

Committee on Judiciary

CS/CS/HB 91 — Judicial Process

by Judiciary Committee; Civil Justice Subcommittee; and Rep. Altman and others
(CS/CS/CS/SB 462 by Rules Committee; Community Affairs Committee; Judiciary Committee;
and Senator Powell)

A notice of lis pendens is a notice recorded in the official records of a county warning that the outcome of litigation involving a parcel of real property may affect the interests of future purchasers or encumbrancers, such as those who may enforce a lien against the property. This bill clarifies that a notice of lis pendens precludes the enforcement of liens or other interests against a foreclosed property until the instrument transferring title to the property is recorded. This change is a response to a recent appellate court opinion that could be read to make a purchaser of property at a foreclosure sale responsible for liens recorded on the property after the sale but before the new title is recorded.

The bill also changes the statutes regulating service of process. The bill allows a certified process server to:

- Serve any nonenforceable civil process; and
- Attach dark window tinting material to the side and back windows of a vehicle owned or leased by the certified process server.

Additionally, the bill allows all process servers to:

- Serve the spouse of the person to be served in any county of the state, not just the county of their shared residence;
- Serve a limited liability company at additional types of addresses used as a business address, including the address of a virtual office, executive office, or mini suite; and
- Electronically sign return-of-service forms that document the date and time of service, which is a convenience currently reserved for process servers employed by a sheriff.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 39-0; House 109-0

Committee on Judiciary

CS/CS/CS/SB 168 — Federal Immigration Enforcement

by Rules Committee; Infrastructure and Security Committee; Judiciary Committee; and Senators Gruters, Bean, Mayfield, Broxson, and Albritton

The bill creates a new chapter of Florida Statutes entitled “Federal Immigration Enforcement.” The bill seeks to ensure that state and local entities and law enforcement agencies cooperate with federal government officials to enforce, and not obstruct, immigration laws. In its most general and broad terms, the bill requires law enforcement agencies to support the enforcement of federal immigration law.

In more specific terms, the bill:

- Prohibits a state entity, local governmental entity, or law enforcement agency from having a sanctuary policy, which is a law, policy, practice, procedure, or custom that restricts a law enforcement agency’s ability to communicate or exchange information with a federal immigration agency on immigration enforcement matters or from complying with immigration detainers.
- Provides procedures for a court to follow to reduce a defendant’s sentence by up to 12 days and thereby permit a law enforcement agency to transfer the defendant to a federal facility and complete the remaining 12 days of the sentence.
- Requires a law enforcement agency that has custody of someone who is subject to an immigration detainer to notify the judge of the detainer, record in the person’s file the existence of the detainer, and comply with the detainer.
- Requires a county correctional facility to enter into an agreement with a federal immigration agency for the payment of costs associated with housing and detaining defendants.
- Provides that the Governor, in an exercise of his or her constitutional duties, may initiate judicial proceedings against any executive or administrative state, county, or municipal officer to enforce compliance with duties under the act or restrain unauthorized actions contrary to the act.
- Permits the Attorney General to institute an action for a violation of this law or to prevent a violation of the law.
- Requires any sanctuary policies currently in effect be repealed within 90 days after the effective date of the act.

If approved by the Governor, the bill takes effect July 1, 2019, except that the section establishing penalties takes effect October 1, 2019.

Vote: Senate 22-18; House 68-45

Committee on Judiciary

CS/CS/HB 337 — Courts

by Judiciary Committee; Civil Justice Subcommittee; and Rep. Leek (CS/CS/CS/SB 328 by Appropriations Committee; Infrastructure and Security Committee; Judiciary Committee; and Senator Brandes)

The bill gradually raises the county courts' maximum jurisdictional amount for civil cases demanding money. The current maximum jurisdictional amount of the county courts in civil cases is \$15,000 or less, an amount that was set back in 1992. The bill requires that the county courts' jurisdictional amount be raised incrementally over the next three years as follows:

- For cases filed on or after January 1, 2020, raised to \$30,000; and
- For cases filed on or after January 1, 2023, raised to \$50,000.

As the ceiling of the county courts' jurisdictional amount is raised, the floor of the circuit courts' jurisdictional amount will be raised correspondingly, to cases in excess of \$30,000 effective January 1, 2020, and then \$50,000 effective January 1, 2023.

Additionally, the bill retains the circuit courts' current appellate jurisdiction over county court cases demanding no more than \$15,000 until January 1, 2023. In the meantime, the bill authorizes the Office of State Courts Administrator (OSCA) to study and provide feedback by February 1, 2021, on the impact of adjusting the county courts' jurisdiction and the feasibility of adjusting the circuit courts' appellate jurisdiction.

The bill also retains the current court filing fees by pinning the amount of the fee to the amount of monetary damages being claimed, regardless of whether the case is filed in county or circuit court. Additionally, the bill clarifies the specific monetary portion of various other court fines and fees that must be remitted to the General Revenue Fund after being collected by the Clerks of the Circuit Courts.

Finally, the bill also addresses funding and budgeting by the Clerks of the Circuit Courts, permitting the Clerks to carry forward unspent funds from the prior fiscal year and any remaining funds in the Clerks of Court Trust Fund for budgetary purposes. The bill also clarifies when excess funds in the Clerks of the Court Trust Fund must be transferred to the General Revenue Fund.

If approved by the Governor, these provisions take effect July 1, 2019, except as otherwise specified.

Vote: Senate 36-0; House 109-0

THE FLORIDA SENATE
2019 SUMMARY OF LEGISLATION PASSED
Committee on Judiciary

CS/CS/HB 409 — Electronic Legal Documents

by Judiciary Committee; Civil Justice Subcommittee; and Reps. Perez, Grant J., and others
(CS/SB 548 by Judiciary Committee and Senator Brandes)

The bill authorizes and provides oversight for the use of Remote Online Notarizations (RON) by Florida notaries public. Remote Online Notarizations are possible because of audio-video communication technologies, such as FaceTime and Skype, where two or more people may be able to both see and hear one another in real time using a computer or mobile device, even from different states. This also means that a notary public can view the face of the principle signer and any witnesses using audio-video technology while simultaneously reviewing the identification and other credentials of each person.

Additionally, the bill puts Florida at the forefront of recognizing the validity of electronic legal documents, such as wills and powers of attorney, by authorizing their electronic creation as well as authorizing remote signing, remote notarization, and remote witnessing, even by a witness in separate location from both the notary and the principle signer. However, the bill contains safeguards for vulnerable adults and provides that witnesses must be physically present with a vulnerable adult in order for a legal document, such as a will or power of attorney, to be given any effect. Otherwise, the bill provides for the safekeeping of an electronic will until the testator's death by the appointment of a qualified custodian.

There are several advantages to using remote online notarization. First, online notarization sessions are recorded in their entirety and retained as a record, which may be used as evidence in the event the creation or execution of a remotely notarized document is challenged in court. Additionally, the verification of signer and witness credentials performed by an online notary is similar to those used credit card companies provided by third parties and public sources to verify that the person is who they claim to be (for example, verifying mother's maiden name).

If approved by the Governor, these provisions take effect January 1, 2020, except that the Department of State's rulemaking authority takes effect upon becoming law.

Vote: Senate 39-0; House 87-28

Committee on Judiciary

CS/HB 487 — Carrying of Firearms by Tactical Medical Professionals

by Criminal Justice Subcommittee and Reps. Smith, D., Gottlieb, and others (CS/CS/SB 722 by Rules Committee; Judiciary Committee; and Senator Hooper)

This bill expressly authorizes a “tactical medical professional” (TMP) who has a concealed weapons and firearms license to carry firearms, weapons, and ammunition when he or she is actively operating in direct support of a tactical law enforcement operation. However, for the authorization to apply, the bill also requires the law enforcement agency head to have appointed the TMP, the agency to have an established policy for these appointments, and the TMP to have completed two types of firearms training, one of which must be provided by the agency.

A TMP may carry a firearm in the same manner as a law enforcement officer and anywhere that a tactical law enforcement operation occurs. Additionally, a TMP has “the same immunities and privileges as a law enforcement officer . . . in a civil or criminal action arising out of a tactical law enforcement operation when acting within the scope of his or her official duties.”

The bill defines a TMP as a paramedic, physician, or osteopathic physician who is appointed to provide medical support to a tactical law enforcement unit engaged in high-risk incidents, such as drugs raids and hostage situations.

If approved by the Governor, these provisions take effect July 1, 2019.

Vote: Senate 39-1; House 106-7

Committee on Judiciary

CS/CS/HB 741 — Anti-Semitism

by Education Committee; Criminal Justice Committee; and Reps. Fine, Caruso, and others (CS/SB 1272 by Judiciary Committee and Senators Gruters, Galvano, Albritton, Baxley, Bean, Benaquisto, Berman, Book, Bracy, Bradley, Brandes, Braynon, Broxson, Diaz, Farmer, Flores, Gainer, Gibson, Harrell, Hooper, Hutson, Lee, Mayfield, Montford, Passidomo, Perry, Pizzo, Powell, Rader, Rodriguez, Rouson, Simmons, Simpson, Stargel, Stewart, Taddeo, Thurston, Torres, Wright, and Cruz)

The bill prohibits discrimination on the basis of religion in the K-20 public school system. Additionally, the bill requires public K-20 educational institutions to treat discrimination “by students or employees or resulting from institutional policies motivated by anti-Semitic intent in an identical manner to discrimination motivated by race.” The bill provides that, for the purposes of the anti-Semitism provision, anti-Semitism includes:

- A certain perception of the Jewish people, which may be expressed as hatred toward Jewish people.
- Rhetorical and physical manifestations of anti-Semitism directed toward a person, his or her property, or toward Jewish community institutions or religious facilities.

The bill also provides many examples of anti-Semitism, including:

- Calling for, aiding, or justifying the killing or harming of Jews, often in the name of a radical ideology or an extremist view of religion.
- Accusing Jews as a people or the State of Israel of inventing or exaggerating the Holocaust.
- Accusing Jewish citizens of being more loyal to Israel, or the alleged priorities of Jews worldwide, than to the interest of their own nations.

The bill also provides that examples of anti-Semitism related to Israel include:

- Applying a double standard to Israel by requiring behavior of Israel that is not expected or demanded of any other democratic nation, or focusing peace or human rights investigations only on Israel.
- Delegitimizing Israel by denying the Jewish people their right to self-determination and denying Israel the right to exist.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 40-0; House 114-0

Committee on Judiciary

CS/CS/CS/HB 829 — Attorney Fees and Costs

by Judiciary Committee; Local, Federal and Veterans Affairs Subcommittee; Civil Justice Subcommittee; and Rep. Sabatini and others (CS/CS/CS/SB 1140 by Rules Committee; Community Affairs Committee; Judiciary Committee; and Senator Hutson)

The bill authorizes an award of attorney fees and costs in challenges to proposed or adopted local government ordinances on subjects that are expressly preempted by the State Constitution or state law. Express preemption means that a particular topic or field is reserved in writing exclusively to the Legislature to regulate.

Under the bill, the prevailing party, or winning party, in a court challenge to a local ordinance on express preemption grounds is entitled to attorney fees and costs. This is an exception to the usual rule on attorney fees in Florida, which requires that each party to a legal action pay its own attorney fees and costs.

However, the bill also provides an “escape clause” from liability for the prevailing party’s attorney fees and costs. The “escape clause” provides that, upon receiving a written claim that a current or proposed/noticed ordinance is expressly preempted, the local government must withdraw a proposed ordinance within 30 days or repeal an adopted ordinance within 60 days.

The bill does not, however, apply to ordinances relating to three fields or areas: comprehensive planning and growth management; the Florida Building Code; and the Florida Fire Code. Each of those statutory areas authorize local ordinances to pass local legislation under certain circumstances. The bill otherwise applies to express preemption challenges initiated on or after July 1, 2019.

If approved by the Governor, these provisions take effect July 1, 2019.

Vote: Senate 25-14; House 77-31

Committee on Judiciary

CS/HB 845 — Public Records/Petition for Certain Protective Injunctions

by Oversight, Transparency and Public Management Subcommittee; and Reps. Hage and Andrade (CS/SB 980 by Governmental Oversight and Accountability Committee and Senator Harrell)

The bill creates a public records exemption that temporarily blocks public access to any information that can be used to identify a petitioner or respondent in a petition for a protective injunction alleging domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking filed with the court. The information will be confidential and exempt only until the alleged batterer or stalker is served by a law enforcement officer with a copy of the petition, the notice of hearing, and copies of any affidavits or temporary injunctions.

The bill provides that the temporary exemption is a public necessity as it will ensure the physical safety of alleged victims and their families from retaliation by an abuser, as well as the physical safety of the law enforcement officers serving these petitions.

If approved by the Governor, these provisions take effect July 1, 2019.

Vote: Senate 39-0; House 114-0

THE FLORIDA SENATE
2019 SUMMARY OF LEGISLATION PASSED
Committee on Judiciary

SB 910 — Court-ordered Treatment Programs

by Senators Gainer and Passidomo

The bill expands the eligibility criteria for individuals who may participate in a military veterans' and servicemembers' court programs, more commonly known as veterans' courts. Veterans' courts are problem-solving courts aimed at addressing and treating the root causes of criminal behavior in order to reduce criminal recidivism. For military veterans and servicemembers who are charged with or convicted of criminal offenses, often the underlying cause of criminal behavior is a military-related injury, such as post-traumatic stress disorder, traumatic brain injury, or a substance abuse disorder.

Eligible veterans' courts participants may either be diverted to an appropriate treatment program before trial, or may be required to complete treatment after trial, as a condition of probation/community control. To help the participant successfully complete his or her treatment program, veterans' courts provide incentives (such as reduced penalties and record expungement), and individualized support.

Currently, the only veterans eligible to participate in Florida's veterans' courts are honorably discharged veterans, generally discharged veterans, and active duty servicemembers. Because of the success of the veterans' court programs in treating these individuals, the bill expands participation eligibility to any veteran discharged or released under any condition. Additionally, the bill extends participation eligibility to individuals who are current or former United States defense contractors or military members of a foreign allied country.

If approved by the Governor, these provisions take effect October 1, 2019.

Vote: Senate 39-0; House 114-0

Committee on Judiciary

CS/CS/HB 1247 — Construction Bonds

by Civil Justice Subcommittee; Business and Professions Subcommittee; and Rep. Perez
(CS/CS/SB 1200 by Rules Committee; Judiciary Committee; and Senator Stargel)

The bill defines the effect of incorrect or incomplete information in a notice of nonpayment for public and private construction contracts. This notice, as provided in existing law, is a notice that a subcontractor must serve on the contractor and the surety to preserve rights to make a claim against the contractor's payment bond.

Under the bill, the negligent inclusion or omission of information in a notice of nonpayment is not a default that would defeat an otherwise valid claim against a payment bond. However, a subcontractor who serves a fraudulent notice of nonpayment forfeits rights under the bond. A notice is fraudulent if it willfully exaggerates amounts unpaid or willfully includes claims for work not performed or materials not furnished or if it is prepared with gross negligence.

Finally, the bill adds contractors to the list of individuals or entities who are entitled to the benefits of a one-way attorney fee statute for prevailing in litigation against a surety that issues a payment or performance bond for a construction project.

If approved by the Governor, these provisions take effect October 1, 2019.

Vote: Senate 40-0; House 110-1

THE FLORIDA SENATE
2019 SUMMARY OF LEGISLATION PASSED
Committee on Judiciary

CS/SB 1656 — Criminal Statutes

by Criminal Justice Committee and Senators Lee and Rouson

This bill creates a savings statute for criminal laws which provides that, unless expressly intended by the Legislature, an amendment, reenactment, or revision of a criminal statute does not affect or abate:

- The prior operation of the statute or a prosecution or enforcement under the statute;
- A violation of the statute based on any act or omission occurring before the effective date of the act; or
- A prior penalty, forfeiture, or punishment incurred or imposed under the statute.

However, the bill also provides that a reenactment or amendment of a criminal statute which reduces a penalty, forfeiture, or punishment must be applied retroactively in a case in which a penalty, forfeiture, or punishment has not been imposed.

Finally, the bill provides that new defenses will be available to a defendant through the appellate process unless the defendant's conviction was affirmed before the new defense took effect.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 38-1; House 110-4

Committee on Judiciary

CS/SB 7006 — Uniform Interstate Depositions and Discovery Act

by Rules Committee and Judiciary Committee

This bill (Chapter 2019-13, L.O.F.) replaces Florida’s Uniform Foreign Depositions Law with the Uniform Interstate Depositions and Discovery Act (Act). The act, which has been adopted by 41 other states and U.S. territories, is aimed at streamlining the process of “discovering” or obtaining evidence in another state for use in a civil lawsuit. For example, if a Georgia resident is involved in a traffic collision in Florida with a Florida resident, under the act, the Florida resident will be able to subpoena (or issue a summons to) the Georgia driver to provide testimony through a deposition, produce documents or photos, or permit inspection of the vehicle without having to hire a Georgia attorney or submit to a Georgia court.

Essentially, the act provides a streamlined, administrative process among the United States and U.S. territories by which a clerk of court can administratively “domesticate” a subpoena issued by another state court. Under the act, once an out-of-state attorney or party files a subpoena with the clerk of court in the Florida county where discovery is sought, the clerk of court must promptly issue a Florida subpoena as a ministerial act. The out-of-state attorney or party is not subject to the jurisdiction of the Florida courts based on the issuance of the domesticated subpoena *unless* the subpoena is challenged by the Florida resident receiving the subpoena or the out-of-state attorney or party seeks to modify or enforce the subpoena. The same is true for a Florida attorney or party seeking discovery in a different state or U.S. Territory that has also adopted the act. This means that a Florida resident seeking discovery from a Georgia resident need not hire a Georgia attorney or submit to the jurisdiction of Georgia courts before issuing a subpoena to the Georgia resident.

Notably, the act has been adopted by Georgia, and both Georgia and Florida have specified that the act does *not* apply to discovery in criminal cases.

These provisions were approved by the Governor and take effect July 1, 2019.

Vote: Senate 37-0; House 115-0

Committee on Judiciary

HB 7025 — OGSR/Treatment-based Drug Court Programs

by Oversight, Transparency and Public Management Subcommittee; and Rep. LaMarca (SB 7010 by Judiciary Committee)

This bill saves from repeal a public records exemption for health-related records, reports, and evaluations concerning applicants to or participants in treatment-based drug court programs.

Treatment-based drug court programs are problem-solving courts aimed at addressing one of the causes of criminal behavior and domestic violence: substance abuse and addiction. Generally, drug court programs identify individuals in either the criminal justice or dependency system who may benefit from substance abuse treatment. Those individuals may either be diverted to a substance abuse treatment center shortly after entering the justice system, or may be required to complete treatment later, as a condition of probation/community control or a dependency case plan. To help these individuals successfully complete treatment, drug courts provide incentives (such as reduced penalties) and support to the individual to help him or her succeed. In sum, by providing substance abuse treatment, drug court programs aim to reduce criminal recidivism and domestic violence by addressing one of the underlying causes of such behavior.

In order for a drug court program to either determine an applicant's eligibility or monitor a participant's progress in the program, a treatment provider must share the individual's health-related information with the judge and other relevant parties on the participant's drug court multidisciplinary team (such as the prosecutor or other agency attorney, a case worker, the drug court administrator, and so forth). Because an individual's health information becomes part of the court's record, in 2014, the Legislature enacted a public records exemption for the sensitive, health-related information that the drug court program applicants and participants must share with the drug court. The public records exemption makes the following health-related records, reports, and evaluations both confidential and exempt from inspection and copying by the public:

- Records relating to initial screenings for participation in the program.
- Records relating to substance abuse screenings.
- Behavioral health evaluations.
- Subsequent treatment status reports.

Under the Open Government Sunset Review Act, this public records exemption was set to automatically repeal on October 2, 2019. The law removes the scheduled repeal date to continue this public records exemption and protect the sensitive, health-related information of those seeking help through the drug court programs.

If approved by the Governor, these provisions take effect October 1, 2019.

Vote: Senate 38-0; House 114-0

Committee on Judiciary

HB 7047 — OGSR/Security Breach Information

by Oversight, Transparency and Public Management Subcommittee and Rep. Good (SB 7008 by Judiciary Committee)

The bill is based on an Open Government Sunset Review of a public records exemption for information received by the Department of Legal Affairs following a data-security breach of a covered entity. Consistent with the review, the bill repeals the schedule repeal of the exemption.

The exemption was enacted as a companion bill to the Florida Information Protection Act of 2014, which requires covered entities to take reasonable steps to protect and secure personal information held in electronic form, such as social security numbers, driver license numbers, and medical information. However, if unauthorized access to the information of at least 500 people nonetheless occurs, the Act requires the covered entity involved to notify the Department.

The exemption serves to protect sensitive personal, corporate, and governmental information, as well as to ensure the integrity of an investigation of a security breach.

If approved by the Governor, these provisions take effect October 1, 2019.

Vote: Senate 38-0; House 114-0

Committee on Judiciary

CS/HB 7081 — State Court System Administration

by Judiciary Committee; Civil Justice Subcommittee; and Rep. DiCeglie (CS/CS/SB 656 by Appropriations Committee; Judiciary Committee; and Senator Baxley)

The bill amends several statutes relating to the administration of the state court system. The bill addresses foreign language court interpreters and mediators, parenting coordination, judicial retirements, and electronic records and fingerprinting.

Foreign Language Court Interpreters and Mediators

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

Parenting Coordination

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

Judicial Retirements

The bill amends provisions relating to the Florida Retirement System to clarify that only a justice or a judge who reaches age 70 before July 1, 2019, is authorized to purchase service credit relating to either temporary duty as a senior judge after that date or the remainder of the justice or judge's term of office.

Electronic Judgments and Fingerprinting

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

If approved by the Governor, these provisions take effect July 1, 2019.

Vote: Senate 40-0; House 110-0