

Tab 1	SB 552 by Boyd (CO-INTRODUCERS) Ausley, Wright; (Compare to H 00397) Clerks of the Circuit Court				
267668	D	S	RCS	ACJ, Boyd	Delete everything after 02/01 11:49 AM
Tab 2	CS/SB 1302 by RI, Burgess (CO-INTRODUCERS) Perry; (Similar to H 01259) Criminal History Information				
Tab 4	CS/SB 1534 by CJ, Boyd (CO-INTRODUCERS) Diaz, Garcia; (Similar to H 01511) Retail Theft				
Tab 3	SB 1358 by Rouson; (Similar to H 01011) Task Force on the Monitoring of Children in Out-of-Home Care				
Tab 5	SPB 7040 by AP; Time Limitations for Preadjudicatory Juvenile Detention Care				

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
**APPROPRIATIONS SUBCOMMITTEE ON CRIMINAL AND
 CIVIL JUSTICE**
Senator Perry, Chair
Senator Wright, Vice Chair

MEETING DATE: Tuesday, February 1, 2022

TIME: 10:30 a.m.—12:00 noon

PLACE: Mallory Horne Committee Room, 37 Senate Building

MEMBERS: Senator Perry, Chair; Senator Wright, Vice Chair; Senators Baxley, Bean, Bracy, Gainer, Pizzo, Rodriguez, and Torres

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 552 Boyd (Compare H 397, S 310)	Clerks of the Circuit Court; Revising the distribution of filing fees in specified trial and appellate proceedings; revising the calculations for certain payment plans with clerks of court; revising the duties of the Clerks of Court Operations Corporation; revising the allocation to the fine and forfeiture fund of filing fees of certain claims filed in county courts; authorizing clerks of court to review the property records and motor vehicle title records of applicants for indigent status, etc. JU 11/30/2021 Favorable ACJ 02/01/2022 Fav/CS AP	Fav/CS Yeas 7 Nays 0
2	CS/SB 1302 Regulated Industries / Burgess (Similar H 1259, Compare H 87, H 1261, S 1118, S 1548)	Criminal History Information; Prohibiting an applicable board, or the Department of Business and Professional Regulation if there is no such board, from inquiring into or considering the conviction history of an applicant for licensure until it is determined that the applicant is otherwise qualified; prohibiting the applicable board, or the department if there is no board, from denying an application for licensure of a person based solely or in part on an applicant's criminal history; providing requirements for determining if such criminal history directly relates to the practice of the applicable profession; providing requirements for court-ordered sealing of certain records that were automatically sealed by the Department of Law Enforcement under specified provisions, etc. RI 01/18/2022 Fav/CS ACJ 02/01/2022 Favorable AP	Favorable Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations Subcommittee on Criminal and Civil Justice
Tuesday, February 1, 2022, 10:30 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 1358 Rouson (Similar H 1011)	Task Force on the Monitoring of Children in Out-of-Home Care; Creating the task force adjunct to the Department of Law Enforcement; requiring the department to provide certain services; requiring the Florida Institute for Child Welfare to conduct certain focus groups and submit its findings to the task force by a specified date; requiring the Department of Children and Families to submit certain monthly reports to the task force through a specified date; requiring the task force to submit a report to the Governor and Legislature by a specified date; providing for future repeal, etc. CF 01/25/2022 Favorable ACJ 02/01/2022 Favorable AP	Favorable Yeas 7 Nays 0
4	CS/SB 1534 Criminal Justice / Boyd (Similar H 1511)	Retail Theft; Prohibiting certain retail theft at multiple locations within a specified timeframe; providing criminal penalties, etc. CJ 01/25/2022 Fav/CS ACJ 02/01/2022 Favorable AP	Favorable Yeas 7 Nays 0
Consideration of proposed bill:			
5	SPB 7040	Time Limitations for Preadjudicatory Juvenile Detention Care; Authorizing a court to order a child placed on supervised release detention care to comply with specified conditions under certain circumstances; authorizing a court to order that a child be placed on supervised release detention care for any time period until an adjudicatory hearing for the case has been commenced; prohibiting a child from being held in secure detention care for longer than a certain time period under certain circumstances; requiring a court to conduct a hearing to determine the continued need for secure detention care under specified circumstances, etc.	Workshop-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: PCS/SB 552 (589784)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice; and Senator Boyd and others

SUBJECT: Clerks of the Circuit Court

DATE: January 3, 2022

REVISED: _____

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

I. Summary:

PCS/SB 552 changes laws affecting the clerks of court by:

- Directing the clerks of court to ask the Legislature for increased funding related to increases in trial court judicial positions.
- Allowing the clerks to review property records to verify an application for civil indigent status.
- Allowing the clerks of court to ask for Legislative funding for filings related to mental health and substance abuse that the clerks must currently file at no charge. Modifying the standard terms of a payment plan for an individual who owes money to a clerk to establish a \$25 minimum monthly payment and to limit the down payment to the lesser of 10 percent of the amount owed or \$100.
- Requiring the Department of Highway Safety and Motor Vehicles to coordinate with the clerks of court on a system for reinstatement of driver licenses upon payment of court-related obligations.

The bill has no fiscal impact but makes fiscally related operational changes.

The bill takes effect July 1, 2022.

II. Present Situation:

Clerk of the Circuit Court

The clerk of the circuit court is a constitutional officer. Each of Florida's 67 counties are required to elect a clerk of the circuit court¹ to serve as both the clerk of court, completing judiciary functions, and as the “*ex officio*”² clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds.”³ In other words, the clerk of the circuit court wears approximately five hats. In wearing the auditor and custodian of county funds hats, the clerk may also be referred to as the comptroller.⁴

Funding for the Clerks’ Court-Related Functions

In its capacity as the clerk of the circuit and county courts, the clerk is required to perform various court-related, administrative and ministerial functions. Any court-related function authorized by law or court rule must be funded by the clerk’s collection of filing fees, service charges, costs, and fines, including the following:

- Case maintenance.
- Records management.
- Court preparation and attendance.
- Processing the assignment, reopening, and reassignment of cases.
- Processing appeals.
- Collection and distribution of fines, fees, service charges, and court costs.
- Data collection and reporting.
- Determinations of indigent status.
- Paying reasonable administrative support costs to enable the clerks to carry out court-related functions.⁵

Court funding is governed by Art. V, s. 14 of the Florida Constitution. For the clerks of the circuit courts, Art. V, s. 14(b) provides that the clerks are self-sustaining and fund their court-related functions through the collection of filing fees, service charges, and other costs. Specifically, Art. V, s. 14(b) states:

(b) All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided in this

¹ FLA. CONST. art. V, s. 16; FLA. CONST. art. VIII, s. 1.

² See BLACK’S LAW DICTIONARY (10th ed. 2014) (“*ex officio*” means “By virtue or because of an office; by virtue of the authority implied by office.”).

³ FLA. CONST. art. V, s. 16. This provision also provides that two officials may split the position, one serving as clerk of court and one serving in the *ex officio* position. Additionally, this provision permits the election of a county clerk of court when authorized by general or special law. *Id.*

⁴ See generally Florida Court Clerks & Comptrollers, *About Us, Clerks Duties & Services*, available at <https://www.flclerks.com/page/ClerksDuties> (last visited Nov. 24, 2021). See also BLACK’S LAW DICTIONARY (10th ed. 2014) (“comptroller” means, “[a]n officer of a business or a private, state, or municipal corporation who is charged with duties usu. relating to fiscal affairs, including auditing and examining accounts and reporting the financial status periodically.”).

⁵ Section 28.35(3)(a), F.S. See also Florida Court Clerks & Comptrollers, *About Us, Clerks Duties & Services*, available at <https://www.flclerks.com/page/ClerksDuties> (last visited Nov. 24, 2021).

subsection and subsection (c), shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law. Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees for judicial proceedings and service charges and costs for performing court-related functions sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, the state shall provide, as determined by the Legislature, adequate and appropriate supplemental funding from state revenues appropriated by general law.⁶

County Funding Referenced in Article V, Section 14(c)

As referenced above, Art. V, s. 14(c) of the Florida Constitution states that while funding for the state courts system, including the clerks of court, will *not* be required by a county or municipality, the counties are responsible to fund certain types of court infrastructure and maintenance, including “the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems and the cost of construction or lease, maintenance, utilities, and security of facilities for . . . the offices of the clerks of the circuit and county courts performing court-related functions.”⁷ Additionally, counties pay “reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law.”⁸

No-Fee Court Functions

Additionally, as referenced above, there are certain categories of cases and certain types of filings for which the clerks of court cannot charge a filing fee and possibly other service charges or other costs. These types of cases and filings include the following:

- Various services and filings for indigent parties to pending litigation.⁹
- Petitions for Habeas Corpus filed by persons detained as mental health patients.¹⁰
- Filing an ex parte order for involuntary examination (Baker Act).¹¹
- Petitions for involuntary inpatient placement for mental health.¹²
- Appellate filing fees for indigent persons determined to be and involuntarily committed as a sexually violent predator.¹³

⁶ FLA. CONST. art. V, s. 14(b) (emphasis added).

⁷ FLA. CONST. art. V, s. 14(c).

⁸ *Id.* Additionally, article V, section 14(a) provides that funding for state court systems as well as state attorney’s offices, public defender’s offices, and court-appointed counsel will generally be paid from “state revenues appropriated by general law”; and section 14(d) clarifies that the court system has no appropriations authority.

⁹ Sections 57.081 and 57.082, F.S. This does not include prisoners as defined in s. 57.085, F.S.

¹⁰ Section 394.459, F.S.

¹¹ Section 394.463, F.S. *See also Collins v. State*, 125 So. 3d 1046, 1047 (Fla. 4th DCA 2013) (noting s. 394.463, F.S., is also known as the Florida Statutes Florida Mental Health Act or the Baker Act).

¹² Section 394.467, F.S.

¹³ Section 394.917, F.S.

- Petitions for involuntary assessment and stabilization for substance abuse impairment.¹⁴
- Petitions for a risk protection order (Marjory Stoneman Douglas High School Public Safety Act).¹⁵
- Petitions for protective injunctions against domestic violence,¹⁶ repeat, dating, or sexual violence,¹⁷ or stalking.¹⁸

History of the Clerks of Court Funding Model

1998 Article V Revision (“Revision 7”) and Implementing Legislation

Article V, s. 14, was amended in 1998 to “substantially and significantly revise[] judicial system funding, greatly reducing funding from local governments and placing the responsibility primarily on the state.”¹⁹ The statement of intent accompanying the revision of Art. V, section 14(b), also known as “Revision 7,” reflects that the proposers intended for the Legislature to adopt procedures: (1) to fund the clerks’ office in the event “filing fees, services charges and costs are insufficient to cover the court-related salaries, costs, and expenses of the offices of the clerks . . . in a given fiscal year”; and (2) for the disposition of excess revenues collected by the clerks’ offices in a given fiscal year.²⁰

Further, the statement of intent clarifies that the purpose for Revision 7 is to require legislative oversight and an independent review of clerk funding and spending practices. The reason for independent oversight is set out as follows:

The drafters of subsection (b) recognize that there currently exists significant disparities among what the various clerks’ offices spend to perform the same functions. The determination by the [L]egislature as to the appropriate level of spending should not entail an acceptance of the current level of spending by the clerks’ offices throughout the state to perform court-related functions. Rather, it is the intent of this proposal that the clerks be held accountable and responsible to a cost standard which is independently established by the [L]egislature.²¹

Revision 7’s 1998 amendment to Article V had to be implemented by July 1, 2004.²² In order to implement the 1998 amendment, the Legislature responded “in stages, beginning with passage of SB 1212 in 2000 (Chapter 2000-237, Laws of Florida), followed by additional changes to that

¹⁴ Section 397.6814, F.S.

¹⁵ Section 790.401, F.S.; ch. 2018-3, s. 16, Laws of Fla.

¹⁶ Section 741.30, F.S.

¹⁷ Section 784.046, F.S.

¹⁸ Section 784.0485, F.S.

¹⁹ *City of Fort Lauderdale v. Crowder*, 983 So. 2d 37, 39 (Fla. 4th DCA 2008) (“In its Statement of Intent, the Constitution Revision Commission explained: ‘The state’s obligation includes, but is not limited to, funding for all core functions and requirements of the state courts system and all other court-related functions and requirements *which are statewide in nature*.’ [e.s.] 26 Fla. Stat. Ann. (Supp.) 67.”).

²⁰ William A. Buzzett and Deborah K. Kearney, *Commentary <1998 Amendment (1997-1998 Constitution Revision Commission Revision 7)>*, FLA. STAT. ANN., FLA. CONST. art. V, s. 14.

²¹ *Id.*

²² *Office of State Attorney for Eleventh Judicial Circuit v. Polites*, 904 So. 2d 527, 530 (Fla. 3d DCA 2005).

law in 2001, and, finally in 2002, through the funding of a study to assist in the final phase of implementation.”²³

The final stage was implemented during the 2003 legislative session. To provide Revision 7’s envisioned oversight, accountability, uniformity, and procedures in funding and budgeting for the clerks of court, the Legislature enacted **sections 28.35, 28.36, and 28.37, F.S.**:²⁴

- **Section 28.35, F.S.**, created the Florida Clerks of Court Operations Corporation (Corporation),²⁵ which is responsible for providing accountability, procedural review, and oversight of the clerks of court budgeting process throughout the state.
- **Section 28.36, F.S.**, established budget review and approval procedures of individual clerk of court budgets by the Corporation.
- **Section 28.37, F.S.**, ensures that a portion of certain fines, fees, service charges, and costs collected by the clerks of court are remitted to the state to fund other court-related salaries, costs, and expenses.

Post-Article V Revision to Clerk Funding: 2004-2008

Between 2004 and 2008, the clerks collected and deposited into their local fine and forfeiture funds revenues from court filing fees, service charges, court costs, and fines assessed in civil and criminal proceedings.²⁶ A portion of the revenues in a clerk’s fine and forfeiture fund was retained to finance the clerk’s operations. However, another portion of these revenues were distributed to the General Revenue Fund or other state trust funds to meet other court-related costs. For example, the clerks were required to remit one-third of all fines, fees, service charges, and costs collected to the Department of Revenue for deposit into the Clerk of the Court Trust Fund,²⁷ a fund established to assist the clerks in meeting revenue deficits.

Regarding budget planning, the clerks had discretion to set their individual budgets based on anticipated revenues and expenditures. Each clerk’s proposed budget had to be balanced with estimated revenues equaling or exceeding anticipated expenditures, although the budget could include a 10 percent contingency reserve.²⁸ If a clerk estimated that available funds plus projected revenues were insufficient to meet anticipated expenditures for court-related functions, that clerk could follow the statutory procedure for receiving funds from the Clerks of the Court Trust Fund to address the deficit.²⁹

Each clerk had to submit its proposed budget to the Corporation for review and certification that the individual budget was complete and complied with budget procedures.³⁰ Upon review and

²³ Florida House of Representatives, *House Bill 113A Staff Analysis*, (May 14, 2003).

²⁴ 2003 Fla. Sess. Law Serv. Ch. 2003-402 (H.B. 113-A). *See also City of Ft. Lauderdale v. Crowder*, 983 So. 2d 37, 39 (Fla. 4th DCA 2008). Note also that the bill seeks to amend each of these provisions.

²⁵ *See supra* note 5, and text. When it was first enacted, section 28.35 the “Clerk of court Operations Conference” which was changed in 2004 to the “Florida Clerks of Court Operations Corporation.” Chapter 2004-265, s. 23, Laws of Fla. All clerks are members of the Corporation.

²⁶ Section 142.01, F.S.

²⁷ Section 28.37(2), F.S. (2008).

²⁸ Section 28.36(3)(b), (c), F.S. (2008).

²⁹ Section 28.36(4), F.S. (2008).

³⁰ Section 28.36(3), F.S. (2008).

certification by the Corporation, revenue exceeding the amount needed to fund each budget was deposited in the General Revenue Fund.³¹

During this time, the Legislature's involvement in the clerks' budgets was limited. The Legislative Budget Commission (LBC) had authority to approve increases to the maximum annual budgets approved for individual clerks if the additional funding was necessary to:

- Pay the cost of performing new or additional functions required by changes in law or court rule; or
- Pay the cost of supporting increases in the number of judges or magistrates authorized by the Legislature.³²

Clerks in the General Appropriations Act: 2009-2012

In an effort to gain greater oversight and accountability for the operations and funding of the clerks of court, the Legislature passed Chapter 2009-204, Laws of Fla., which substantially amended the clerks' statutory budget process and procedures. The new law brought the clerks into the state budget and appropriated their funding in the annual General Appropriations Act.

More specifically, the 2009 law required that all revenues received by the clerks from court-related fees, fines, costs and service charges be remitted to the Department of Revenue for deposit into the Clerks of Court Trust Fund within the Justice Administrative Commission (JAC).³³ The law permitted the clerks, however, to deposit 10 percent of all court-related fines in the Public Records Modernization Trust Fund to be used in addition to state appropriations for operational needs.³⁴

By 2009, revenues accruing to the Clerks of Court Trust Fund began to decline due to the downturn in the economy and the reduction in foreclosure filing fees. As a result, the Legislature reinforced the clerks' budgets with additional moneys from the General Revenue Fund. The 2011 Legislature appropriated \$44.2 million from the General Revenue Fund to address FY 2010-2011 revenue deficits and the 2012 Legislature appropriated \$57.6 million to address FY 2011-2012 deficits.

Return to Pre-2009 Funding Model: 2013-2019³⁵

In 2013, the Legislature reversed many of the 2009 funding model changes, but expanded the oversight and accountability in the clerks' budget process. Significantly, the 2013 law³⁶ added the following:

³¹ Section 28.37(4), F.S. (2008).

³² Section 28.36(6), F.S. (2008).

³³ Chapter 2009-204, ss. 5-8, 12, 14, 19, Laws of Fla. The clerks' budgets were appropriated within the JAC budget from 2009-2012. *See also* s. 43.16, F.S. (establishes the Justice Administrative Commission, which administratively serves 49 judicial-related entities, as well as provides compliance and financial review of billings for services provided by private court-appointed attorneys representing indigent citizens and associated due process vendors).

³⁴ Section 28.37(5), F.S.

³⁵ This section adapted or used in its entirety from the Appropriations Committee staff analysis in SB 2506 (2017).

³⁶ Chapter 2013-44, Laws of Fla.

- Monthly accounting: required each clerk to submit all collected revenues exceeding one-twelfth of the clerk's total budget for the prior month to the Department of Revenue for deposit into the Clerks of the Court Trust Fund.
- Annual accounting: required the transfer of revenue exceeding one-twelfth of the clerks' total budget out of the Clerks of Court Trust Fund into the General Revenue Fund each January *unless* the official estimate by the Revenue Estimating Conference projects a trust fund deficit (based on the current budget) in the current or upcoming fiscal year.
- Corporation audits: directed the Corporation to conduct annual base budget reviews, conduct cost-comparisons of similarly situated clerks, report pay and benefit issues, and provide an explanation of any clerk expenditure increases over 3 percent.³⁷
- Corporation budget standard: required the Corporation to use the official Article V Revenue Estimating Conference revenue estimates for the clerks' budget process.³⁸

The 2013 law also enhanced the role and responsibilities of the Legislative Budget Commission (LBC), and directed the LBC to review the budgets of the clerks and either approve, disapprove, or amend and approve the budgets by October 1 of each year.³⁹ In 2017, however, the Legislature removed these duties from the LBC to review the clerks' budgets.⁴⁰

Most Recent Changes: 2019 to present

The clerk's budget process was amended again in 2019.⁴¹ In addition to the total estimated revenues from fees, service charges, costs, and fines for court-related functions available for court-related expenditures as determined by the most recent Revenue Estimating Conference, the combined budget for the clerks of court may also include:

- The unspent budgeted funds for court-related functions carried forward by the clerks of court from the previous county fiscal year; and
- The balance of funds remaining in the Clerks of the Court Trust Fund after the transfer of funds to the General Revenue Fund required pursuant to s. 28.37, F.S.

In 2019, the requirement that the cumulative excess of all fines, fees, service charges, and costs retained by the clerks of court exceeding the amount needed to fund their authorized budgets was transferred to the General Revenue Fund, was changed as follows:

- No later than February 1, 2020, the cumulative excess of all fines, fees, services charges, and costs exceeding \$10 million will be transferred to the General Revenue Fund.
- No later than February 1, 2021, and no later than February 1, 2022, not less than 50 percent of the cumulative excess of all fines, fees, services charges, and costs will be transferred to the General Revenue Fund; provided, however, that the balance remaining in the Clerks of Courts Trust Fund after the transfer may not exceed \$20 million.
- No later than February 1, 2023, and each February 1 thereafter, the cumulative excess of all fines, fees, services charges, and costs will be transferred to the General Revenue Fund.

³⁷ Section 28.35(2)(f), F.S.

³⁸ Section 28.35(2)(f)6., F.S.

³⁹ Section 11.90(6)(d), F.S.

⁴⁰ Chapter 2017-126, s. 1, Laws of Fla.

⁴¹ Chapter 2019-58, Laws of Fla.

In that same act, the 2019 Legislature was looking ahead to 2022 by including a requirement that the Office of Program Policy Analysis and Government Accountability (OPPAGA) review the Clerk of Court processes, including, in part, a comparison of organizational arrangement and deployment of personnel resources among all clerks' offices. The Legislature is required to review and consider the results of the report before the 2022 Regular Session of the Legislature in deciding whether to extent or reenact the provisions of the 2019 changes relating to clerk funding. The OPPAGA report contains 26 recommendations for operational efficiency and cost savings in five categories.⁴²

III. Effect of Proposed Changes:

This bill primarily makes fiscally related operational changes to the clerks of court as follows.

Clerk of Courts Operations Corporation

The bill adds to the list of duties required of the Clerk of Courts Operations Corporation the duty to:

- Recommend to the Legislature changes in the distribution of monies collected by a clerk.
- Recommend to the Legislature an increase in a clerk's budget representing the total increased costs associated with clerk support of a new trial court judicial position, based on a formula approved by the Corporation.
- Develop on an annual basis a budget request for the anticipated amount necessary for reimbursement of certain no-fee cases related to mental health and substance abuse (see below). The request is not subject to change by the Justice Administrative Commission, and it must be submitted to the Governor for transmittal to the Legislature.

Payment Plans

Persons who pay money to the clerk of court for an outstanding fine, penalty, fee, service charge, or court cost are expected to pay in full. Many individuals, however, cannot afford to pay. Current law authorizes a clerk to accept partial payments and to enter into payment plans with individuals.⁴³ Monthly payments of no more than 2 percent of the individual's net pay is presumed to be within an individual's ability to pay.⁴⁴

The bill changes the terms of payment plans offered by a clerk to a person unable to immediately pay monies owed to the clerk. The bill establishes a minimum monthly payment of \$25, and establishes a maximum initial payment of the lesser of 10 percent of the debt or \$100. The \$5 partial payment service charge⁴⁵ or the alternative one-time \$25 service charge for establishing a payment plan,⁴⁶ are payable in addition to the maximum allowable initial payment and, thus, are not a part of the limits.

⁴² Florida Clerks of Court Study, *Final Report* (November 15, 2019), available at <https://oppaga.fl.gov/Products/ReportDetail?rn=19-CLERKS>

⁴³ Section 28.246(4), F.S.,

⁴⁴ Using the 2021 Florida minimum wage at full-time employment and subtracting the standard federal payroll deductions, an unmarried individual at that wage would pay no more than \$26.80 a month on a clerk's payment plan.

⁴⁵ Section 28.24(27)(b), F.S.

⁴⁶ Section 28.24(27)(c), F.S.

Civil Indigent Application Investigation

An individual seeking appointment of an attorney in a civil case who is eligible for court-appointed counsel, or seeking relief from prepayment of civil filing fees, must apply to the clerk for a determination of civil indigent status. There is a presumption that an individual is not indigent if the individual has a net equity of \$2,500 or more, excluding homestead and excluding equity in a vehicle of up to \$5,000.⁴⁷ The clerk must accept the application on its face and may not independently verify the information provided.⁴⁸

The bill allows a clerk of court to make a limited investigation of an individual's application for status as civil indigent. The clerk may conduct a review of the property records for the county in which the applicant resides and the motor vehicle title records of this state to identify any property interests of the applicant. The clerk may evaluate and consider the results of the review in making a determination of civil indigent status. If a review is conducted, the results must be in the court file should the applicant appeal the denial of civil indigent status to the trial court.

Driver License Suspensions

Numerous laws provide for driver license suspensions due to nonpayment of court obligations. Currently, there are separate processes for reinstatement of the driver license based on the reason for the suspension. Where the suspension is due to nonpayment of a traffic infraction, upon receipt of full payment the clerk immediately clears the suspension by notice to the Department of Highway Safety and Motor Vehicles (DHSMV).⁴⁹ Where the suspension is court-related but not traffic-related, notably suspensions for delinquency in payment of child support obligations or criminal court fees and fines,⁵⁰ the process is different and longer. There, the clerk of court collects the monies owed and furnishes the person with an affidavit that the financial obligation that led to the suspension has been paid. The person must then go to a county tax collector's office to reinstate the driver license with DHSMV. Until the process is complete, the person's license remains suspended.⁵¹

The bill requires the DHSMV to coordinate with the clerks of court, through their association, to ensure the capability within the department's technology systems for clerks of court to reinstate suspended driver licenses that have been suspended for failure to pay court-related obligations.

Clerk Reimbursement for Certain No-Fee Cases

Clerks of court are supposed to be primarily funded by filing fees and service charges.⁵² However, some civil cases are processed by the clerks without payment, notably protective injunctions, mental health, substance abuse, and civil actions filed by indigents. During the

⁴⁷ Section 57.082(2)(a)2., F.S.

⁴⁸ Section 57.082(2)(d), F.S.

⁴⁹ Section 318.15, F.S.; Florida Court Clerks & Comptrollers, *Bill Analysis of SB 552* (November 24, 2021).

⁵⁰ Section 322.245, F.S.

⁵¹ Florida Court Clerks & Comptrollers, *Bill Analysis of SB 552* (November 24, 2021).

⁵² FLA. CONST. article V, s. 14(b).

2019-20 county fiscal year, the clerks opened 183,991 civil files without payment of a filing fee to the clerk.⁵³

Subject to appropriation, the bill allows a clerk of court to submit to the Justice Administrative Commission a certified request for \$40 per case reimbursement for services rendered in certain no-fee civil cases related to mental health and substance abuse. The request for reimbursement must be submitted in the form and manner prescribed by the Justice Administrative Commission. The categories of cases are:

- Habeas corpus filed by an individual detained under the Florida Mental Health Act,⁵⁴ pursuant to s. 394.459(8)(d), F.S.
- Determination whether an individual should be subject to an involuntary mental health examination under the Florida Mental Health Act, pursuant to s. 394.463(2)(a), F.S.
- Determination whether an individual should be subject to involuntary mental health placement in a mental health facility under the Florida Mental Health Act, pursuant to s. 394.467(3), F.S.
- Determination whether an individual is a sexually violent predator subject to commitment to a mental health facility for sexually violent predators, pursuant to s. 394.917(3), F.S. and Part V of ch. 394, F.S.
- Determination of whether an individual should be involuntarily assessed and stabilized due to substance abuse, pursuant to s. 397.6814, F.S.⁵⁵

Effective Date

The bill is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

⁵³ Florida Court Clerks & Comptrollers, *Bill Analysis of SB 552* (November 24, 2021). There were 135,672 statutory no-fee cases and 48,319 cases filed by indigents.

⁵⁴ The Florida Mental Health Act is also known as the Baker Act.

⁵⁵ Chapter 397, F.S., is also known as the Marchman Act.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. None. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 28.246, 28.35, 40.29, 57.082, and 322.29, F.S.

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 1, 2022:

The committee substitute:

- Removes the section that decreases the share of certain foreclosure filing fees transferred to the General Revenue Fund.
- Removes the section that changes the distribution of a county court filing fee from the General Revenue Fund to the clerks of court.
- Removes the section that requires a judge or traffic infraction hearing officer to impose the minimum financial penalty after finding an offender guilty of a traffic infraction.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/01/2022	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (b) of subsection (4) of section
28.246, Florida Statutes, is amended to read:

28.246 Payment of court-related fines or other monetary
penalties, fees, charges, and costs; partial payments;
distribution of funds.—

(4)



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(b) An individual seeking to defer payment of fees, service charges, court costs, or fines imposed by operation of law or order of the court under any provision of general law shall apply to the clerk for enrollment in a payment plan. The clerk shall enter into a payment plan with an individual who the court determines is indigent for costs. It is the responsibility of an individual who is released from incarceration and has outstanding court obligations to contact the clerk within 30 days after release to pay fees, service charges, court costs, and fines in full, or to apply for enrollment in a payment plan.

1. A monthly payment amount, calculated based upon all fees and all anticipated fees, service charges, court costs, and fines, is presumed to correspond to the person's ability to pay if the amount does not exceed the greater of:

a. Two ~~2~~ percent of the person's annual net income, as defined in s. 27.52(1), divided by 12; or

b. \$25.

2. Any amount required by the clerk as a down payment to initially establish a payment plan shall be the lesser of 10 percent of the total amount owed or \$100. The amount does not include the imposition of a service charge pursuant to s. 28.24(27)(b) or (c). The clerk shall establish all terms of a payment plan, and the court may review the reasonableness of the payment plan.

Section 2. Paragraph (c) of subsection (2) of section 28.35, Florida Statutes, is amended, and paragraph (i) is added to that subsection, to read:

28.35 Florida Clerks of Court Operations Corporation.—

(2) The duties of the corporation shall include the



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following:

(c)1. Recommending to the Legislature changes in the amounts and distribution of the various court-related fines, fees, service charges, and costs established by law to ensure reasonable and adequate funding of the clerks of the court in the performance of their court-related functions.

2. If the number of judges under s. 26.031 or s. 34.022 increases:

a. Developing a formula to estimate the total cost associated with clerk support for circuit and county judges statewide.

b. Making a recommendation for consideration by the Legislature on any need for additional funding using the formula approved in sub-subparagraph a.

(i) Annually preparing a budget request that, notwithstanding chapter 216 and in accordance with s. 216.351, provides the anticipated amount necessary for reimbursement pursuant to s. 40.29(6). The request for the anticipated reimbursement amount must be submitted in the form and manner prescribed by the Justice Administrative Commission. Such request is not subject to change by the Justice Administrative Commission except for technical changes necessary to conform to the legislative budget instructions and must be submitted by the Justice Administrative Commission to the Governor for transmittal to the Legislature.

Section 3. Section 40.29, Florida Statutes, is amended to read:

40.29 Payment of due-process costs; reimbursement for petitions and orders.—



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(1) Each clerk of the circuit court, on behalf of the state attorney, private court-appointed counsel, the public defender, and the criminal conflict and civil regional counsel, shall forward to the Justice Administrative Commission, by county, a quarterly estimate of funds necessary to pay for ordinary witnesses, including, but not limited to, witnesses in civil traffic cases and witnesses of the state attorney, the public defender, criminal conflict and civil regional counsel, private court-appointed counsel, and persons determined to be indigent for costs. Each quarter of the state fiscal year, the commission, based upon the estimates, shall advance funds to each clerk to pay for these ordinary witnesses from state funds specifically appropriated for the payment of ordinary witnesses.

(2) Upon receipt of an estimate pursuant to subsection (1), the Justice Administrative Commission shall endorse the amount deemed necessary for payment by the clerk of the court during the quarterly fiscal period and shall submit a request for payment to the Chief Financial Officer.

(3) Upon receipt of the funds from the Chief Financial Officer, the clerk of the court shall pay all invoices approved and submitted by the state attorney, the public defender, criminal conflict and civil regional counsel, and private court-appointed counsel for the items enumerated in subsection (1).

(4) After review for compliance with applicable rates and requirements, the Justice Administrative Commission shall pay all due process service related invoices, except those enumerated in subsection (1), approved and submitted by the state attorney, the public defender, criminal conflict and civil regional counsel, or private court-appointed counsel in



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98 accordance with the applicable requirements of ss. 29.005,
99 29.006, and 29.007.

100 (5) The Justice Administrative Commission shall reimburse
101 funds to the clerks of the court to compensate jurors, to pay
102 for meals or lodging provided to jurors, and to pay for jury-
103 related personnel costs as provided in this section. Each clerk
104 of the court must submit a request for reimbursement to the
105 Florida Clerks of Court Operations Corporation within 20 days
106 after each quarter attesting to the clerk's actual costs to
107 compensate jurors, to pay for meals or lodging provided to
108 jurors, and to pay for jury-related personnel costs. The Florida
109 Clerks of Court Operations Corporation must review the request
110 for reimbursement to ensure that the costs are reasonably and
111 directly related to jury management. The Florida Clerks of Court
112 Operations Corporation must forward to the Justice
113 Administrative Commission the amount necessary to reimburse each
114 clerk of the court for its personnel and other costs related to
115 jury management unless the total request for reimbursement by
116 the clerks exceeds the quarterly funds available to the Justice
117 Administrative Commission, in which case the Florida Clerks of
118 Court Operations Corporation shall adjust the cumulative total
119 to match the available funds before submitting the request to
120 the Justice Administrative Commission. Upon receipt of each
121 request for reimbursement, the Justice Administrative Commission
122 must review the amount deemed necessary for payment to the
123 clerks of the court for the most recently completed quarter,
124 determine if the total payment amount is available, and submit a
125 request for payment to the Chief Financial Officer. The clerks
126 of the court are responsible for any compensation to jurors, for



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payments for meals or lodging provided to jurors, and for jury-related personnel costs that exceed the funding provided in the General Appropriations Act for these purposes.

(6) Subject to legislative appropriation, the clerk of the circuit court may, on a quarterly basis, submit to the Justice Administrative Commission a certified request for reimbursement for petitions and orders filed under ss. 394.459, 394.463, 394.467, 394.917, and 397.6814, at the rate of \$40 per petition or order. Such request for reimbursement must be submitted in the form and manner prescribed by the Justice Administrative Commission pursuant to s. 28.35(2)(i).

Section 4. Paragraphs (a) and (d) of subsection (2) of section 57.082, Florida Statutes, are amended to read:

57.082 Determination of civil indigent status.—

(2) DETERMINATION BY THE CLERK.—The clerk of the court shall determine whether an applicant seeking such designation is indigent based upon the information provided in the application and the criteria prescribed in this subsection.

(a)1. An applicant, including an applicant who is a minor or an adult tax-dependent person, is indigent if the applicant's income is equal to or below 200 percent of the then-current federal poverty guidelines prescribed for the size of the household of the applicant by the United States Department of Health and Human Services.

2. There is a presumption that the applicant is not indigent if the applicant owns, or has equity in, any intangible or tangible personal property or real property or the expectancy of an interest in any such property having a net equity value of \$2,500 or more, excluding the value of the person's homestead



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and one vehicle having a net value not exceeding \$5,000.

3. Notwithstanding the information provided by the applicant, the clerk may conduct a review of the property records for the county in which the applicant resides and the motor vehicle title records of this state to identify any property interests of the applicant under this paragraph. The clerk may evaluate and consider the results of the review in making a determination under this subsection. If a review is conducted, the clerk must maintain the results of the review in a file with the application and provide the file to the court if an applicant seeks a review under subsection (4) of the clerk's determination of indigent status.

(d) The duty of the clerk in determining whether an applicant is indigent is limited to receiving the application, conducting a review of records under subparagraph (a)3., and comparing the information provided in the application and identified in the review of records to the criteria prescribed in this subsection. The determination of indigent status is a ministerial act of the clerk and ~~may~~ not a decision ~~be~~ based on further investigation or the exercise of independent judgment by the clerk. The clerk may contract with third parties to perform functions assigned to the clerk under this section.

Section 5. Subsection (3) is added to section 322.29, Florida Statutes, to read:

322.29 Surrender and return of license.—

(3) The department shall work with the clerks of court, through their association, to ensure the ability within their technology systems for clerks of court to reinstate suspended driver licenses for failure to pay court obligations.



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Section 6. This act shall take effect July 1, 2022.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to clerks of the circuit court;
amending s. 28.246, F.S.; revising the calculation
used to determine the presumed ability to pay certain
fees, charges, costs, and fines; providing a formula
for determining a specified down payment; providing
construction; amending s. 28.35, F.S.; requiring the
Florida Clerks of Court Operations Corporation to
provide a recommendation on the distribution of
specified fines, fees, charges, and costs; requiring
the corporation to complete specified duties under
certain circumstances; requiring the corporation to
annually prepare a specified budget request; providing
that such a request is not subject to change by the
Justice Administrative Commission; requiring the
commission to submit the request to the Governor for
transmittal to the Legislature; amending s. 40.29,
F.S.; authorizing clerks of the circuit court to
submit, at prescribed intervals, to the commission
certified requests for reimbursement of specified
petitions and orders at a certain rate per petition or
order; amending s. 57.082, F.S.; authorizing clerks of
the court to conduct a review of specified records;



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214 requiring the clerks to maintain the results of such
215 review in a specified manner and provide the results
216 to the court under certain circumstances; amending s.
217 322.29, F.S.; requiring the Department of Highway
218 Safety and Motor Vehicles to work with a specified
219 association to ensure that their technology systems
220 have specified capabilities; providing an effective
221 date.

By Senator Boyd

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1 A bill to be entitled
 2 An act relating to clerks of the circuit court;
 3 amending s. 28.241, F.S.; revising the distribution of
 4 filing fees in specified trial and appellate
 5 proceedings; amending s. 28.246, F.S.; revising the
 6 calculations for certain payment plans with clerks of
 7 court; providing requirements for down payments for
 8 such payment plans; providing that the down payment
 9 does not include specified service charges; amending
 10 s. 28.35, F.S.; revising the duties of the Clerks of
 11 Court Operations Corporation; requiring the
 12 corporation to recommend to the Legislature the costs
 13 associated with clerk support for newly created county
 14 court and circuit court judgeships; amending s.
 15 34.041, F.S.; revising the allocation to the fine and
 16 forfeiture fund of filing fees of certain claims filed
 17 in county courts; amending s. 57.082, F.S.;
 18 authorizing clerks of court to review the property
 19 records and motor vehicle title records of applicants
 20 for indigent status; requiring clerks to maintain the
 21 results of such reviews with the applications and
 22 provide those results to the court if an applicant
 23 seeks review of the clerk's determination; providing
 24 construction; amending s. 318.14, F.S.; revising the
 25 minimum civil penalty for noncriminal traffic
 26 infractions; amending s. 322.29, F.S.; requiring the
 27 Department of Highway Safety and Motor Vehicles to
 28 coordinate with the clerks of court to ensure that
 29 their technology systems have the capability to

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30 reinstate driver licenses suspended for failure to pay
 31 court obligations; amending s. 394.459, F.S.;
 32 authorizing clerks of court to seek reimbursement from
 33 the Legislature for habeas corpus petitions under
 34 specified conditions; providing the method to seek
 35 such reimbursement; requiring the corporation to
 36 annually develop and submit to the Governor a budget
 37 request for such reimbursement, not subject to change
 38 by the Justice Administrative Commission, to be
 39 transmitted to the Legislature; amending s. 394.463,
 40 F.S.; authorizing clerks of court to seek
 41 reimbursement from the Legislature for the filing of
 42 orders of involuntary examination under specified
 43 conditions; providing the method to seek such
 44 reimbursement; requiring the corporation to annually
 45 develop and submit to the Governor a budget request
 46 for such reimbursement, not subject to change by the
 47 Justice Administrative Commission, to be transmitted
 48 to the Legislature; amending s. 394.467, F.S.;
 49 authorizing clerks of court to seek reimbursement from
 50 the Legislature for the filing of petitions for
 51 involuntary inpatient placement; providing the method
 52 to seek such reimbursement; requiring the corporation
 53 to annually develop and submit to the Governor a
 54 budget request for such reimbursement, not subject to
 55 change by the Justice Administrative Commission, to be
 56 transmitted to the Legislature; amending s. 394.917,
 57 F.S.; authorizing clerks of court to seek
 58 reimbursement from the Legislature for costs and fees

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related to appeals for persons determined to be sexually violent predators; providing the method to seek such reimbursement; requiring the corporation to annually develop and submit to the Governor a budget request for such reimbursement, not subject to change by the Justice Administrative Commission, to be transmitted to the Legislature; amending s. 397.6814, F.S.; authorizing clerks of court to seek reimbursement from the Legislature for petitions for involuntary assessment and stabilization; providing the method to seek such reimbursement; requiring the corporation to annually develop and submit to the Governor a budget request for such reimbursement, not subject to change by the Justice Administrative Commission, to be transmitted to the Legislature; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 28.241, Florida Statutes, is amended to read:

28.241 Filing fees for trial and appellate proceedings.—

(1) Filing fees are due at the time a party files a pleading to initiate a proceeding or files a pleading for relief. Reopen fees are due at the time a party files a pleading to reopen a proceeding if at least 90 days have elapsed since the filing of a final order or final judgment with the clerk. If a fee is not paid upon the filing of the pleading as required under this section, the clerk must ~~shall~~ pursue collection of

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the fee pursuant to s. 28.246.

(a)1.a. Except as provided in sub-subparagraph b. and subparagraph 2., the party instituting any civil action, suit, or proceeding in the circuit court shall pay to the clerk of that court a filing fee of up to \$395 in all cases in which there are not more than five defendants and an additional filing fee of up to \$2.50, from which the clerk shall remit \$0.50 to the Department of Revenue for deposit into the General Revenue Fund, for each defendant in excess of five. Of the first \$200 in filing fees, \$195 must be remitted to the Department of Revenue for deposit into the State Courts Revenue Trust Fund, \$4 must be remitted to the Department of Revenue for deposit into the Administrative Trust Fund within the Department of Financial Services and used to fund the contract with the Florida Clerks of Court Operations Corporation created in s. 28.35, and \$1 must be remitted to the Department of Revenue for deposit into the Administrative Trust Fund within the Department of Financial Services to fund audits of individual clerks' court-related expenditures conducted by the Department of Financial Services. By the 10th of each month, the clerk shall submit that portion of the filing fees collected in the previous month which is in excess of one-twelfth of the clerk's total budget to the Department of Revenue for deposit into the Clerks of the Court Trust Fund.

b. The party instituting any civil action, suit, or proceeding in the circuit court under chapter 39, chapter 61, chapter 741, chapter 742, chapter 747, chapter 752, or chapter 753 shall pay to the clerk of that court a filing fee of up to \$295 in all cases in which there are not more than five

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defendants and an additional filing fee of up to \$2.50 for each defendant in excess of five. Of the first \$100 in filing fees, \$95 must be remitted to the Department of Revenue for deposit into the State Courts Revenue Trust Fund, \$4 must be remitted to the Department of Revenue for deposit into the Administrative Trust Fund within the Department of Financial Services and used to fund the contract with the Florida Clerks of Court Operations Corporation created in s. 28.35, and \$1 must be remitted to the Department of Revenue for deposit into the Administrative Trust Fund within the Department of Financial Services to fund audits of individual clerks' court-related expenditures conducted by the Department of Financial Services.

c. An additional filing fee of \$4 must ~~shall~~ be paid to the clerk. The clerk shall remit \$3.50 to the Department of Revenue for deposit into the Court Education Trust Fund and shall remit 50 cents to the Department of Revenue for deposit into the Administrative Trust Fund within the Department of Financial Services to fund clerk education provided by the Florida Clerks of Court Operations Corporation. An additional filing fee of up to \$18 must ~~shall~~ be paid by the party seeking each severance that is granted, from which the clerk shall remit \$3 to the Department of Revenue for deposit into the General Revenue Fund. The clerk may impose an additional filing fee of up to \$85, from which the clerk shall remit \$10 to the Department of Revenue for deposit into the General Revenue Fund, for all proceedings of garnishment, attachment, replevin, and distress. Postal charges incurred by the clerk of the circuit court in making service by certified or registered mail on defendants or other parties must ~~shall~~ be paid by the party at whose instance service is made.

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Additional fees, charges, or costs may not be added to the filing fees imposed under this section, except as authorized in this section or by general law.

2.a. Notwithstanding the fees prescribed in subparagraph 1., a party instituting a civil action in circuit court relating to real property or mortgage foreclosure shall pay a graduated filing fee based on the value of the claim.

b. A party shall estimate in writing the amount in controversy of the claim upon filing the action. For purposes of this subparagraph, the value of a mortgage foreclosure action is based upon the principal due on the note secured by the mortgage, plus interest owed on the note and any moneys advanced by the lender for property taxes, insurance, and other advances secured by the mortgage, at the time of filing the foreclosure. The value must ~~shall~~ also include the value of any tax certificates related to the property. In stating the value of a mortgage foreclosure claim, a party shall declare in writing the total value of the claim, as well as the individual elements of the value as prescribed in this sub-subparagraph.

c. In its order providing for the final disposition of the matter, the court shall identify the actual value of the claim. The clerk must ~~shall~~ adjust the filing fee if there is a difference between the estimated amount in controversy and the actual value of the claim and collect any additional filing fee owed or provide a refund of excess filing fee paid.

d. The party shall pay a filing fee of:

(I) Three hundred and ninety-five dollars in all cases in which the value of the claim is \$50,000 or less and in which there are not more than five defendants. The party shall pay an

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175 additional filing fee of up to \$2.50 for each defendant in
 176 excess of five. Of the first \$200 in filing fees, \$195 must be
 177 remitted by the clerk to the Department of Revenue for deposit
 178 into the General Revenue Fund, \$4 must be remitted to the
 179 Department of Revenue for deposit into the Administrative Trust
 180 Fund within the Department of Financial Services and used to
 181 fund the contract with the Florida Clerks of Court Operations
 182 Corporation created in s. 28.35, and \$1 must be remitted to the
 183 Department of Revenue for deposit into the Administrative Trust
 184 Fund within the Department of Financial Services to fund audits
 185 of individual clerks' court-related expenditures conducted by
 186 the Department of Financial Services;

187 (II) Nine hundred dollars in all cases in which the value
 188 of the claim is more than \$50,000 but less than \$250,000 and in
 189 which there are not more than five defendants. The party shall
 190 pay an additional filing fee of up to \$2.50 for each defendant
 191 in excess of five. Of the first \$355 ~~\$705~~ in filing fees, \$350
 192 ~~\$700~~ must be remitted by the clerk to the Department of Revenue
 193 for deposit into the General Revenue Fund, except that the first
 194 \$1.5 million in such filing fees remitted to the Department of
 195 Revenue and deposited into the General Revenue Fund in fiscal
 196 year 2018-2019 shall be distributed to the Miami-Dade County
 197 Clerk of Court; \$4 must be remitted to the Department of Revenue
 198 for deposit into the Administrative Trust Fund within the
 199 Department of Financial Services and used to fund the contract
 200 with the Florida Clerks of Court Operations Corporation created
 201 in s. 28.35; and \$1 must be remitted to the Department of
 202 Revenue for deposit into the Administrative Trust Fund within
 203 the Department of Financial Services to fund audits of

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204 individual clerks' court-related expenditures conducted by the
 205 Department of Financial Services; or

206 (III) One thousand nine hundred dollars in all cases in
 207 which the value of the claim is \$250,000 or more and in which
 208 there are not more than five defendants. The party shall pay an
 209 additional filing fee of up to \$2.50 for each defendant in
 210 excess of five. Of the first \$1,240 ~~\$1,705~~ in filing fees, \$465
 211 ~~\$930~~ must be remitted by the clerk to the Department of Revenue
 212 for deposit into the General Revenue Fund, \$770 must be remitted
 213 to the Department of Revenue for deposit into the State Courts
 214 Revenue Trust Fund, \$4 must be remitted to the Department of
 215 Revenue for deposit into the Administrative Trust Fund within
 216 the Department of Financial Services to fund the contract with
 217 the Florida Clerks of Court Operations Corporation created in s.
 218 28.35, and \$1 must be remitted to the Department of Revenue for
 219 deposit into the Administrative Trust Fund within the Department
 220 of Financial Services to fund audits of individual clerks'
 221 court-related expenditures conducted by the Department of
 222 Financial Services.

223 e. An additional filing fee of \$4 shall be paid to the
 224 clerk. The clerk shall remit \$3.50 to the Department of Revenue
 225 for deposit into the Court Education Trust Fund and shall remit
 226 50 cents to the Department of Revenue for deposit into the
 227 Administrative Trust Fund within the Department of Financial
 228 Services to fund clerk education provided by the Florida Clerks
 229 of Court Operations Corporation. An additional filing fee of up
 230 to \$18 must ~~shall~~ be paid by the party seeking each severance
 231 that is granted. The clerk may impose an additional filing fee
 232 of up to \$85 for all proceedings of garnishment, attachment,

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replevin, and distress. Postal charges incurred by the clerk of the circuit court in making service by certified or registered mail on defendants or other parties ~~must shall~~ be paid by the party at whose instance service is made. Additional fees, charges, or costs may not be added to the filing fees imposed under this section, except as authorized in this section or by general law.

Section 2. Subsection (4) of section 28.246, Florida Statutes, is amended to read:

28.246 Payment of court-related fines or other monetary penalties, fees, charges, and costs; partial payments; distribution of funds.—

(4)(a) Each clerk of the circuit court shall accept partial payments for each case type for court-related fees, service charges, court costs, and fines in accordance with the terms of an established payment plan developed by the clerk.

(b) An individual seeking to defer payment of fees, service charges, court costs, or fines imposed by operation of law or order of the court under any provision of general law shall apply to the clerk for enrollment in a payment plan. The clerk shall enter into a payment plan with an individual who the court determines is indigent for costs. It is the responsibility of an individual who is released from incarceration and has outstanding court obligations to contact the clerk within 30 days after release to pay fees, service charges, court costs, and fines in full, or to apply for enrollment in a payment plan. A monthly payment amount, calculated based upon all fees and all anticipated fees, service charges, court costs, and fines, is presumed to correspond to the person's ability to pay if the

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amount does not exceed 2 percent of the person's annual net income, as defined in s. 27.52(1), divided by 12 or \$25, ~~whichever is greater.~~ Any amount required by the clerk as down payment to initially establish a payment plan may not be more than 10 percent of the total amount owed or \$100, ~~whichever is less.~~ Such amount does not include the imposition of a per month service charge pursuant to s. 28.24(27)(b) or the imposition of a one-time administrative processing service charge each time a payment plan is established pursuant to s. 28.24(27)(c). The clerk shall establish all terms of a payment plan, and the court may review the reasonableness of the payment plan.

Section 3. Paragraph (c) of subsection (2) of section 28.35, Florida Statutes, is amended to read:

28.35 Florida Clerks of Court Operations Corporation.—

(2) The duties of the corporation shall include the following:

(c) 1. Recommending to the Legislature changes in the amounts and distribution of the various court-related fines, fees, service charges, and costs established by law to ensure reasonable and adequate funding of the clerks of the court in the performance of their court-related functions.

2. Recommending to the Legislature the total cost associated with clerk support of circuit and county judges statewide, based on a formula approved by the corporation, for consideration each year in which the Legislature authorizes the establishment of new county court judgeships under s. 34.022 or new circuit court judgeships under s. 26.031.

Section 4. Paragraph (c) of subsection (1) of section 34.041, Florida Statutes, is amended to read:

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291 34.041 Filing fees.—

292 (1)

293 (c) A party in addition to a party described in paragraph
 294 (a) who files a pleading in an original civil action in the
 295 county court for affirmative relief by cross-claim,
 296 counterclaim, counterpetition, or third-party complaint, or who
 297 files a notice of cross-appeal or notice of joinder or motion to
 298 intervene as an appellant, cross-appellant, or petitioner, shall
 299 pay the clerk of court a fee of \$295 if the relief sought by the
 300 party under this paragraph exceeds \$2,500 but is not more than
 301 \$15,000 and \$395 if the relief sought by the party under this
 302 paragraph exceeds \$15,000. The clerk shall deposit ~~remit~~ the
 303 fee, if the relief sought by the party under this paragraph
 304 exceeds \$2,500 but is not more than \$15,000, to the Department
 305 of Revenue for deposit into the fine and forfeiture fund
 306 established pursuant to s. 142.01 General Revenue Fund. This fee
 307 does not apply if the cross-claim, counterclaim,
 308 counterpetition, or third-party complaint requires transfer of
 309 the case from county to circuit court. However, the party shall
 310 pay to the clerk the standard filing fee for the court to which
 311 the case is to be transferred.

312 Section 5. Paragraphs (a) and (d) of subsection (2) of
 313 section 57.082, Florida Statutes, are amended to read:

314 57.082 Determination of civil indigent status.—

315 (2) DETERMINATION BY THE CLERK.—The clerk of the court
 316 shall determine whether an applicant seeking such designation is
 317 indigent based upon the information provided in the application
 318 and the criteria prescribed in this subsection.

319 (a)1. An applicant, including an applicant who is a minor

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320 or an adult tax-dependent person, is indigent if the applicant's
 321 income is equal to or below 200 percent of the then-current
 322 federal poverty guidelines prescribed for the size of the
 323 household of the applicant by the United States Department of
 324 Health and Human Services.

325 2. There is a presumption that the applicant is not
 326 indigent if the applicant owns, or has equity in, any intangible
 327 or tangible personal property or real property or the expectancy
 328 of an interest in any such property having a net equity value of
 329 \$2,500 or more, excluding the value of the person's homestead
 330 and one vehicle having a net value not exceeding \$5,000.

331 3. Notwithstanding the information provided by the
 332 applicant, the clerk may conduct a review of the property
 333 records for the county in which the applicant resides and the
 334 motor vehicle title records of this state to identify any
 335 property interests of the applicant under this paragraph. The
 336 clerk may evaluate and consider the results of the review in
 337 making a determination under this subsection. If a review is
 338 conducted, the clerk must maintain the results of the review in
 339 a file with the application and provide the file to the court if
 340 an applicant seeks review under subsection (4) of the clerk's
 341 determination of indigent status.

342 (d) The duty of the clerk in determining whether an
 343 applicant is indigent is limited to receiving the application
 344 and comparing the information provided in the application to the
 345 criteria prescribed in this subsection. The determination of
 346 indigent status is a ministerial act of the clerk and not a
 347 decision ~~may not be~~ based on further investigation, other than
 348 the review authorized under this subsection, or the exercise of

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independent judgment by the clerk. The clerk may contract with third parties to perform functions assigned to the clerk under this section.

Section 6. Subsection (5) of section 318.14, Florida Statutes, is amended to read:

318.14 Noncriminal traffic infractions; exception; procedures.—

(5) Any person electing to appear before the designated official or who is required so to appear is ~~shall be~~ deemed to have waived his or her right to the civil penalty provisions of s. 318.18. The official, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven, the official may impose a civil penalty not to exceed \$500, but no less than the amount of the civil penalty provisions of s. 318.18, except that in cases involving unlawful speed in a school zone or involving unlawful speed in a construction zone, the civil penalty may not exceed \$1,000; or require attendance at a driver improvement school, or both. If the person is required to appear before the designated official pursuant to s. 318.19(1) and is found to have committed the infraction, the designated official ~~must shall~~ impose a civil penalty of \$1,000 in addition to any other penalties and the person's driver license shall be suspended for 6 months. If the person is required to appear before the designated official pursuant to s. 318.19(2) and is found to have committed the infraction, the designated official ~~must shall~~ impose a civil penalty of \$500 in addition to any other penalties and the person's driver license shall be suspended for 3 months. If the official determines that no

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infraction has been committed, no costs or penalties shall be imposed and any costs or penalties that have been paid shall be returned. Moneys received from the mandatory civil penalties imposed pursuant to this subsection upon persons required to appear before a designated official pursuant to s. 318.19(1) or (2) ~~must shall~~ be remitted to the Department of Revenue and deposited into the Department of Health Emergency Medical Services Trust Fund to provide financial support to certified trauma centers to assure the availability and accessibility of trauma services throughout this ~~the~~ state. Funds deposited into the Emergency Medical Services Trust Fund under this section shall be allocated as follows:

(a) Fifty percent shall be allocated equally among all Level I, Level II, and pediatric trauma centers in recognition of readiness costs for maintaining trauma services.

(b) Fifty percent shall be allocated among Level I, Level II, and pediatric trauma centers based on each center's relative volume of trauma cases as calculated using the hospital discharge data collected pursuant to s. 408.061.

Section 7. Subsection (2) of section 322.29, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

322.29 Surrender and return of license.—

(2) Notwithstanding subsection (1), an examination is not required for the return of a license suspended under s. 318.15 or s. 322.245 unless an examination is otherwise required by this chapter. A person applying for the return of a license suspended under s. 318.15 or s. 322.245 shall ~~must~~ present to the department certification from the court that he or she has

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complied with all obligations and penalties imposed pursuant to s. 318.15 or, in the case of a suspension pursuant to s. 322.245, that he or she has complied with all directives of the court and the requirements of s. 322.245 and shall pay to the department a nonrefundable service fee of \$60, of which \$37.50 ~~must shall~~ be deposited into the General Revenue Fund and \$22.50 ~~must shall~~ be deposited into the Highway Safety Operating Trust Fund. If reinstated by the clerk of the court or tax collector, \$37.50 ~~must shall~~ be retained and \$22.50 ~~must shall~~ be remitted to the Department of Revenue for deposit into the Highway Safety Operating Trust Fund. However, the service fee is not required if the person is required to pay a \$45 fee or \$75 fee under s. 322.21(8).

(3) The department shall coordinate with the clerks of court, through their association, to ensure the capability within their technology systems for clerks of court to reinstate suspended driver licenses for failure to pay court obligations.

Section 8. Paragraph (d) of subsection (8) of section 394.459, Florida Statutes, is amended to read:

394.459 Rights of patients.—

(8) HABEAS CORPUS.—

(d) ~~A No fee may not shall~~ be charged for the filing of a petition under this subsection. However, subject to legislative appropriation, the clerk of the circuit court may, on a quarterly basis, submit to the Justice Administrative Commission a certified request for reimbursement for petitions under this subsection, at the rate of \$40 per petition. The request for reimbursement must be submitted in the form and manner prescribed by the Justice Administrative Commission.

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Additionally, the Clerks of the Court Operations Corporation shall develop on an annual basis a budget request for the anticipated amount necessary for reimbursement. The request is not subject to change by the Justice Administrative Commission, and it shall be submitted to the Governor for transmittal to the Legislature.

Section 9. Paragraph (a) of subsection (2) of section 394.463, Florida Statutes, is amended to read:

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

(a) An involuntary examination may be initiated by any one of the following means:

1. A circuit or county court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination and specifying the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on written or oral sworn testimony that includes specific facts that support the findings. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The order of the court shall be made a part of the patient's clinical record. A fee may not be charged for the filing of an order under this subsection. However, subject to legislative appropriation, the clerk of the circuit court may, on a quarterly basis, submit to the Justice Administrative Commission a certified request for

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reimbursement for orders under this subsection, at the rate of \$40 per order. The request for reimbursement must be submitted in the form and manner prescribed by the Justice Administrative Commission. Additionally, the Clerks of the Court Operations Corporation shall develop on an annual basis a budget request for the anticipated amount necessary for reimbursement. The request is not subject to change by the Justice Administrative Commission, and it shall be submitted to the Governor for transmittal to the Legislature. A facility accepting the patient based on this order must send a copy of the order to the department within 5 working days. The order may be submitted electronically through existing data systems, if available. The order shall be valid only until the person is delivered to the facility or for the period specified in the order itself, whichever comes first. If a time limit is not specified in the order, the order is valid for 7 days after the date that the order was signed.

2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for examination. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, which must be made a part of the patient's clinical record. Any facility accepting the patient based on this report must send a copy of the report to the department within 5 working days.

3. A physician, a physician assistant, a clinical psychologist, a psychiatric nurse, an advanced practice

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registered nurse registered under s. 464.0123, a mental health counselor, a marriage and family therapist, or a clinical social worker may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means, such as voluntary appearance for outpatient evaluation, are not available, a law enforcement officer shall take into custody the person named in the certificate and deliver him or her to the appropriate, or nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report and certificate shall be made a part of the patient's clinical record. Any facility accepting the patient based on this certificate must send a copy of the certificate to the department within 5 working days. The document may be submitted electronically through existing data systems, if applicable.

When sending the order, report, or certificate to the department, a facility shall, at a minimum, provide information about which action was taken regarding the patient under paragraph (g), which information shall also be made a part of the patient's clinical record.

Section 10. Subsection (3) of section 394.467, Florida Statutes, is amended to read:

394.467 Involuntary inpatient placement.—

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(3) PETITION FOR INVOLUNTARY INPATIENT PLACEMENT.—The administrator of the facility shall file a petition for involuntary inpatient placement in the court in the county where the patient is located. Upon filing, the clerk of the court shall provide copies to the department, the patient, the patient's guardian or representative, and the state attorney and public defender of the judicial circuit in which the patient is located. A fee may not be charged for the filing of a petition under this subsection. However, subject to legislative appropriation, the clerk of the circuit court may, on a quarterly basis, submit to the Justice Administrative Commission a certified request for reimbursement for petitions under this subsection, at the rate of \$40 per petition. The request for reimbursement must be submitted in the form and manner prescribed by the Justice Administrative Commission. Additionally, the Clerks of the Court Operations Corporation shall develop on an annual basis a budget request for the anticipated amount necessary for reimbursement. The request is not subject to change by the Justice Administrative Commission, and it shall be submitted to the Governor for transmittal to the Legislature.

Section 11. Subsection (3) of section 394.917, Florida Statutes, is amended to read:

394.917 Determination; commitment procedure; mistrials; housing; counsel and costs in indigent appellate cases.—

(3) The public defender of the circuit in which a person was determined to be a sexually violent predator shall be appointed to represent the person on appeal. That public defender may request the public defender who handles criminal

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appeals for the circuit to represent the person on appeal in the manner provided in s. 27.51(4). If the public defender is unable to represent the person on appeal due to a conflict, the court shall appoint other counsel, who shall be compensated at a rate not less than that provided for appointed counsel in criminal cases. Filing fees for indigent appeals under this act are waived. Costs and fees related to such appeals, including the amounts paid for records, transcripts, and compensation of appointed counsel, shall be authorized by the trial court and paid from state funds ~~that are~~ appropriated for such purposes. However, subject to legislative appropriation, the clerk of the circuit court may, on a quarterly basis, submit to the Justice Administrative Commission a certified request for reimbursement for petitions under this subsection, at the rate of \$40 per petition. The request for reimbursement must be submitted in the form and manner prescribed by the Justice Administrative Commission. Additionally, the Clerks of the Court Operations Corporation shall develop on an annual basis a budget request for the anticipated amount necessary for reimbursement. The request is not subject to change by the Justice Administrative Commission, and it shall be submitted to the Governor for transmittal to the Legislature.

Section 12. Section 397.6814, Florida Statutes, is amended to read:

397.6814 Involuntary assessment and stabilization; contents of petition.—A petition for involuntary assessment and stabilization must contain the name of the respondent, the name of the applicant or applicants, the relationship between the respondent and the applicant, and the name of the respondent's

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581 attorney, if known, and must state facts to support the need for
 582 involuntary assessment and stabilization, including:

583 (1) The reason for the petitioner's belief that the
 584 respondent is substance abuse impaired;

585 (2) The reason for the petitioner's belief that because of
 586 such impairment the respondent has lost the power of self-
 587 control with respect to substance abuse; and

588 (3) (a) The reason the petitioner believes that the
 589 respondent has inflicted or is likely to inflict physical harm
 590 on himself or herself or others unless admitted; or

591 (b) The reason the petitioner believes that the
 592 respondent's refusal to voluntarily receive care is based on
 593 judgment so impaired by reason of substance abuse that the
 594 respondent is incapable of appreciating his or her need for care
 595 and of making a rational decision regarding that need for care.
 596 If the respondent has refused to submit to an assessment, such
 597 refusal must be alleged in the petition.

598

599 A fee may not be charged for the filing of a petition pursuant
 600 to this section. However, subject to legislative appropriation,
 601 the clerk of the circuit court may, on a quarterly basis, submit
 602 to the Justice Administrative Commission a certified request for
 603 reimbursement for petitions under this section, at the rate of
 604 \$40 per petition. The request for reimbursement must be
 605 submitted in the form and manner prescribed by the Justice
 606 Administrative Commission. Additionally, the Clerks of the Court
 607 Operations Corporation shall develop on an annual basis a budget
 608 request for the anticipated amount necessary for reimbursement.
 609 The request is not subject to change by the Justice

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610 Administrative Commission, and it shall be submitted to the
 611 Governor for transmittal to the Legislature.

612 Section 13. This act shall take effect July 1, 2022.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Chair*
Agriculture
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Judiciary
Rules

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR JIM BOYD

21st District

November 30, 2021

Senator Keith Perry
404 South Monroe Street
201 The Capitol
Tallahassee, FL 32399

Dear Chairman Perry:

I respectfully request Senate Bill 552: Clerks of the Circuit Court, be scheduled for a hearing in the Appropriations Subcommittee on Criminal and Civil Justice at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me.

Thank you for your consideration of this matter.

Best regards,

A handwritten signature in blue ink, appearing to read "Jim Boyd".

Jim Boyd

cc: Marti Harkness
Hayley Kolich

REPLY TO:

- ☐ 717 Manatee Avenue West, Bradenton, Florida 34205 (941) 742-6445
- ☐ 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

November 30, 2021
Page 2

02/01/2022

Meeting Date

Appropriations Subcommittee on Criminal and Civil Justice

Committee

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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552

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Angel Colonnese**

Phone **(941) 749-1800**

Address **1115 Manatee Avenue West**

Email **angel.colonnese@manateeclerk.com**

Street

Bradenton

FL

34205

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

2-1-22

Meeting Date

552

Bill Number or Topic

App. Sub. on Criminal/Civil
Justice
Committee

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Amendment Barcode (if applicable)

Name

Cindy Stuart, Clerk of Court - Hillsborough
County

Phone

813-301-7021

Address

601 E. Kennedy Blvd.

Email

cindy.stuart@hillsclerk.com

Street

Tpr
City

Fla.

State

33601

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2-1-22

552

Meeting Date

Bill Number or Topic

App. Sub. on Criminal / Civil Justice
Committee

Amendment Barcode (if applicable)

Name

Jenna Hodgins

Phone

813-307-7194

Address

601 E. Kennedy Blvd

Email

jenna.hodgens@hillsclerk.com

Street

Tpa

Fla.

33601

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

Hillsborough Co. Clerk
of Court

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

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S-001 (08/10/2021)

02/01/2022

Meeting Date

Appropriations Subcommittee on Criminal and Civil Justice

Committee

The Florida Senate

APPEARANCE RECORD

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552

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Jason Welty**

Phone **850-386-3322**

Address **2560 Barrington Circe**

Email **jwelty@flccoc.org**

Street

Tallahassee

FL

32308

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

**Florida Clerks of Court Operations
Corporation**

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

02/01/2022

Meeting Date

Appropriations Subcommittee on Criminal and Civil Justice

Committee

The Florida Senate

APPEARANCE RECORD

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552

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Tom Bexley**

Phone **850.345.6835**

Address **1769 E Moody Blvd, Building 1**

Email **tbexley@flaglerclerk.com**

Street

Brunnell

City

FL

State

32110

Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

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

S-001 (08/10/2021)

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 1302

INTRODUCER: Regulated Industries Committee and Senator Burgess

SUBJECT: Criminal History Information

DATE: January 31, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>Kolich</u>	<u>Harkness</u>	<u>ACJ</u>	Recommend: Favorable
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1302 revises the process by which the Department of Business and Professional Regulation (DBPR) and regulatory boards within the department may consider the criminal background of license applicants. Under the bill, the process for considering the criminal background of a license applicant applies to all professions licensed by regulatory boards within the DBPR.

The bill prohibits the DBPR and its regulatory boards from inquiring into, or considering the criminal conviction history of, an applicant for a license until the applicant is determined to be otherwise qualified for licensure. The bill also repeals the provision in current law authorizing a board to consider the criminal history of an applicant for licensure if the criminal history has been found to relate to good moral character. However, many of the practice acts for professions regulated by DBPR and its boards require the license applicant to be of good moral character.

The bill provides several factors for a board to consider when determining if the criminal history of an applicant directly relates to the practice of the applicable profession for which the license is sought or held, including the nature and seriousness of the conviction, the age of the person at the time the offense was committed, the length of time since the conviction, evidence of mitigation or rehabilitation, and the applicant's current ability to practice the profession competently in accordance with the actual practice of the profession.

Under the bill, if the DBPR or a regulatory board intends to deny a license application solely or in part on the basis of the applicant's criminal history, the DBPR or board must give the applicant written notice before making a final decision and give the applicant 10 business days to respond with information challenging the accuracy of the information and evidence of mitigation or rehabilitation and his or her current ability to practice the profession competently in accordance with the actual practice of the profession.

If the DBPR or regulatory board denies an application for a license solely or in part on the basis of the applicant's criminal history, the applicable board must notify the applicant in writing of the final denial and the appeal process.

The bill also revises the process for a court-ordered sealing of a criminal record under s. 943.059(1), F.S., to require a court to grant a petition for the sealing of a criminal history record if a criminal history record has been automatically sealed pursuant to s. 943.0595, F.S., and the subject of the sealed record presents a certificate of sealing issued by the Florida Department of Law Enforcement (FDLE). Under the bill, the FDLE must issue a certificate of eligibility for sealing to a person who is the subject of a criminal history record sealed by the FDLE pursuant to the automatic sealing of criminal history provisions in s. 943.0595, F.S.

The bill is anticipated to have a significant negative fiscal impact on the FDLE. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2022.

II. Present Situation:

Licensing Determinations and Criminal History

Section 112.011, F.S., provides guidelines for the review of a license applicant's criminal history by state agencies during licensure determinations. Generally, a person may be denied a professional license based on his or her prior conviction of a crime if the crime was a felony¹ or first-degree misdemeanor² that is directly related to the standards determined by the regulatory authority to be necessary and reasonably related to the protection of the public health, safety, and welfare for the specific profession for which the license is sought.³ Notwithstanding any law to the contrary, a state agency may not deny an application for a license based solely on the applicant's lack of civil rights.⁴

¹ Section 775.08(1), F.S., defines "felony" as any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or a term of imprisonment in a state penitentiary that exceeds one year.

² Section 775.08(2), F.S., defines "misdemeanor" as any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by a term of imprisonment in a county correctional facility of less than one year. A first degree misdemeanor is punishable by a term of imprisonment not exceeding one year and a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

³ Section 112.011(1)(b), F.S. *See also*, e.g., *State ex rel. Shordy v. Rowlett*, 138 Fla. 330, 190 So. 59, 63 (1939), holding that "the preservation of the public health is one of the duties of sovereignty and in a conflict between the right of a citizen to follow a profession and the right of a sovereignty to guard the health and welfare, it logically follows that the rights of the citizen to pursue his profession must yield to the power of the State to prescribe such restrictions and regulations as shall fully protect the people from ignorance, incapacity, deception, and fraud."

⁴ Section 112.011(1)(c), F.S.

Department of Business and Professional Regulation

Licensure, Generally

DBPR has 12 divisions that are tasked with the licensing and general regulation of several professions and businesses in Florida.⁵ Fifteen boards and programs exist within the Division of Professions,⁶ two boards exist within the Division of Real Estate,⁷ and one board exists in the Division of Certified Public Accounting.⁸

Chapter 455, F.S., relates to the regulation of professions by the DBPR.⁹ Sections 455.203 and 455.213, F.S., establish the DBPR's general licensing authority, including its authority to charge license fees and license renewal fees. Each board within the DBPR must determine by rule the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.¹⁰ When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a "permit, registration, certificate, or license" to the licensee.¹¹

In Fiscal Year 2020-2021, there were 892,843 total active licenses in the Division of Certified Public Accounting, Division of Professions, Division of Real Estate, and Division of Regulation.¹²

Denial of Licensure

Chapter 455, F.S., provides procedural and administrative framework for the regulation of professionals by the DBPR, and boards housed under the DBPR, including the Divisions of

⁵ See s. 20.165, F.S., creating the divisions of Administration; Alcoholic Beverages and Tobacco; Certified Public Accounting; Drugs, Devices, and Cosmetics; Florida Condominiums, Timeshares, and Mobile Homes; Hotels and Restaurants; Pari-mutuel Wagering; Professions; Real Estate; Regulation; Service Operations; and Technology.

⁶ Section 20.165(4)(a), F.S., establishes the following boards and programs which are noted with the implementing statutes: Board of Architecture and Interior Design, part I of ch. 481, F.S.; Florida Board of Auctioneers, part VI of ch. 468, F.S.; Barbers' Board, ch. 476, F.S.; Florida Building Code Administrators and Inspectors Board, part XII of ch. 468, F.S.; Construction Industry Licensing Board, part I of ch. 489, F.S.; Board of Cosmetology, ch. 477, F.S.; Electrical Contractors' Licensing Board, part II of ch. 489, F.S.; Board of Employee Leasing Companies, part XI of ch. 468, F.S.; Board of Landscape Architecture, part II of ch. 481, F.S.; Board of Pilot Commissioners, ch. 310, F.S.; Board of Professional Engineers, ch. 471, F.S.; Board of Professional Geologists, ch. 492, F.S.; Board of Veterinary Medicine, ch. 474, F.S.; Home Inspection Services Licensing Program, part XV of ch. 468, F.S.; and Mold-related Services Licensing Program, part XVI of ch. 468, F.S.

⁷ See s. 20.165(4)(b), F.S. Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S., and Florida Real Estate Commission, created under part I of ch. 475, F.S.

⁸ See s. 20.165(4)(c), F.S., which establishes the Board of Accountancy, created under ch. 473, F.S.

⁹ Section 455.017, F.S.

¹⁰ Section 455.219(1), F.S.

¹¹ Section 455.01(4) and (5), F.S.

¹² See Department of Business and Professional Regulation, *Division of Certified Public Accounting, Division of Professions, Division of Real Estate, and Division of Regulation Annual Report, Fiscal Year 2020-2021*, p. 20, available at http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY2021.pdf (last visited Jan. 13, 2022).

Certified Public Accounting, Professions, Real Estate, and Regulation.¹³ Provisions within the chapter specify that the provision applies to the DBPR if there is no board.¹⁴

The DBPR may regulate professions “only for the preservation of the health, safety, and welfare of the public under the police powers of the state.”¹⁵ Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.¹⁶

However, “neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention,” or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.¹⁷

Licensing and Criminal Background for Certain Professions

The DBPR or a pertinent regulatory board may deny an application for licensure based on the grounds set forth in s. 455.227(1), F.S., or in the profession’s practice act.¹⁸ Specifically, the DBPR or regulatory board may deny a licensure application for any person who was:

...convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee’s profession.¹⁹ (Emphasis added.)

In 2019, the Legislature created a process for reviewing the criminal history of applicants for specified professions or occupations regulated by the DBPR.²⁰ The process applies to:

- Barbers;
- Cosmetologists and cosmetology specialists;
- Construction professionals, including:
 - Air-conditioning contractors;
 - Electrical contractors;
 - Mechanical contractors;
 - Plumbing contractors;
 - Pollutant storage systems contractors;
 - Roofing contractors;
 - Septic tank contractors;

¹³ See ss. 455.01(6) and 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. See s. 455.221(1), F.S.

¹⁴ For example, s. 455.227(2), F.S., dealing with grounds for discipline, penalties, and enforcement, provides “[w]hen the board, or the department when there is no board, finds...”

¹⁵ Section 455.201(2), F.S.

¹⁶ Section 455.201(2), F.S.

¹⁷ Section 455.201(4)(b), F.S.

¹⁸ Section 455.227(2), F.S.

¹⁹ Section 455.227(1)(c), F.S.

²⁰ Chapter 2019-167, L.O.F., codified at s. 455.213(3), F.S.

- Sheet metal contractors;
- Solar contractors;
- Swimming pool and spa contractors;
- Underground utility and excavation contractors; and
- Other specialty contractors; or
- Any other profession for which the DBPR issues a license, provided the profession is offered to prisoners in any correctional institution or correctional facility as a vocational training or through an industry certification program.²¹

Under this process, a prisoner may apply for a license before he or she is lawfully released from confinement or supervision.²² The application may not be denied solely on the basis of the applicant's current confinement or supervision.

A license for one of the above-listed occupations may not be denied on the basis of a conviction for a crime occurring more than five years before the date of application.²³ However, a board may deny a license if the applicant's criminal history includes a crime listed in s. 775.21(4)(a)1., F.S., relating to sexual predator crimes, or s. 776.08, F.S., relating to forcible felonies,²⁴ if such criminal history relates to the practice of the applicable profession.²⁵ A regulatory board may also consider the criminal history of an applicant if such criminal history is found to relate to good moral character.²⁶

Additionally, a board must:

- Permit a person to apply for a license while under criminal confinement (incarceration) or supervision;²⁷
- Compile a list of crimes by rule of crimes that do not impair a person's qualifications for licensure;²⁸
- Compile a list of crimes that have been used in the past two years as the basis for a license denial;²⁹ and
- Permit applicants who are incarcerated or under supervision to appear by teleconference or video conference at a meeting of a board or the agency for a hearing concerning the person's license application.³⁰

The DBPR or a board may refuse to issue an initial license to any applicant who is under investigation or prosecution in any jurisdiction for an action that would constitute a violation of

²¹ Section 455.213(3)(a), F.S.

²² Section 455.213.(3)(c), F.S.

²³ Section 455.213(3)(b)1., F.S. "Conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

²⁴ Section 776.08, F.S., defines "forcible felony" to mean "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."

²⁵ Section 455.213(3)(b)1., F.S.

²⁶ Section 455.213(3)(b)2., F.S.

²⁷ Section 455.213(3)(c), F.S.

²⁸ Section 455.213(3)(d), F.S.

²⁹ Section 455.213(3)(e), F.S.

³⁰ Section 455.213(5), F.S.

ch. 455, F.S., or the professional practice acts administered by the department and the boards, until such time as the investigation or prosecution is complete.³¹

License Qualifications Based on Moral Character

Several professions licensed by the DBPR require the applicant to be of good moral character, including applicants for a license to practice:

- Boxing, kick boxing and mixed martial arts issued by the Florida Athletic Commission;³²
- Construction contracting issued by the Construction Industry Licensing Board;³³
- Electrical contracting issued by the Electrical Contractors' Board.³⁴
- Athlete agents issued by the DBPR;³⁵
- Building code administrators and inspectors issued by the Florida Building Code Administrators and Inspectors Board;³⁶
- Certified public accountants issued by the Board of Accountancy;³⁷
- Engineers issued by the Board of Professional Engineers;³⁸
- Real estate brokers and agents issued by the Florida Real Estate Commission; and³⁹
- Mold-related services issued by the DBPR.⁴⁰

License Qualifications Based on Criminal History Related to the Profession

Many professional practice acts do not require the applicant to be of good moral character but permit a license application to be denied if the applicant's criminal history directly relates to, or relates to, the practice of the profession. For example, the license qualifications for the following professions require that the applicant not have a criminal history directly related, or simply related, to the practice of the profession:

- Architecture issued by the Board of Architecture and Interior Design;⁴¹
- Asbestos contracting and consulting issued by the DBPR;⁴²

³¹ Section 455.213(4), F.S.

³² Section 548.071(3), F.S., provides a basis for the Florida Athletic Commission to disqualify for a license any person who has been convicted of, has pleaded guilty to, has entered a plea of nolo contendere to, or has been found guilty of a crime involving moral turpitude in any jurisdiction within 10 years preceding the suspension or revocation.

³³ Section 489.111(2)(b) and (3), F.S., provides that the Construction Industry Licensing Board may refuse to certify an applicant for failure to satisfy the requirement of good moral character if there is a substantial connection between the lack of good moral character and the professional responsibility of the certified contractor; and the lack of good moral character is supported by clear and convincing evidence. The board may deny a license application if the applicant's criminal history directly relates to the practice of the profession.

³⁴ Section 489. 511(3)(a), F.S., defines good moral character as a history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation and specifies that the Electrical Contractors' Licensing Board may refuse to certify an applicant for failure to satisfy the requirement of good moral character if certain requirements are met. The board may deny a license application if the applicant's criminal history directly relates to the practice of the profession.

³⁵ Section 468.453(2)(b), F.S.

³⁶ Section 468.609(3)(b), F.S., also permits a license application to be denied if the applicant's criminal history directly relates to the practice of the profession.

³⁷ Section 473.308(5) and (6), F.S., also permits a license application to be denied if the applicant's criminal history directly relates to the practice of the profession.

³⁸ Section 471.013(2)(a), F.S.

³⁹ Section 475.227(1)(c), F.S.

⁴⁰ Section 468.8414(3), F.S.

⁴¹ Section 481.225(1)(d), F.S.

⁴² Section 469.009(1)(g), F.S.

- Auctioneering issued by the Florida Board of Auctioneers;⁴³
- Barbering issued by the Barbers' Board;⁴⁴
- Community association management issued by the Regulatory Council of Community Association Managers;⁴⁵
- Professional geology issued by the Board of Professional Geologists;⁴⁶
- Home inspection issued by the DBPR;⁴⁷
- Landscape architecture issued by the Board of Landscape Architecture;⁴⁸ and
- Veterinary medicine issued by the Board of Veterinary Medicine.⁴⁹

Disciplinary Actions and License Qualifications based on Section 455.227(1)(c), F.S.

Section 455.227(1)(c), F.S., authorizes a board, or the DBPR if there is no board for the profession, to take disciplinary action against a licensee if the person is convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, of a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession. This basis for discipline includes a criminal history that occurred prior to obtaining a license.⁵⁰

Disciplinary action includes refusal to certify, or to certify with restrictions, an application for a license and suspension or permanent revocation of a license.⁵¹

Several professions regulated by the DBPR, or a board within the DBPR, rely on the grounds for disciplinary action in s. 455.227(1)(c), F.S., as a basis for denial or grant of a license. In some professional practice acts, a license disqualification based on s. 455.227(1)(c), F.S., may be a basis grounds for a license denial in addition to a good moral character requirement or a specific criminal history disqualifier. The practice act for following professional licenses within the DBPR cross reference the grounds for denial of a license in s. 455.227(1)(c), F.S.:

- Barbers;⁵²
- Engineers issued by the Board of Professional Engineers;⁵³
- Professional geologists;⁵⁴
- Home inspectors;⁵⁵
- Mold-related service providers; and⁵⁶
- Real estate brokers and agents.⁵⁷

⁴³ Section 468.389(1)(l), F.S.

⁴⁴ Section 476.144(6)(a)2.b., F.S., provides that the qualifications for a barber license include having no disciplinary history related to barbering for five years.

⁴⁵ Section 468.436(2)(b), F.S.

⁴⁶ Section 492.113(1)(d), F.S.

⁴⁷ Section 468.832(1)(d), F.S.

⁴⁸ Section 481.325(1)(d), F.S.

⁴⁹ Sections 474.214(1)(c), (p) and (2), F.S., authorize the Board of Veterinary Medicine to deny a license application based on criminal history, including conviction on a charge of cruelty to animals.

⁵⁰ Section 455.227(2), F.S.

⁵¹ *Id.*

⁵² Section 476.204(1)(h), F.S.

⁵³ Section 471.033(1)(a), F.S.

⁵⁴ Section 492.113(1)(d), F.S.

⁵⁵ Section 468.832(1)(a), F.S.

⁵⁶ Section 468.842(1)(a), F.S.

⁵⁷ Section 475.25(1)(a), F.S.

Administrative Procedure Act

Chapter 120, F.S., the Administrative Procedure Act, provides uniform procedures for state agencies, including the conduct of rulemaking, implementing disciplinary actions, and the granting and denial of license applications.

Section 120.60, F.S., provides the process for the granting or denial of license applications. Upon receipt of a license application, an agency must examine the application and, within 30 days after such receipt, notify the applicant of any apparent errors or omissions and request any additional information the agency is permitted by law to require. An agency may not deny a license because of an applicant's failure to correct an error or omission or to supply additional information unless the agency has timely notified the applicant within this 30-day period. A license application is complete upon receipt by the agency of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired.

An agency must approve or deny a license application within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. The 90-day time period is tolled by the initiation of a proceeding under ss. 120.569 and 120.57, F.S.⁵⁸ Any application for a license which is not approved or denied within the 90-day or shorter time period, within 15 days after conclusion of a public hearing held on the application, or within 45 days after a recommended order is submitted to the agency and the parties, whichever action and timeframe is latest and applicable, is considered approved unless the recommended order recommends that the agency deny the license.

Expunction and Sealing of Criminal History Records

Sections 943.045 through 943.0595, F.S., set forth the processes for multiple ways in which to seal or expunge (destroy) a criminal history record. A criminal history record is "any nonjudicial record maintained by a criminal justice agency containing criminal history information."⁵⁹ Unless sealed or expunged, a criminal history record of an adult is generally accessible to the public. And the term "record" refers not to any single document, but instead to all documents or other records of a particular arrest or incident.⁶⁰

"Expunction of a criminal history record" means:

...the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order, except that criminal history records in the custody of the department must be retained in all cases for purposes of evaluating subsequent requests by the subject of the record for

⁵⁸ Section 120.569 F.S., provides the administrative process for all proceedings in which the substantial interests of a party are determined by an agency, unless the parties are proceeding under the mediation process in s. 120.573, F.S., or the summary hearing process in s. 120.574, F.S. Section 120.57, F.S., provides additional procedures for matters involving disputed issues of material fact before an administrative law judge assigned by the Division of Administrative Hearings.

⁵⁹ Section 943.0045(6), F.S.

⁶⁰ See s. 943.045(17), F.S.

sealing or expunction, or for purposes of recreating the record in the event an order to expunge is vacated by a court of competent jurisdiction.⁶¹

“Sealing of a criminal history record” means:

...the preservation of a record under such circumstances that it is secure and inaccessible to any person not having a legal right of access to the record or the information contained and preserved therein.⁶²

Eligibility for Court Ordered Sealing and Expunction

The processes for obtaining a court order to seal or expunge a criminal history record involve several similar steps. A person seeking the expunction or the sealing of a record must obtain a certificate of eligibility from the FDLE, and file a petition with the court for an order to seal or expunge his or her criminal history record.⁶³

To successfully complete this process and receive a court order, a person must meet certain eligibility requirements. The person is eligible to petition a court for a court-ordered expunction or sealing of a criminal record when:

- The criminal history record is not ineligible for court-ordered expunction under s. 943.0584, F.S., which includes an extensive list of crimes such as terrorism, murder, and sexual battery crimes;⁶⁴
- The person has never, as of the date the application for a certificate of eligibility is filed, been adjudicated guilty in this state of a criminal offense or been adjudicated delinquent in this state for committing any felony or any of the specified misdemeanors involving violence, firearms, or neglect of children, unless the record of such adjudication of delinquency has been expunged pursuant to s. 943.0515, F.S.;⁶⁵
- The person has not been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to expunge or seal pertains;⁶⁶
- The person is no longer under court supervision for the arrest or alleged criminal activity to which the petition pertains;⁶⁷ or
- The person has never secured a prior sealing or expunction of a criminal history record, unless the expunction sought is of a criminal history record previously sealed for 10 years pursuant to s. 943.0585(2)(h), F.S.⁶⁸

Court-Ordered Sealing

When a criminal history record is sealed, it is preserved so that it is secure and inaccessible to any person who does not have a legal right to access the record or the information contained

⁶¹ Section 943.045(16), F.S.

⁶² Section 943.045(19), F.S.

⁶³ See ss. 943.0585(2)-(3), and 943.059, F.S.

⁶⁴ See ss. 943.0585(1)(c), and 943.059(1), F.S.

⁶⁵ See ss. 943.0585(1)(d), and 943.059(1), F.S.

⁶⁶ Sections 943.0585(1)(e), and 943.059(1), F.S.

⁶⁷ Sections 943.0585(1)(f), and 943.059(1), F.S.

⁶⁸ Sections 943.0585(2)(g), and 943.059(1), F.S.

within the record.⁶⁹ A court may order a criminal history record sealed,⁷⁰ rendering it confidential and exempt from Florida's public records laws.⁷¹ Only the following entities may access a sealed criminal history record:

- The subject of the record;
- His or her attorney;
- Criminal justice agencies for criminal justice purposes;
- Judges in the state courts system for assisting in their case-related decision-making responsibilities; and
- Certain enumerated entities⁷² for licensing, access authorization, and employment purposes.⁷³

To seal a record, a person must first apply to the Florida Department of Law Enforcement (FDLE) for a certificate of eligibility, which the FDLE must issue to a person who:

- Has submitted a certified copy of the charge disposition he or she seeks to seal;
- Is not seeking to seal a criminal history record relating to a violation of certain enumerated offenses;
- Meets the criteria for eligibility for a court-ordered sealing as described above; and
- Remits a \$75 processing fee to the FDLE, unless such fee is waived.⁷⁴

Upon receiving a certificate of eligibility from the FDLE, a person must petition the court to seal the record.⁷⁵ A complete petition contains both a valid certificate of eligibility, issued within the previous 12 months, and a sworn statement from the petitioner attesting to his or her eligibility.⁷⁶ It is solely within the court's discretion to grant or deny a petition to seal.⁷⁷

There is no statutory right to a court-ordered sealing and any request for sealing of a criminal history record may be denied at the sole discretion of the court.⁷⁸

If the court grants a petition to seal, the clerk of the court then certifies copies of the order to the appropriate state attorney or the statewide prosecutor, the arresting agency, and any other agency that has received the criminal history record from the court. The arresting agency must provide the sealing order to any agencies that received the criminal history record information from the arresting agency. The FDLE must provide the order to the Federal Bureau of Investigation.⁷⁹

⁶⁹ Section 943.045(19), F.S.

⁷⁰ Section 943.059, F.S.

⁷¹ Sections 943.059(6) and 119.07(1), F.S.; Art. I, s. 24(a), Fla. Const.

⁷² Section 943.059(6)(b), F.S., provides that enumerated entities include criminal justice agencies, The Florida Bar, the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, the Department of Juvenile Justice, the Department of Education, a district school board, a university laboratory school, a charter school, a private or parochial school, a local governmental entity that licenses child care facilities, the Division of Insurance Agent and Agency Services within the Department of Financial Services, and the Bureau of License Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services.

⁷³ Sections 943.059(6)(a), F.S.

⁷⁴ Section 943.059(2), F.S.

⁷⁵ Section 943.059(3), F.S.

⁷⁶ Section 943.059(2)(b), F.S.

⁷⁷ Section 943.059, F.S.

⁷⁸ Section 943.059(4)(e), F.S.

⁷⁹ Section 943.059(5)(b), F.S.

A person who has his or her criminal history record sealed may lawfully deny or fail to acknowledge arrests relating to the records that were sealed. However, there are several exceptions for which a person must disclose this information, including when a person is applying for certain state employment positions, seeking certain professional licenses, purchasing a firearm, applying for a concealed weapons permit, seeking expunction, or if the subject is a defendant in a criminal prosecution.⁸⁰

Automatic Sealing of Criminal History Record

The FDLE must automatically seal a criminal history record that does not result from an indictment, information, or other charging document for a forcible felony as defined in s. 776.08, F.S.,⁸¹ or for an offense enumerated in s. 943.0435(1)(h)1.a.(I), F.S.,⁸² if:

- An indictment, information, or other charging document was not filed or issued in the case giving rise to the criminal history record;
- An indictment, information, or other charging document was filed in the case giving rise to the criminal history record, but was dismissed or nolle prosequi by the state attorney or statewide prosecutor or was dismissed by a court of competent jurisdiction. However, a person is not eligible for automatic sealing under this section if the dismissal was pursuant to s. 916.145, F.S., or s. 985.19, F.S.;⁸³
- A not guilty verdict was rendered by a judge or jury. However, a person is not eligible for automatic sealing under this section if the defendant was found not guilty by reason of insanity; or
- A judgment of acquittal was rendered by a judge.

The clerk of court must transmit a certified copy of the disposition of the criminal history record to the FDLE, which must seal the record. The automatic sealing of such records does not require sealing by the court or other criminal justice agencies, or that such record be surrendered to the court, and such record must continue to be maintained by the department and other criminal justice agencies.⁸⁴

III. Effect of Proposed Changes:

DBPR Licensing and Criminal Background

CS/SB 1302 revises the process by which DBPR or a regulatory board may consider the criminal background of license applicants. The process for considering the criminal background of a license applicant applies to all professions licensed by a regulatory board within the DBPR, or the DBPR if there is no board.

⁸⁰ Section 943.059(6)(b), F.S.

⁸¹ See *supra* n. 24.

⁸² Section 943.0435(1)(h)1.a.(I), F.S., defines the term “sexual offender” as a person who has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in this provision in Florida or similar offenses in another jurisdiction.

⁸³ Section 916.145, F.S., relates to the dismissal of charges for certain crimes due to the mental illness of a defendant. Section 985.19, F.S., relates to the stay of juvenile delinquency proceedings due to the incompetency of the child named in the juvenile delinquency petition to proceed with a hearing.

⁸⁴ Section 943.0595, F.S.

The bill amends s. 455.213(3), F.S., to prohibit DBPR and its regulatory boards from inquiring into, or considering the conviction history of, an applicant for license until the applicant is determined to be otherwise qualified for licensure.

The bill also amends s. 455.213(3), F.S., to repeal the prohibition against denial of an application on the basis of a conviction, or any other adjudication, for a crime more than five years before the date of application.

Under the bill, the following criminal background information may not be used, distributed, or disseminated by the DBPR, its boards, or its agents in connection with a license application:

- An arrest without a valid conviction;
- A conviction that has been sealed, dismissed, or expunged;
- Misdemeanor convictions without incarceration;⁸⁵ and
- Noncriminal infractions.

The bill also repeals the provision authorizing a board to consider the criminal history of an applicant for licensure if the criminal history has been found to relate to good moral character. However, many of the practice acts for professions regulated by the DBPR require the license applicant to be of good moral character.

The bill provides several factors for a board to consider when determining if the criminal history of an applicant directly relates to the practice of the applicable profession for which the license is sought or held. In determining if the applicant's criminal history directly relates to the practice of the applicable profession for which the license is sought or held, the bill requires the applicable board to consider:

- The nature and seriousness of the conviction;
- Whether the conviction directly relates to the practice of the applicable profession for which the license is sought or held;
- Whether the duties and responsibilities of the profession provide the opportunity for the same or a similar offense to occur;
- Whether circumstances leading to the offense for which the person was convicted will recur in the profession;
- The age of the person at the time the offense was committed;
- The length of time since the conviction;
- All circumstances relative to the offense, including mitigating circumstances or social conditions surrounding the commission of the offense; and
- Evidence of mitigation or rehabilitation and the applicant's current ability to practice the profession competently in accordance with the actual practice of the profession.

⁸⁵ There are two classes of misdemeanors in Florida. Both classes may result in a period of imprisonment, i.e., incarceration . Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S. provides that a misdemeanor of the second degree is punishable by a fine not to exceed \$500. Section 775.082, F.S., provides that a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S. provides that a misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

If the DBPR or a board intends to deny a license application solely or in part on the basis of the applicant's criminal history, it must notify the applicant in writing of the following before making a final decision:

- Identify the reasons for the potential denial;
- Provide a copy of any criminal history record; and
- Provide examples of evidence of mitigation or rehabilitation and the current ability to practice the profession competently in accordance with the actual practice of the profession which the applicant may voluntarily provide.

The bill provides that an applicant who has been convicted of an offense that directly relates to the practice of the profession for which a license is sought may not be denied the license if he or she can show evidence of mitigation or rehabilitation and the current ability to practice the profession competently in accordance with the actual practice of the profession.

Under the bill, the license applicant has 10 business days after issuance of the DBPR or board's written notice to respond with any information, including challenging the accuracy of the information and submitting evidence of mitigation or rehabilitation and his or her current ability to practice the profession competently in accordance with the actual practice of the profession.

The bill provides that the applicant's evidence of mitigation or rehabilitation and the applicant's current ability to practice the profession competently in accordance with the actual practice of the profession may be established by:

- Proof of compliance with the terms and conditions of probation or parole; or
- Other evidence, including, but not limited to, letters of reference or program or education certificates.

If an applicable board denies an application for a license solely or in part on the basis of the applicant's criminal history, the applicable board must notify the applicant in writing of the:

- Final denial;⁸⁶and
- Appeal process.⁸⁷

Court-Ordered Sealing of Criminal History Records

The bill creates subparagraph (f) of s. 943.059(1), F.S., to require a court to grant a petition for the sealing of a criminal history record if a criminal history record has been automatically sealed pursuant to s. 943.0595, F.S., and the subject of the sealed record presents a certificate of sealing issued by the FDLE. The court must grant the petition for the sealing of a criminal history record even if the person has previously been adjudicated guilty of a criminal offense listed in s. 943.059(1)(b), F.S., or the person has previously secured a sealing or expunction of a criminal

⁸⁶ Section 120.60(3), F.S., requires agencies to give license applicants written notice, personally or by mail, that the agency intends to grant or deny, or has granted or denied, the application for license. The notice must state with particularity the grounds or basis for the issuance or denial of the license, except when issuance is a ministerial act. Unless waived, the agency must deliver or mail to each party's attorney of record and to each person who has made a written request for notice of agency action. The notice must inform the recipient of the basis for the agency decision, inform the recipient of any administrative hearing pursuant to ss. 120.569 and 120.57, F.S., or judicial review pursuant to s. 120.68, F.S., which may be available, indicate the procedure that must be followed, and state the applicable time limits.

⁸⁷ *Id.*

record for one of the offenses listed in s. 943.059(1)(e), F.S., which would otherwise make the offense ineligible for sealing or expunction.

The bill also amends s. 943.059(2), F.S., to revise the requirements for the FLDE-issued certificate of eligibility to have a criminal record sealed by the court. Under the bill, the FDLE must issue a certificate of eligibility for sealing to a person who is the subject of a criminal history record that has been sealed by the FDLE pursuant to the automatic sealing of criminal history provisions in s. 943.0595, F.S. The eligibility certificate must indicate that the record has been sealed by the FDLE and is only valid for court-ordered sealing under s. 943.059(1)(f), F.S., of a record already automatically sealed pursuant to s. 943.0595, F.S. This provision applies even if the person seeking the certificate of eligibility does not satisfy the eligibility requirements for a court-ordered sealing, which includes payment of a \$75 processing fee.

Effective Date

The bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires the FDLE to issue a certificate of eligibility for sealing to a person who is the subject of a criminal history record that has been sealed by the FDLE pursuant to the automatic sealing of criminal history provisions in s. 943.0595, F.S. The bill exempts the person seeking an eligibility certificate from the payment of the \$75 processing fee. The FDLE anticipates the need for 60 additional full time employees (FTEs) totaling \$4,142,020 (\$3,869,260 recurring) and approximately \$147,000 to modify existing IT systems necessary to implement the changes in the bill.⁸⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 120.60(1), F.S., requires an agency to approve or deny a license application within 60 days of receipt of a completed application. The bill requires boards within the DBPR to give an applicant who has been convicted of an offense that directly relates to the practice of the profession for which a license is sought an opportunity to show evidence of mitigation or rehabilitation and the current ability to practice the profession competently in accordance with the actual practice of the profession. Under the bill, the license applicant has 10 business days after issuance of the notice to respond with any information, including challenging the accuracy of the information and submitting evidence of mitigation or rehabilitation and his or her current ability to practice the profession competently in accordance with the actual practice of the profession. This process does not toll the 90-day period in s. 120.60(1), F.S., during which an agency must approve or deny a completed license application.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 455.213 and 943.059.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Regulated Industries on January 18, 2022:**

The committee substitute:

- Extends the requirements in the bill to license applications submitted to the Department of Business and Professional Regulation (DBPR). The effect of the bill is limited to boards within the DBPR. Some professions are licensed by DBPR and not boards.

⁸⁸ Florida Department of Law Enforcement, *2022 Agency Legislative Bill Analysis for SB 1302* (Jan. 13, 2022) (on file with the Senate Committee on Regulated Industries).

- Clarifies that the DBPR or its boards or agents may not use, distribute, or disseminate the specified criminal history information by removing an incorrect reference to “political subdivisions.”
- Expands the license review process in the bill to include all of an applicant’s criminal history that is not exempted by the bill. The bill limited the review process to applicants with a felony criminal history.
- Removes from the bill the requirement that the DBPR or board, when it denies a license application solely or in part on the basis of the applicant’s prior criminal record, give the applicant written notice of the applicant’s eligibility for other licenses or professions and the earliest date the applicant may reapply for a license.

B. Amendments:

None.

By the Committee on Regulated Industries; and Senator Burgess

580-02079-22

20221302c1

1 A bill to be entitled
 2 An act relating to criminal history information;
 3 amending s. 455.213, F.S.; prohibiting an applicable
 4 board, or the Department of Business and Professional
 5 Regulation if there is no such board, from inquiring
 6 into or considering the conviction history of an
 7 applicant for licensure until it is determined that
 8 the applicant is otherwise qualified; revising
 9 professions for licensure eligibility; removing a
 10 provision relating to licensure of other professions
 11 offered to certain inmates under certain
 12 circumstances; prohibiting the use of a conviction, or
 13 other adjudication, for a crime before the date an
 14 application is received as being grounds for denial of
 15 a license; authorizing an applicable board, or the
 16 department if there is no board, to consider an
 17 applicant's criminal history only if such criminal
 18 history directly relates to the practice of the
 19 applicable profession; prohibiting the use,
 20 distribution, and dissemination of specified criminal
 21 records; removing a provision authorizing an
 22 applicable board to consider an applicant's criminal
 23 history if the history has been found to relate to
 24 good moral character; prohibiting the applicable
 25 board, or the department if there is no board, from
 26 denying an application for licensure of a person based
 27 solely or in part on an applicant's criminal history;
 28 providing an exception; providing requirements for
 29 determining if such criminal history directly relates

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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20221302c1

30 to the practice of the applicable profession;
 31 providing requirements if the applicable board, or the
 32 department if there is no board, intends to deny an
 33 application for license based solely or in part on the
 34 applicant's prior conviction; amending s. 943.059,
 35 F.S.; providing requirements for court-ordered sealing
 36 of certain records that were automatically sealed by
 37 the Department of Law Enforcement under specified
 38 provisions; providing an effective date.

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

41
 42 Section 1. Present paragraphs (b) through (e) of subsection
 43 (3) of section 455.213, Florida Statutes, are redesignated as
 44 paragraphs (c) through (f), respectively, a new paragraph (b)
 45 and paragraph (g) are added to that subsection, and paragraph
 46 (a) and present paragraph (b) of that subsection are amended, to
 47 read:

48 455.213 General licensing provisions.—

49 (3) (a) Notwithstanding any other law, the applicable board,
 50 or the department if there is no board, shall use the process in
 51 this subsection for review of an applicant's criminal record to
 52 determine his or her eligibility for licensure.

53 (b) The applicable board, or the department if there is no
 54 board, may not inquire into or consider the conviction history
 55 of an applicant for licensure until the applicant is determined
 56 to be otherwise qualified for licensure. ~~as~~

57 ~~1. A barber under chapter 476,~~

58 ~~2. A cosmetologist or cosmetology specialist under chapter~~

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477,

~~3. Any of the following construction professions under chapter 489:~~

- ~~a. Air conditioning contractor;~~
- ~~b. Electrical contractor;~~
- ~~c. Mechanical contractor;~~
- ~~d. Plumbing contractor;~~
- ~~e. Pollutant storage systems contractor;~~
- ~~f. Roofing contractor;~~
- ~~g. Sheet metal contractor;~~
- ~~h. Solar contractor;~~
- ~~i. Swimming pool and spa contractor;~~
- ~~j. Underground utility and excavation contractor; or~~
- ~~k. Other specialty contractors; or~~

~~4. Any other profession for which the department issues a license, provided the profession is offered to inmates in any correctional institution or correctional facility as vocational training or through an industry certification program.~~

~~(c)1.(b)1.~~ A conviction, or any other adjudication, for a crime ~~more than 5 years~~ before the date the application is received by the applicable board, or the department if there is no board, may not be grounds for denial of a license ~~specified in paragraph (a).~~ For purposes of this subsection ~~paragraph~~, the term "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld. This ~~subsection paragraph~~ does not limit the applicable board, or the department if there is no board, from considering an applicant's criminal history that includes a crime listed in s. 775.21(4)(a)1. or s. 776.08 at any time, but

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only if such criminal history has been found to directly relate to the practice of the applicable profession.

2. Notwithstanding subparagraph 1., the following criminal history may not be used, distributed, or disseminated by the department or a board or its agents in connection with an application for licensure:

- a. An arrest without a valid conviction.
- b. Convictions that have been sealed, dismissed, or expunged.
- c. Misdemeanor convictions without incarceration.
- d. Noncriminal infractions.

(g) The applicable board, or the department if there is no board, may not deny an application for a license solely or in part on the basis of an applicant's criminal history unless the criminal history directly relates to the practice of the applicable profession for which the license is sought or held.

1. In determining if a criminal history directly relates to the practice of the applicable profession for which the license is sought or held, the applicable board, or the department if there is no board, shall consider:

- a. The nature and seriousness of the conviction.
- b. Whether the conviction directly relates to the practice of the applicable profession for which the license is sought or held.
- c. Whether the duties and responsibilities of the profession provide the opportunity for the same or a similar offense to occur.
- d. Whether circumstances leading to the offense for which the person was convicted will recur in the profession.

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e. The age of the person at the time the offense was committed.

f. The length of time since the conviction.

g. All circumstances relative to the offense, including mitigating circumstances or social conditions surrounding the commission of the offense.

h. Evidence of mitigation or rehabilitation and the applicant's current ability to practice the profession competently in accordance with the actual practice of the profession.

2. If the applicable board, or the department if there is no board, intends to deny an application for a license solely or in part on the basis of the applicant's criminal history, it must notify the applicant in writing of its intent before making a final decision. Such notice must do all of the following:

a. Identify the reasons for the potential denial.

b. Provide a copy of any criminal history record.

c. Provide examples of evidence of mitigation or rehabilitation and the current ability to practice the profession competently in accordance with the actual practice of the profession, which the applicant may voluntarily provide.

(I) An applicant who has been convicted of an offense that directly relates to the practice of the applicable profession for which a license is sought may not be denied the license if he or she can show evidence of mitigation or rehabilitation and the current ability to practice the profession competently in accordance with the actual practice of the profession.

(II) The applicant shall have 10 business days after issuance of the notice to respond with any information,

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including challenging the accuracy of the information and submitting evidence of mitigation or rehabilitation and his or her current ability to practice the profession competently in accordance with the actual practice of the profession.

(III) Evidence of mitigation or rehabilitation and the applicant's current ability to practice the profession competently in accordance with the actual practice of the profession may be established by:

(A) Proof of compliance with the terms and conditions of probation or parole; or

(B) Other evidence, including, but not limited to, letters of reference or program or education certificates.

(IV) If an applicable board, or the department if there is no board, denies an application for a license solely or in part on the basis of the applicant's criminal history, it must notify the applicant in writing of all of the following:

(A) Final denial.

(B) Appeal process ~~The applicable board may consider the criminal history of an applicant for licensure under subparagraph (a)2. if such criminal history has been found to relate to good moral character.~~

Section 2. Present paragraph (b) of subsection (2) of section 943.059, Florida Statutes, is redesignated as paragraph (c), and paragraph (f) is added to subsection (1) and a new paragraph (b) is added to subsection (2) of that section, to read:

943.059 Court-ordered sealing of criminal history records.—

(1) ELIGIBILITY.—A person is eligible to petition a court to seal a criminal history record when:

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175 (f) Notwithstanding paragraphs (b) and (e), if a criminal
176 history record has been automatically sealed pursuant to s.
177 943.0595 and the subject of the sealed record presents a record
178 of the sealing by the department described in paragraph (2) (b)
179 to the court, the court shall grant the sealing of the criminal
180 history record.

181 (2) CERTIFICATE OF ELIGIBILITY.—Before petitioning the
182 court to seal a criminal history record, a person seeking to
183 seal a criminal history record must apply to the department for
184 a certificate of eligibility for sealing. The department shall
185 adopt rules relating to the application for and issuance of
186 certificates of eligibility for sealing.

187 (b) Notwithstanding paragraph (a), the department shall
188 also issue a certificate of eligibility for sealing to a person
189 who is the subject of a criminal history record that has been
190 sealed by the department pursuant to s. 943.0595. This
191 certificate must indicate that the record has been sealed by the
192 department and is only valid for court-ordered sealing under
193 paragraph (1) (f) of a record already sealed pursuant to s.
194 943.0595.

195 Section 3. This act shall take effect July 1, 2022.

The Florida Senate
APPEARANCE RECORD

2/1/22

Meeting Date

1302

Bill Number or Topic

Appropriations Subcommittee on Criminal
and Civil Committee Justice

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Christie Arnold

Phone 850-339-6075

Address 201 W. Park Ave
Street

Email car Arnold@flaccb.org

Tallahassee
City

FL
State

32301
Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:
FL Conference of
Catholic Bishops

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf](#) [flsenate.gov](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2.1.22

Meeting Date

CJ Apphp.

Committee

SB 1302

Bill Number or Topic

Amendment Barcode (if applicable)

Name Shaena Fzazl

Phone 202.594.6893

Address Alliance for Safety & Justice

Email sfzazl@safeandjust.org

Street

City

State

Zip

Speaking: ☒ For

☐ Against

☐ Information

OR

Waive Speaking: ☒ In Support

☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☒ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Alliance for Safety & Justice

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

2/1/22

Meeting Date

1302

Bill Number or Topic

Approps Sub. on Criminal Justice

Committee

Deliver both copies of this form to
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Amendment Barcode (if applicable)

Name Philip Suderman

Phone _____

Address _____

Street

Email _____

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Americans for
Prosperity

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf](#) [flsenate.gov](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

3/1/22

Meeting Date

1302

Bill Number or Topic

Deliver both copies of this form to
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name

Crim/Civ Appropriations sub

Matthew Metz, Public Defender, 7th Circuit

Phone

(386)

Address

251 N Ridgewood

Email

metz.matthew@pd7.org

Street

Daytona Bch FL

32114

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](#)

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S-001 (08/10/2021)

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 1534

INTRODUCER: Criminal Justice Committee and Senator Boyd and others

SUBJECT: Retail Theft

DATE: January 31, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Jones	CJ	Fav/CS
2. Atchley	Harkness	ACJ	Recommend: Favorable
3. _____	_____	AP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1534 amends s. 812.015, F.S., the retail theft statute, to create new third degree felony and second degree felony retail theft crimes based on multiple retail thefts occurring in a limited time period in different merchant locations. Specifically, the bill amends the statute to provide that a person commits retail theft, a third degree felony, if the person individually, or in concert with one or more other persons, commits five or more retail thefts within a 30-day period and in committing such thefts obtains or uses 10 or more items of merchandise, and the number of items stolen during each theft is aggregated within the 30-day period to determine the total number of items stolen, regardless of the value of such merchandise, and two or more of the thefts occur at different physical merchant locations.

The bill also amends the statute to provide that a person commits a second degree felony if the person individually, or in concert with one or more other persons, commits five or more retail thefts within a 30-day period and in committing such thefts obtains or uses 20 or more items of merchandise, and the number of items stolen during each theft is aggregated within the 30-day period to determine the total number of items stolen, regardless of the value of such merchandise, and two or more of the thefts occur at a different physical retail merchant location.

The bill also amends s. 921.0022, F.S., the offense severity level ranking chart of the Criminal Punishment Code, to rank the new third degree felony retail theft offense as a level 5 offense and rank the new second degree felony retail theft offense as a level 6 offense.

The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect on October 1, 2022.

II. Present Situation:

Organized Retail Crime and "Boosting"

Organized retail crime (or ORC theft) is "a premeditated burglary that involves multiple offenders who operate in different specified roles or positions. These crime rings often hit multiple stores in one run, collecting a car full of stolen goods that are sold or 'returned' for store credit or even cash, depending on the return policy. Oftentimes, these items are sold via online marketplaces, which makes it nearly impossible to trace the criminal activity back to the seller."¹

"The ... most common form of organized retail crime is referred to as *boosting*." "Boosting" is "the basic act of walking into a store and stealing item(s) without being caught. This can be done in any number of ways, from pocketing smaller items to simply walking out the front door with a cart full of big-ticket merchandise and enough confidence in your step that nobody questions you."²

According to the Florida Attorney General's Office, there are many challenges to prosecuting boosting under existing theft laws which generally require proof of the value of the property stolen.

There are limited statutes which law enforcement and prosecutors can charge boosters under. The traditional theft statute, s. 812.014, the organized retail theft statute, s. 812.015, and the scheme to defraud statute, s. 817.034, all require evidence of value.

In order to prove value, the law enforcement officer and prosecutor must know and prove the exact items stolen. While this level of proof is clear when someone is detained and found with the merchandise, when there are limited items stolen and clear view, or when merchandise is later recovered, such proof is exceedingly difficult to meet when the merchandise leaves the store.

If there is not a clear camera view of the exact items stolen, a prosecutor can only include the lowest value item within the area of the item stolen. Stores keep items of largely varying value within arm's reach of other items of similar type. A multiple hundred dollar item can be kept right next to an item worth less than \$20.00.

Using the item described above, if a defendant steals five \$200 items (totaling \$1,000) they could be charged with only stealing \$100 of merchandise if the item is not clearly

¹ Storm Suitter, *Organized Retail Crime Methods and How to Prevent Them* (Sep. 28, 2021), LiveView Technologies, available at <https://www.lvt.com/company/about-us> (last visited on Jan. 20, 2022).

² *Id.*

visible on video. In both situations, it is undisputed that five items were stolen; the exact item stolen is what would be contested.

The investigations into boosting activity can take upwards of a year or longer to conduct. First, retail loss prevention must watch the boosting activity and identify the exact items stolen. Law enforcement must then review the video to ensure the items are detailed by retail loss prevention correctly and complete an affidavit. A prosecutor must then review the videos and the affidavit to make sure the prosecutor has a good faith basis to file charges. This is a timely process. During this investigative process, the boosting activity continues across the State.

Large scale boosters can enter many stores within a small period of time and boost many items during each theft. Reviewing the video files to check for items stolen can take many hours at each step of the process. Each item needs to be readily apparent from the video.

Some retailers have the ability to verify inventory logs to check for missing merchandise, to prove the items stolen. However, in order to successfully prove the items stolen with this method, there must be evidence from the point of the first inventory to the point of the next inventory of legitimate sales, restocking, and/or proving no other persons stole during that time. Depending on the time between inventory checks, this could be multiple days of video to review by the loss prevention, then law enforcement, then the prosecutor.³

Organized Retail Crime –National Trends

The National Retail Federation (NRF) reports that “[o]rganized retail crime now costs retailers an average of \$700,000 per \$1 billion in sales, and three-fourths of retailers saw an increase in ORC in 2020....”⁴

According to the *National Retail Security Survey 2021*, a NRF survey of retail loss prevention professionals that covers national retail security issues, including external retail crime, organized retail crime is a growing threat. The survey reports: “About 69% of retailers said they had seen an increase in ORC activity over the past year. They cited reasons such as COVID-19, policing, changes to sentencing guidelines and the growth of online marketplaces for the increase in ORC activity.”⁵ Further, “[r]etailers report these gangs are more aggressive and violent than in years past.”⁶

³ Summary of boosting issue and legislation provided to staff of the Senate Committee on Criminal Justice on Jan. 18, 2022 (on file with the Senate Committee on Criminal Justice).

⁴ Craig Guillot, *Organized retail crime remains a growing threat* (Nov. 18, 2021), National Retail Federation, available at <https://nrf.com/blog/organized-retail-crime-remains-growing-threat> (last visited on Jan. 20, 2022).

⁵ *National Retail Security Survey 2021*, National Retail Federation, at p. 10, available at <https://cdn.nrf.com/sites/default/files/2021-08/2021%20National%20Retail%20Security%20Survey%20updated.pdf> (last visited on Jan. 20, 2022).

⁶ *Id.*

Florida Organized Retail Crime Exchange (FORCE)

On December 2, 2021, Florida Attorney General Ashley Moody announced the creation of the Florida Organized Retail Crime Exchange (FORCE), which consists of a task force and an interactive statewide database.⁷ The task force will be composed of law enforcement personnel, prosecutors, and retailers⁸ who “will meet regularly to discuss trends, share criminal intelligence and coordinate investigations.”⁹ The statewide database, which will be operated by the Attorney General’s Office and the Florida Retail Federation, will “spot trends, identify suspects and take down massive organized retail theft rings.”¹⁰ Law enforcement and retailers that complete specialized training will have access to it.¹¹

Attorney General Moody also reported that since taking office in 2019, statewide prosecutors have “filed nearly 60 cases involving more than 250 individuals suspected of organized retail theft or crimes related to organized retail theft.”¹²

Criminal Punishment Code

The Criminal Punishment Code¹³ (Code) is Florida’s primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).¹⁴ Points are assigned and accrue based upon the offense severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.¹⁵ Absent mitigation,¹⁶ the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.¹⁷

⁷ News Release, *VIDEO: Attorney General Moody Launches FORCE to Protect Floridians Against Retail Theft Crime Sprees Plaguing Cities in Other States* (Dec. 2, 2021), Attorney General’s Office (on file with the Senate Committee on Criminal Justice).

⁸ *Id.*

⁹ Pat Raia, *Database aims to thwart retail theft rings before they organize here* (Dec. 5, 2021), Hernando Sun, available at <https://www.hernandosun.com/2021/12/05/database-aims-to-thwart-retail-theft-rings-before-they-organize-here/> (last visited on Jan. 20, 2022).

¹⁰ See footnote 9, *supra*.

¹¹ *Id.*

¹² *Id.*

¹³ Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

¹⁴ Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

¹⁵ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

¹⁶ The court may “mitigate” or “depart downward” from the scored lowest permissible sentence, if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

¹⁷ If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

Theft Statute (s. 812.014, F.S.)

Section 812.014(1), F.S., provides that a person commits “theft” if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:

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

The statute punishes “grand theft” and “petit theft.”¹⁸ Grand theft penalties, which are more severe than petit theft penalties, may be triggered by theft of an item listed in the statute, such as a fire extinguisher, regardless of the value of that listed item.¹⁹ However, more typically, grand theft is theft of property valued at \$750 or more. The degree and punishment of grand theft escalates based on the value of the stolen property. If the property stolen is valued at:

- \$750 or more, but less than \$5,000, it is grand theft of the third degree and a Level 2 third degree felony;²⁰
- \$5,000 or more, but less than \$10,000, it is grand theft of the third degree and a Level 3 third degree felony;²¹
- \$10,000 or more, but less than \$20,000, it is grand theft of the third degree and a Level 4 third degree felony;²²
- \$20,000 or more, but less than \$100,000, it is grand theft of the second degree and a Level 6 second degree felony;²³ and
- \$100,000 or more, it is grand theft of the first degree and a Level 7 first degree felony.²⁴

Additionally, s. 812.014(2)(d), F.S., provides that theft of property valued at \$100 or more, but less than \$750, is grand theft of the third degree, a Level 2 third degree felony,²⁵ if the property was taken from a dwelling or its unenclosed curtilage.

Petit theft is generally theft of property valued at less than \$750 or property without a specific monetary value that is not listed in s. 812.014(2), F.S. Except as provided in s. 812.014(2)(d),

¹⁸ Grand theft also includes: grand theft in which a motor vehicle is used as an instrumentality in committing the theft (s. 812.014(2)(a)3.a., F.S.); theft of a semitrailer deployed by a law enforcement officer; and theft of cargo, emergency medical equipment, and law enforcement equipment in a specified property value range (s. 812.014(2)(a)1. and 2., (2)(b)2., 3., and 4., F.S.). Further, penalties for grand theft are enhanced if committed after a declaration of an emergency and facilitated by the emergency and during a riot or an aggravated riot (s. 812.014(2)(b) and (c), F.S.).

¹⁹ See s. 812.014(2)(c)4.-13., F.S.

²⁰ Sections 812.014(2)(c)1. and 921.0022(3)(b), F.S. A third degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S. *But see* ss. 775.082(10) and 921.00241, F.S. (prison diversion).

²¹ Sections 812.014(2)(c)2. and 921.0022(3)(c), F.S.

²² Sections 812.014(2)(c)3. and 921.0022(3)(d), F.S.

²³ Sections 812.014(2)(b)1. and 921.0022(3)(f), F.S. A second degree felony is punishable by not more than 15 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

²⁴ Sections 812.014(2)(a)1. and 921.0022(3)(g), F.S. A first degree felony is generally punishable by not more than 30 years in state prison and a fine not exceeding \$10,000. When specifically provided by statute, a first degree felony may be punished by imprisonment for a term of years not exceeding life imprisonment. Sections 775.082 and 775.083, F.S.

²⁵ Section 921.0022(3)(b), F.S.

F.S., if the property stolen is valued at \$100 or more, but less than \$750, the offender commits petit theft of the first degree, which is a first degree misdemeanor.²⁶ Theft of any property not specified in s. 812.014(2), F.S., is petit theft of the second degree, which is a second degree misdemeanor.²⁷ However, a person who commits petit theft and who has previously been convicted of any theft commits a first degree misdemeanor²⁸ or a Level 1 third degree felony if there are 2 or more previous theft convictions.²⁹

A person commits a Level 4 second degree felony if that person individually, or in concert with one or more other persons, coordinates the activities of one or more persons in committing theft under s. 812.014, F.S., where the stolen property has a value in excess of \$3,000.³⁰

Retail Theft Statute (s. 812.015, F.S.)

While theft is generally punished in s. 812.014, F.S., and thefts from retailers can be punished under that statute, s. 812.015, F.S., is specifically directed at punishing “retail theft,”³¹ which the statute defines as “the taking possession of or carrying away of merchandise,³² property, money, or negotiable documents; altering or removing a label, universal product code, or price tag; transferring merchandise from one container to another; or removing a shopping cart, with intent to deprive the merchant³³ of possession, use, benefit, or full retail value.”³⁴

Section 812.015(8), F.S., provides that it is a third degree felony to commit retail theft, if the property stolen is valued at \$750 or more, and the person:

- Individually commits retail theft, or in concert with one or more other persons, coordinates the activities of one or more individuals in committing the offense, which may occur through multiple acts of retail theft, in which the amount of each individual theft is aggregated within a 30-day period to determine the value of the property stolen;
- Conspires with another person to commit retail theft with the intent to sell the stolen property for monetary or other gain, and subsequently takes or causes such property to be placed in

²⁶ Section 812.014(2)(e), F.S. A first degree misdemeanor is punishable by not more than one year in a county jail and a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

²⁷ Section 812.014(3)(a), F.S. A second degree misdemeanor is punishable by not more than 60 days in a county jail and a fine not exceeding \$500. Sections 775.082 and 775.083, F.S.

²⁸ Section 812.014(3)(b), F.S.

²⁹ Section 812.014(3)(c) and 921.0022(3)(a), F.S.

³⁰ Sections 812.014(6) and 921.0022(3)(b), F.S.

³¹ In addition to punishing retail theft, the statute does the following: requires specified fines or public service for a second or subsequent conviction for petit theft from a merchant, farmer, or transit agency (s. 812.015(2), F.S.); authorizes a merchant and others to take an offender into custody and detain the offender when there is probable cause (s. 812.015(3), F.S.); authorizes arrest without a warrant in specified circumstances (s. 812.015(4), F.S.); provides a liability shield for taking a person into custody or arresting a person in accordance with requirements of the statute (s. 812.015(5), F.S.); punishes resisting a law enforcement officer and others recovering property in specified circumstances (s. 812.015(6), F.S.); punishes possession or use of any antishoplifting or inventory control device countermeasure (s. 812.015(7), F.S.); and requires the Office of Program Policy Analysis and Government Accountability to perform a study every five years to determine the appropriateness of the monetary threshold amounts included in the statute (s. 812.015(11), F.S.). None of these provisions are addressed in the bill, and therefore, they are not discussed further in this analysis.

³² “Merchandise” means “any personal property, capable of manual delivery, displayed, held, or offered for retail sale by a merchant.” Section 812.015(1)(a), F.S.

³³ “Merchant” means “an owner or operator, or the agent, consignee, employee, lessee, or officer of an owner or operator, of any premises or apparatus used for retail purchase or sale of any merchandise.” Section 812.015(1)(b), F.S.

³⁴ Section 812.015(1)(d), F.S.

the control of another person in exchange for consideration, in which the stolen property taken or placed within a 30-day period is aggregated to determine the value of the stolen property;

- Individually, or in concert with one or more other persons, commits theft from more than one location within a 30-day period, in which the amount of each individual theft is aggregated to determine the value of the property stolen;
- Acts in concert with one or more other individuals within one or more establishments to distract the merchant, merchant's employee, or law enforcement officer in order to carry out the offense, or acts in other ways to coordinate efforts to carry out the offense; or
- Commits the offense through the purchase of merchandise in a package or box that contains merchandise other than, or in addition to, the merchandise purported to be contained in the package or box.

All of the retail theft offenses in s. 812.015(8), F.S., are Level 5 third degree felonies,³⁵ except for the conspiracy offense, which is a Level 3 third degree felony.³⁶

Section 812.015(9), F.S., provides that it is a second degree felony if the person:

- Violates s. 812.015(8), F.S., and has previously been convicted of a violation of this subsection;
- Individually, or in concert with one or more other persons, coordinates the activities of one or more persons in committing the offense of retail theft, in which the amount of each individual theft within a 30-day period is aggregated to determine the value of the stolen property and such value is in excess of \$3,000; or
- Conspires with another person to commit retail theft with the intent to sell the stolen property for monetary or other gain, and subsequently takes or causes such property to be placed in control of another person in exchange for consideration, in which the stolen property taken or placed within a 30-day period is aggregated to have a value in excess of \$3,000.

All of the retail theft offenses in s. 812.015(9), F.S., are Level 6 second degree felonies,³⁷ except for the conspiracy offense, which is unranked in the Code chart, and therefore defaults to Level 4 pursuant to s. 921.0023(2), F.S.

Section 812.015(10), F.S., provides that if a person commits retail theft in more than one judicial circuit within a 30-day period, the value of the stolen property resulting from the thefts in each judicial circuit may be aggregated, and the person must be prosecuted by the Office of the Statewide Prosecutor in accordance with s. 16.56, F.S.

III. Effect of Proposed Changes:

The bill amends s. 812.015, F.S., the retail theft statute, to create new third degree felony and second degree felony retail theft crimes based on multiple retail thefts occurring in a limited time period in different merchant locations. Specifically, the bill amends the statute to provide that a person commits retail theft, a third degree felony, if the person individually, or in concert with

³⁵ Section 921.0022(3)(e), F.S.

³⁶ Section 921.0022(3)(c), F.S.

³⁷ Section 921.0022(3)(g), F.S.

one or more other persons, commits five or more retail thefts within a 30-day period and in committing such thefts obtains or uses 10 or more items of merchandise, and the number of items stolen during each theft is aggregated within the 30-day period to determine the total number of items stolen, regardless of the value of such merchandise, and two or more of the thefts occur at different physical merchant locations.

The bill also amends the statute to provide that a person commits a second degree felony if the person individually, or in concert with one or more other persons, commits five or more retail thefts within a 30-day period and in committing such thefts obtains or uses 20 or more items of merchandise, and the number of items stolen during each theft is aggregated within the 30-day period to determine the total number of items stolen, regardless of the value of such merchandise, and two or more of the thefts occur at a different physical retail merchant location.

The bill also amends s. 812.015, F.S., to:

- Specify that a second degree felony retail theft violation includes not only a current third degree felony retail theft violation coupled with a prior third degree felony retail theft violation but a current third degree felony retail theft violation coupled with a prior second degree felony retail theft violation. This change is consistent with the approach to enhance punishment for repeat retail theft.
- Restructure the retail theft offense so that it is clearer that this element is an element of each specific retail theft act described in the statute. This a technical change and not a substantive change since property value is an element of each specified act and the amendment of the statute does not in any way change the property value threshold (\$750).

The bill also amends s. 921.0022, F.S., the offense severity level ranking chart of the Code, to rank the new third degree felony retail theft offense as a level 5 offense and rank the new second degree felony retail theft offense as a level 6 offense.

The bill takes effect on October 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent the new retail theft crimes reduces retail theft, especially large retail theft operations, the bill would reduce loss of inventory with a cost savings to retailers, which may be substantial.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of prison bed impact, if any, of legislation has not yet reviewed the bill. However, the EDR preliminarily estimates that bill will have a “positive indeterminate” prison bed impact (an unquantifiable increase in prison beds). Additionally, the EDR provided the following information regarding its estimate:

Existing retail theft felonies require that stolen property is worth \$750 or more (over a thirty day period), whereas these new felonies only require a specific number of items stolen (over a thirty day period), with at least two thefts occurring at different physical merchant locations. Retail theft is currently defined as “taking possession of or carrying away of merchandise, property, money, or negotiable documents; altering or removing a label, universal product code, or price tag; transferring merchandise from one container to another; or removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value.”

Per [Department of Corrections], in FY 18-19, there were 40 new commitments for retail theft as it is currently defined. There were 23 new commitments in FY 19-20 and 22 new commitments in FY 20-21. It is not known how many of these offenders committed offenses defined under this new language, nor is it known how many additional offenders there will be that have committed offenses as defined under this language with property valued under the \$750 threshold.³⁸

³⁸ *SB 1534 – Retail Theft (Identical HB 1511)*, Office of Economic and Demographic Research (on file with Senate Committee on Criminal Justice).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 812.015 and 921.0022.

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

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

CS by Criminal Justice on January 25, 2022:

The committee substitute removes a provision that excludes from these new retail theft crimes created by the bill a person's theft of one or more food items with the intent to consume such items for the sustenance of himself or herself or another person under his or her care.

B. Amendments:

None.

By the Committee on Criminal Justice; and Senators Boyd, Diaz,
and Garcia

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A bill to be entitled

An act relating to retail theft; amending s. 812.015,
F.S.; prohibiting certain retail theft at multiple
locations within a specified timeframe; providing
criminal penalties; amending s. 921.0022, F.S.;
ranking offenses for purposes of the offense severity
ranking chart of the Criminal Punishment Code;
providing an effective date.

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

Section 1. Subsections (8) and (9) of section 812.015,
Florida Statutes, are amended to read:

812.015 Retail and farm theft; transit fare evasion;
mandatory fine; alternative punishment; detention and arrest;
exemption from liability for false arrest; resisting arrest;
penalties.—

(8) Except as provided in subsection (9), a person who
commits retail theft commits a felony of the third degree,
punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
if ~~the property stolen is valued at \$750 or more, and the~~
person:

(a) Individually ~~commits retail theft~~, or in concert with
one or more other persons, coordinates the activities of one or
more individuals in committing the offense, which may occur
through multiple acts of retail theft, in which the amount of
each individual theft is aggregated within a 30-day period to
determine the value of the property stolen and such value is
\$750 or more;

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(b) Conspires with another person to commit retail theft
with the intent to sell the stolen property for monetary or
other gain, and subsequently takes or causes such property to be
placed in the control of another person in exchange for
consideration, in which the stolen property taken or placed
within a 30-day period is aggregated to determine the value of
the stolen property and such value is \$750 or more;

(c) Individually, or in concert with one or more other
persons, commits theft from more than one location within a 30-
day period, in which the amount of each individual theft is
aggregated to determine the value of the property stolen and
such value is \$750 or more;

(d) Acts in concert with one or more other individuals
within one or more establishments to distract the merchant,
merchant's employee, or law enforcement officer in order to
carry out the offense, or acts in other ways to coordinate
efforts to carry out the offense and such value is \$750 or more;

~~or~~

(e) Commits the offense through the purchase of merchandise
in a package or box that contains merchandise other than, or in
addition to, the merchandise purported to be contained in the
package or box and such value is \$750 or more; or

(f) Individually, or in concert with one or more other
persons, commits five or more retail thefts within a 30-day
period and in committing such thefts obtains or uses 10 or more
items of merchandise, and the number of items stolen during each
theft is aggregated within the 30-day period to determine the
total number of items stolen, regardless of the value of such
merchandise, and two or more of the thefts occur at different

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physical merchant locations.

(9) A person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the person:

(a) Violates subsection (8) and has previously been convicted of a violation of subsection (8) or of this subsection;

(b) Individually, or in concert with one or more other persons, coordinates the activities of one or more persons in committing the offense of retail theft, in which the amount of each individual theft within a 30-day period is aggregated to determine the value of the stolen property and such value is in excess of \$3,000; ~~or~~

(c) Conspires with another person to commit retail theft with the intent to sell the stolen property for monetary or other gain, and subsequently takes or causes such property to be placed in control of another person in exchange for consideration, in which the stolen property taken or placed within a 30-day period is aggregated to have a value in excess of \$3,000; or

(d) Individually, or in concert with one or more other persons, commits five or more retail thefts within a 30-day period and in committing such thefts obtains or uses 20 or more items of merchandise, and the number of items stolen during each theft is aggregated within the 30-day period to determine the total number of items stolen, regardless of the value of such merchandise, and two or more of the thefts occur at a different physical retail merchant location.

Section 2. Paragraphs (e) and (f) of subsection (3) of

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section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone

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crab traps, lines, or buoys;
 illegal bartering, trading, or
 sale, conspiring or aiding in
 such barter, trade, or sale, or
 supplying, agreeing to supply,
 aiding in supplying, or giving
 away stone crab trap tags or
 certificates; making, altering,
 forging, counterfeiting, or
 reproducing stone crab trap
 tags; possession of forged,
 counterfeit, or imitation stone
 crab trap tags; and engaging in
 the commercial harvest of stone
 crabs while license is
 suspended or revoked.

100

379.367(4) 3rd Willful molestation of a
 commercial harvester's spiny
 lobster trap, line, or buoy.

101

379.407(5)(b)3. 3rd Possession of 100 or more
 undersized spiny lobsters.

102

381.0041(11)(b) 3rd Donate blood, plasma, or organs
 knowing HIV positive.

103

440.10(1)(g) 2nd Failure to obtain workers'
 compensation coverage.

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104 440.105(5) 2nd Unlawful solicitation for the
 purpose of making workers'
 compensation claims.

105

440.381(2) 3rd Submission of false,
 misleading, or incomplete
 information with the purpose of
 avoiding or reducing workers'
 compensation premiums.

106

624.401(4)(b)2. 2nd Transacting insurance without a
 certificate or authority;
 premium collected \$20,000 or
 more but less than \$100,000.

107

626.902(1)(c) 2nd Representing an unauthorized
 insurer; repeat offender.

108

790.01(2) 3rd Carrying a concealed firearm.

109

790.162 2nd Threat to throw or discharge
 destructive device.

110

790.163(1) 2nd False report of bomb,
 explosive, weapon of mass
 destruction, or use of firearms
 in violent manner.

111

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	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
112			
	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
113			
	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
114			
	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
115			
	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
116			
	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
117			
	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
118			
	812.015 (8)(a) & (c)-	3rd	Retail theft; property stolen is valued at \$750 or more and

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	(e)		one or more specified acts.
119			
	<u>812.015(8)(f)</u>	<u>3rd</u>	<u>Retail theft; multiple thefts within specified period.</u>
120			
	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
121			
	812.081(3)	2nd	Trafficking in trade secrets.
122			
	812.131(2)(b)	3rd	Robbery by sudden snatching.
123			
	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
124			
	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
125			
	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
126			
	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
127			

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817.568(2)(b) 2nd Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons.

817.611(2)(a) 2nd Traffic in or possess 5 to 14 counterfeit credit cards or related documents.

817.625(2)(b) 2nd Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.

825.1025(4) 3rd Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.

827.071(4) 2nd Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.

827.071(5) 3rd Possess, control, or

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intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.

828.12(2) 3rd Tortures any animal with intent to inflict intense pain, serious physical injury, or death.

839.13(2)(b) 2nd Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.

843.01 3rd Resist officer with violence to person; resist arrest with violence.

847.0135(5)(b) 2nd Lewd or lascivious exhibition using computer; offender 18 years or older.

847.0137 3rd Transmission of pornography by electronic device or equipment.

847.0138 3rd Transmission of material harmful to minors to a minor by

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electronic device or equipment.

139

874.05(1)(b)

2nd

Encouraging or recruiting
another to join a criminal
gang; second or subsequent
offense.

140

874.05(2)(a)

2nd

Encouraging or recruiting
person under 13 years of age to
join a criminal gang.

141

893.13(1)(a)1.

2nd

Sell, manufacture, or deliver
cocaine (or other s.
893.03(1)(a), (1)(b), (1)(d),
(2)(a), (2)(b), or (2)(c)5.
drugs).

142

893.13(1)(c)2.

2nd

Sell, manufacture, or deliver
cannabis (or other s.
893.03(1)(c), (2)(c)1.,
(2)(c)2., (2)(c)3., (2)(c)6.,
(2)(c)7., (2)(c)8., (2)(c)9.,
(2)(c)10., (3), or (4) drugs)
within 1,000 feet of a child
care facility, school, or
state, county, or municipal
park or publicly owned
recreational facility or
community center.

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143

893.13(1)(d)1.

1st

Sell, manufacture, or deliver
cocaine (or other s.
893.03(1)(a), (1)(b), (1)(d),
(2)(a), (2)(b), or (2)(c)5.
drugs) within 1,000 feet of
university.

144

893.13(1)(e)2.

2nd

Sell, manufacture, or deliver
cannabis or other drug
prohibited under s.
893.03(1)(c), (2)(c)1.,
(2)(c)2., (2)(c)3., (2)(c)6.,
(2)(c)7., (2)(c)8., (2)(c)9.,
(2)(c)10., (3), or (4) within
1,000 feet of property used for
religious services or a
specified business site.

145

893.13(1)(f)1.

1st

Sell, manufacture, or deliver
cocaine (or other s.
893.03(1)(a), (1)(b), (1)(d),
or (2)(a), (2)(b), or (2)(c)5.
drugs) within 1,000 feet of
public housing facility.

146

893.13(4)(b)

2nd

Use or hire of minor; deliver
to minor other controlled
substance.

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147

893.1351(1) 3rd Ownership, lease, or rental for
trafficking in or manufacturing
of controlled substance.

148

149

(f) LEVEL 6

150

Florida
Statute

Felony
Degree

Description

151

316.027(2)(b) 2nd Leaving the scene of a
crash involving
serious bodily injury.

152

316.193(2)(b) 3rd Felony DUI, 4th or
subsequent conviction.

153

400.9935(4)(c) 2nd Operating a clinic, or
offering services
requiring licensure,
without a license.

154

499.0051(2) 2nd Knowing forgery of
transaction history,
transaction
information, or
transaction statement.

155

499.0051(3) 2nd Knowing purchase or

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156

receipt of
prescription drug from
unauthorized person.

499.0051(4)

2nd

Knowing sale or
transfer of
prescription drug to
unauthorized person.

157

775.0875(1)

3rd

Taking firearm from
law enforcement
officer.

158

784.021(1)(a)

3rd

Aggravated assault;
deadly weapon without
intent to kill.

159

784.021(1)(b)

3rd

Aggravated assault;
intent to commit
felony.

160

784.041

3rd

Felony battery;
domestic battery by
strangulation.

161

784.048(3)

3rd

Aggravated stalking;
credible threat.

162

784.048(5)

3rd

Aggravated stalking of

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			person under 16.
163	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
164	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
165	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
166	784.081(2)	2nd	Aggravated assault on specified official or employee.
167	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
168	784.083(2)	2nd	Aggravated assault on code inspector.
169	787.02(2)	3rd	False imprisonment; restraining with

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			purpose other than those in s. 787.01.
170	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
171	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
172	790.164(1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
173	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
174	794.011(8)(a)	3rd	Solicitation of minor to participate in

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	591-02276-22		20221534c1
			sexual activity by custodial adult.
175	794.05(1)	2nd	Unlawful sexual activity with specified minor.
176	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
177	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
178	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
179	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
180	810.145(8)(b)	2nd	Video voyeurism; certain minor victims;

	591-02276-22		20221534c1
			2nd or subsequent offense.
181	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
182	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
183	812.015(9)(a)	2nd	Retail theft; property stolen \$750 or more; second or subsequent conviction.
184	812.015(9)(b)	2nd	Retail theft; aggregated property stolen within 30 days is \$3,000 or more; coordination of others.
185	<u>812.015(9)(d)</u>	<u>2nd</u>	<u>Retail theft; multiple thefts within specified period.</u>

186	591-02276-22	20221534c1	
	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
187	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
188	817.49(2)(b)2.	2nd	Willful making of a false report of a crime resulting in death.
189	817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
190	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
191	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
192	825.1025(3)	3rd	Lewd or lascivious molestation of an

Page 19 of 22

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	591-02276-22	20221534c1	
			elderly person or disabled adult.
193	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
194	827.03(2)(c)	3rd	Abuse of a child.
195	827.03(2)(d)	3rd	Neglect of a child.
196	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
197	836.05	2nd	Threats; extortion.
198	836.10	2nd	Written or electronic threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.
199	843.12	3rd	Aids or assists person

Page 20 of 22

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

591-02276-22	20221534c1	
		to escape.
200	847.011	3rd Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
201	847.012	3rd Knowingly using a minor in the production of materials harmful to minors.
202	847.0135(2)	3rd Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
203	914.23	2nd Retaliation against a witness, victim, or informant, with bodily injury.
204	944.35(3)(a)2.	3rd Committing malicious battery upon or inflicting cruel or

591-02276-22	20221534c1	
		inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
205	944.40	2nd Escapes.
206	944.46	3rd Harboring, concealing, aiding escaped prisoners.
207	944.47(1)(a)5.	2nd Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
208	951.22(1)(i)	3rd Firearm or weapon introduced into county detention facility.
209		
210		Section 3. This act shall take effect October 1, 2022.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JIM BOYD

21st District

COMMITTEES:

Banking and Insurance, *Chair*
Agriculture
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Judiciary
Rules

JOINT COMMITTEE:

Joint Legislative Auditing Committee

January 26, 2022

Senator Keith Perry
404 South Monroe Street
201 The Capitol
Tallahassee, FL 32399

Dear Chairman Perry:

I respectfully request CS/SB1534: Retail Theft, be scheduled for a hearing in the Appropriations Subcommittee on Criminal and Civil Justice, at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me.

Thank you for your consideration of this matter.

Best regards,

A handwritten signature in blue ink, appearing to read "Jim Boyd".

Jim Boyd

cc: Marti Harkness
Hayley Kolich

REPLY TO:

- ☐ 717 Manatee Avenue West, Bradenton, Florida 34205 (941) 742-6445
- ☐ 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

1-1-22

Meeting Date

1534

Bill Number or Topic

Approp. Criminal Justice
Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Matt Dunagan

Phone 850-877-2165

Address 2617 Mahan Drive
Street

Email mdunagan@flsheriffs.org

Tallahassee FL 32308
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Florida Sheriffs Association

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](#)

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S-001 (08/10/2021)

2/1

Meeting Date

Criminal Civil Justice Approps

Committee

The Florida Senate

APPEARANCE RECORD

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1534

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Lorena Holley**

Phone **850.222.4082**

Address **227 S. Adams**

Email **lorena@frf.org**

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Florida Retail Federation

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf](#) ([flsenate.gov](#))

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

2/1/22

Meeting Date

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CS/SB 1534

Bill Number or Topic

App. Criminal/Civil Justice

Committee

Amendment Barcode (if applicable)

Name

Buddy Jacobs General Counsel

Phone

904 261-3643

Address

State Attorneys of Fla.
FLA. Prosecuting Association

Email

bjacobs@comcast.net

Street

Fernandina Bch

FL

32084

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

FPAA

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](#)

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S-001 (08/10/2021)

02/01/2022

Meeting Date

Appropriations Subcommittee on Criminal and Civil Justice

Committee

Name **Richard Martin**

Phone **850-245-0155**

Address **400 S. Monroe Street PL-01**

Email **Richard.Martin@myfloridalegal.com**

Street

Tallahassee

City

FL

State

32399

Zip

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
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1534

Bill Number or Topic

Amendment Barcode (if applicable)

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Office of Attorney General

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf](#) ([flsenate.gov](#))

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

S-001 (08/10/2021)

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 1358

INTRODUCER: Senator Rouson

SUBJECT: Task Force on the Monitoring of Children in Out-of-Home Care

DATE: January 31, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Preston	Cox	CF	Favorable
2. Kolich	Harkness	ACJ	Recommend: Favorable
3. _____	_____	AP	_____

I. Summary:

SB 1358 creates the Task Force on the Monitoring of Children in Out-of-Home Care adjunct to the Florida Department of Law Enforcement (FDLE), with the FDLE providing administrative support for the Task Force. The Task Force is required to identify and counter the root causes of why children go missing while in out-of-home care and to ensure that prompt and effective action is taken to address such causes. The Task Force must examine and recommend improvements to current policies, procedures, programs, and initiatives to prevent children from going missing while in out-of-home care and to ensure that timely and comprehensive steps are taken to find children who are missing for any reason, including, but not limited to, running away, human trafficking, and abduction by or absconding with a parent or an individual who does not have care or custody of the child.

The Task Force is to be composed of 13 members, including, but not limited to, a member of the Senate, a member of the House of Representatives, and representatives from the FDLE, the Guardian ad Litem program, and the community-based care lead agencies (CBCs), a licensed foster parent, and a young adult who has aged out of the foster care system. Dates are specified for member appointments and the initial meeting of the Task Force.

The bill requires the Department of Children and Families (DCF or department) to submit monthly reports through October, 2023, to assist the Task Force in fulfilling its duties and requires the Florida Institute for Child Welfare to conduct focus groups with children in out-of-home care and young adults who have aged out of the foster care system to examine why children leave their out-of-home placements and how to prevent them from leaving.

The bill requires the Task Force to submit a report with findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1, 2023.

The bill includes a date for repeal of the section creating the Task Force on June 30, 2024, unless reviewed and saved from repeal by the Legislature.

The bill is anticipated to have a significant negative fiscal impact on the FDLE. See Section V. Fiscal Impact Statement.

The bill has an effective date of July 1, 2022.

II. Present Situation:

Out-of-home Care

Current law requires any person who knows or suspects that a child has been abused, abandoned, or neglected to report such knowledge or suspicion to the Florida central abuse hotline (hotline).¹ A child protective investigation begins if the hotline determines the allegations meet the statutory definition of abuse,² abandonment,³ or neglect.⁴ A child protective investigator (CPI) investigates the situation either immediately, or within 24 hours after the report is received, depending on the nature of the allegation.⁵

After conducting an investigation, if the CPI determines that the child is in need of protection and supervision that necessitates removal, the investigator may initiate formal proceedings to remove the child from his or her home. When the DCF removes a child from the home, known as out-of-home care, a series of dependency court proceedings must occur before a child may be adjudicated dependent.⁶

When children cannot safely remain at home with parents, Florida's child welfare system finds safe out-of-home placements for such children. After an assessment to determine the most

¹ Section 39.201(1), F.S.

² Section 39.01(2), F.S. The term "abuse" means any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes the birth of a new child into a family during the course of an open dependency case when the parent or caregiver has been determined to lack the protective capacity to safely care for the children in the home and has not substantially complied with the case plan towards successful reunification or met the conditions for return of the children into the home. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

³ Section 39.01(1), F.S. The term "abandoned" or "abandonment" means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both.

⁴ Sections 39.01(50) and 39.201(2)(a), F.S. "Neglect" occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. The foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected by such person. A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian; however, such an exception does not preclude a court from ordering necessary services.

⁵ Section 39.101(2), F.S.

⁶ See s. 39.01(14), F.S., for the definition of "child who is found to be dependent".

appropriate out-of-home placement, a child may be placed with a relative, fictive kin, licensed foster parent, in a group home or residential setting.⁷ While in out-of-home care, the child and his or her parents receive services to address problems that led to the removal so that reunification or other permanency option may be reached as quickly as possible.⁸

Once removed, the shelter and daily care for the child are provided by foster or kinship families or group home staff. These caregivers undergo an assessment and licensing or certification process to ensure their suitability as caregivers. While in out-of-home care, services are provided to the child and his or her parents to help improve the problems that led to the removal so that reunification or other permanency options may be reached as quickly as possible.⁹

Missing Children in DCF Custody

When Rilya Wilson disappeared in 2002, national awareness of the problem of children becoming missing while under the care of child welfare agencies intensified.¹⁰ In the wake of her disappearance, at the direction of Governor Jeb Bush, DCF and the Florida Department of Law Enforcement (FDLE) teamed up to locate 393 missing children who were under the DCF's custody.¹¹ The multi-agency, statewide effort was entitled "Operation SafeKids" (Operation). Seven Regional Child Location Strike Forces were created in each of the FDLE's seven regions. The results of the Operation included:

- 292 (75%) children were located or cases were closed.
- 13 (3%) children aged out of care and were no longer under the custody of the DCF but still had active cases with law enforcement.
- 88 (22%) children were not located and remained under active investigation by the local law enforcement agency and the DCF. Of these, 20 were included in the Endangered/Parental Abduction/Involuntary group, and 68 were included in the Runaway group.¹²

The FDLE reports that the FDLE's Missing Endangered Persons Information Clearinghouse (MEPIC)¹³ led a multi-agency, statewide effort, titled "Operation Safe Kids." Part of this

⁷ Rule 65C-28.004, F.A.C.

⁸ Child Welfare Information Gateway, *Out-of- Home Care Overview*, available at <https://www.childwelfare.gov/topics/outofhome/overview/#:~:text=Out%2Dof%2Dhome%20care%20is,to%20abuse%20and%20for%20neglect> (last visited Jan. 22, 2022).

⁹ *Id.*

¹⁰ Four-year old Rilya Wilson went missing while in DCF's custody after the termination of her mother's parental rights. The DCF did not discover her disappearance until two years later, when Rilya was not found living at the home of her caregiver. The Florida Legislature passed, and the Governor signed, a bill into law that created the Rilya Wilson Act. Section 39.604, F.S., requires a child from birth to the age of school entry, who is under court-ordered protective supervision or in out-of-home care and is enrolled in an early education or child care program, to attend the program 5 days a week unless the court grants an exemption.

¹¹ The FDLE and the DCF, *Operation SafeKids, Results, Findings & Recommendations* (Dec. 17, 2002), available at https://popcenter.asu.edu/sites/default/files/problems/runaways/PDFs/FL%20DOC&F_2002.pdf (last visited January 22, 2022).

¹² *Id.*

¹³ The Missing Endangered Persons Information Clearinghouse (MEPIC) is the central repository of information regarding missing endangered persons in Florida. MEPIC assists law enforcement agencies and Florida's citizens in finding missing persons by providing analytical services and engaging the public in the search. As part of these services, MEPIC has worked with partner agencies to develop the Florida AMBER Plan and Florida Silver Alert Plan. Under these plans, MEPIC is responsible for issuing all AMBER Alerts, Missing Child Alerts and State Silver Alerts in Florida, *available at*: <https://www.fdle.state.fl.us/mcicsearch/> (Last visited January 11, 2022).

operation's work was implementation of the now standard procedure, opening missing persons cases for every child discovered missing while under the DCF custody. The DCF, as the custodian of the missing child, makes the initial missing report to the appropriate local law enforcement agency who then enters the case into the Florida Crime Information Center (FCIC). This entry ensures all law enforcement and criminal justice professionals nationwide making inquiries regarding a possible missing child similar to the subject of the case, are notified of the Florida missing child. Additionally, the DCF creates a record in the Florida Safe Families Network (FSFN), their internal database, concerning the missing episode.¹⁴

A DCF liaison, co-located within MEPIC, quality controls the information in FSFN using internal DCF information and the missing child's FCIC entry. This information is electronically transferred from the DCF liaison to members of MEPIC who facilitate its entry into MEPIC's Missing Persons Database (MPDB). In addition to populating a variety of Florida systems and access points to the information, MPDB also electronically transfers the information regarding the child to the National Center for Missing and Exploited Children (NCMEC). When fully implemented as an electronic network in February of 2008, this relay process became the first of its kind in the nation, rapidly transferring the missing record of a child in state care, to both state and federal missing persons clearinghouses to help optimize the safe recovery of the child in minimal time.¹⁵

The co-location and partnership with the DCF personnel within MEPIC facilitates the ongoing effectiveness and continued success of this system as well as the facilitation of near immediate agency-to-agency communication and information sharing between state and local partners on all DCF missing child cases. This benefit is particularly valuable with those cases involving the most serious danger for the children and urgency required to insure a safe recovery.¹⁶

Additionally, a Florida Senate interim project report noted that the disappearance of Rilya Wilson in 2002 raised national awareness of the problem of children who become missing while under the care of the child welfare agencies charged with protecting them. Since then, Florida and many other states studied the issue and enacted legislation and implemented policies intended to improve tracking of children in state care. The report made a number of recommendations related to changes in Florida law, including:

- The DCF should be given rule-making authority specific to missing children. The department should be directed to promulgate rules that will provide comprehensive, explicit and consistent guidelines to be followed by its employees and contracted providers.
- The Legislature should consider amending Chapter 39 to require the department and its contracted providers to report a child as missing to the appropriate law enforcement agency, after making reasonable, but unsuccessful, efforts to locate the child and determining that it is necessary to report the child as missing.
- Section 937.021(1), F.S., should be amended to make it clear that a law enforcement agency must take reports of missing children not only from parents and guardians, but also from the department or its contracted providers.

¹⁴ The FDLE, *2022 FDLE Legislative Bill Analysis SB 1358*, p. 5, January 19, 2022. (on file with the Senate Committee on Children, Families and Elder Affairs) (hereinafter cited as "The FDLE SB 1358 Analysis").

¹⁵ *Id.*

¹⁶ *Id.*

- Section 787.04(3), F.S., related to removing a child during an investigation or while under protective supervision, should be amended to require that a defendant act knowingly and willfully, rather than with criminal intent, after receiving constructive or actual notice of the pending matter.¹⁷

All of these recommendations were enacted during the 2008 legislative session.¹⁸

Collection of Information Related to Children in Out-of-home Care

Federal legislation enacted in 1993 supports states in planning, designing, developing, and implementing a Statewide Automated Child Welfare Information System (SACWIS) system. SACWIS is a comprehensive, automated case management system that helps social workers manage foster care and adoption cases. All states and the District of Columbia collect data on their child welfare cases and activities for entry into a statewide automated system that provides reports for a variety of uses.¹⁹

The Children's Bureau requires states to include 66 data elements, including demographic information on the child's race, age, gender, and date of entry into care. The SACWIS includes case-related information, such as the reason identified for removing the child and placing him or her into foster care, service goals, number of placements, and availability for adoption. States may include other data elements to meet their needs, including elements that help caseworkers manage their caseloads within the structure of the child welfare system. States use their SACWIS data to create management and outcome reports.²⁰

The DCF's Florida Safe Families Network (FSFN) is the state's SACWIS.²¹ FSFN serves as the statewide electronic case record for all child abuse investigations and case management activities in Florida. The amount of data entered into FSFN is extensive and if fully utilized can provide infinite details on the whereabouts and safety of children in out-of-home care.

Florida Institute for Child Welfare

In 2014, the Legislature established the Florida Institute for Child Welfare (FICW) at the Florida State University, College of Social Work. The Legislature created the FICW to provide research and evaluation that contributes to a more sustainable, accountable, and effective child welfare system. The purpose of the FICW is to advance the well-being of children and families by improving the performance of child protection and child welfare services through research,

¹⁷ The Florida Senate, Committee on Children, Families, and Elder Affairs, *Missing Children*, Interim Project Report 2008-106, October 2007, available at <https://www.flsenate.gov/UserContent/Committees/Publications/InterimWorkProgram/2008/pdf/2008-106cf.pdf> (last visited January 22, 2022).

¹⁸ Chapter 2008-245, L.O.F.

¹⁹ Substance Abuse and Mental Health Services Administration Center for Substance Abuse Treatment and Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, *Introduction to Cross-System Data Sources in Child Welfare, Alcohol and Other Drug Services, and Courts*, HHS Publication No. SMA-11-4630, 2011, available at https://ncsacw.samhsa.gov/files/DataPrimer_508.pdf (last visited January 22, 2022).

²⁰ *Id.*

²¹ Rule 65C-38.001, F.A.C.

policy analysis, evaluation, and leadership development.²² Current law requires the FICW to establish an affiliate network of public and private universities with accredited degrees in social work. All public universities with such programs in Florida are currently part of the network. In 2017, the FICW expanded its affiliate network to include research affiliates, and there are now over 50 research faculty affiliates. The FICW is statutorily mandated to:

- Maintain a program of research contributing to the scientific knowledge related to child safety, permanency, and child and family well-being.
- Advise the DCF and other organizations about scientific evidence regarding child welfare practice, as well as management practices and administrative processes.
- Assess performance of child welfare services based on specified outcome measures.
- Evaluate training requirements for the child welfare workforce and the effectiveness of training.
- Develop a program of training and consulting to assist organizations with employee retention.
- Identify and communicate effective policies and promising practices.
- Recommend improvements in the state's child welfare system.
- Submit annual reports to the Governor and Legislature.²³

The FICW sponsors and supports interdisciplinary research projects and program evaluation initiatives that contribute to knowledge relevant to enhancing Florida's child welfare outcomes.

Task Force

Section 20.03, F.S., includes definitions related to organizational structure. In part, it defines a "task force" as an advisory body created without specific statutory enactment for a time not to exceed one year or created by specific statutory enactment for a time not to exceed three years and appointed to study a specific problem and recommend a solution or policy alternative with respect to that problem. Its existence terminates upon the completion of its assignment.²⁴

Florida has established a number of task forces in the past related to child welfare. These have typically been created either by the Governor or the DCF's Secretary in response to a tragic incident involving a child under the DCF's custody. Examples of these include, in part:

- The Nubia Report, the Investigative Panel's Findings and Recommendations, 2011.²⁵
- Family Safety Quality Assurance Review of Courtney Alisa Clark, Initial Findings, 2007.²⁶
- Report of Gabriel Myers Work Group on Child-on-Child Sexual Abuse, 2010.²⁷
- Governor's Blue Ribbon Panel on Child Protection, 2003 (Rilya Wilson).²⁸

²² Section 1004.615, F.S.

²³ *Id.*

²⁴ Section 20.30(8), F.S.

²⁵ Lawrence, D., Martinez, R., and Sewell, J., *The Nubia Report, The Investigative Panel's Findings and Recommendations*, available at <http://centerforchildwelfare.org/kb/bppub/NubiasStory.pdf> (last visited Jan. 20, 2022).

²⁶ The DCF, *Family Safety Quality Assurance Review of Courtney Alisa Clark, Initial Findings*, available at <http://centerforchildwelfare.org/kb/FIPerformance/cclark%20QA%20Initial%20Findings.pdf> (last visited Jan. 20, 2022).

²⁷ The DCF, *Report of Gabriel Myers Work Group on Child-on-Child Sexual Abuse*, available at <https://www.myflfamilies.com/initiatives/GMWorkgroup/docs/Gabriel%20Myers%20COC%20Report%20May%2014%202010.pdf> (last visited Jan. 20, 2022).

²⁸ The DCF, *Governor's Blue Ribbon Panel on Child Protection*, available at <http://centerforchildwelfare.org/kb/FIPerformance/BlueRibbonFinal110703.pdf> (last visited Jan. 20, 2022).

There is currently no task force that monitors children in out-of-home care.

III. Effect of Proposed Changes:

The bill creates the Task Force on the Monitoring of Children in Out-of-Home Care within the FDLE. The Task Force is created to identify and counter the root causes of why children go missing while in out-of-home care and to ensure prompt and effective action is taken to address such causes. The bill requires the Task Force to examine and recommend improvements to current policies, procedures, programs, and initiatives to prevent children from going missing while in out-of-home care and to ensure that timely and comprehensive steps are taken to find children who are missing for any reason, including, but not limited to, running away, human trafficking, and abduction by a parent or a person who does not have care or custody of the child.

The Task Force must be composed of the following 13 members:

- A member of the Senate, appointed by the President of the Senate.
- A member of the House of Representatives, appointed by the Speaker of the House of Representatives.
- The Secretary of the DCF, or designee.
- The Secretary of the Department of Juvenile Justice, or designee.
- The executive director of the Statewide Guardian ad Litem Office, or designee.
- The executive director of the FDLE, or designee.
- A representative from Safe Kids Florida, appointed by the State Surgeon General.
- A representative from the Statewide Council on Human Trafficking, appointed by the Attorney General.
- A representative from a CBC that delivers child welfare services in a rural county, appointed by the DCF's Secretary.
- A representative from a CBC that delivers child welfare services in an urban county, appointed by DCF's Secretary.
- A licensed foster parent, appointed by the DCF's Secretary.
- A representative from a residential group care provider, appointed by the DCF's Secretary.
- A young adult who aged out of the foster care system, appointed by the DCF's Secretary.

The bill requires all Task Force appointments to be made by August 1, 2022, and provides that each member serves at the pleasure of the appointing official. A vacancy on the Task Force must be filled in the same manner as the original appointment. The members must elect a chair from among the members.

The bill requires the Task Force to convene no later than September 1, 2022, and to meet monthly thereafter or upon the call of the chair. The bill allows meetings to be held through teleconference or other electronic means.

The bill requires the Task Force to:

- Analyze statistical data regarding children in out-of-home care who are missing and the reasons why, if known;
- Identify the root causes of why children go missing while in out-of-home care and how to prevent children from going missing while in out-of-home care;
- Assess the relationship between children who go missing from out-of-home care and the risks of such children becoming victims of human trafficking;
- Assess the comprehensiveness and effectiveness of existing policies and procedures for preventing children in out-of-home care from going missing, for promptly determining whether such children are missing, and for locating such children;
- Evaluate the state's approaches to reporting on the individual status of children missing from out-of-home care and the results of the efforts to locate such children, including, but not limited to, the use of technology, training, communication, and cooperation;
- Measure the overall performance of efforts to locate and recover children missing from out-of-home care, including, but not limited to, the communication and response between CBC's, the DCF, and other entities;
- Collaborate with the FICW to identify best practices used in other states for monitoring the location of children in out-of-home care who go missing, and evaluate whether such practices should be adopted in the state; and
- Submit recommendations to improve policies, procedures, and systems in the state, including, but not limited to, technology, training, communication, and cooperation, so all entities are effectively monitoring children in out-of-home care, responding appropriately when such children go missing, and preventing such children from going missing while in out-of-home care.

The bill requires the FICW to conduct focus groups with children in out-of-home care and young adults who aged out of the foster care system to assist the Task Force in fulfilling its duties. The focus groups must, at a minimum, consider the reasons why such children seek to leave their out-of-home placement, identify opportunities and resources to assist and prevent children from leaving their placements, and to facilitate the return of such missing children. The bill requires the FICW to submit the findings from the focus groups to the Task Force by April 1, 2023.

The bill requires the DCF to provide monthly reports to the Task Force until October 1, 2023. The monthly reports must, at a minimum, address the number and percentage of children in out-of-home care who have been reported missing, the reasons why such children are missing, if known, and the length of time between when such children are reported missing and their recovery or return. The monthly reports must categorize the required data by age, county, CBC, and reason, if known.

The Task Force must submit a report with its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1, 2023.

The bill includes a repeal date of June 30, 2024, for the section creating the Task Force, unless reviewed and saved from repeal by the Legislature.

The bill provides an effective date of July 1, 2022.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The FDLE reports that due to the short-term nature of the Task Force, the FDLE states it will require two OPS positions totaling \$140,076 (\$130,986 recurring) to support the Task Force.²⁹

VI. Technical Deficiencies:

None.

²⁹ The FDLE, *Agency Analysis for SB 1358*, p. 4, January 19, 2022 (on file with Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as “The FDLE SB 1358 Analysis”).

VII. Related Issues:

The FDLE has reported that as a task force pursuant to s. 20.03, F.S., this body would be required to meet sunshine meeting and records requirements. The bill does not provide an exception for closed sessions, therefore, task force members would not be able to openly discuss confidential and/or exempt records without waiving such rights. Further, the FDLE states that there may be the need to occasionally possess and review law enforcement sensitive information in this setting.³⁰ The FDLE respectfully recommends mirroring language found in s. 943.687(8), FS, which provides: “Any portion of a meeting of the Marjory Stoneman Douglas High School Public Safety Commission at which exempt or confidential and exempt information is discussed is exempt from s. 286.011, FS, and s. 24(b), Art. I of the State Constitution.”³¹

Additionally, the FDLE requests that additional language be included in the bill to allow for the Task Force to possess records while maintaining any exemption or confidentiality status those records may have already maintained and language authorizing closed sessions to discuss confidential and/or exempt materials that the Task Force may regularly need, such as active criminal intelligence information or active criminal investigative information, or personal identifiable information of individuals such as victims who may have constitutional rights under Marsy’s Law.³²

VIII. Statutes Affected:

The bill creates section 39.4093 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.

³⁰ The FDLE SB 1358 Analysis, p. 5.

³¹ *Id.*

³² *Id.*

By Senator Rouson

19-01584-22

20221358__

A bill to be entitled

An act relating to the Task Force on the Monitoring of Children in Out-of-Home Care; creating s. 39.4093, F.S.; creating the task force adjunct to the Department of Law Enforcement; requiring the department to provide certain services; specifying the purpose of the task force; specifying the composition of the task force; providing requirements for member appointments, election of a chair, and meetings; specifying duties of the task force; requiring the Florida Institute for Child Welfare to conduct certain focus groups and submit its findings to the task force by a specified date; requiring the Department of Children and Families to submit certain monthly reports to the task force through a specified date; requiring the task force to submit a report to the Governor and Legislature by a specified date; providing for future repeal; providing an effective date.

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

Section 1. Section 39.4093, Florida Statutes, is created to read:

39.4093 Task Force on the Monitoring of Children in Out-of-Home Care.-

(1) CREATION.-The Task Force on the Monitoring of Children in Out-of-Home Care, a task force as defined in s. 20.03(8), is created adjunct to the Department of Law Enforcement. The

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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20221358__

Department of Law Enforcement shall provide administrative and staff support services relating to the functions of the task force.

(2) PURPOSE.-The purpose of the task force is to identify and counter the root causes of why children go missing while in out-of-home care and to ensure that prompt and effective action is taken to address such causes. The task force shall examine and recommend improvements to current policies, procedures, programs, and initiatives to prevent children from going missing while in out-of-home care and to ensure that timely and comprehensive steps are taken to find children who are missing for any reason, including, but not limited to, running away, human trafficking, and abduction by or absconding with a parent or an individual who does not have care or custody of the child.

(3) MEMBERSHIP; MEETINGS.-

(a) The task force is composed of the following members:

1. A member of the Senate, appointed by the President of the Senate.

2. A member of the House of Representatives, appointed by the Speaker of the House of Representatives.

3. The secretary, or his or her designee.

4. The Secretary of Juvenile Justice, or his or her designee.

5. The executive director of the Statewide Guardian Ad Litem Office, or his or her designee.

6. The executive director of the Department of Law Enforcement, or his or her designee.

7. A representative from Safe Kids Florida, appointed by the State Surgeon General.

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59 8. A representative from the Statewide Council on Human
 60 Trafficking, appointed by the Attorney General.

61 9. A representative from a community-based care lead agency
 62 that delivers child welfare services in a rural county,
 63 appointed by the secretary.

64 10. A representative from a community-based care lead
 65 agency that delivers child welfare services in an urban county,
 66 appointed by the secretary.

67 11. A licensed foster parent, appointed by the secretary.

68 12. A representative from a residential group care
 69 provider, appointed by the secretary.

70 13. A young adult who aged out of the foster care system,
 71 appointed by the secretary.

72 (b) Appointments to the task force must be made by August
 73 1, 2022. Each member shall serve at the pleasure of the official
 74 who appointed the member. A vacancy on the task force must be
 75 filled in the same manner as the original appointment.

76 (c) The task force shall elect a chair from among its
 77 members.

78 (d) The task force shall convene no later than September 1,
 79 2022. The task force shall meet monthly or upon the call of the
 80 chair. The task force shall hold its meetings through
 81 teleconference or other electronic means.

82 (4) DUTIES.—The duties of the task force include all of the
 83 following:

84 (a) Analyzing statistical data regarding children in out-
 85 of-home care who are missing and the reasons why the children
 86 are missing, if known.

87 (b) Identifying the root causes of why children go missing

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88 while in out-of-home care and how to prevent children from going
 89 missing while in out-of-home care.

90 (c) Assessing the relationship between children who go
 91 missing from out-of-home care and the risks of such children
 92 becoming victims of human trafficking.

93 (d) Assessing the comprehensiveness and effectiveness of
 94 existing policies and procedures for preventing children in out-
 95 of-home care from going missing, for promptly determining
 96 whether such children are missing, and for locating such
 97 children.

98 (e) Evaluating the state's approaches to reporting on the
 99 individual status of children missing from out-of-home care and
 100 the results of the efforts to locate such children, including,
 101 but not limited to, the use of technology, training,
 102 communication, and cooperation.

103 (f) Measuring the overall performance of efforts to locate
 104 and recover children missing from out-of-home care, including,
 105 but not limited to, the communication and response between
 106 community-based care lead agencies, the department, and other
 107 entities.

108 (g) Collaborating with the Florida Institute for Child
 109 Welfare to identify best practices used in other states for
 110 monitoring the location of children in out-of-home care who go
 111 missing, and evaluating whether such practices should be adopted
 112 in this state.

113 (h) Submitting recommendations to improve policies,
 114 procedures, and systems in this state, including, but not
 115 limited to, technology, training, communication, and
 116 cooperation, so that all entities are effectively monitoring

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117 children in out-of-home care, responding appropriately when such
 118 children go missing, and preventing such children from going
 119 missing while in out-of-home care.

120 (5) FOCUS GROUPS.—The Florida Institute for Child Welfare
 121 shall conduct focus groups with children in out-of-home care and
 122 young adults who aged out of the foster care system to assist
 123 the task force in fulfilling its duties. The focus groups shall,
 124 at a minimum, consider the reasons why such children seek to
 125 leave their out-of-home placement, and identify opportunities
 126 and resources to assist and prevent children from leaving their
 127 placements and to facilitate the return of such missing
 128 children. The institute shall submit the findings from the focus
 129 groups to the task force by April 1, 2023.

130 (6) REPORTS.—

131 (a) Through October 1, 2023, the department shall provide
 132 monthly reports to the task force to assist the task force in
 133 fulfilling its duties. The monthly reports must, at a minimum,
 134 address the number and percentage of children in out-of-home
 135 care who have been reported missing; the reasons why such
 136 children are missing, if known; and the length of time between
 137 when such children are reported missing and their recovery or
 138 return. The monthly report must categorize the required data by
 139 age, county, community-based care lead agency, and reasons why
 140 such children are missing, if known.

141 (b) By October 1, 2023, the task force shall submit to the
 142 Governor, the President of the Senate, and the Speaker of the
 143 House of Representatives a report that compiles the findings and
 144 recommendations of the task force.

145 (7) REPEAL.—This section is repealed June 30, 2024, unless

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146 reviewed and saved from repeal by the Legislature.
 147 Section 2. This act shall take effect July 1, 2022.

2/1/22

Meeting Date

CJ Approps

Committee

The Florida Senate
APPEARANCE RECORD

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1358

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Victoria Zapp

Phone

850/241 6309

Address

310 W. College Ave.

Email

VICTORIA@TEAM180.COM

Street

TLH

City

FL

State

32301

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

FL COALITION
FOR CHILDREN

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf](#) ([flsenate.gov](#))

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

Bill Number or Topic

Amendment Barcode (if applicable)

Meeting Date

Committee

Name

Phone

Address

Street

City

FL

State

32809

Zip

Email

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☒

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Florida PTA

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

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: SPB 7040

INTRODUCER: For consideration by the Appropriations Subcommittee on Criminal and Civil Justice

SUBJECT: Time Limitations for Preadjudicatory Juvenile Detention Care

DATE: January 31, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stokes	Harkness		Pre-meeting

I. Summary:

SPB 7040 amends s. 985.24, F.S., providing that the court may order a child placed on supervised release detention care to comply with any condition established by the Department of Juvenile Justice (DJJ) and ordered by the court, including electronic monitoring, when the court finds such condition necessary to preserve public safety or to ensure the child's safety or appearance in court.

The bill authorizes a court to order a child be placed on *supervised release detention* care for any time period until an adjudicatory hearing for the case has been commenced. If a child has served 75 days on supervised release detention care, the court must conduct a hearing to determine if continued supervised release detention care is warranted.

The bill specifies that, except in specified circumstances, a child may not be held in *secure detention* for longer than 21 days unless an adjudicatory hearing has been commenced. Under current law, a child generally may not be held in *secure* or *supervised release detention* care for longer than 21 days, except in specified circumstances.

Additionally, the bill provides that the court may transition a child between secure detention care and supervised release detention care, including electronic monitoring, if the court finds such placement is necessary. Each period of secure detention care counts toward the 21 day time limitation, whether served consecutively or nonconsecutively.

Currently, upon a showing of good cause that additional time for the prosecution or defense is needed, the court may extend the length of detention for an additional 9 days, for specified offenses. The bill authorizes a court to also extend the length of detention based upon the totality of the circumstances, including the preservation of public safety, warranting an extension. Additionally, the bill increases the length of such extension from 9 days to up to 21 days. The bill expands the list of specified offenses to include:

- Any second degree felony; and
- A third degree felony involving violence against any individual.

The court may continue to extend the period of secure detention in increments of up to 21 days by conducting a hearing before the expiration of the current period, excluding Saturdays, Sundays, and legal holidays. At such hearing the court must make required findings on the record. If the court extends the time period of secure detention care, it must ensure that an adjudicatory hearing for the case commences as soon as is reasonably possible and prioritize the efficient disposition of those cases in which the child has served 60 or more days in secure detention care.

The bill provides that any period of supervised release detention care must be excluded from the time limits for detention care. The bill removes language contained in s. 985.26(4)(b), F.S., relating to the tolling of supervised release detention care because this language becomes obsolete with the changes made to this section by the bill.

Any electronic monitoring ordered by a court as a condition of supervised release detention care may be supervised by the DJJ, a law enforcement agency, or the department and a law enforcement agency working in partnership. However, the bill specifies that it does not require a law enforcement agency to supervise a child placed on electronic monitoring.

This bill may have an indeterminate bed impact on the DJJ. See section V. Fiscal Impact Statement.

This bill is effective July 1, 2022.

II. Present Situation:

Detention of Children in Florida

Intake and Assessment

Every child under the age of 18 charged with a crime in Florida is referred to the DJJ.¹ Intake and screening services for a child referred to the DJJ are performed at a Juvenile Assessment Center.² The purpose of the intake process is to assess the child's needs and risks and to determine the most appropriate treatment plan and setting for the child.³ Once a child is in the custody of the DJJ, the DJJ determines whether detention care is appropriate.⁴ The DJJ makes an initial decision regarding detention care placement using the "Detention Risk Assessment Instrument."⁵ The DJJ serves as the primary case manager responsible for managing, coordinating, and monitoring services provided to the child.⁶

¹ A referral is similar to an arrest in the adult criminal justice system. See the DJJ, *Probation and Community Intervention, Overview*, available at <http://www.djj.state.fl.us/services/probation> (last visited January 28, 2022).

² Section 985.135(4), F.S.

³ Section 985.14(2), F.S. The intake process consists of a preliminary screening and may be followed by a comprehensive assessment, consisting of a full mental health, cognitive impairment, substance abuse, or psychosexual evaluation.

⁴ Section 985.25(1), F.S.

⁵ Sections 985.25(1) and 985.245, F.S. Section 985.245, F.S., outlines with whom the Detention Risk Assessment Instrument must be developed, when and how it must be updated, and what factors the assessment instrument should identify when evaluating a child to determine whether detention placement is appropriate.

⁶ Section 985.145(1), F.S.

A child is entitled to a detention hearing within 24 hours of being taken into custody or placed in detention care. At the hearing, the court may order continued detention care under certain circumstances.⁷ “Detention care” means “the temporary care of a child in secure, or supervised release detention, pending a court adjudication or disposition or execution of a court order.”⁸

There are two types of detention care, including:

- “Secure detention” which is the temporary custody of a child while he or she is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.
- “Supervised release detention” which is the temporary, no secure custody of a child while the child is released to the custody of a parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of department staff pending adjudication or disposition, through programs that include, but are not limited to, electronic monitoring, day reporting centers, and nonsecure shelters, in addition to other court-imposed requirements.⁹

The use of detention care must be based primarily on findings that the child:

- Presents a substantial risk of not appearing at a subsequent hearing;
- Presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior, including the illegal possession of a firearm;
- Presents a history of committing a property offense prior to adjudication, disposition, or placement;
- Has committed contempt of court by: intentionally disrupting the administration of the court; intentionally disobeying a court order; or engaging in a punishable act or speech in the court’s presence which shows disrespect for the authority and dignity of the court; or
- Requests protection from imminent bodily harm.¹⁰

Additionally, the use of detention care may not be used for the following reasons:

- To allow a parent to avoid his or her legal responsibility;
- To permit more convenient administrative access to the child;
- To facilitate further interrogation or investigation; or
- Due to a lack of more appropriate facilities.¹¹

Generally, a child may not be held in detention care for more than 21 days, unless an adjudicatory hearing for the case has been commenced in good faith by the court. The court may extend the length of detention for an additional 9 days if there is good cause shown that the nature of the charge requires additional time for the prosecution or defense of the case and the child is charged with one of the following offenses:

- Capital felony;
- Life felony;
- First degree felony; or
- Second degree felony involving violence against any individual.¹²

⁷ Section 985.255(1), F.S.

⁸ Section 985.03(18), F.S.

⁹ *Id.*

¹⁰ Section 985.24(1), F.S.

¹¹ Section 985.24(2), F.S.

¹² Section 985.26, F.S.

A prolific juvenile offender¹³ must be placed on supervised release detention care with electronic monitoring or in secure detention care under a special detention order.¹⁴ If secure detention care is ordered by the court for a prolific juvenile offender, such secure detention care must not exceed 21 days unless an adjudicatory hearing for the case has been commenced in good faith, or secure detention care is extended for 9 days as described above.¹⁵

The time limitations on detention care do not include periods of delay resulting from a continuance granted by the court. Upon an order granting a continuance, the court must conduct a hearing at the end of each 72- hour period to determine the need for continued detention.¹⁶

The period of supervised release detention care is tolled upon the allegation that a child has violated his or her supervised release detention. This period remains tolled until the court makes a ruling on the alleged violation. If the court finds the child in violation, the number of day the child has served on any type of detention before the violation is excluded from the time limitations described above.¹⁷

Cost Sharing of Detention Care

Cost sharing is governed by s. 985.6865, F.S., which provides that each fiscal year, the DJJ must calculate and provide to every county that is not fiscally constrained¹⁸ and that does not provide its own detention care, its annual percentage share.¹⁹

The DJJ calculates a county's annual percentage share by dividing the total number of detention days for children residing in the non-fiscally constrained county for the most recently completed 12-month period by the total number of detention days for children in all non-fiscally constrained counties. The county must pay 50 percent of the annual percentage share in 12 equal payments, due on the first day of each month.²⁰

Counties that are required to pay their share of detention costs must incorporate sufficient funds to pay its share of detention costs into its annual budget.²¹ Funds paid by the counties to the DJJ

¹³ Section 985.255, F.S., provides that a "prolific juvenile offender" means a child that is charged with a delinquent act that would be a felony if committed by an adult, has a prior adjudication or adjudication withheld for a delinquent act that would be a felony if committed by an adult, and has 5 or more arrests, adjudications, or adjudications withheld, 3 of which must have been felony offenses.

¹⁴ Section 985.26, F.S.

¹⁵ Section 985.26(2)(c), F.S.

¹⁶ Section 985.26(4)(a), F.S.

¹⁷ Section 985.26(4)(b), F.S.

¹⁸ Section 985.6865(1)(b), F.S., defines "fiscally constrained county" as a county within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656, F.S., or each county for which the value of a mill will raise no more than \$5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., F.S., from the previous July 1.

¹⁹ Section 985.6865(2), F.S.

²⁰ *Id.*

²¹ Section 985.6865(4), F.S.

under this section must be deposited into the Shared County/State Juvenile Detention Trust Fund.²² The DJJ will determine quarterly whether counties are complying with this section.²³

The State must pay all costs of detention care for children:

- Residing in a fiscally constrained county.
- Residing out of State.
- Housed in state detention centers from counties that provide their own detention care for children.²⁴

III. Effect of Proposed Changes:

The bill amends s. 985.24, F.S., providing that the court may order a child placed on supervised release detention care to comply with any condition established by the department and ordered by the court, including electronic monitoring, when the court finds such condition necessary to preserve public safety or to ensure the child's safety or appearance in court.

The bill amends s. 985.26, F.S., providing that the court may order a child be placed on *supervised release detention* care for any time period until an adjudicatory hearing for the case has been commenced. If a child has served 75 days on supervised release detention care, the court must conduct a hearing within 15 days, excluding Saturdays, Sundays, and legal holidays, to determine the need for continued supervised release detention care. At such hearing, the court may order the child to remain on supervised release detention care until an adjudicatory hearing has been commenced, upon:

- Good cause being shown that the nature of the charge requires additional time for the prosecution or defense of the case; or
- Consideration of the totality of the circumstances, including the preservation of public safety.

The bill specifies that, except in specified circumstances, a child may not be held in *secure detention* for longer than 21 days unless an adjudicatory hearing has been commenced. Under current law, a child generally may not be held in *secure* or *supervised release detention* care for longer than 21 days, except in specified circumstances.

Additionally, the bill provides that the court may transition a child between secure detention care and supervised release detention care, including electronic monitoring, if the court finds such placement is necessary to:

- Preserve public safety;
- Ensure the child's safety;
- Ensure appearance in court; or
- Ensure compliance with any condition of supervised release detention care.

Each period of secure detention care counts toward the 21 day time limitation, whether served consecutively or nonconsecutively.

²² Section 985.6865(5), F.S.

²³ Section 985.6865(6), F.S.

²⁴ Section 985.6865(3), F.S.

Currently, upon a showing of good cause that additional time for the prosecution or defense is needed, the court may extend the length of detention for an additional 9 days, for specified offenses. The bill authorizes a court to also extend the length of detention based upon the totality of the circumstances, including the preservation of public safety, warranting an extension. Additionally, the bill increases the length of such extension from 9 days to up to 21 days. The bill expands the list of specified offenses to include:

- Any second degree felony; and
- A third degree felony involving violence against any individual.

The court may continue to extend the period of secure detention in increments of up to 21 days by conducting a hearing before the expiration of the current period, excluding Saturdays, Sundays, and legal holidays. At such hearing the court must make required findings on the record. If the court extends the time period of secure detention care, it must ensure that an adjudicatory hearing for the case commences as soon as is reasonably possible considering the totality of the circumstances. The court must prioritize the efficient disposition of those cases in which the child has served 60 or more days in secure detention care.

The bill provides that any period of supervised release detention care must be excluded from the time limits for detention care. The bill removes language contained in s. 985.26(4)(b), F.S., relating to the tolling of supervised release detention care because this language becomes obsolete with the changes made to this section by the bill.

Any electronic monitoring ordered by a court as a condition of supervised release detention care may be supervised by the DJJ, a law enforcement agency, or the department and a law enforcement agency working in partnership. However, the bill specifies that it does not require a law enforcement agency to supervise a child placed on electronic monitoring.

This bill is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The overall impact of the bill on DJJ is indeterminate. There may be a positive indeterminate bed impact (unquantifiable increase in the need for secure detention beds) on the DJJ due to the increase in the number of children who may be held in secure detention for longer periods of time. This bed impact may be partially offset by the reduction in detention bed needs due to the use of supervised release detention. There may also be a positive workload impact on the DJJ due to the extended period of supervision under supervised release detention. It is unclear whether the fiscal impact due to the longer permissible period of secure detention will be offset by the court's ability to transfer a child from secure to supervised release detention. The bill may also increase the demand for electronic monitoring.

Additionally, all non-fiscally constrained counties pay for half of their prior year actual detention casts. More children detained in detention care would mean higher cost to the counties to pay for their detention care.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 985.24 and 985.26.

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.

FOR CONSIDERATION By the Committee on Appropriations

576-02039C-22

20227040pb

1 A bill to be entitled
 2 An act relating to time limitations for
 3 preadjudicatory juvenile detention care; amending s.
 4 985.24, F.S.; authorizing a court to order a child
 5 placed on supervised release detention care to comply
 6 with specified conditions under certain circumstances;
 7 amending s. 985.26, F.S.; authorizing a court to order
 8 that a child be placed on supervised release detention
 9 care for any time period until an adjudicatory hearing
 10 for the case has been commenced; requiring a court to
 11 conduct a hearing within a specified timeframe if a
 12 child has served longer than a specified number of
 13 days on supervised release detention care; prohibiting
 14 a child from being held in secure detention care for
 15 longer than a certain time period under certain
 16 circumstances; authorizing a court to extend the
 17 length of secure detention care for an increased
 18 amount of days under specified circumstances;
 19 authorizing a court to continue to extend the time
 20 period for secure detention care under specified
 21 circumstances; requiring a court to make specified
 22 findings; requiring a court to conduct a hearing to
 23 determine the continued need for secure detention care
 24 under specified circumstances; revising provisions
 25 relating to supervised release detention care and its
 26 exclusion from specified time limitations; authorizing
 27 certain electronic monitoring ordered by a court to be
 28 supervised by the Department of Juvenile Justice or a
 29 law enforcement agency, or both; providing

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 construction; providing an effective date.
 31
 32 Be It Enacted by the Legislature of the State of Florida:
 33
 34 Section 1. Present subsections (2), (3), and (4) of section
 35 985.24, Florida Statutes, are redesignated as subsections (3),
 36 (4), and (5), respectively, and a new subsection (2) is added to
 37 that section, to read:
 38 985.24 Use of detention; prohibitions.—
 39 (2) The court may order a child placed on supervised
 40 release detention care to comply with any condition established
 41 by the department and ordered by the court, including electronic
 42 monitoring, when the court finds such condition necessary to
 43 preserve public safety or to ensure the child's safety or
 44 appearance in court.
 45 Section 2. Section 985.26, Florida Statutes, is amended to
 46 read:
 47 985.26 Length of detention.—
 48 (1) A child may not be placed into or held in detention
 49 care for longer than 24 hours unless the court orders such
 50 detention care, and the order includes specific instructions
 51 that direct the release of the child from such detention care,
 52 in accordance with s. 985.255. The order shall be a final order,
 53 reviewable by appeal under s. 985.534 and the Florida Rules of
 54 Appellate Procedure. Appeals of such orders shall take
 55 precedence over other appeals and other pending matters.
 56 (2) (a) 1. A court may order that a child be placed on
 57 supervised release detention care for any time period until an
 58 adjudicatory hearing for the case has been commenced in good

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59 faith by the court. However, if a child has served 75 days on
 60 supervised release detention care, the court must conduct a
 61 hearing within 15 days, excluding Saturdays, Sundays, and legal
 62 holidays, to determine the need for continued supervised release
 63 detention care. At the hearing, upon good cause being shown that
 64 the nature of the charge requires additional time for the
 65 prosecution or defense of the case or upon consideration of the
 66 totality of the circumstances, including the preservation of
 67 public safety, which may warrant an extension, the court may
 68 order the child to remain on supervised release detention care
 69 until an adjudicatory hearing has been commenced in good faith
 70 by the court.

71 2. Except as provided in paragraph (b) or paragraph (c), a
 72 child may not be held in secure detention care under a special
 73 detention order for more than 21 days unless an adjudicatory
 74 hearing for the case has been commenced in good faith by the
 75 court.

76 3. This section does not prohibit a court from
 77 transitioning a child between secure detention care and
 78 supervised release detention care, including electronic
 79 monitoring, if the court finds that such placement is necessary
 80 to preserve public safety or to ensure the child's safety,
 81 appearance in court, or compliance with any condition of
 82 supervised release detention care. Each period of secure
 83 detention care counts toward the time limitation in this
 84 paragraph, whether served consecutively or nonconsecutively.

85 (b) Upon good cause being shown that the nature of the
 86 charge requires additional time for the prosecution or defense
 87 of the case or upon the totality of the circumstances, including

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88 the preservation of public safety, warranting an extension, the
 89 court may extend the length of secure detention care for up to
 90 21 ~~an additional 9~~ days if the child is charged with an offense
 91 that ~~would be~~, if committed by an adult, would be a capital
 92 felony, a life felony, a felony of the first ~~or second~~ degree,
 93 or a felony of the third ~~second~~ degree involving violence
 94 against any individual. The court may continue to extend the
 95 period of secure detention care in increments of up to 21 days
 96 by conducting a hearing before the expiration of the current
 97 period, excluding Saturdays, Sundays, and legal holidays, to
 98 determine the need for continuing the secure detention care of
 99 the child. At the hearing, the court must make the required
 100 findings on the record to extend the period of secure detention
 101 care. If the court extends the time period for secure detention
 102 care, it must ensure that an adjudicatory hearing for the case
 103 commences as soon as reasonably possible considering the
 104 totality of the circumstances, and it must prioritize the
 105 efficient disposition of those cases in which the child has
 106 served 60 or more days in secure detention care.

107 (c) A prolific juvenile offender under s. 985.255(1)(f)
 108 shall be placed on supervised release detention care with
 109 electronic monitoring or in secure detention care under a
 110 special detention order until disposition. If secure detention
 111 care is ordered by the court, it must be authorized under this
 112 part and may not exceed:

113 1. Twenty-one days unless an adjudicatory hearing for the
 114 case has been commenced in good faith by the court or the period
 115 is extended by the court pursuant to paragraph (b); or

116 2. Fifteen days after the entry of an order of

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117 adjudication.

118
119 As used in this paragraph, the term "disposition" means a
120 declination to file under s. 985.15(1)(h), the entry of nolle
121 prosequi for the charges, the filing of an indictment under s.
122 985.56 or an information under s. 985.557, a dismissal of the
123 case, or an order of final disposition by the court.

124 (d) A prolific juvenile offender under s. 985.255(1)(f) who
125 is taken into custody for a violation of the conditions of his
126 or her supervised release detention must be held in secure
127 detention until a detention hearing is held.

128 (3) Except as provided in subsection (2), a child may not
129 be held in detention care for more than 15 days following the
130 entry of an order of adjudication.

131 (4)(a) The time limits in subsections (2) and (3) do not
132 include periods of delay resulting from a continuance granted by
133 the court for cause on motion of the child or his or her counsel
134 or of the state. Upon the issuance of an order granting a
135 continuance for cause on a motion by either the child, the
136 child's counsel, or the state, the court shall conduct a hearing
137 at the end of each 72-hour period, excluding Saturdays, Sundays,
138 and legal holidays, to determine the need for continued secure
139 detention of the child and the need for further continuance of
140 proceedings for the child or the state.

141 (b) Any ~~The period of for supervised release detention care~~
142 ~~under this section is tolled on the date that the department or~~
143 ~~a law enforcement officer alleges that the child has violated a~~
144 ~~condition of the child's supervised release detention care until~~
145 ~~the court enters a ruling on the violation. Notwithstanding the~~

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146 ~~tolling of supervised release detention care, the court retains~~
147 ~~jurisdiction over the child for a violation of a condition of~~
148 ~~supervised release detention care during the tolling period. If~~
149 ~~the court finds that a child has violated his or her supervised~~
150 ~~release detention care, the number of days that the child served~~
151 ~~in any type of detention care before commission of the violation~~
152 shall be excluded from the time limits under subsections (2) and
153 (3).

154 (5) A child who was not in secure detention at the time of
155 the adjudicatory hearing, but for whom residential commitment is
156 anticipated or recommended, may be placed under a special
157 detention order for a period not to exceed 72 hours, excluding
158 weekends and legal holidays, for the purpose of conducting a
159 comprehensive evaluation as provided in s. 985.185. Motions for
160 the issuance of such special detention order may be made
161 subsequent to a finding of delinquency. Upon said motion, the
162 court shall conduct a hearing to determine the appropriateness
163 of such special detention order and shall order the least
164 restrictive level of detention necessary to complete the
165 comprehensive evaluation process that is consistent with public
166 safety. Such special detention order may be extended for an
167 additional 72 hours upon further order of the court.

168 (6) If a child is detained and a petition for delinquency
169 is filed, the child must ~~shall~~ be arraigned in accordance with
170 the Florida Rules of Juvenile Procedure within 48 hours after
171 the filing of the petition for delinquency.

172 (7) Any electronic monitoring ordered by a court as a
173 condition of supervised release detention care pursuant to this
174 section may be supervised by the department, a law enforcement

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175 agency, or the department and a law enforcement agency working
176 in partnership. However, this subsection does not require a law
177 enforcement agency to supervise a child placed on electronic
178 monitoring.

179 Section 3. This act shall take effect July 1, 2022.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2-1-2022

Meeting Date

7040

Bill Number or Topic

CJ Approps.

Committee

Amendment Barcode (if applicable)

Name

Mike Carroll

Phone

727-331-9977

Address

3627 W. Waters

Email

mike.carroll@lsfnet.org

Street

Tampa

City

FL.

State

33614

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Lutheran Services Florida

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flsenate.gov](#)

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

S-001 (08/10/2021)

2/1/22

Meeting Date

Criminal and Civil Appropriations subcommittee

Committee

Name **Honorable Matthew Metz**

Phone **(386) 239-7730**

Address **251 N. Ridgewood**

Email **metz.matthew@pd7.org**

Street

Daytona Beach

FL

32114

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Sta fee 985

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

SB 7040

Bill Number or Topic

Amendment Barcode (if applicable)

Deliver both copies of this form to
Senate professional staff conducting the meeting

The Florida Senate

APPEARANCE RECORD

1-1-22

Meeting Date

7040

Bill Number or Topic

Approp. Criminal Justice

Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Sheriff Bob Gualtieri

Phone 727-582-6200

Address

Street

Email

Largo

City

FL

State

33779

Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Florida Sheriffs Association

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf flisenate.gov](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

1-1-22

Meeting Date

7040

Bill Number or Topic

Approp Criminal Justice

Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Matt Dunagan

Phone 850 877 2165

Address 2615 Mahan Drive

Street

Email mdunagan@flsheriffs.org

Tallahassee FL

City

State

32308

Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Florida Sheriffs
Association

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

S-001 (08/10/2021)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations
Appropriations Subcommittee on Criminal and
Civil Justice
Ethics and Elections
Reapportionment
Rules
Transportation

SELECT SUBCOMMITTEE:

Select Subcommittee on Legislative
Reapportionment

SENATOR RANDOLPH BRACY
11th District

February 1, 2022

The Honorable Keith Perry
Chair, Appropriations Subcommittee on Criminal and Civil Justice
404 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Perry,

I write to respectfully request that my absence be excused for the Appropriations Subcommittee on Criminal and Civil Justice meeting on February 1, 2022 due to sickness. It was my intent to be there today but my health has continued to deteriorate. I regret that I cannot be present for the committee today, and appreciate your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Randolph Bracy".

Senator Randolph Bracy
District 11

A handwritten signature in blue ink that reads "Keith Perry".

REPLY TO:

- ☐ 6965 Piazza Grande Avenue, Suite 302, Orlando, Florida 32835 (407) 297-2045 FAX: (888) 263-3814
- ☐ 213 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR GEORGE B. GAINER
2nd District

COMMITTEES:
Appropriations Subcommittee on
Transportation,
Tourism, and Economic Development,
Chair
Appropriations
Appropriations Subcommittee on Criminal
and Civil Justice
Criminal Justice
Ethics and Elections
Transportation

February 1, 2022

Dear Chair Perry,

I am respectfully requesting a formal excusal for the upcoming Subcommittee on Civil and Criminal Justice meeting on February 1, 2022. I regret that I will be unable to attend, as I am still recovering from surgery.

If there are any questions or concerns, please do not hesitate to call my office at (850) 487-5002.

Thank you,

A blue ink signature of George B. Gainer, written in a cursive style.

Senator George Gainer
District 2

A blue ink signature of Kath Perry, written in a cursive style.

Florida 32578 (850) 747-5454

REPLY TO:

- ☐ 840 West 11th Street, Panama City, Florida 32401 (850) 747-5454
- ☐ Northwest Florida State College, 100 East College Boulevard, Building 330, Rooms 105 and 112, Niceville,
- ☐ 408 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5002

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

CourtSmart Tag Report

Room: SB 37

Case No.:

Type:

Caption: Senate Appropriations Subcommittee on Criminal and Civil Justice

Judge:

Started: 2/1/2022 10:34:25 AM

Ends: 2/1/2022 11:09:05 AM

Length: 00:34:41

10:34:30 AM Sen. Perry (Chair)
10:35:10 AM S 1302
10:35:17 AM Sen. Burgess
10:36:30 AM Matthew Metz, Public Defender, 7th Circuit (waives in support)
10:36:36 AM Phillip Suderman, Americans for Prosperity (waives in support)
10:36:42 AM Shaena Fazal, Alliance for Safety Justice (waives in support)
10:36:53 AM Christie Arnold, Florida Conference of Catholic Bishops (waives in support)
10:37:13 AM Sen. Burgess
10:37:48 AM S 552
10:37:57 AM Sen. Boyd
10:38:15 AM Am. 267668
10:38:41 AM Sen. Boyd
10:38:56 AM S 552 (cont.)
10:39:16 AM Tom Bexley (waives in support)
10:39:19 AM Jason Welty, Florida Clerks of Court Operations Corporation (waives in support)
10:39:27 AM Jenna Hodgins, Hillsborough County Clerk of Court (waives in support)
10:39:29 AM Cindy Stuart, Hillsborough County Clerk of Court (waives in support)
10:39:34 AM Angel Colonnese (waives in support)
10:39:55 AM Sen. Boyd
10:40:33 AM S 1534
10:40:38 AM Sen. Boyd
10:41:23 AM Sen. Torres
10:41:42 AM Sen. Boyd
10:42:22 AM Richard Martin, Office of Attorney General (waives in support)
10:42:32 AM Buddy Jacobs, General Counsel, State Attorneys of Florida; Florida Prosecuting Association (waives in support)
10:42:37 AM Lorena Holley, Florida Retail Federation (waives in support)
10:42:38 AM Matt Dunagan, Florida Sheriffs Association (waives in support)
10:42:44 AM Sen. Wright
10:43:06 AM Sen. Baxley
10:44:22 AM Sen. Pizzo
10:45:10 AM Sen. Torres
10:45:58 AM Sen. Boyd
10:47:22 AM S 1358
10:47:28 AM Sen. Rouson
10:48:25 AM Kay Hawkins, Florida PTA (waives in support)
10:48:31 AM Victoria Zepp, Florida Coalition for Children (waives in support)
10:48:43 AM Sen. Rouson
10:49:15 AM Sen. Wright (Chair)
10:49:25 AM S 7040
10:49:27 AM Sen. Perry
10:50:37 AM Sen. Pizzo
10:51:26 AM Sen. Perry
10:51:55 AM Sen. Pizzo
10:52:08 AM Sen. Perry
10:52:46 AM Lauren Jones, Staff Director, Committee on Criminal Justice
10:53:58 AM Sen. Pizzo
10:54:35 AM L. Jones
10:55:01 AM Sen. Pizzo
10:55:10 AM L. Jones
10:55:12 AM Sen. Pizzo
10:55:15 AM L. Jones

10:55:27 AM	Sen. Pizzo
10:56:07 AM	L. Jones
10:56:37 AM	Mike Carroll, Lutheran Services Florida (waives in support)
10:56:50 AM	Matthew Metz (waives in support)
11:00:43 AM	Sen. Pizzo
11:00:55 AM	M. Metz
11:01:01 AM	Sen. Pizzo
11:01:09 AM	M. Metz
11:01:13 AM	Sen. Pizzo
11:01:24 AM	M. Metz
11:01:27 AM	Sen. Pizzo
11:01:30 AM	M. Metz
11:01:35 AM	Sen. Pizzo
11:01:49 AM	M. Metz
11:02:11 AM	Sen. Pizzo
11:02:22 AM	M. Metz
11:02:26 AM	Sen. Pizzo
11:02:44 AM	M. Metz
11:02:49 AM	Sen. Pizzo
11:02:51 AM	M. Metz
11:02:53 AM	Sen. Pizzo
11:03:25 AM	M. Metz
11:03:33 AM	Sen. Pizzo
11:04:06 AM	M. Metz
11:04:28 AM	Sen. Pizzo
11:04:44 AM	Bob Gualtieri, Florida Sheriffs Association (waives in support)
11:04:56 AM	Matt Dunagan, Florida Sheriffs Association (waives in support)
11:05:01 AM	Sen. Pizzo
11:06:39 AM	Sen. Perry
11:08:31 AM	Sen. Perry (Chair)
11:08:56 AM	Sen. Pizzo