationships as provided in s. 121.021(39), the eligible
293 officer may authorize a distribution of those proceeds as

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294 provided in s. 121.591.

295 (c)~~(a)~~ The investment plan may accept such amounts for
296 deposit into member accounts as provided in paragraph (5) (e).

297 (d)~~(b)~~ The affected member shall direct the investment of
298 his or her investment account; however, unless he or she becomes
299 a renewed member of the Florida Retirement System under s.
300 121.122 and elects to participate in the investment plan, no
301 contributions may be made to the member's account as provided
302 under paragraph (5) (a).

303 (e)~~(c)~~ The state board or the department is not responsible
304 for locating those persons who may be eligible to participate in
305 the investment plan under this subsection.

306 Section 4. (1) As soon as practicable after the effective
307 date of this act, the State Board of Administration and the
308 Department of Management Services shall request a private letter
309 ruling from the United States Internal Revenue Service. If the
310 United States Internal Revenue Service refuses to act upon the
311 request for a private letter ruling, then a legal opinion from a
312 qualified tax attorney or firm may be substituted for such
313 private letter ruling.

314 (2) If the state board or the department receives
315 notification from the United States Internal Revenue Service
316 that this act or any portion of this act will cause the Florida
317 Retirement System, or a portion thereof, to be disqualified for
318 tax purposes under the Internal Revenue Code, then the portion
319 that will cause the disqualification does not apply. Upon
320 receipt of such notice, the state board and the department shall
321 notify the presiding officers of the Legislature.

322 Section 5. This act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Chair*
Judiciary, *Vice Chair*
Appropriations
Appropriations Subcommittee on Education
Children, Families, and Elder Affairs
Commerce and Tourism

SENATOR JEREMY RING

29th District

January 18, 2016

Senator Joe Negron, Chair
Appropriations Subcommittee on Criminal and Civil Justice
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Negron,

I am writing to respectfully request your cooperation in placing Senate Bill 7044, relating to Retirement Benefits for Certain Judges, on the Appropriations Subcommittee on Criminal and Civil Justice agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring
Senator District 29

cc: Tim Sadberry, Staff Director
Michelle Sanders, Committee Administrative Assistant

REPLY TO:

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: SB 7046
INTRODUCER: Transportation Committee
SUBJECT: Penalties and Fees
DATE: February 17, 2016 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Jones</u>	<u>Eichin</u>		TR Submitted as Committee Bill
1.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Favorable
2.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 7046 makes numerous changes to the Florida Statutes related to driver license (DL) suspensions and revocations, and the penalties and fees associated with them. Specifically, the bill:

- Removes suspension and revocation penalties for a number of specified non-driving-related offenses;
- Reduces the length of mandatory DL suspension for drug convictions from one year to six months;
- Allows individuals whose licenses are suspended for failure to comply with a court order or failure to pay court financial obligations, under ss. 318.15 or 322.245, F.S., to apply for a hardship license issued by the Department of Highway Safety and Motor Vehicles (DHSMV);
- Requires the court to inquire about a person’s financial ability to pay a fine at the time a civil penalty is ordered in court;
- Prohibits a DL from being suspended solely for inability to pay a financial penalty or court obligation if the individual demonstrates to the court that he or she cannot pay;
- Adds criteria of what evidence demonstrates to the court a person is unable to pay;
- Prohibits clerk of the court-approved payment plans from exceeding two percent of an applicant’s income, unless approved by the applicant;
- Requires clerks of the circuit court (clerks of court) to competitively bid for collection agents or private attorneys taking over unpaid accounts, and:
 - Prohibits the clerk of court from adding collection fees to the unpaid accounts for transferring the account to an agent or attorney; and
 - Prohibits the collections agent or attorney to add additional fees to the account other than the contractually agreed upon surcharge;
- Requires uniform traffic citations include information regarding the option of a payment plan and community service;

- Requires, in criminal cases, public defender request forms include the option to elect or refuse community service, if it is offered by the court; and
- Allows the court to use the information provided on the public defender request form to determine the person's inability to pay court financial obligations for the purpose of converting financial obligations into court-ordered community service.

The bill has an indeterminate negative fiscal impact on state and local government. The Revenue Estimating Conference estimated the removal of suspension penalties for non-driving-related offenses within the bill will negatively impact state and local government by a recurring loss of \$1.5 million each year for Fiscal Years 2016-2017 through 2020-2021. The bill will likely have a negative impact on local tax collectors and clerks of court who retain a portion of revenues from certain DL sanctions when issuing reinstatements, in addition to other fees retained by them associated with DL suspensions and revocations. However, the Revenue Estimating Conference was unable to determine the fiscal impact of the reduction in suspensions for "failure to comply" and "failure to pay court obligations", the strengthening of the payment plan provisions, or the potential increase in the use of community service in lieu of payment. The clerks of court estimate that the cost to comply with the bill's provisions related to the monitoring and management of the payment plans are approximately \$7.5 million and a loss in revenue ranging from \$24.7 million to \$82.4 million, based on County Fiscal Year 2014-2015 revenue. *See* Section V.

The bill has an effective date of October 1, 2016.

II. Present Situation:

Driver license (DL) revocations and suspensions, respectively, terminate or temporarily withdraw one's driving privilege.¹ Although initially used to address poor driving behavior, DL sanctions are now commonly used to punish individuals engaged in behavior unrelated to the operation of a motor vehicle. Consequently, a substantial amount of time and resources are expended by state and local entities to deal with and process non-driving-related suspensions and revocations.

According to the American Association of Motor Vehicle Administrators (AAMVA), "Some studies have shown that suspending driving privileges for non-highway safety related reasons is not effective."² Enforcing non-driving-related suspensions is costly and detracts from highway safety priorities. Licenses being suspended for non-driving-related reasons have caused the seriousness of DL suspensions to become lessened in the minds of law enforcement, the courts, and the public, even though data shows drivers with suspensions for traffic-safety-related reasons are three times more likely to be involved in a crash than drivers suspended for other reasons.³

It is estimated that as many as three-fourths of drivers with suspended or revoked licenses continue to drive, indicating DL suspensions may not effectively force compliance.⁴ According

¹ Sections 322.01(36) and (40), F.S.

² AAMVA, *Best Practices Guide to Reducing Suspended Drivers*, (Feb. 2013), available at: <http://www.aamva.org/WorkArea/DownloadAsset.aspx?id=3723> at p. 2 (last visited Jan. 4, 2016).

³ *Id.*

⁴ *Id.*

to the Transportation Research Board of the National Academies, one out of five fatalities nationally involves a driver who is operating a vehicle without a valid license.⁵

DL suspension and revocation penalties are used to punish individuals who do not pay certain financial penalties and obligations, sometimes whether or not the individual can afford to do so. Furthermore, penalties for driving with a DL that is suspended or revoked increase per offense, causing individuals suffering from financial hardship to become stuck in a self-perpetuating cycle. Drivers who were unable to pay their original fine or court fees may lose their ability to legally get to and from work. If they are caught driving while the DL is suspended or revoked, they will incur additional court costs and penalties. Additionally, these drivers are not allowed to obtain a hardship license, restricted to business or employment purposes only⁶, even though this option is available for numerous driving-related suspensions, including DUIs.⁷ Drivers whose license is suspended for inability to pay penalties or court financial obligations need to pay reinstatement fees in addition to their outstanding obligations to legally drive.

Clerks (clerks of court or clerks) use DL sanctions as a means to improve collections of fines and fees and have indicated that DL sanctions are their most effective tool to increase collections.⁸ However, a 2007 report by the Office of Program Policy Analysis and Government Accountability (OPPAGA) indicated, of the 67 clerks they surveyed, there was no meaningful difference between the average revenue collected overall and clerks' use of any particular collection method.⁹ According to a 2004 OPPAGA *Information Brief*, some clerks and judges both indicated that imposing sanctions against a DL for non-traffic-related offenses would not be appropriate since the punishment did not fit the crime; licenses were already overburdened with penalties; and sanctions would result in more unlicensed drivers on Florida's roadways as well as potentially more court cases.¹⁰

Non-Driving-Related DL Suspensions and Revocations

Generally, the threat of losing one's driving privilege has been used to combat truancy, theft, vandalism, illegal possession of drugs, alcohol, tobacco, and firearms, and a number of other non-driving-related offenses. Relevant non-driving offenses are detailed below.

School Attendance Requirements

A minor is not eligible for driving privileges unless that minor:

⁵ See *Id.* at p. 6.

⁶ Section 322.271(1)(c), F.S., defines a "business purposes only" restricted driving privilege as limited to driving necessary to maintain livelihood, including driving to and from work, necessary on-the-job driving, driving for educational purposes, and driving for church and medical purposes. An "employment purposes only" restricted driving privilege is limited to driving to and from work and necessary on-the-job driving.

⁷ DHSMV, *Hardship Reinstatement Eligibility Requirements*, (Revised May 12, 2014) (on file with the Senate Committee on Transportation).

⁸ OPPAGA, *Options Exist to Modify Use of Driver License Suspension for Non-Driving-Related Reasons*, Report No. 14-07, (Feb. 2014), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1407rpt.pdf> (last visited Dec. 9, 2015).

⁹ OPPAGA, *Clerks of Court Generally Are Meeting the System's Collections Performance Standards*, Report No. 07-21, (Mar. 2007), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0721rpt.pdf> at p. 4 (last visited Jan. 2016).

¹⁰ OPPAGA, *Information Brief: Court Fine and Fee Collections Can Increase*, Report No. 04-07, (Jan. 2004), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0407rpt.pdf> at p. 5 (last visited Jan. 4, 2016).

- Is enrolled in a public school, nonpublic school, or home education program and satisfies relevant attendance requirements;
- Has received a high school diploma, a high school equivalency diploma, a special diploma, or a certificate of high school completion;
- Is enrolled in a study course in preparation for the high school equivalency examination and satisfies relevant attendance requirements;
- Has been issued a certificate of exemption¹¹ from the district school superintendent; or
- Has been issued a hardship waiver.¹²

In Fiscal Year 2012-2013, the Department of Highway Safety and Motor Vehicles (DHSMV) suspended 4,020 licenses for non-compliance with school attendance requirements.¹³ Approximately 60 percent of DL suspensions for non-compliance with school attendance requirements are reinstated in less than one year; however, the majority of the reinstatements are for individuals who reached their eighteenth birthday and were thus, no longer subject to the requirements.¹⁴ Revenue from reinstatement fees for school attendance non-compliance from Fiscal Year 2012-2013 totaled \$241,389.¹⁵ As of 2013, 29 states linked minors' driving privileges to school enrollment, attendance, academic performance, or behavior.¹⁶

Worthless Check - Failure to Appear

The court may order the suspension or revocation of a DL if the licensee is being prosecuted for giving worthless checks, drafts, or debit card orders under s. 832.05, F.S., and fails to appear before the court after having been previously adjudicated guilty under the same section.¹⁷ The DHSMV issued 906 DL sanctions in 2014 for failing to appear on a worthless check charge.¹⁸ The driving privilege is suspended until full payment of any court financial obligations incurred as a result of the warrant or *capias* issued is received, the cancellation of the warrant or *capias* from the Department of Law Enforcement is recorded, and a payment of a \$10 fee in addition to the suspension or revocation fee is paid to the DHSMV.¹⁹

Misdemeanor Theft

The court has the option to suspend the DL of a person adjudicated guilty of any misdemeanor violation of theft regardless of the value of the property stolen.²⁰ The first suspension following an adjudication of guilt for theft is for a period of six months, and a second or subsequent

¹¹ See s. 1003.21(3), F.S.

¹² Section 322.091, F.S.

¹³ OPPAGA 2014 report, *supra* note 8 at p. 9

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ National Conference of State Legislatures (NCSL), *State Statutes Linking Driver's Licenses to School Enrollment, Attendance, Academic Performance, or Behavior* (2013), <http://www.ncsl.org/documents/transportation/DLgradesattend.pdf> (last visited Dec. 9, 2015).

¹⁷ Section 832.09, F.S., provides the individual is also issued a warrant or *capias* for failure to appear by the court.

¹⁸ DHSMV, PowerPoint Presentation to the Florida Senate Committee on Transportation (Sept. 16, 2015). *available at*: http://www.flsenate.gov/PublishedContent/Committees/2014-2016/TR/MeetingRecords/MeetingPacket_3156_2.pdf at p. 35 (last visited Dec. 28, 2015).

¹⁹ See s. 322.251(7)(a), F.S., and DHSMV website, *Fee Schedule*, <http://www.flhsmv.gov/fees/> (last visited Dec. 28, 2015).

²⁰ Section 812.0155, F.S., allows the suspension for a misdemeanor violation under ss. 812.014 or 812.015, F.S.

suspension is for a period of one year.²¹ The DHSMV issued 508 DL sanctions in 2014 for theft.²²

The court may also suspend, revoke, or withhold issuance of a DL of a minor found guilty of a violation of theft²³ as an alternative to sentencing the minor to probation, commitment to the Department of Juvenile Justice, community control, or incarceration if the minor has never previously been convicted of or adjudicated delinquent for any criminal offense.²⁴

Providing Alcohol to Persons Under 21

The court has discretion to order the DHSMV to withhold the issuance of, or suspend or revoke the DL of a person found guilty of violating s. 562.11(1), F.S., which prohibits a person from selling, giving, serving, or permitting service of alcoholic beverages to a person under the age of 21 or permitting a person under the age of 21 to consume an alcoholic beverage on a licensed premise.²⁵ Additionally, a person found guilty of violating this prohibition commits a second degree misdemeanor, and a person who violates this prohibition a second or subsequent time within one year after a prior conviction commits a first degree misdemeanor.

Minor Guilty of Certain Alcohol, Drug, or Tobacco Offenses

Section 322.056, F.S., requires a mandatory suspension, revocation, or withholding of a DL for persons under age 18 found guilty of certain alcohol, drug, or tobacco offenses. This penalty is in addition to any other penalty imposed by law.

Alcohol and Drug Offenses

The court must direct the DHSMV to revoke or withhold the issuance of driving privileges if a minor, who is eligible by reason of age for driving privileges, is guilty of:

- A violation of s. 562.11(2), F.S., misrepresenting his or her age or the age of another for the purpose of obtaining alcoholic beverages;
- A violation of s. 562.111, F.S., possession of alcoholic beverages by a person under age 21; or
- A violation of the Florida Comprehensive Drug Abuse Prevention and Control Act.²⁶

The DL or driving privilege is revoked or withheld for not less than six months or more than one year for a first violation, and two years for a second or subsequent violation. However, the court may direct the DHSMV to issue a hardship license if the person is otherwise qualified for such a license.²⁷

Tobacco and Nicotine Offenses

Section 569.11, F.S., prohibits a minor from knowingly possessing any tobacco product or misrepresenting his or her age to obtain a tobacco product. Additionally, a minor is prohibited

²¹ *Id.*

²² DHSMV PowerPoint Presentation, *supra* note 18.

²³ Violation of ss. 812.014 or 812.015, F.S.

²⁴ Section 812.0155(2), F.S.

²⁵ Section 322.057, F.S.

²⁶ Chapter 893, F.S.

²⁷ Section 322.056(1), F.S.

from possessing nicotine products, possessing nicotine dispensing devices, or misrepresenting age to obtain these products or devices.²⁸ A violation of these sections is a noncriminal violation punishable by:

- For a first violation or subsequent violation not within 12 weeks of the first: 16 hours of community service or a \$25 fine, and the minor must attend a school-approved anti-tobacco and nicotine program, if locally available;
- For a second violation within 12 weeks of the first: A \$25 fine, and
- For a third or subsequent violation within 12 weeks of the first violation: Suspension or withholding issuance of a DL or driving privilege for 60 consecutive days.

If a minor, eligible by reason of age for driving privileges, fails to comply with the penalty, the court must revoke or withhold issuance of the driving privilege of the minor for a period of:²⁹

- 30 days for the first violation or a subsequent violation not within 12 weeks of the first;
- 45 days for a second violation within 12 weeks of the first; or
- 60 consecutive days for a third violation within 12 weeks of the first.

A Minor Guilty of Unlawful Possession of Firearms

Section 790.22, F.S., prohibits a minor from possessing certain weapons and firearms. A person under the age of 18 may not possess a loaded firearm, unless the minor is at least 16 years of age or being supervised by an adult, and engaged in lawful hunting, marksmanship competitions or practice, or other lawful recreational shooting activities. A minor who violates this prohibition commits a first degree misdemeanor for the first offense and may serve a detention period of up to three days, shall be required to perform community service, and have his or her DL or privilege to drive revoked or withheld for up to one year. A second or subsequent offense is a third degree felony, plus up to a 15-day detention period, community service, and DL or privilege to drive is revoked or withheld for up to two years.

A minor who commits any other offense involving the use or possession of a firearm, in addition to the penalties provided by that offense and the penalties in s. 790.22(9), F.S., will also have his or her DL or privilege to drive revoked or withheld for up to one year for a first offense and up to two years for a second or subsequent offense.³⁰

Graffiti

A minor found to have illegally placed graffiti on any public or private property, in addition to any other penalty provided by law, will have his or her DL or privilege to drive revoked or withheld for a period of not more than one year.³¹

Drug Convictions

Federal Law requires the state to enact and enforce “[A] law that requires in all circumstances, or requires in the absence of compelling circumstances warranting an exception....” the driver

²⁸ Sections 877.112(6) and (7), F.S.

²⁹ Sections 322.056(2) and (3), F.S.

³⁰ Section 790.22(10), F.S.

³¹ Section 806.13(7), F.S.

license of any individual convicted of any drug offense be suspended for at least six months.³² A percentage of federal highway funding given to the state is contingent upon this law. A state may opt-out of the law if the State Governor submits both written certification stating he is opposed to the enforcement of this law and certification from the State Legislature that it has adopted a resolution expressing opposition to the law. As of 2013, ten states had passed resolutions in opposition to this law.³³

Under Florida Law, the court is required to direct the DHSMV to suspend, revoke, or withhold the issuance of the DL of a person 18 years or older who is convicted of a drug offense.³⁴ The privilege to drive is unavailable for one year or until the person is evaluated for and, if deemed necessary, completes a drug treatment and rehabilitation program approved or regulated by the Department of Children and Families. The court has the discretion to direct the DHSMV to issue a hardship license, which is available after six months of suspension of the driving privilege, or a driver may petition the DHSMV for restoration of restricted or unrestricted driving privileges after six months.

In 2014, the Legislature passed a bill, which was signed into law, reducing the length of suspension of a DL from two years to one year for individuals convicted of drug offenses.³⁵

The DHSMV issued 19,168 DL sanctions for violation of a controlled substance in 2014.³⁶

Suspensions Initiated by the Clerk of Court

The majority, over 1.5 million in 2014, of DL suspension notices issued by the DHSMV are a result of requests initiated by a clerk of the court.³⁷ Most originate from “failure to comply” or “failure to pay” offenses, actions that are not necessarily indicative of the violator’s ability to operate a motor vehicle safely.

Suspension for Failure to Comply with Civil Penalties or to Appear

An individual who is issued a noncriminal traffic citation, who is not required to appear before the court, has 30 days to comply with the penalty (i.e., pay the fine), enter into a penalty payment plan with the clerk of court, or request a hearing before the court.³⁸

If an individual does not comply with the civil penalty, enter into a payment plan, attend driver improvement school (if ordered), or appear at a scheduled hearing, the clerk of court must issue notice of failure to the DHSMV within 10 days.³⁹ Upon receiving the notice of failure, the DHSMV immediately issues an order suspending the driving privilege of the individual effective

³² 23 U.S.C. s. 159 (2011).

³³ AAMVA, *supra* note 2 at p. 29.

³⁴ Section 322.055, F.S.

³⁵ See ch. 2014-216, s. 28, Laws of Fla.

³⁶ DHSMV PowerPoint Presentation, *supra* note 18.

³⁷ See DHSMV PowerPoint Presentation, *supra* note 18 at p. 33.

³⁸ Section 318.14, F.S.

³⁹ Section 318.15, F.S.

20 days after the order of suspension is mailed to the individual.⁴⁰ The DL and driving privilege are suspended until the driver meets the court requirements for reinstatement, and pays a \$60 reinstatement fee.⁴¹

Section 322.245, F.S., provides that the clerk of court shall mail a notice of failure, within five days after the failure, to a person charged with a violation of any criminal offense enumerated in s. 318.17, F.S., or a misdemeanor offense under chs. 320 or 322, F.S., who fails to comply with all directives of the court within the time allotted. The notice indicates the individual has 30 days from the date of the notice to comply with the court directives and pay a delinquency fee up to \$25, or his or her DL will be suspended. Upon failure to comply with the court directives within the 30-day period, the clerk of court must notify the DHSMV of such failure within 10 days. Upon receiving the notice of failure, the DHSMV immediately issues an order suspending the driving privilege of the individual effective 20 days after the order of suspension is mailed to the individual.

According to the DHSMV, 807,000 licenses were suspended for “failure to comply” reasons in 2014. As of September 23, 2015, 496,000 of these were reinstated.⁴²

Suspension for Failure to Pay Court Financial Obligations

When a clerk of court provides notification to the DHSMV that a person has failed to pay financial obligations for *any* criminal offense, in full or in part under a payment plan with the clerk of court, the DHSMV will suspend the DL of the person until:⁴³

- The person has satisfied the financial obligation in full or made all payments currently due under a payment plan;
- The person has entered into a written agreement for payment of the financial obligation if not presently enrolled in a payment plan; or
- A court has entered an order granting relief to the person ordering reinstatement of the DL.

OPPAGA reported that a large percentage of licenses suspended for failure to pay court obligations are not reinstated for at least two years, and some are not reinstated in over five years.⁴⁴ According to the DHSMV, 136,596 licenses were suspended in 2014 for financial obligations.

Payment Plans

The clerk of court is required to accept partial payment of court-related fees, service charges, costs, or fines in accordance with the terms of an established payment plan.⁴⁵ The court may review the reasonableness of the payment plan. A monthly payment amount is “presumed to

⁴⁰ Notice of cancellation, suspension, revocation, or disqualification of a driver license must be mailed in accordance with s. 322.251, F.S.

⁴¹ DHSMV PowerPoint, *supra* note 18 at p. 30.

⁴² DHSMV, Presentation to the Florida Senate Committee on Transportation (Oct. 8, 2015) *available at*: http://www.flsenate.gov/PublishedContent/Committees/2014-2016/TR/MeetingRecords/MeetingPacket_3181_2.pdf (last visited Jan. 9, 2016).

⁴³ Section 322.245(5), F.S.

⁴⁴ OPPAGA 2014 report, *supra* note 8 at p. 8.

⁴⁵ Section 28.246(4), F.S.

correspond to the person's ability to pay if the amount does not exceed two percent of the person's annual net income," divided by 12.⁴⁶ The Brennan Center for Justice has indicated this presumption is often ignored and payment levels are set at fixed amounts.⁴⁷ Payment plan fees are \$5 per transaction or a \$25 one time set-up fee.⁴⁸

Collection of Fees, Service Charges, Fines, Courts Costs, and Liens

Section 28.246(6), F.S., provides a clerk of court must pursue the collection of any unpaid financial obligations to the court which remain unpaid after 90 days by referring the account to a private attorney or collection agent.⁴⁹ The clerk of court must have attempted to collect the unpaid obligation through a collection court, collections docket, or any other collections process established by the court prior to referring the account to a private attorney or collections agent, find the referral to be cost-effective, and follow any applicable procurement processes. A collection fee may be added to the balance owed of up to 40 percent of the amount owed at the time the account is referred to the attorney or agent for collection.

Penalties and Fees

Driving While License is Suspended or Revoked (DWLSR) Penalties

Section 322.34, F.S., provides penalties for individuals driving while their DL is suspended, revoked, canceled, or disqualified. A person, excluding a habitual traffic offender⁵⁰, whose DL has been canceled, suspended, or revoked is guilty of a moving violation if driving a motor vehicle while *unaware* of the DL sanction. A person, excluding a "habitual traffic offender," who *knowingly* drives a motor vehicle while his or her DL is invalid is guilty of:

- A second degree misdemeanor for the first conviction;
- A first degree misdemeanor for a second conviction; and
- A third degree felony for a third or subsequent conviction.

However, if a person does not have a prior forcible felony⁵¹ conviction, and knowingly drives with a DL that is canceled, suspended, or revoked for failing to:

- Pay child support or certain financial obligations;
- Comply with a civil penalty required in s. 318.15, F.S.;

⁴⁶ *Id.*

⁴⁷ Brennan Center for Justice, *Criminal Justice Debt: A Barrier to Reentry*, (2010), available at: <http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf> at p. 14 (last visited Jan. 4, 2016).

⁴⁸ Section 28.24(26), F.S.

⁴⁹ A private attorney must be a member in good standing with The Florida Bar, and the collection agent must be registered and in good standing pursuant to ch. 559, F.S.

⁵⁰ Section 322.264, F.S., defines a "habitual traffic offender" as having at least three convictions arising out of separate acts of: manslaughter resulting from the operation of a motor vehicle; driving under the influence; any felony offense using a motor vehicle; driving while license is suspended or revoked; failing to stop and render aid as required; or driving a commercial motor vehicle while privilege is disqualified; or has accumulated 15 convictions of moving traffic offenses for which points may be assessed within a five-year period.

⁵¹ 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 use or threat of physical force or violence against any individual."

- Maintain adequate automobile insurance as required in ch. 324, F.S.; or
- Comply with attendance requirements;

then the person may be penalized with a second degree misdemeanor which is increased to a first degree misdemeanor for a second or subsequent conviction.

Driver License Reinstatement Fees

Section 322.21(8), F.S., requires a person who applies for reinstatement following a DL suspension or revocation to pay a service fee of \$45 following a suspension and \$75 following a revocation, in addition to the \$25 fee to replace their license if necessary. “Failure to comply” suspensions require a \$60 reinstatement fee. Additionally, the county tax collectors are required to charge a service fee of \$6.25, when providing services in ch. 322, F.S., including DL reinstatements.⁵²

Community Service Option in Lieu of Payment

A person ordered to pay a civil penalty for a noncriminal traffic infraction who is unable to comply with the court’s order due to demonstrable financial hardship must be allowed, by the court, to satisfy the civil penalty by participating in community service.⁵³ The penalty is reduced based on the hourly rate of community service performed. The specified hourly credit rate is the federal minimum wage⁵⁴, currently \$7.25, or the average prevailing wage rate for a trade or profession that the community service agency needs.⁵⁵

Similarly, the court may require a person liable for payment of a financial obligation in a criminal case to appear before the court and be examined under oath concerning the person’s ability to pay the obligation. The court may convert statutory financial obligations into community service after determining the person’s inability to pay.⁵⁶

The Florida Court Clerks and Comptrollers reported in Fiscal Year 2013-2014, that \$4,153,505 of the \$946,782,692 court-related fines, fees, penalties, charges, or costs assessed by the courts statewide had been converted to community service.⁵⁷

III. Effect of Proposed Changes:

The bill makes changes to the Florida Statutes in order to reduce the amount of driver license (DL) suspensions and revocations for non-driving-related offenses, reduce the financial burden of DL suspensions, and reduce the severity of suspension-related penalties.

⁵² Section 322.135(1)(c), F.S.

⁵³ Section 318.18(8)(b), F.S.

⁵⁴ As specified in 29 U.S.C. s. 206(a)(1) under the Federal Fair Labor Standards Act of 1938.

⁵⁵ Section 318.18(8)(b)2., F.S.

⁵⁶ Section 938.30(2), F.S.

⁵⁷ Florida Court Clerks and Comptrollers, *2014 Annual Assessments and Collections Report*, (Jan. 2, 2015), available at: http://c.ymcdn.com/sites/www.flclerks.com/resource/resmgr/Public_Documents_/2014_Clerks_A_and_C_Consolid.pdf at p. 6 (last visited Jan. 4, 2016).

Non-Driving-Related DL Suspensions and Revocations

The bill removes suspension or revocation of a DL from the potential penalties that may be applied for the following offenses:

- A minor who does not meet school attendance requirements;
- A person who fails to appear in a worthless check case;
- A person found guilty of misdemeanor theft;
- A person who provides alcohol to anyone under 21 years of age;
- A minor possessing alcohol, tobacco, tobacco products, or nicotine products, or misrepresenting age to obtain them;
- A minor illegally possessing a firearm; and
- A minor found guilty of graffiti.

The bill retains the 30-day and 45-day DL suspension for minors who do not comply with the penalties for tobacco and nicotine offenses, however, this penalty is at the court's discretion rather than mandatory.

Drug Convictions

The bill reduces the length of the suspension period for a drug conviction from one year to six months for persons over the age of 18, and reduces the suspension period to six months for minors convicted of drug offenses.

The bill deletes provisions allowing individuals to petition the DHSMV for a hardship license after six months of their suspension become the bill reduces the suspension period to six months.

Failure to Comply and Failure to Pay Court Financial Obligations Suspensions

Sections 318.15 and 322.245, F.S., are amended to provide that a person's DL may not be suspended solely for failure to pay a penalty or court financial obligation if the person demonstrates to the court that he or she is unable to pay. The person must provide evidence he or she is unable to pay after receiving the penalty, but prior to the suspension taking place in order to avoid suspension. A person is considered unable to pay if the person:

- Receives temporary cash assistance pursuant to ch. 443, F.S.;
- Is disabled and incapable of self-support or receives benefits under the federal Supplemental Security Income or Social Security Disability programs;
- Is making payments in accordance with a confirmed bankruptcy plan under chs. 11, 12, or 13 of the United States Bankruptcy Code;
- Has been placed on a payment plan or plans with the clerk of court which in total exceed what is determined to be a reasonable payment plan pursuant to s. 28.246(4), F.S.; or
- Has been determined indigent after filing an application with the clerk of court in accordance with ss. 27.52 or 57.082, F.S.

The bill also allows a person whose DL or privilege to drive has been suspended under either of these sections, with the exception of suspensions related to non-payment of child support, to apply to the DHSMV to have his or her DL reinstated on a restricted basis. The restricted license

is valid until the seven-year suspension period ends for failure to pay or comply penalties under s. 318.15, F.S., or until the debt is paid.

Payment Plans with the Clerk of the Circuit Court (Clerk of Court)

Section. 28.246(4), F.S., is amended to provide that a monthly payment plan with the clerk of court may not exceed two percent of the person's annual net income, divided by 12, without the consent of the applicant.

In addition, the bill requires that uniform traffic citation forms must include language indicating that a person may enter into a payment plan with the clerk of court to pay the penalty.

Collection of Fees, Service Charges, Fines, Courts Costs, and Liens by Clerk of Court

The bill amends s. 28.246(6), F.S., regarding referring accounts to private attorneys or collection agents. A clerk of court *may* pursue collections of an account, after first attempting to collect the debt through other collections processes, by referring the account to a private attorney or collection agent. However, the clerk of court must have competitively bid a contract with a collection agent or private attorney by considering all pertinent criteria including performance quality, customer service, and collection fees. The contract with a collection agent or private attorney may be in effect for no longer than three years with the opportunity to make a maximum of two one-year extensions. The clerk of court is prohibited from assessing any collection surcharges to the account, and the collection agent or private attorney may not impose any additional fees or surcharges other than the contractually agreed upon surcharge.

Community Service Option in Lieu of Payment

The bill adds that the uniform traffic citation form must include language indicating that a person ordered to pay a noncriminal traffic infraction penalty who is unable to comply due to demonstrable hardship will be allowed by the court to satisfy payment by participating in community service. Additionally, if a person is ordered to pay a civil penalty for a noncriminal infraction in court, the court shall inquire regarding the person's ability to pay at the time the civil penalty is ordered.

The bill amends s. 27.52, F.S., with regards to the application a person claiming indigent status makes to the clerk of court in order to receive a public defender. The bill provides that the person must make an election of or refusal of the option to fulfill any court-ordered financial obligation associated with his or her case by completion of community service if offered by the court. For financial obligations in criminal cases, the judge may rely on this information as a factor in determining the person's inability to pay court financial obligations when converting statutory financial obligations into court-ordered community service.

Effective Date

Information regarding payment plans and community service options to be added to the uniform traffic citation form will be added upon the creation of new inventory, which allows the DHSMV to deplete the current stock.

The bill takes effect October 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18, Florida Constitution, provides that a mandate may exist if a law reduces the authority that counties or municipalities have to raise revenues in the aggregate. Local government tax collectors and clerks of the court do retain a portion of driver license (DL) reinstatement fees for DL suspensions and revocations possibly eliminated or reduced by this bill. However, the bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference adopted an estimate it considers a minimum impact and recognized that “behavioral shifts related to changed incentives may make the impact higher than adopted.” The adopted estimate reduces state revenues in Fiscal Year 2016-2017 by \$0.6 million in recurring general revenue, \$0.8 million in recurring trust funds, and reduces local government revenues by \$0.1 million recurring.⁵⁸

B. Private Sector Impact:

The bill will have a positive impact on individuals who may have otherwise had their driver license (DL) suspended or revoked, or who will be eligible to receive a hardship license if their DL is suspended.

C. Government Sector Impact:

SB 7046 will have an indeterminate negative fiscal impact to state and local government.

The Revenue Estimating Conference estimated the removal of suspension penalties for non-driving-related offenses under the bill will negatively impact state and local

⁵⁸ Office of Economic and Demographic Research, The Florida Legislature, *Revenue Estimating Impact Conference* (Jan. 14, 2016).

government by a recurring loss of \$1.5 million each year for Fiscal Years 2016-2017 through 2020-2021, which will affect the General Revenue Fund, Highway Safety Operating Trust Fund, and local funds.⁵⁹

It is unknown how much the bill will decrease suspensions for “failure to comply” and “failure to pay court obligations”; however, the Office of Economic and Demographic Research estimates a one percent decrease in state revenues will result in a recurring loss of approximately \$120,000 each year for Fiscal Years 2016-2017 through 2020-2021.⁶⁰

The bill will likely have a negative impact on local tax collectors and clerks of the circuit court (clerk of court) who retain a portion of revenues from certain DL sanctions when issuing reinstatements, in addition to other fees retained by them associated with DL suspensions and revocations. Additionally, it is indeterminate how the bill will impact the clerk of court regarding the competitive bidding process for collection agents or attorneys, and any impact associated with an increased use of clerk of court-approved payment plans.

The clerk of court estimate that the cost to comply with the bill’s provisions related to the monitoring and management of the payment plans would be approximately \$7.5 million in additional full time equivalent positions (FTEs) and IT costs. In addition, the clerk of court’s annual loss of revenue, based on County Fiscal Year 2014-2015 revenue figures, would range from \$24.7 million to \$82.4 million, depending on assumptions regarding what percentage of collections fail to be paid (15% to 50% nonpayment). For instance, if 15% of collections are lost because individuals extend payment plans or participate in community service in lieu of paying fees, the clerk of court could lose an estimated \$24.7 million in revenues.⁶¹ Clerk of court were unable to estimate the percentage of nonpayment associated with the bill.

In addition, the costs associated with the process of suspending and revoking licenses, the loss of revenue associated with drivers being unable to legally drive, and the costs of individuals continuing to drive without a valid license is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁵⁹ Revenue Estimating Conference, *supra* note 59.

⁶⁰ Email from the Office of Economic and Demographic Research (Revised Jan. 6, 2016) (on file with the Senate Committee on Transportation).

⁶¹ Letter from the Florida Court Clerks and Comptrollers (January 11, 2016) (on file with the Senate Appropriations Subcommittee on Criminal and Civil Justice).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 27.52, 28.246, 316.650, 318.15, 318.18, 322.055, 322.056, 322.09, 322.245, 322.251, 322.271, 322.34, 562.11, 562.111, 569.11, 790.22, 806.13, 877.112, 938.30, and 1003.27.

This bill amends the following sections of the Florida Statutes to conform to changes made by this act: 318.14, 322.05, 397.951, and 1003.01.

This bill repeals the following sections and subsections of the Florida Statutes: 322.057, 322.091, 812.0155, and 832.09.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By the Committee on Transportation

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1 A bill to be entitled
2 An act relating to penalties and fees; amending s.
3 27.52, F.S.; adding a financial information
4 requirement for a certain application form; amending
5 s. 28.246, F.S.; revising requirements relating to the
6 payment of court-related fines or other monetary
7 penalties, fees, charges, and costs; authorizing,
8 rather than requiring, a clerk of court to pursue
9 collection of certain fees, charges, fines, costs, or
10 liens under certain circumstances; requiring a clerk
11 of court to competitively bid a contract with a
12 collection agency or private attorney under certain
13 circumstances, subject to certain requirements;
14 prohibiting the clerk from assessing any collections
15 transfer surcharge; prohibiting the collection agency
16 or private attorney from imposing certain additional
17 fees or surcharges; amending s. 316.650, F.S.;
18 requiring traffic citation forms to include certain
19 language relating to payment of a penalty; amending s.
20 318.15, F.S.; prohibiting the suspension of a person's
21 driver license solely for failure to pay a penalty if
22 the person demonstrates to the court, when specified,
23 that he or she is unable to pay such penalty;
24 requiring the person to provide documentation meeting
25 certain requirements to the appropriate clerk of court
26 in order to be considered unable to pay; amending s.
27 318.18, F.S.; requiring a court to inquire regarding a
28 person's ability to pay at the time a certain civil
29 penalty is ordered; amending s. 322.055, F.S.;
30 decreasing the period for revocation or suspension of,
31 or delay of eligibility for, driver licenses or
32 driving privileges for certain persons convicted of

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33 certain drug offenses; deleting provisions authorizing
34 a driver to petition the department for restoration of
35 the person's driving privilege; amending s. 322.056,
36 F.S.; decreasing the period for revocation or
37 suspension of, or delay of eligibility for, driver
38 licenses or driving privileges for certain persons
39 found guilty of certain drug offenses; deleting a
40 provision authorizing a court to direct the Department
41 of Highway Safety and Motor Vehicles to issue a
42 license for certain restricted driving privileges
43 under certain circumstances; deleting requirements
44 relating to the revocation or suspension of, or delay
45 of eligibility for, driver licenses or driving
46 privileges for certain persons found guilty of certain
47 alcohol or tobacco offenses; repealing s. 322.057,
48 F.S., relating to discretionary revocation or
49 suspension of a driver license for certain persons who
50 provide alcohol to persons under a specified age;
51 amending s. 322.09, F.S.; deleting a provision
52 prohibiting the issuance of a driver license or
53 learner's driver license under certain circumstances;
54 repealing s. 322.091, F.S., relating to attendance
55 requirements for driving privileges; amending s.
56 322.245, F.S.; prohibiting the suspension of a
57 person's driver license solely for failure to pay a
58 penalty if the person demonstrates to the court, when
59 specified, that he or she is unable to pay such
60 penalty; requiring the person to provide documentation
61 meeting certain requirements to the appropriate clerk

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62 of court in order to be considered unable to pay;
63 repealing s. 322.251(7), F.S., relating to notice of
64 suspension or revocation of driving privileges,
65 reasons for reinstatement of such driving privileges,
66 and certain electronic access to identify a person who
67 is the subject of an outstanding warrant or capias for
68 passing worthless bank checks; amending s. 322.271,
69 F.S.; providing that a person whose driver license or
70 privilege to drive has been suspended may have his or
71 her driver license or driving privilege reinstated on
72 a restricted basis under certain circumstances;
73 providing the period of validity of such restricted
74 license; amending s. 322.34, F.S.; revising the
75 underlying violations resulting in driver license or
76 driving privilege cancellation, suspension, or
77 revocation for which specified penalties apply;
78 amending s. 562.11, F.S.; revising penalties for
79 selling, giving, serving, or permitting to be served
80 alcoholic beverages to a person under a specified age
81 or permitting such person to consume such beverages on
82 licensed premises; repealing s. 562.111(3), F.S.,
83 relating to withholding issuance of, or suspending or
84 revoking, a driver license or driving privilege for
85 possession of alcoholic beverages by persons under a
86 specified age; amending s. 569.11, F.S.; revising
87 penalties for persons under a specified age who
88 knowingly possess, misrepresent their age or military
89 service to purchase, or purchase or attempt to
90 purchase tobacco products; authorizing, rather than

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91 requiring, the court to direct the Department of
92 Highway Safety and Motor Vehicles to withhold issuance
93 of or suspend a person's driver license or driving
94 privilege for certain violations; amending s. 790.22,
95 F.S.; revising penalties relating to suspending,
96 revoking, or withholding issuance of driver licenses
97 or driving privileges for minors under a specified age
98 who possess firearms under certain circumstances;
99 deleting provisions relating to penalties for certain
100 offenses involving the use or possession of a firearm
101 by a minor under a specified age; amending s. 806.13,
102 F.S.; deleting provisions relating to certain
103 penalties for criminal mischief by a minor; repealing
104 s. 812.0155, F.S., relating to suspension of a driver
105 license following an adjudication of guilt for theft;
106 repealing s. 832.09, F.S., relating to suspension of a
107 driver license after warrant or capias is issued in
108 worthless check cases; amending s. 877.112, F.S.;
109 revising penalties for persons under a specified age
110 who knowingly possess, misrepresent their age or
111 military service to purchase, or purchase or attempt
112 to purchase any nicotine product or nicotine
113 dispensing device; authorizing, rather than requiring,
114 the court to direct the department to withhold
115 issuance of or suspend a person's driver license or
116 driving privilege for certain violations; amending s.
117 938.30, F.S.; authorizing a judge to convert certain
118 statutory financial obligations into court-ordered
119 obligations to perform community service by reliance

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120 upon specified information under certain
121 circumstances; amending s. 1003.27, F.S.; deleting
122 provisions relating to procedures and penalties for
123 nonenrollment and nonattendance cases; amending ss.
124 318.14, 322.05, 397.951, and 1003.01, F.S.; conforming
125 provisions to changes made by the act; providing
126 applicability; providing an effective date.

127

128 Be It Enacted by the Legislature of the State of Florida:

129

130 Section 1. Paragraph (a) of subsection (1) of section
131 27.52, Florida Statutes, is amended to read:

132 27.52 Determination of indigent status.—

133 (1) APPLICATION TO THE CLERK.—A person seeking appointment
134 of a public defender under s. 27.51 based upon an inability to
135 pay must apply to the clerk of the court for a determination of
136 indigent status using an application form developed by the
137 Florida Clerks of Court Operations Corporation with final
138 approval by the Supreme Court.

139 (a) The application must include, at a minimum, the
140 following financial information:

141 1. Net income, consisting of total salary and wages, minus
142 deductions required by law, including court-ordered support
143 payments.

144 2. Other income, including, but not limited to, social
145 security benefits, union funds, veterans' benefits, workers'
146 compensation, other regular support from absent family members,
147 public or private employee pensions, reemployment assistance or
148 unemployment compensation, dividends, interest, rent, trusts,

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149 and gifts.

150 3. Assets, including, but not limited to, cash, savings
151 accounts, bank accounts, stocks, bonds, certificates of deposit,
152 equity in real estate, and equity in a boat or a motor vehicle
153 or in other tangible property.

154 4. All liabilities and debts.

155 5. If applicable, the amount of any bail paid for the
156 applicant's release from incarceration and the source of the
157 funds.

158 6. The election of or refusal of the option to fulfill any
159 court-ordered financial obligation associated with the case by
160 the completion of community service as ordered by the court.

161
162 The application must include a signature by the applicant which
163 attests to the truthfulness of the information provided. The
164 application form developed by the corporation must include
165 notice that the applicant may seek court review of a clerk's
166 determination that the applicant is not indigent, as provided in
167 this section.

168 Section 2. Subsections (4) and (6) of section 28.246,
169 Florida Statutes, are amended to read:

170 28.246 Payment of court-related fines or other monetary
171 penalties, fees, charges, and costs; partial payments;
172 distribution of funds.—

173 (4) The clerk of the circuit court shall accept partial
174 payments for court-related fees, service charges, costs, and
175 fines in accordance with the terms of an established payment
176 plan. An individual seeking to defer payment of fees, service
177 charges, costs, or fines imposed by operation of law or order of

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178 the court under any provision of general law shall apply to the
179 clerk for enrollment in a payment plan. ~~The clerk shall enter~~
180 ~~into a payment plan with an individual who the court determines~~
181 ~~is indigent for costs.~~ A monthly payment amount, calculated
182 based upon all fees and all anticipated costs, may ~~is presumed~~
183 ~~to correspond to the person's ability to pay if the amount does~~
184 not exceed 2 percent of the person's annual net income, as
185 defined in s. 27.52(1), divided by 12, without the consent of
186 the applicant. The court may review the reasonableness of the
187 payment plan.

188 (6) A clerk of court may ~~shall~~ pursue the collection of any
189 fees, service charges, fines, court costs, and liens for the
190 payment of attorney fees and costs pursuant to s. 938.29 which
191 remain unpaid after 90 days by referring the account to a
192 private attorney who is a member in good standing of The Florida
193 Bar or collection agent who is registered and in good standing
194 pursuant to chapter 559. In pursuing the collection of such
195 unpaid financial obligations through a private attorney or
196 collection agent, the clerk of the court must first attempt ~~have~~
197 ~~attempted~~ to collect the unpaid amount through a collection
198 court, collections docket, or other collections process, if any,
199 established by the court. If this attempt is unsuccessful, the
200 clerk may pursue the collection through a private attorney or
201 collection agent following ~~, find this to be cost-effective and~~
202 ~~follow~~ any applicable procurement practices. and the following
203 conditions:

204 (a) In retaining a collection agent or private attorney as
205 provided in this subsection, the clerk shall competitively bid a
206 contract with a collection agent or private attorney. Such

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207 contract may be in effect for no longer than 3 years with a
208 maximum of two, one-year extensions.

209 (b) The clerk shall consider all pertinent criteria when
210 considering bids including, but not limited to, performance
211 quality, customer service, and collection fees. However, the
212 collection fee, including any reasonable attorney attorney's
213 fee, paid to any attorney or collection agent retained by the
214 clerk may be added to the balance owed in an amount not to
215 exceed 40 percent of the amount owed at the time the account is
216 referred to the attorney or agent for collection.

217 (c) The clerk may not assess any collections transfer
218 surcharges.

219 (d) The collection agent or private attorney may not impose
220 any additional fees or surcharges other than their contractually
221 agreed upon surcharge.

222 (e) The clerk shall give the private attorney or collection
223 agent the application for the appointment of court-appointed
224 counsel regardless of whether the court file is otherwise
225 confidential from disclosure.

226 Section 3. Present paragraphs (b), (c), and (d) of
227 subsection (1) of section 316.650, Florida Statutes, are
228 redesignated as paragraphs (c), (d), and (e), respectively, a
229 new paragraph (b) is added to that subsection, and present
230 paragraph (c) of that subsection is amended, to read:

231 316.650 Traffic citations.—

232 (1)

233 (b) The traffic citation form must include language
234 indicating that a person may enter into a payment plan with the
235 clerk of court to pay a penalty. The form must also indicate

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236 that a person ordered to pay a penalty for a noncriminal traffic
237 infraction who is unable to comply due to demonstrable financial
238 hardship will be allowed by the court to satisfy payment by
239 participating in community service pursuant to s. 318.18(8)(b).

240 (d) ~~(e)~~ Notwithstanding paragraphs (a) and (c) ~~(b)~~, a
241 traffic enforcement agency may produce uniform traffic citations
242 by electronic means. Such citations must be consistent with the
243 state traffic court rules and the procedures established by the
244 department and must be appropriately numbered and inventoried.
245 Affidavit-of-compliance forms may also be produced by electronic
246 means.

247 Section 4. Subsection (4) is added to section 318.15,
248 Florida Statutes, to read:

249 318.15 Failure to comply with civil penalty or to appear;
250 penalty.-

251 (4) Notwithstanding any other law, a person's driver
252 license may not be suspended solely for failure to pay a penalty
253 if the person demonstrates to the court, after receiving the
254 penalty and prior to the suspension taking place, that he or she
255 is unable to pay the penalty. A person is considered unable to
256 pay if the person provides documentation to the appropriate
257 clerk of court evidencing that:

258 (a) The person receives reemployment assistance or
259 unemployment compensation pursuant to chapter 443;

260 (b) The person is disabled and incapable of self-support or
261 receives benefits under the federal Supplemental Security Income
262 program or Social Security Disability Insurance program;

263 (c) The person receives temporary cash assistance pursuant
264 to chapter 414;

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265 (d) The person is making payments in accordance with a
266 confirmed bankruptcy plan under chapter 11, chapter 12, or
267 chapter 13 of the United States Bankruptcy Code, 11 U.S.C. ss.
268 101 et seq.;

269 (e) The person has been placed on a payment plan or payment
270 plans with the clerk of court which in total exceed what is
271 determined to be a reasonable payment plan pursuant to s.
272 28.246(4); or

273 (f) The person has been determined to be indigent after
274 filing an application with the clerk in accordance with s. 27.52
275 or s. 57.082.

276 Section 5. Paragraph (b) of subsection (8) of section
277 318.18, Florida Statutes, is amended to read:

278 318.18 Amount of penalties.—The penalties required for a
279 noncriminal disposition pursuant to s. 318.14 or a criminal
280 offense listed in s. 318.17 are as follows:

281 (8)

282 (b)1.a. If a person has been ordered to pay a civil penalty
283 for a noncriminal traffic infraction and the person is unable to
284 comply with the court's order due to demonstrable financial
285 hardship, the court shall allow the person to satisfy the civil
286 penalty by participating in community service until the civil
287 penalty is paid.

288 b. The court shall inquire regarding the person's ability
289 to pay at the time the civil penalty is ordered.

290 c. If a court orders a person to perform community service,
291 the person shall receive credit for the civil penalty at the
292 specified hourly credit rate per hour of community service
293 performed, and each hour of community service performed shall

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294 reduce the civil penalty by that amount.

295 2.a. As used in this paragraph, the term "specified hourly
296 credit rate" means the wage rate that is specified in 29 U.S.C.
297 s. 206(a)(1) under the federal Fair Labor Standards Act of 1938,
298 that is then in effect, and that an employer subject to such
299 provision must pay per hour to each employee subject to such
300 provision.

301 b. However, if a person ordered to perform community
302 service has a trade or profession for which there is a community
303 service need, the specified hourly credit rate for each hour of
304 community service performed by that person shall be the average
305 prevailing wage rate for the trade or profession that the
306 community service agency needs.

307 3.a. The community service agency supervising the person
308 shall record the number of hours of community service completed
309 and the date the community service hours were completed. The
310 community service agency shall submit the data to the clerk of
311 court on the letterhead of the community service agency, which
312 must also bear the notarized signature of the person designated
313 to represent the community service agency.

314 b. When the number of community service hours completed by
315 the person equals the amount of the civil penalty, the clerk of
316 court shall certify this fact to the court. Thereafter, the
317 clerk of court shall record in the case file that the civil
318 penalty has been paid in full.

319 4. As used in this paragraph, the term:

320 a. "Community service" means uncompensated labor for a
321 community service agency.

322 b. "Community service agency" means a not-for-profit

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323 corporation, community organization, charitable organization,
324 public officer, the state or any political subdivision of the
325 state, or any other body the purpose of which is to improve the
326 quality of life or social welfare of the community and which
327 agrees to accept community service from persons unable to pay
328 civil penalties for noncriminal traffic infractions.

329 Section 6. Subsections (1) through (4) of section 322.055,
330 Florida Statutes, are amended to read:

331 322.055 Revocation or suspension of, or delay of
332 eligibility for, driver license for persons 18 years of age or
333 older convicted of certain drug offenses.-

334 (1) Notwithstanding s. 322.28, upon the conviction of a
335 person 18 years of age or older for possession or sale of,
336 trafficking in, or conspiracy to possess, sell, or traffic in a
337 controlled substance, the court shall direct the department to
338 revoke the driver license or driving privilege of the person.
339 The period of such revocation shall be 6 months ~~1 year~~ or until
340 the person is evaluated for and, if deemed necessary by the
341 evaluating agency, completes a drug treatment and rehabilitation
342 program approved or regulated by the Department of Children and
343 Families. However, the court may, in its sound discretion,
344 direct the department to issue a license for driving privilege
345 restricted to business or employment purposes only, as defined
346 by s. 322.271, if the person is otherwise qualified for such a
347 license. ~~A driver whose license or driving privilege has been~~
348 ~~suspended or revoked under this section or s. 322.056 may, upon~~
349 ~~the expiration of 6 months, petition the department for~~
350 ~~restoration of the driving privilege on a restricted or~~
351 ~~unrestricted basis depending on length of suspension or~~

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352 ~~revocation. In no case shall~~ A restricted license may not be
353 available until 6 months of the suspension or revocation period
354 has expired.

355 (2) If a person 18 years of age or older is convicted for
356 the possession or sale of, trafficking in, or conspiracy to
357 possess, sell, or traffic in a controlled substance and such
358 person is eligible by reason of age for a driver license or
359 privilege, the court shall direct the department to withhold
360 issuance of such person's driver license or driving privilege
361 for a period of 6 months ~~1 year~~ after the date the person was
362 convicted or until the person is evaluated for and, if deemed
363 necessary by the evaluating agency, completes a drug treatment
364 and rehabilitation program approved or regulated by the
365 Department of Children and Families. However, the court may, in
366 its sound discretion, direct the department to issue a license
367 for driving privilege restricted to business or employment
368 purposes only, as defined by s. 322.271, if the person is
369 otherwise qualified for such a license. ~~A driver whose license
370 or driving privilege has been suspended or revoked under this
371 section or s. 322.056 may, upon the expiration of 6 months,
372 petition the department for restoration of the driving privilege
373 on a restricted or unrestricted basis depending on the length of
374 suspension or revocation. In no case shall~~ A restricted license
375 may not be available until 6 months of the suspension or
376 revocation period has expired.

377 (3) If a person 18 years of age or older is convicted for
378 the possession or sale of, trafficking in, or conspiracy to
379 possess, sell, or traffic in a controlled substance and such
380 person's driver license or driving privilege is already under

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381 suspension or revocation for any reason, the court shall direct
382 the department to extend the period of such suspension or
383 revocation by an additional period of 6 months ~~1-year~~ or until
384 the person is evaluated for and, if deemed necessary by the
385 evaluating agency, completes a drug treatment and rehabilitation
386 program approved or regulated by the Department of Children and
387 Families. However, the court may, in its sound discretion,
388 direct the department to issue a license for driving privilege
389 restricted to business or employment purposes only, as defined
390 by s. 322.271, if the person is otherwise qualified for such a
391 license. ~~A driver whose license or driving privilege has been~~
392 ~~suspended or revoked under this section or s. 322.056 may, upon~~
393 ~~the expiration of 6 months, petition the department for~~
394 ~~restoration of the driving privilege on a restricted or~~
395 ~~unrestricted basis depending on the length of suspension or~~
396 ~~revocation. In no case shall~~ A restricted license may not be
397 available until 6 months of the suspension or revocation period
398 has expired.

399 (4) If a person 18 years of age or older is convicted for
400 the possession or sale of, trafficking in, or conspiracy to
401 possess, sell, or traffic in a controlled substance and such
402 person is ineligible by reason of age for a driver license or
403 driving privilege, the court shall direct the department to
404 withhold issuance of such person's driver license or driving
405 privilege for a period of 6 months ~~1-year~~ after the date that he
406 or she would otherwise have become eligible or until he or she
407 becomes eligible by reason of age for a driver license and is
408 evaluated for and, if deemed necessary by the evaluating agency,
409 completes a drug treatment and rehabilitation program approved

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410 or regulated by the Department of Children and Families.
411 However, the court may, in its sound discretion, direct the
412 department to issue a license for driving privilege restricted
413 to business or employment purposes only, as defined by s.
414 322.271, if the person is otherwise qualified for such a
415 license. ~~A driver whose license or driving privilege has been~~
416 ~~suspended or revoked under this section or s. 322.056 may, upon~~
417 ~~the expiration of 6 months, petition the department for~~
418 ~~restoration of the driving privilege on a restricted or~~
419 ~~unrestricted basis depending on the length of suspension or~~
420 ~~revocation. In no case shall~~ A restricted license may not be
421 available until 6 months of the suspension or revocation period
422 has expired.

423 Section 7. Section 322.056, Florida Statutes, is amended to
424 read:

425 322.056 Mandatory revocation or suspension of, or delay of
426 eligibility for, driver license for persons under age 18 found
427 guilty of ~~certain alcohol, drug, or tobacco~~ offenses;
428 prohibition.—

429 (1) Notwithstanding the provisions of s. 322.055, if a
430 person under 18 years of age is found guilty of or delinquent
431 for a violation of ~~s. 562.11(2), s. 562.111, or~~ chapter 893,
432 and:

433 (a) The person is eligible by reason of age for a driver
434 license or driving privilege, the court shall direct the
435 department to revoke or to withhold issuance of his or her
436 driver license or driving privilege for a period of 6 months.†

437 ~~1. Not less than 6 months and not more than 1 year for the~~
438 ~~first violation.~~

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439 ~~2. Two years, for a subsequent violation.~~

440 (b) The person's driver license or driving privilege is
441 under suspension or revocation for any reason, the court shall
442 direct the department to extend the period of suspension or
443 revocation by an additional period of 6 months.~~±~~

444 ~~1. Not less than 6 months and not more than 1 year for the~~
445 ~~first violation.~~

446 ~~2. Two years, for a subsequent violation.~~

447 (c) The person is ineligible by reason of age for a driver
448 license or driving privilege, the court shall direct the
449 department to withhold issuance of his or her driver license or
450 driving privilege for a period of~~±~~

451 ~~1. Not less than 6 months and not more than 1 year after~~
452 ~~the date on which he or she would otherwise have become~~
453 ~~eligible, for the first violation.~~

454 ~~2. Two years after the date on which he or she would~~
455 ~~otherwise have become eligible, for a subsequent violation.~~

456
457 ~~However, the court may, in its sound discretion, direct the~~
458 ~~department to issue a license for driving privileges restricted~~
459 ~~to business or employment purposes only, as defined in s.~~
460 ~~322.271, if the person is otherwise qualified for such a~~
461 ~~license.~~

462 ~~(2) If a person under 18 years of age is found by the court~~
463 ~~to have committed a noncriminal violation under s. 569.11 or s.~~
464 ~~877.112(6) or (7) and that person has failed to comply with the~~
465 ~~procedures established in that section by failing to fulfill~~
466 ~~community service requirements, failing to pay the applicable~~
467 ~~fine, or failing to attend a locally available school approved~~

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468 ~~anti-tobacco program, and:~~

469 ~~(a) The person is eligible by reason of age for a driver~~
470 ~~license or driving privilege, the court shall direct the~~
471 ~~department to revoke or to withhold issuance of his or her~~
472 ~~driver license or driving privilege as follows:~~

473 ~~1. For the first violation, for 30 days.~~

474 ~~2. For the second violation within 12 weeks of the first~~
475 ~~violation, for 45 days.~~

476 ~~(b) The person's driver license or driving privilege is~~
477 ~~under suspension or revocation for any reason, the court shall~~
478 ~~direct the department to extend the period of suspension or~~
479 ~~revocation by an additional period as follows:~~

480 ~~1. For the first violation, for 30 days.~~

481 ~~2. For the second violation within 12 weeks of the first~~
482 ~~violation, for 45 days.~~

483 ~~(c) The person is ineligible by reason of age for a driver~~
484 ~~license or driving privilege, the court shall direct the~~
485 ~~department to withhold issuance of his or her driver license or~~
486 ~~driving privilege as follows:~~

487 ~~1. For the first violation, for 30 days.~~

488 ~~2. For the second violation within 12 weeks of the first~~
489 ~~violation, for 45 days.~~

490
491 ~~Any second violation of s. 569.11 or s. 877.112(6) or (7) not~~
492 ~~within the 12-week period after the first violation will be~~
493 ~~treated as a first violation and in the same manner as provided~~
494 ~~in this subsection.~~

495 ~~(3) If a person under 18 years of age is found by the court~~
496 ~~to have committed a third violation of s. 569.11 or s.~~

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497 ~~877.112(6) or (7) within 12 weeks of the first violation, the~~
498 ~~court must direct the Department of Highway Safety and Motor~~
499 ~~Vehicles to suspend or withhold issuance of his or her driver~~
500 ~~license or driving privilege for 60 consecutive days. Any third~~
501 ~~violation of s. 569.11 or s. 877.112(6) or (7) not within the~~
502 ~~12-week period after the first violation will be treated as a~~
503 ~~first violation and in the same manner as provided in subsection~~
504 ~~(2).~~

505 (2)~~(4)~~ A penalty imposed under this section shall be in
506 addition to any other penalty imposed by law.

507 ~~(5) The suspension or revocation of a person's driver~~
508 ~~license imposed pursuant to subsection (2) or subsection (3),~~
509 ~~shall not result in or be cause for an increase of the convicted~~
510 ~~person's, or his or her parent's or legal guardian's, automobile~~
511 ~~insurance rate or premium or result in points assessed against~~
512 ~~the person's driving record.~~

513 Section 8. Section 322.057, Florida Statutes, is repealed.

514 Section 9. Subsection (3) of section 322.09, Florida
515 Statutes, is amended, and present subsections (4) and (5) of
516 that section are redesignated as subsections (3) and (4),
517 respectively, to read:

518 322.09 Application of minors; responsibility for negligence
519 or misconduct of minor.—

520 ~~(3) The department may not issue a driver license or~~
521 ~~learner's driver license to any applicant under the age of 18~~
522 ~~years who is not in compliance with the requirements of s.~~
523 ~~322.091.~~

524 Section 10. Section 322.091, Florida Statutes, is repealed.

525 Section 11. Subsection (6) is added to section 322.245,

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526 Florida Statutes, to read:

527 322.245 Suspension of license upon failure of person
528 charged with specified offense under chapter 316, chapter 320,
529 or this chapter to comply with directives ordered by traffic
530 court or upon failure to pay child support in non-IV-D cases as
531 provided in chapter 61 or failure to pay any financial
532 obligation in any other criminal case.-

533 (6) Notwithstanding any other law, a person's driver
534 license may not be suspended solely for failure to pay a penalty
535 or court obligation if the person demonstrates to the court,
536 after receiving the penalty and prior to the suspension taking
537 place, that he or she is unable to pay the penalty or court
538 obligation. A person is considered unable to pay if the person
539 provides documentation to the appropriate clerk of court
540 evidencing that:

541 (a) The person receives reemployment assistance or
542 unemployment compensation pursuant to chapter 443;

543 (b) The person is disabled and incapable of self-support or
544 receives benefits under the federal Supplemental Security Income
545 program or Social Security Disability Insurance program;

546 (c) The person receives temporary cash assistance pursuant
547 to chapter 414;

548 (d) The person is making payments in accordance with a
549 confirmed bankruptcy plan under chapter 11, chapter 12, or
550 chapter 13 of the United States Bankruptcy Code, 11 U.S.C. ss.
551 101 et seq.;

552 (e) The person has been placed on a payment plan or payment
553 plans with the clerk of court which in total exceed what is
554 determined to be a reasonable payment plan pursuant to s.

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555 28.246(4); or

556 (f) The person has been determined to be indigent after
557 filing an application with the clerk in accordance with s. 27.52
558 or s. 57.082.

559 Section 12. Subsection (7) of section 322.251, Florida
560 Statutes, is repealed.

561 Section 13. Subsection (8) is added to section 322.271,
562 Florida Statutes, to read:

563 322.271 Authority to modify revocation, cancellation, or
564 suspension order.—

565 (8) A person whose driver license or privilege to drive has
566 been suspended under s. 318.15 or s. 322.245, with the exception
567 of any suspension related to s. 61.13016, may have his or her
568 driver license or driving privilege reinstated on a restricted
569 basis by the department in accordance with this section. The
570 restricted license shall be valid until the 7-year suspension
571 period ends as provided in s. 318.15 or until the debt is paid.

572 Section 14. Subsection (10) of section 322.34, Florida
573 Statutes, is amended to read:

574 322.34 Driving while license suspended, revoked, canceled,
575 or disqualified.—

576 (10) (a) Notwithstanding any other provision of this
577 section, if a person does not have a prior forcible felony
578 conviction as defined in s. 776.08, the penalties provided in
579 paragraph (b) apply if a person's driver license or driving
580 privilege is canceled, suspended, or revoked for:

581 1. Failing to pay child support as provided in s. 322.245
582 or s. 61.13016;

583 2. Failing to pay any other financial obligation as

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584 provided in s. 322.245 ~~other than those specified in s.~~
585 ~~322.245(1)~~;

586 3. Failing to comply with a civil penalty required in s.
587 318.15;

588 4. Failing to maintain vehicular financial responsibility
589 as required by chapter 324; or

590 ~~5. Failing to comply with attendance or other requirements~~
591 ~~for minors as set forth in s. 322.091; or~~

592 5.6. Having been designated a habitual traffic offender
593 under s. 322.264(1)(d) as a result of suspensions of his or her
594 driver license or driver privilege for any underlying violation
595 listed in subparagraphs 1.-4. ~~1.-5.~~

596 (b)1. Upon a first conviction for knowingly driving while
597 his or her license is suspended, revoked, or canceled for any of
598 the underlying violations listed in subparagraphs (a)1.-5.
599 ~~(a)1.-6.~~, a person commits a misdemeanor of the second degree,
600 punishable as provided in s. 775.082 or s. 775.083.

601 2. Upon a second or subsequent conviction for the same
602 offense of knowingly driving while his or her license is
603 suspended, revoked, or canceled for any of the underlying
604 violations listed in subparagraphs (a)1.-5. ~~(a)1.-6.~~, a person
605 commits a misdemeanor of the first degree, punishable as
606 provided in s. 775.082 or s. 775.083.

607 Section 15. Paragraph (a) of subsection (1) of section
608 562.11, Florida Statutes, is amended to read:

609 562.11 Selling, giving, or serving alcoholic beverages to
610 person under age 21; providing a proper name; misrepresenting or
611 misstating age or age of another to induce licensee to serve
612 alcoholic beverages to person under 21; penalties.-

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613 (1) (a) ~~1.~~ A person may not sell, give, serve, or permit to
614 be served alcoholic beverages to a person under 21 years of age
615 or permit a person under 21 years of age to consume such
616 beverages on the licensed premises. A person who violates this
617 subparagraph commits a misdemeanor of the second degree,
618 punishable as provided in s. 775.082 or s. 775.083. A person who
619 violates this subparagraph a second or subsequent time within 1
620 year after a prior conviction commits a misdemeanor of the first
621 degree, punishable as provided in s. 775.082 or s. 775.083.

622 ~~2. In addition to any other penalty imposed for a violation~~
623 ~~of subparagraph 1., the court may order the Department of~~
624 ~~Highway Safety and Motor Vehicles to withhold the issuance of,~~
625 ~~or suspend or revoke, the driver license or driving privilege,~~
626 ~~as provided in s. 322.057, of any person who violates~~
627 ~~subparagraph 1. This subparagraph does not apply to a licensee,~~
628 ~~as defined in s. 561.01, who violates subparagraph 1. while~~
629 ~~acting within the scope of his or her license or an employee or~~
630 ~~agent of a licensee, as defined in s. 561.01, who violates~~
631 ~~subparagraph 1. while engaged within the scope of his or her~~
632 ~~employment or agency.~~

633 ~~3. A court that withholds the issuance of, or suspends or~~
634 ~~revokes, the driver license or driving privilege of a person~~
635 ~~pursuant to subparagraph 2. may direct the Department of Highway~~
636 ~~Safety and Motor Vehicles to issue the person a license for~~
637 ~~driving privilege restricted to business purposes only, as~~
638 ~~defined in s. 322.271, if he or she is otherwise qualified.~~

639 Section 16. Subsection (3) of section 562.111, Florida
640 Statutes, is repealed.

641 Section 17. Subsections (1), (2), and (5) of section

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642 569.11, Florida Statutes, are amended to read:

643 569.11 Possession, misrepresenting age or military service
644 to purchase, and purchase of tobacco products by persons under
645 18 years of age prohibited; penalties; jurisdiction; disposition
646 of fines.—

647 (1) It is unlawful for any person under 18 years of age to
648 knowingly possess any tobacco product. Any person under 18 years
649 of age who violates the provisions of this subsection commits a
650 noncriminal violation as provided in s. 775.08(3), punishable
651 by:

652 (a) For a first violation, 16 hours of community service
653 or, instead of community service, a \$25 fine. In addition, the
654 person must attend a school-approved anti-tobacco program, if
655 locally available; or

656 (b) For a second or subsequent violation within 12 weeks of
657 the first violation, a \$25 fine. ~~;~~ ~~or~~

658 ~~(c) For a third or subsequent violation within 12 weeks of~~
659 ~~the first violation, the court must direct the Department of~~
660 ~~Highway Safety and Motor Vehicles to withhold issuance of or~~
661 ~~suspend or revoke the person's driver license or driving~~
662 ~~privilege, as provided in s. 322.056.~~

663

664 Any second or subsequent violation not within the 12-week time
665 period after the first violation is punishable as provided for a
666 first violation.

667 (2) It is unlawful for any person under 18 years of age to
668 misrepresent his or her age or military service for the purpose
669 of inducing a dealer or an agent or employee of the dealer to
670 sell, give, barter, furnish, or deliver any tobacco product, or

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671 to purchase, or attempt to purchase, any tobacco product from a
672 person or a vending machine. Any person under 18 years of age
673 who violates a provision of this subsection commits a
674 noncriminal violation as provided in s. 775.08(3), punishable
675 by:

676 (a) For a first violation, 16 hours of community service
677 or, instead of community service, a \$25 fine and, in addition,
678 the person must attend a school-approved anti-tobacco program,
679 if available; or

680 (b) For a second or subsequent violation within 12 weeks of
681 the first violation, a \$25 fine. ~~or~~

682 ~~(c) For a third or subsequent violation within 12 weeks of~~
683 ~~the first violation, the court must direct the Department of~~
684 ~~Highway Safety and Motor Vehicles to withhold issuance of or~~
685 ~~suspend or revoke the person's driver license or driving~~
686 ~~privilege, as provided in s. 322.056.~~

687
688 Any second or subsequent violation not within the 12-week time
689 period after the first violation is punishable as provided for a
690 first violation.

691 (5) (a) If a person under 18 years of age is found by the
692 court to have committed a noncriminal violation under this
693 section and that person has failed to complete community
694 service, pay the fine as required by paragraph (1) (a) or
695 paragraph (2) (a), or attend a school-approved anti-tobacco
696 program, if locally available, the court may ~~must~~ direct the
697 Department of Highway Safety and Motor Vehicles to withhold
698 issuance of or suspend the driver license or driving privilege
699 of that person for a period of 30 consecutive days.

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700 (b) If a person under 18 years of age is found by the court
701 to have committed a noncriminal violation under this section and
702 that person has failed to pay the applicable fine as required by
703 paragraph (1)(b) or paragraph (2)(b), the court may ~~must~~ direct
704 the Department of Highway Safety and Motor Vehicles to withhold
705 issuance of or suspend the driver license or driving privilege
706 of that person for a period of 45 consecutive days.

707 Section 18. Subsections (5) and (10) of section 790.22,
708 Florida Statutes, are amended to read:

709 790.22 Use of BB guns, air or gas-operated guns, or
710 electric weapons or devices by minor under 16; limitation;
711 possession of firearms by minor under 18 prohibited; penalties.-

712 (5) (a) A minor who violates subsection (3) commits a
713 misdemeanor of the first degree; for a first offense, may serve
714 a period of detention of up to 3 days in a secure detention
715 facility; and, in addition to any other penalty provided by law,
716 shall be required to perform 100 hours of community service. †
717 ~~and:~~

718 ~~1. If the minor is eligible by reason of age for a driver~~
719 ~~license or driving privilege, the court shall direct the~~
720 ~~Department of Highway Safety and Motor Vehicles to revoke or to~~
721 ~~withhold issuance of the minor's driver license or driving~~
722 ~~privilege for up to 1 year.~~

723 ~~2. If the minor's driver license or driving privilege is~~
724 ~~under suspension or revocation for any reason, the court shall~~
725 ~~direct the Department of Highway Safety and Motor Vehicles to~~
726 ~~extend the period of suspension or revocation by an additional~~
727 ~~period of up to 1 year.~~

728 ~~3. If the minor is ineligible by reason of age for a driver~~

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729 ~~license or driving privilege, the court shall direct the~~
730 ~~Department of Highway Safety and Motor Vehicles to withhold~~
731 ~~issuance of the minor's driver license or driving privilege for~~
732 ~~up to 1 year after the date on which the minor would otherwise~~
733 ~~have become eligible.~~

734 (b) For a second or subsequent offense, a minor who
735 violates subsection (3) commits a felony of the third degree and
736 shall serve a period of detention of up to 15 days in a secure
737 detention facility and shall be required to perform not less
738 than 100 ~~or not~~ more than 250 hours of community service. 7 ~~and:~~

739 ~~1. If the minor is eligible by reason of age for a driver~~
740 ~~license or driving privilege, the court shall direct the~~
741 ~~Department of Highway Safety and Motor Vehicles to revoke or to~~
742 ~~withhold issuance of the minor's driver license or driving~~
743 ~~privilege for up to 2 years.~~

744 ~~2. If the minor's driver license or driving privilege is~~
745 ~~under suspension or revocation for any reason, the court shall~~
746 ~~direct the Department of Highway Safety and Motor Vehicles to~~
747 ~~extend the period of suspension or revocation by an additional~~
748 ~~period of up to 2 years.~~

749 ~~3. If the minor is ineligible by reason of age for a driver~~
750 ~~license or driving privilege, the court shall direct the~~
751 ~~Department of Highway Safety and Motor Vehicles to withhold~~
752 ~~issuance of the minor's driver license or driving privilege for~~
753 ~~up to 2 years after the date on which the minor would otherwise~~
754 ~~have become eligible.~~

755
756 For the purposes of this subsection, community service shall be
757 performed, if possible, in a manner involving a hospital

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758 emergency room or other medical environment that deals on a
759 regular basis with trauma patients and gunshot wounds.

760 ~~(10) If a minor is found to have committed an offense under~~
761 ~~subsection (9), the court shall impose the following penalties~~
762 ~~in addition to any penalty imposed under paragraph (9) (a) or~~
763 ~~paragraph (9) (b):~~

764 ~~(a) For a first offense:~~

765 ~~1. If the minor is eligible by reason of age for a driver~~
766 ~~license or driving privilege, the court shall direct the~~
767 ~~Department of Highway Safety and Motor Vehicles to revoke or to~~
768 ~~withhold issuance of the minor's driver license or driving~~
769 ~~privilege for up to 1 year.~~

770 ~~2. If the minor's driver license or driving privilege is~~
771 ~~under suspension or revocation for any reason, the court shall~~
772 ~~direct the Department of Highway Safety and Motor Vehicles to~~
773 ~~extend the period of suspension or revocation by an additional~~
774 ~~period for up to 1 year.~~

775 ~~3. If the minor is ineligible by reason of age for a driver~~
776 ~~license or driving privilege, the court shall direct the~~
777 ~~Department of Highway Safety and Motor Vehicles to withhold~~
778 ~~issuance of the minor's driver license or driving privilege for~~
779 ~~up to 1 year after the date on which the minor would otherwise~~
780 ~~have become eligible.~~

781 ~~(b) For a second or subsequent offense:~~

782 ~~1. If the minor is eligible by reason of age for a driver~~
783 ~~license or driving privilege, the court shall direct the~~
784 ~~Department of Highway Safety and Motor Vehicles to revoke or to~~
785 ~~withhold issuance of the minor's driver license or driving~~
786 ~~privilege for up to 2 years.~~

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787 ~~2. If the minor's driver license or driving privilege is~~
788 ~~under suspension or revocation for any reason, the court shall~~
789 ~~direct the Department of Highway Safety and Motor Vehicles to~~
790 ~~extend the period of suspension or revocation by an additional~~
791 ~~period for up to 2 years.~~

792 ~~3. If the minor is ineligible by reason of age for a driver~~
793 ~~license or driving privilege, the court shall direct the~~
794 ~~Department of Highway Safety and Motor Vehicles to withhold~~
795 ~~issuance of the minor's driver license or driving privilege for~~
796 ~~up to 2 years after the date on which the minor would otherwise~~
797 ~~have become eligible.~~

798 Section 19. Subsections (7) and (8) of section 806.13,
799 Florida Statutes, are amended, and present subsection (9) of
800 that section is redesignated as subsection (7), to read:

801 806.13 Criminal mischief; penalties; penalty for minor.—

802 ~~(7) In addition to any other penalty provided by law, if a~~
803 ~~minor is found to have committed a delinquent act under this~~
804 ~~section for placing graffiti on any public property or private~~
805 ~~property, and:~~

806 ~~(a) The minor is eligible by reason of age for a driver~~
807 ~~license or driving privilege, the court shall direct the~~
808 ~~Department of Highway Safety and Motor Vehicles to revoke or~~
809 ~~withhold issuance of the minor's driver license or driving~~
810 ~~privilege for not more than 1 year.~~

811 ~~(b) The minor's driver license or driving privilege is~~
812 ~~under suspension or revocation for any reason, the court shall~~
813 ~~direct the Department of Highway Safety and Motor Vehicles to~~
814 ~~extend the period of suspension or revocation by an additional~~
815 ~~period of not more than 1 year.~~

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816 ~~(c) The minor is ineligible by reason of age for a driver~~
817 ~~license or driving privilege, the court shall direct the~~
818 ~~Department of Highway Safety and Motor Vehicles to withhold~~
819 ~~issuance of the minor's driver license or driving privilege for~~
820 ~~not more than 1 year after the date on which he or she would~~
821 ~~otherwise have become eligible.~~

822 ~~(8) A minor whose driver license or driving privilege is~~
823 ~~revoked, suspended, or withheld under subsection (7) may elect~~
824 ~~to reduce the period of revocation, suspension, or withholding~~
825 ~~by performing community service at the rate of 1 day for each~~
826 ~~hour of community service performed. In addition, if the court~~
827 ~~determines that due to a family hardship, the minor's driver~~
828 ~~license or driving privilege is necessary for employment or~~
829 ~~medical purposes of the minor or a member of the minor's family,~~
830 ~~the court shall order the minor to perform community service and~~
831 ~~reduce the period of revocation, suspension, or withholding at~~
832 ~~the rate of 1 day for each hour of community service performed.~~
833 ~~As used in this subsection, the term "community service" means~~
834 ~~cleaning graffiti from public property.~~

835 Section 20. Section 812.0155, Florida Statutes, is
836 repealed.

837 Section 21. Section 832.09, Florida Statutes, is repealed.

838 Section 22. Subsections (6) and (7) and paragraphs (c) and
839 (d) of subsection (8) of section 877.112, Florida Statutes, are
840 amended to read:

841 877.112 Nicotine products and nicotine dispensing devices;
842 prohibitions for minors; penalties; civil fines; signage
843 requirements; preemption.—

844 (6) PROHIBITIONS ON POSSESSION OF NICOTINE PRODUCTS OR

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845 NICOTINE DISPENSING DEVICES BY MINORS.—It is unlawful for any
846 person under 18 years of age to knowingly possess any nicotine
847 product or a nicotine dispensing device. Any person under 18
848 years of age who violates this subsection commits a noncriminal
849 violation as defined in s. 775.08(3), punishable by:

850 (a) For a first violation, 16 hours of community service
851 or, instead of community service, a \$25 fine. In addition, the
852 person must attend a school-approved anti-tobacco and nicotine
853 program, if locally available; or

854 (b) For a second or subsequent violation within 12 weeks of
855 the first violation, a \$25 fine. ~~or~~

856 ~~(c) For a third or subsequent violation within 12 weeks of~~
857 ~~the first violation, the court must direct the Department of~~
858 ~~Highway Safety and Motor Vehicles to withhold issuance of or~~
859 ~~suspend or revoke the person's driver license or driving~~
860 ~~privilege, as provided in s. 322.056.~~

861
862 Any second or subsequent violation not within the 12-week time
863 period after the first violation is punishable as provided for a
864 first violation.

865 (7) PROHIBITION ON MISREPRESENTING AGE.—It is unlawful for
866 any person under 18 years of age to misrepresent his or her age
867 or military service for the purpose of inducing a retailer of
868 nicotine products or nicotine dispensing devices or an agent or
869 employee of such retailer to sell, give, barter, furnish, or
870 deliver any nicotine product or nicotine dispensing device, or
871 to purchase, or attempt to purchase, any nicotine product or
872 nicotine dispensing device from a person or a vending machine.
873 Any person under 18 years of age who violates this subsection

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874 commits a noncriminal violation as defined in s. 775.08(3),
875 punishable by:

876 (a) For a first violation, 16 hours of community service
877 or, instead of community service, a \$25 fine and, in addition,
878 the person must attend a school-approved anti-tobacco and
879 nicotine program, if available; or

880 (b) For a second or subsequent violation within 12 weeks of
881 the first violation, a \$25 fine. ~~;~~ ~~or~~

882 ~~(c) For a third or subsequent violation within 12 weeks of~~
883 ~~the first violation, the court must direct the Department of~~
884 ~~Highway Safety and Motor Vehicles to withhold issuance of or~~
885 ~~suspend or revoke the person's driver license or driving~~
886 ~~privilege, as provided in s. 322.056.~~

887
888 Any second or subsequent violation not within the 12-week time
889 period after the first violation is punishable as provided for a
890 first violation.

891 (8) PENALTIES FOR MINORS.—

892 (c) If a person under 18 years of age is found by the court
893 to have committed a noncriminal violation under this section and
894 that person has failed to complete community service, pay the
895 fine as required by paragraph (6) (a) or paragraph (7) (a), or
896 attend a school-approved anti-tobacco and nicotine program, if
897 locally available, the court may ~~must~~ direct the Department of
898 Highway Safety and Motor Vehicles to withhold issuance of or
899 suspend the driver license or driving privilege of that person
900 for 30 consecutive days.

901 (d) If a person under 18 years of age is found by the court
902 to have committed a noncriminal violation under this section and

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903 that person has failed to pay the applicable fine as required by
904 paragraph (6)(b) or paragraph (7)(b), the court may ~~must~~ direct
905 the Department of Highway Safety and Motor Vehicles to withhold
906 issuance of or suspend the driver license or driving privilege
907 of that person for 45 consecutive days.

908 Section 23. Subsection (2) of section 938.30, Florida
909 Statutes, is amended to read:

910 938.30 Financial obligations in criminal cases;
911 supplementary proceedings.—

912 (2) The court may require a person liable for payment of an
913 obligation to appear and be examined under oath concerning the
914 person's financial ability to pay the obligation. The judge may
915 convert the statutory financial obligation into a court-ordered
916 obligation to perform community service, subject to the
917 provisions of s. 318.18(8), after examining a person under oath
918 and determining the person's inability to pay, or by reliance
919 upon information provided under s. 27.52(1)(a)6. Any person who
920 fails to attend a hearing may be arrested on warrant or capias
921 issued by the clerk upon order of the court.

922 Section 24. Subsection (2) of section 1003.27, Florida
923 Statutes, is amended to read:

924 1003.27 Court procedure and penalties.—The court procedure
925 and penalties for the enforcement of the provisions of this
926 part, relating to compulsory school attendance, shall be as
927 follows:

928 (2) NONENROLLMENT AND NONATTENDANCE CASES.—

929 ~~(a)~~ In each case of nonenrollment or of nonattendance upon
930 the part of a student who is required to attend some school,
931 when no valid reason for such nonenrollment or nonattendance is

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932 found, the district school superintendent shall institute a
933 criminal prosecution against the student's parent.

934 ~~(b) Each public school principal or the principal's~~
935 ~~designee shall notify the district school board of each minor~~
936 ~~student under its jurisdiction who accumulates 15 unexcused~~
937 ~~absences in a period of 90 calendar days. Each designee of the~~
938 ~~governing body of each private school, and each parent whose~~
939 ~~child is enrolled in a home education program, may provide the~~
940 ~~Department of Highway Safety and Motor Vehicles with the legal~~
941 ~~name, sex, date of birth, and social security number of each~~
942 ~~minor student under his or her jurisdiction who fails to satisfy~~
943 ~~relevant attendance requirements and who fails to otherwise~~
944 ~~satisfy the requirements of s. 322.091. The district school~~
945 ~~superintendent must provide the Department of Highway Safety and~~
946 ~~Motor Vehicles the legal name, sex, date of birth, and social~~
947 ~~security number of each minor student who has been reported~~
948 ~~under this paragraph and who fails to otherwise satisfy the~~
949 ~~requirements of s. 322.091. The Department of Highway Safety and~~
950 ~~Motor Vehicles may not issue a driver license or learner's~~
951 ~~driver license to, and shall suspend any previously issued~~
952 ~~driver license or learner's driver license of, any such minor~~
953 ~~student, pursuant to the provisions of s. 322.091.~~

954 Section 25. Paragraph (a) of subsection (10) of section
955 318.14, Florida Statutes, is amended to read:

956 318.14 Noncriminal traffic infractions; exception;
957 procedures.—

958 (10) (a) Any person who does not hold a commercial driver
959 license or commercial learner's permit and who is cited while
960 driving a noncommercial motor vehicle for an offense listed

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961 under this subsection may, in lieu of payment of fine or court
962 appearance, elect to enter a plea of nolo contendere and provide
963 proof of compliance to the clerk of the court, designated
964 official, or authorized operator of a traffic violations bureau.
965 In such case, adjudication shall be withheld; however, a person
966 may not make an election under this subsection if the person has
967 made an election under this subsection in the preceding 12
968 months. A person may not make more than three elections under
969 this subsection. This subsection applies to the following
970 offenses:

971 1. Operating a motor vehicle without a valid driver license
972 in violation of s. 322.03, s. 322.065, or s. 322.15(1), or
973 operating a motor vehicle with a license that has been suspended
974 for failure to appear, failure to pay civil penalty, or failure
975 to attend a driver improvement course pursuant to s. 322.291.

976 2. Operating a motor vehicle without a valid registration
977 in violation of s. 320.0605, s. 320.07, or s. 320.131.

978 3. Operating a motor vehicle in violation of s. 316.646.

979 4. Operating a motor vehicle with a license that has been
980 suspended under s. 61.13016 or s. 322.245 for failure to pay
981 child support or for failure to pay any other financial
982 obligation as provided in s. 322.245; however, this subparagraph
983 does not apply if the license has been suspended pursuant to s.
984 322.245(1).

985 ~~5. Operating a motor vehicle with a license that has been~~
986 ~~suspended under s. 322.091 for failure to meet school attendance~~
987 ~~requirements.~~

988 Section 26. Subsections (1) and (2) of section 322.05,
989 Florida Statutes, are amended to read:

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990 322.05 Persons not to be licensed.—The department may not
991 issue a license:

992 (1) To a person who is under the age of 16 years, except
993 that the department may issue a learner's driver license to a
994 person who is at least 15 years of age and who meets the
995 requirements of s. 322.1615 ~~ss. 322.091 and 322.1615~~ and of any
996 other applicable law or rule.

997 (2) To a person who is at least 16 years of age but is
998 under 18 years of age ~~unless the person meets the requirements~~
999 ~~of s. 322.091~~ and holds a valid:

1000 (a) Learner's driver license for at least 12 months, with
1001 no moving traffic convictions, before applying for a license;

1002 (b) Learner's driver license for at least 12 months and who
1003 has a moving traffic conviction but elects to attend a traffic
1004 driving school for which adjudication must be withheld pursuant
1005 to s. 318.14; or

1006 (c) License that was issued in another state or in a
1007 foreign jurisdiction and that would not be subject to suspension
1008 or revocation under the laws of this state.

1009 Section 27. Paragraph (i) of subsection (2) of section
1010 397.951, Florida Statutes, is amended to read:

1011 397.951 Treatment and sanctions.—The Legislature recognizes
1012 that the integration of treatment and sanctions greatly
1013 increases the effectiveness of substance abuse treatment. It is
1014 the responsibility of the department and the substance abuse
1015 treatment provider to employ the full measure of sanctions
1016 available to require participation and completion of treatment
1017 to ensure successful outcomes for children in substance abuse
1018 treatment.

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1019 (2) The department shall ensure that substance abuse
1020 treatment providers employ any and all appropriate available
1021 sanctions necessary to engage, motivate, and maintain a child in
1022 treatment, including, but not limited to, provisions in law
1023 that:

1024 (i) Provide that, pursuant to s. 322.056, for any person
1025 under 18 years of age who is found guilty of or delinquent for a
1026 violation of ~~s. 562.11(2), s. 562.111, or~~ chapter 893, and is
1027 eligible by reason of age for a driver license or driving
1028 privilege, the court shall direct the Department of Highway
1029 Safety and Motor Vehicles to revoke or to withhold issuance of
1030 his or her driver license or driving privilege for a period of 6
1031 months.÷

1032 ~~1. Not less than 6 months and not more than 1 year for the~~
1033 ~~first violation.~~

1034 ~~2. Two years, for a subsequent violation.~~

1035 Section 28. Subsection (9) of section 1003.01, Florida
1036 Statutes, is amended to read:

1037 1003.01 Definitions.—As used in this chapter, the term:

1038 (9) "Dropout" means a student who meets any one or more of
1039 the following criteria:

1040 (a) The student has voluntarily removed himself or herself
1041 from the school system before graduation for reasons that
1042 include, but are not limited to, marriage, or the student has
1043 withdrawn from school because he or she has failed the statewide
1044 student assessment test and thereby does not receive any of the
1045 certificates of completion;

1046 (b) The student has not met the relevant attendance
1047 requirements of the school district pursuant to State Board of

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1048 Education rules, or the student was expected to attend a school
1049 but did not enter as expected for unknown reasons, or the
1050 student's whereabouts are unknown;

1051 (c) The student has withdrawn from school, but has not
1052 transferred to another public or private school or enrolled in
1053 any career, adult, home education, or alternative educational
1054 program;

1055 (d) The student has withdrawn from school due to hardship,
1056 unless such withdrawal has been granted under ~~the provisions of~~
1057 ~~s. 322.091~~, court action, expulsion, medical reasons, or
1058 pregnancy; or

1059 (e) The student is not eligible to attend school because of
1060 reaching the maximum age for an exceptional student program in
1061 accordance with the district's policy.

1062

1063 The State Board of Education may adopt rules to implement ~~the~~
1064 ~~provisions of~~ this subsection.

1065 Section 29. The amendment made by this act to s. 316.650,
1066 Florida Statutes, shall apply upon the creation of new inventory
1067 of uniform traffic citation forms.

1068 Section 30. This act shall take effect October 1, 2016.



The Florida Senate

Committee Agenda Request

To: Senator Joe Negron, Chair
Appropriations Subcommittee on Criminal and Civil Justice

Subject: Committee Agenda Request

Date: January 21, 2016

I respectfully request that **Senate Bill #7046**, relating to **Penalties and Fees**, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", with a long horizontal flourish extending to the right.

Senator Jeff Brandes
Florida Senate, District 22

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/17/16
Meeting Date

7046
Bill Number (if applicable)

Topic Penalties and Fees

Amendment Barcode (if applicable)

Name PAMELA Burch Fort

Job Title _____

Address 104 S. Monroe Street

Phone 850/425-1344

Tallahassee FL 32301
City State Zip

Email TcgLobby@aol.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing ACLU of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

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2/17/2016

7046

Meeting Date

Bill Number (if applicable)

Topic Penalties and Fees

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Public Defender, 2nd Circuit

Address 301 S. Monroe Street

Phone 850.606.1000

Street

Tallahassee

Florida

32301

Email nancy.daniels@flpd2.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/17/2016
Meeting Date

SB 7046
Bill Number (if applicable)

Topic PENALTIES AND FEES

Amendment Barcode (if applicable)

Name RICHARD FORTIN

Job Title SERGEANT VOLUSIA COUNTY SHERIFF'S OFFICE

Address 101 EAST CANAL STREET
Street

Phone 386-423-3301

NEW SMYRNA FL 32168
City State Zip

Email R.FORTIN@VUSO.US

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLORIDA SHERIFFS ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

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2/17/16
Meeting Date

9137046
Bill Number (if applicable)

Topic Penalties + Fees

Amendment Barcode (if applicable)

Name Fred Baggett

Job Title _____

Address ~~3797 Bob~~ 101 E. College Ave

Phone 425-9912

Tall. City FL State 32301 Zip

Email BaggettF@GTLaw.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Court Clerks

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/17/2016

Meeting Date

7046

Bill Number (if applicable)



Topic Penalties and Fees

Amendment Barcode (if applicable)

Name Sarrah Carroll

Job Title Lobbyist

Address 123 S. Adams

Phone 850-671-4401

Street

Tallahassee

FL

32301

Email carroll@sostrategy.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

No
document
available.

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APPEARANCE RECORD

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2/17/2016

Meeting Date

N/A

Bill Number (if applicable)

Topic Work Release

Amendment Barcode (if applicable)

Name Jim DeBeaugrieux

Job Title LEO

Address 215 S. Monroe St.

Phone 850-508-8908

Street

Tallahassee

FL

32317

Email Jim_debeaugrieux@comcast.net

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Coalition to Advance Justice

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/17/16

Meeting Date

N/A

Bill Number (if applicable)

Topic Work Release Workshop

Amendment Barcode (if applicable)

Name Paul Biecker

Job Title Facility Director

Address 585 Camp Rd

Phone 321-295-3417

Street

Loco

City

FL

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Bridges of America

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date _____

Bill Number (if applicable) _____

Topic Work Release

Amendment Barcode (if applicable) _____

Name Andrew Williams Sr

Job Title Director of Criminal Justice

Address 1341 Indian Lake Ave

Phone 386-527-8592

Street

City

Daytona Beach FL

State

32714

Zip

Email awilliams@smabehavior.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing SMA Behavioral Health

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/12/16 -
Meeting Date

Bill Number (if applicable)

Topic Discussion - Release Center

Amendment Barcode (if applicable)

Name Abraham Uccello.

Job Title Director, Division of Development.

Address Sol 5 - Calhoun ST.

Phone 850-917-3030 -

Street

Tallahassee

FL

32319 -

Email Uccello.Abraham@
mail.dc.state.fl.us

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FL Dept. of Corrections (FDC) -

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)