

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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**BILL:** PCS/SB 1318 (578002)

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

**SUBJECT:** Education for Prisoners

**DATE:** February 26, 2018

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	<b>Favorable</b>
2.	Forbes	Sadberry	ACJ	<b>Recommend: Fav/CS</b>
3.	Forbes	Hansen	AP	<b>Pre-meeting</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/SB 1318 authorizes a county or municipal detention facility or the Department of Corrections (DOC) to contract with a district school board, the Florida Virtual School, a Florida College System institution, a virtual education provider approved by the State Board of Education, or a charter school (school provider) to provide educational services to its inmates. The educational services may include any educational, career, or vocational training.

The bill allows state funding for postsecondary education to be used for an inmate with less than 60 months of time remaining on his or her sentence.

The bill also makes various changes to procedures related to business licensing for persons who have previously been convicted of a criminal offense, including:

- Permits a person to submit a petition for declaratory statement to any Florida agency to determine the effect of a criminal background on his or her eligibility for occupational or professional licensure;
- Requires the agency to indicate specified information in its declaratory statement conclusion;
- Requires the agency's conclusion in the declaratory statement is binding on the agency as to the petitioner;
- Requires specified submissions to be included with the petition for declaratory statement, including a fee of not more than \$100;

- Prohibits an agency from denying an application for licensure for certain professions if a specific duration has passed since the applicant's conviction;
- Authorizes a person to apply for licensing from Department of Business and Professional Regulation (DBPR) prior to being released from incarceration and provides a process for the staying of the issuance of the license until the person's release from custody;
- Specifies accommodations that an agency must make for applicants who are under confinement or supervision at the time of their application; and
- Requires pertinent boards under the DBPR and Department of Health to adopt rules that specify crimes that constitute grounds for licensure denial.

The bill will likely have no fiscal impact on the school districts. If the DOC or county or municipal detention facilities elect to contract with a school provider to provide services under such contract, the services will need to be funded out of an appropriation specific for this purpose. The bill may result in an increased workload and revenues to agencies that must process the petitions for declaratory statements from a licensing agency. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2018.

## II. Present Situation:

### Sentencing of Inmates – Overview

A defendant that is convicted of a crime in the state of Florida may be incarcerated in either county jail or state prison based upon the degree of the offense. A number of factors are taken into consideration when determining whether a defendant will be committed to the custody of the jail or the DOC. A defendant convicted of a misdemeanor offense can be committed to the custody of the county's chief correctional officer for no more than one year for a first degree misdemeanor or 60 days for a second degree misdemeanor.<sup>1</sup>

For a defendant convicted of a felony offense, the Criminal Punishment Code<sup>2</sup> (Code) applies to sentencing for felony offenses committed on or after October 1, 1998.<sup>3</sup> The permissible sentence (absent a downward departure) for an offense ranges from the calculated lowest permissible sentence as determined by the Code to the statutory maximum for the primary offense. The statutory maximum sentence for a first-degree felony is 30 years, for a second-degree felony is 15 years, and for a third degree felony is 5 years.<sup>4</sup>

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<sup>1</sup> Section 775.082(4), F.S.

<sup>2</sup> 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.

<sup>3</sup> Section 921.0022, F.S.

<sup>4</sup> See s. 775.082, F.S.

### **Education for County Inmates**

Section 951.176, F.S., requires county and municipal detention facilities<sup>5</sup> to provide educational services to minors detained in such facilities if the minor has not graduated from high school or is an eligible student with disabilities under the age of 22 who has not graduated with a standard diploma or its equivalent. The educational services must be offered by the local school district in which the facility is located.<sup>6</sup> These educational services are based on the estimated length of time the youth will be in the facility and the youth's current level of functioning. School district superintendents or their designees must be notified by the county's chief correctional officer if a youth under the age of 21 is accepted into the facility.<sup>7</sup>

Florida law is silent as to whether a county or municipal detention facility is required to provide educational services to its adult inmates. However, The County Corrections Equality Act requires that females have access to educational, vocational training, rehabilitation and substance abuse treatment that are equivalent to that provided to male inmates.<sup>8</sup>

### **Education for State Prisoners**

Florida law establishes (under the DOC) a Correctional Education Program (CEP), which must be composed of the educational facilities and services of all institutions, and facilities housing inmates operated by the DOC.<sup>9</sup> The duties of the CEP include, but are not limited to:

- Developing guidelines for collecting education-related information during the inmate reception process and for disseminating such information to the classification staff of the DOC.<sup>10</sup>
- Approving educational programs of the appropriate levels and types in the correctional institutions and developing procedures for the admission of inmate students into such programs.<sup>11</sup>
- Entering into agreements with public or private school districts, entities, community colleges, junior colleges, colleges, or universities as may be deemed appropriate for the purpose of carrying out the CEP duties.<sup>12</sup>
- Ensuring that such local agreements require minimum performance standards and standards for measurable objectives, in accordance with established Department of Education standards.<sup>13</sup>

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<sup>5</sup> Section 951.23(1)(a) and (d), F.S., define county detention facility to mean a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either a felony or misdemeanor; and a municipal detention facility to mean a city jail, a city stockade, a city prison camp, and any other place except a county detention facility used by a municipality or municipal officer for the detention of persons charged with or convicted of violation of municipal laws or ordinances.

<sup>6</sup> Section 951.176, F.S.

<sup>7</sup> Section 951.176, F.S., also requires the development of a cooperative agreement with the local school district and applicable law enforcement units to address the notification requirement and the provision of educational services to these youth.

<sup>8</sup> Section 951.175, F.S.

<sup>9</sup> Section 944.801(1), F.S.

<sup>10</sup> Section 944.801(3)(a), F.S., also provides that the information collected must include the inmate's areas of educational or vocational interest, vocational skills, and level of education.

<sup>11</sup> Section 944.801(3)(d), F.S.

<sup>12</sup> Section 944.801(3)(e), F.S.

<sup>13</sup> *Id.*

- Developing and maintaining complete and reliable statistics on the number of high school equivalency diplomas and vocational certificates issued by each institution in each skill area, the change in inmate literacy levels, and the number of inmate admissions to and withdrawals from education courses.<sup>14</sup>
- Ensuring every inmate who has two years or more on his or her sentence at the time of being received at an institution and who lacks basic and functional literacy skills as defined in s. 1004.02, F.S.,<sup>15</sup> attends not less than 150 hours of sequential instruction in a correctional adult basic education program.<sup>16</sup>
- Ensure that all education staff are certified in accordance with the Department of Education standards.<sup>17</sup>

## **Providers of K-20 Education in Florida**

### *School Districts*

A district school system includes all public schools, classes, and courses of instruction and all services and activities directly related to education in that district which are under the direction of the district school officials.<sup>18</sup> Any district school board, after first obtaining the approval of the Department of Education, may, as a part of the district school system, organize, establish, and operate a career center, or acquire and operate a career center previously established.<sup>19</sup>

### *Charter Schools*

Charter schools are nonsectarian, public schools that operate under a performance contract with a sponsor. This performance contract is known as a “charter.”<sup>20</sup> The charter exempts the school from many regulations applicable to traditional public schools to encourage the use of innovative learning methods.<sup>21</sup> One of the guiding principles of charter schools is to meet high standards of student achievement while providing parents flexibility to choose among diverse educational opportunities within the state’s public school system.<sup>22</sup> The school must be operated by a Florida College System institution, municipality, or nonprofit organization. While a charter school must be a public or nonprofit entity, it may be managed by a for-profit education management

<sup>14</sup> Section 944.801(3)(g), F.S.

<sup>15</sup> Section 1004.02(4), F.S., defines basic literacy to mean the demonstration of academic competence from 2.0 through 5.9 educational grade levels as measured by means approved for this purpose by the State Board of Education. Section 1004.02(15), F.S., defines functional literacy to mean the demonstration of academic competence from 6.0 through 8.9 educational grade levels as measured by means approved for this purpose by the State Board of Education.

<sup>16</sup> Section 944.801(3)(i), F.S., further provides that highest priority of inmate participation must be focused on youthful offenders and those inmates nearing release from the correctional system and that an inmate is not allowed to participate in the adult basic education program if he or she is serving a life sentence or is under sentence of death, specifically exempted for security or health reasons, housed at a community correctional center, road prison, work camp, or vocational center, attains a functional literacy level after attendance in fewer than 150 hours of adult basic education instruction, or is unable to enter such instruction because of insufficient facilities, staff, or classroom capacity.

<sup>17</sup> Section 944.801(3)(k), F.S. See ss. 1002.33(12)(f), 1012.54, 1012.55, and 1012.56, F.S.

<sup>18</sup> Section 1001.31, F.S.

<sup>19</sup> Section 1001.14, F.S.

<sup>20</sup> Section 1002.33(5)(a), (6)(h), (7) and (9)(a), F.S.

<sup>21</sup> Section 1002.33(2)(b)3. and (16), F.S.

<sup>22</sup> Section 1002.33(2)(a)1., F.S.

organization.<sup>23</sup> A district school board may sponsor a charter school in the county over which the district school board has jurisdiction.<sup>24</sup>

### ***Virtual Instruction***

The Florida Virtual School (FVS) is established for the development and delivery of online and distance learning education and its mission is to provide students with technology-based educational opportunities to gain the knowledge and skills necessary to succeed.<sup>25</sup> The school must serve any student in the state and must give priority to:

- Students who need expanded access to courses in order to meet their educational goals, such as home education students and students in inner-city and rural high schools who do not have access to higher-level courses; and
- Students seeking accelerated access in order to obtain a high school diploma at least one semester early.<sup>26</sup>

There is no specific prohibition against district, charter, or virtual schools providing classes to local or state inmates or in defining “student” to exclude inmates from such instruction.

### **Workforce Education Through K-20 School Providers**

Florida school districts are encouraged to develop educational opportunities for adults who have earned a diploma or high school equivalency diploma, but who lack the basic skills necessary to function effectively in everyday situations, to enter the job market, or to enter career certificate instruction.<sup>27</sup> Each district school board or Florida College System institution board of trustees must negotiate with the local workforce development board for basic and functional literacy skills assessments for participants in the welfare transition employment and training programs. Such assessments are conducted at a site mutually acceptable to the district school board or Florida College System institution board of trustees and the local workforce development board.<sup>28</sup>

Any workforce education program may be conducted by a Florida College System institution and school district unless restricted by statute.<sup>29</sup> Additionally, s. 1004.98, F.S., establishes the workforce literacy program within the Florida College System institutions and school districts. Workforce literacy programs are designed:

- To ensure that a sufficient numbers of employees who possess the skills necessary to perform in entry-level occupations exist;
- To adapt to technological advances in the workplace; and

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<sup>23</sup> Section 1002.33(12)(i), F.S.

<sup>24</sup> Section 1002.33(5)(a)1., F.S.

<sup>25</sup> Section 1002.37(1), F.S.

<sup>26</sup> Section 1002.37(b), F.S.

<sup>27</sup> Section 1004.93(1), F.S.

<sup>28</sup> Section 1004.93(3)(a), F.S.

<sup>29</sup> Section 1011.80(2), F.S. Section 1011.80(1), F.S., defines the terms workforce education and workforce education program to include: a) adult general education programs designed to improve the employability skills of the state’s workforce as defined in s. 1004.02(3), F.S.; b) career certificate programs, as defined in s. 1004.02(20), F.S.; c) applied technology diploma programs; d) continuing workforce education courses; e) degree career education programs; f) apprenticeship and preapprenticeship programs as defined in s. 446.021, F.S.

- With the intention of supporting economic development in Florida by increasing adult literacy and producing an educated workforce.<sup>30</sup>

Florida College System institutions and school districts may also offer courses that assist adults with gaining the communication and computation skills necessary to complete a career program, to gain or maintain entry-level employment, or to upgrade employment.<sup>31</sup>

### ***Funding for Workforce Education Programs***

Expenditures for the continuing workforce education programs provided by the Florida College System institutions or school districts must be fully supported by fees. For all other workforce education programs, state funding must equal 75 percent of the average cost of instruction with the remaining 25 percent made up from student fees, which are based on a uniform fee calculated and set at the state level, as adopted by the State Board of Education, unless otherwise specified in the General Appropriations Act. For fee-exempt students pursuant to s. 1009.25, F.S., unless otherwise provided for in law, state funding must equal 100 percent of the average cost of instruction.<sup>32</sup>

Since 2011, state funds allocated for postsecondary workforce programs are explicitly prohibited from being used to educate state or federal inmates.<sup>33</sup>

### **Agency Declaratory Statements**

The Administrative Procedure Act provides uniform procedures for agencies to exercise their authority, and is applicable to every Florida administrative agency.<sup>34</sup>

A declaratory statement is meant to “‘enable members of the public to definitively resolve ambiguities of law arising in the conduct of their daily affairs or in the planning of their future affairs’ and ‘to enable the public to secure definitive binding advice as to the applicability of agency-enforced law to a particular set of facts.’”<sup>35</sup> A petition for declaratory statement must include a petitioner’s specific set of circumstances and the applicable law, rule, or order he or she wishes to have interpreted in light of those circumstances.<sup>36</sup>

When a petitioner files a petition for a declaratory statement with an agency, the agency must file a notice of the petition in the next available issue of the Florida Administrative Register and transmit copies of the petition to the Joint Administrative Procedures Committee.<sup>37</sup> Within 90

<sup>30</sup> Section 1004.98, F.S.

<sup>31</sup> See s. 1004.98, F.S.

<sup>32</sup> Section 1011.80(5), F.S.

<sup>33</sup> Section 1011.80(7) F.S. and ch. 2011-63, s. 35, L.O.F.

<sup>34</sup> See ss. 120.50-120.515, F.S.

<sup>35</sup> Section 120.565(1), F.S.; *Fla. Dept. of Bus. & Pro. Reg., Div. of Pari-Mutuel Wagering v. Invest. Corp. of Palm Bch.*, 747 So. 2d 374, 376 (Fla. 1999), quoting Patricia A. Dore, *Access to Florida Administrative Proceedings*, 13 Fla. St. U. L. Rev. 965 (1986).

<sup>36</sup> Section 120.565(2), F.S.

<sup>37</sup> Section 120.565(3), F.S. The Joint Administrative Procedures Committee (JAPC) is a joint standing committee of the Legislature created by Rule 4.1 of the Joint Rules of the Florida Legislature. It is composed of five Senators appointed by the President of the Senate and six Representatives appointed by the Speaker of the House of Representatives. The primary function of JAPC is to generally review agency action pursuant to the operation of the Administrative Procedure Act in

days from the petition's filing, the agency must either issue a declaratory statement or deny the petition. The agency must give notice of its action in the next available issue of the Florida Administrative Register.<sup>38</sup>

Generally, an agency will only issue a declaratory statement on actions that will take place in the future.<sup>39</sup> However, the fact pattern must not be hypothetical so as to amount to a request for an advisory opinion regarding facts that are only 'contingent, uncertain, [and] rest in the future.'<sup>40</sup>

Current law does not require a fee for filing a petition for declaratory statement with an agency.

### **Department of Business and Professional Regulation**

Section 20.165, F.S., establishes the organizational structure of the Department of Business and Professional Regulation (DBPR), which has 12 divisions tasked with the regulation of several professions and businesses.<sup>41</sup>

Chapter 455, F.S., provides the general powers of the DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under the DBPR as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.<sup>42</sup>

The DBPR may engage in the regulation of professions "only for the preservation of the health, safety, and welfare of the public under the police powers of the state."<sup>43</sup> 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.<sup>44</sup>

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.<sup>45</sup>

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.<sup>46</sup>

ch. 120, F.S., related to the rulemaking process, to ensure that rules adopted by the executive branch agencies do not create new law and stay within the authority specifically delegated to them by the Legislature.

<sup>38</sup> Section 120.565(3), F.S.

<sup>39</sup> *Fed'n of Mobile Home Owners of Fla., Inc. v. Dept. of Bus. Regulation*, 479 So. 2d 252 (Fla. Dist. Ct. App. 1985).

<sup>40</sup> *Santa Rosa Cnty. v. Admin. Comm'n., Div. of Admin. Hearings*, 661 So. 2d 1190 (Fla. 1995).

<sup>41</sup> 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.

<sup>42</sup> See s. 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 the DBPR staff counsel. See s. 455.221(1), F.S.

<sup>43</sup> Section 455.201(2), F.S.

<sup>44</sup> *Id.*

<sup>45</sup> Section 455.201(4)(b), F.S.

<sup>46</sup> Section 455.01(4) and (5), F.S.

In Fiscal Year 2016-2017, there were 412,872 active licensees in the Division of Professions,<sup>47</sup> including:

- Architects and interior designers;
- Asbestos consultants and contractors;
- Athlete agents;
- Auctioneers;
- Barbers (19,098 active and 199 inactive);
- Building code administrators and inspectors;
- Community association managers;
- Construction industry contractors (71,818 active and 15,004 inactive);
- Cosmetologists (237,090 active and 1,600 inactive);
- Electrical contractors (11,960 active and 1,285 inactive);
- Employee leasing companies;
- Geologists;
- Home inspectors;
- Harbor pilots;
- Landscape architects;
- Mold-related services;
- Talent agencies; and
- Veterinarians.<sup>48</sup>

Sections 455.203 and 455.213, F.S., establish general licensing authority for the DBPR, including the 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.<sup>49</sup>

### ***Barbering***

The term “barbering” in ss. 476.014 through 476.254, F.S., (the Barbers’ Act) includes any of the following practices when done for payment: shaving, cutting, trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard or applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances.<sup>50</sup>

An applicant for licensure as a barber must pass an examination. To be eligible to take the examination, the applicant must:

- Be at least 16 years of age;
- Pay the application fee; and

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<sup>47</sup> See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2016-2017*, available at <http://www.myfloridalicense.com/dbpr/os/documents/DivisionAnnualReport.pdf?x40199> (last visited Feb. 15, 2018) at pages 21 and 22. Of the total 434,574 licensees in the Division of Professions, 21,702 are inactive. *Id.* at page 22.

<sup>48</sup> *Id.*

<sup>49</sup> Section 455.219(1), F.S.

<sup>50</sup> See s. 476.034(2), F.S. The term does not include those services when done for the treatment of disease or physical or mental ailments.



- Have held an active valid license in another state for at least one year,<sup>51</sup> or have a minimum of 1,200 hours of specified training.<sup>52</sup>

Alternatively, a person may apply for and receive a “restricted license” to practice barbering, which authorizes the licensee to practice only in areas in which he or she has demonstrated competency pursuant to rules of the Barbers’ Board.<sup>53</sup>

### ***Nail and Facial Specialists, Hair Braiders, Hair Wrappers, and Body Wrappers***

Chapter 477, F.S., governs the licensing and regulation of cosmetologists, hair braiders, hair wrappers, nail specialists, facial specialists, full specialists, body wrappers, and related salons in the state. The Board of Cosmetology, within the DBPR’s Division of Professions, processes license applications, reviews disciplinary cases, and conducts informal administrative hearings relating to licensure and discipline.<sup>54</sup>

Individuals are prohibited from providing manicures, pedicures, or facials without first becoming licensed as a cosmetologist or registered as a nail specialist, facial specialist, or full specialist.<sup>55</sup>

A “specialist” is “any person holding a specialty registration in one or more of the specialties registered under [ch. 477, F.S.]”<sup>56</sup> The term “specialty” is defined as “the practice of one or more of the following:

- Manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands. This term includes any procedure or process for the affixing of artificial nails, except those nails which may be applied solely by use of a simple adhesive.
- Pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet.
- Facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services.”<sup>57</sup>

An applicant for a specialist license must:

- Be at least 16 years of age;
- Obtain a certificate of completion from an approved specialty education program; and

<sup>51</sup> Licensure by endorsement may also allow a practitioner holding an active license in another state or country to qualify for licensure in Florida. *See* s. 476.144(5), F.S.

<sup>52</sup> *See* s. 476.114(2), F.S.; the training must include, but is not limited to the completion of services directly related to the practice of barbering at a licensed school of barbering, a public school barbering program, or a government-operated barbering program in Florida.

<sup>53</sup> *See* s. 476.144(6), F.S.

<sup>54</sup> *See* Department of Business and Professional Regulation, *Cosmetology*, available at <http://www.myfloridalicense.com/DBPR/cosmetology/> (last visited Feb. 15, 2018).

<sup>55</sup> *See* Florida Department of Business and Professional Regulation, *Board of Cosmetology Frequently Asked Questions and Answers* (Aug. 2017), available at [http://www.myfloridalicense.com/dbpr/pro/cosmo/documents/cosmo\\_faq.pdf](http://www.myfloridalicense.com/dbpr/pro/cosmo/documents/cosmo_faq.pdf) (last visited Feb. 14, 2018). The application of polish to fingernails and toenails is considered manicuring, even though the individual is not cutting, cleansing, adding, or extending the nails. Therefore, a registration as a specialist or licensure as a cosmetologist is required to apply polish to fingernails and toenails for compensation. *See* s. 477.013(6)(a) and (b), F.S.

<sup>56</sup> *See* s. 477.013(5), F.S.

<sup>57</sup> *See* s. 477.013(6), F.S.

- Submit an application for registration to the DBPR with the registration fee.<sup>58</sup>

A “cosmetologist” is a person who is licensed to engage in the practice of cosmetology.<sup>59</sup> “Cosmetology” is “the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than for medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services.”<sup>60</sup>

Certain persons who apply cosmetic products (makeup) are exempt from ch. 477, F.S., under limited conditions, including application of such products in photography studio salons, in connection with certain retail sales, or during the production of qualified films.<sup>61</sup> In addition, persons who provide makeup in a theme park or entertainment complex to actors and others or the general public are exempt from licensing requirements.<sup>62</sup>

An applicant for a cosmetologist license must pass a licensure examination and:

- Be at least 16 years of age;
- Have a high school diploma;
- Submit an application with the applicable fee and examination fee; and
- Be licensed in another state or country for at least one year, or received 1,200 hours training, including completion of an education at an approved cosmetology school or program.

### **Licensing and Criminal Background**

Section 112.011, F.S., outlines general guidelines for considering criminal convictions 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 felony or first-degree misdemeanor 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.<sup>63</sup> 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.<sup>64</sup>

### **DBPR**

The regulatory boards of the DBPR, or the department if there is no board, may deny a license application for any person who it finds guilty of any of the grounds for discipline set forth in s. 455.227(1), F.S., or set forth in the profession’s practice act.<sup>65</sup> Specifically, the regulatory

<sup>58</sup> See s. 477.0201, F.S.

<sup>59</sup> See s. 477.013(3), F.S.

<sup>60</sup> See s. 477.013(4), F.S. A licensed cosmetologist is not required to register separately as a hair braider, hair wrapper, body wrapper, or specialist. See *supra* at note 55.

<sup>61</sup> See ss. 477.013(11), 477.0135(1)(f), and 477.0135(5), F.S.

<sup>62</sup> See s. 477.0135(6), F.S.

<sup>63</sup> Section 112.011(1)(b), F.S.

<sup>64</sup> Section 112.011(1)(c), F.S.

<sup>65</sup> Section 455.227(2), F.S.

board, or the department if there is no board, may deny a license application for any person having been:

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.<sup>66</sup>

Section 455.227, F.S., does not specifically require the DBPR or the applicable regulatory board to consider the passage of time since the disqualifying criminal offense before denying or granting a license.

### ***Department of Health***

The Department of Health (DOH) or an applicable board may deny the licensure of any applicant who has been "convicted of or pled guilty or nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession regulated by this state"<sup>67</sup> or related to certain types of fraud,<sup>68</sup> or for other reasons in the applicable practice act.

There are no statutory provisions or rules that prohibit individuals from applying for licensure while they are still incarcerated or under some form of supervised release.<sup>69</sup>

### **Certified Nursing Assistants**

The Board of Nursing within the DOH is responsible for licensing and regulating the certified nursing assistants (CNA) under part II of ch. 464, F.S.<sup>70</sup> In Fiscal Year 2015-2016, there were 146,495 active certified nursing assistants.<sup>71</sup>

The "practice of a certified nursing assistant" means:

providing care and assisting persons with tasks relating to the activities of daily living. Such tasks are those associated with personal care, maintaining mobility, nutrition and hydration, toileting and elimination, assistive devices, safety and cleanliness, data gathering, reporting abnormal signs and symptoms, postmortem care, patient socialization and reality orientation, end-of-life care, cardiopulmonary resuscitation and emergency care, residents' or patients' rights, documentation of nursing-assistant services, and other tasks that a certified nurse assistant may

<sup>66</sup> Section 455.227(1)(c), F.S.

<sup>67</sup> Sections 456.024(3)(c), 456.072(1)(c), (x), (ii) and (ll), and 456.071(2)(a), F.S.

<sup>68</sup> Section 456.0635, F.S.

<sup>69</sup> Florida Department of Health, *Agency Analysis of HB 1041*, p. 2 (Jan. 24, 2018) (on file with the Criminal Justice Committee).

<sup>70</sup> See s. 489.107, F.S.

<sup>71</sup> See Florida Department of Health, Division of Medical Quality Assurance, *Annual Report & Long-range Plan, Fiscal Year 2016-2017*, p. 14, available at <http://mqawebteam.com/annualreports/1617/#1/z> (last visited Feb. 14, 2018). Of the total 193,637 certified nursing assistants, 42,209 are in-state delinquent, 2,019 are out-of-state delinquent, and are active military.

perform after training beyond that required for initial certification and upon validation of competence in that skill by a registered nurse.<sup>72</sup>

The definition of “practice of a certified nursing assistant” does not restrict a person who is otherwise trained and educated from performing the tasks specified in the definition.<sup>73</sup>

To be certified in Florida, a person must have a high school diploma, or its equivalent; or be at least 18 years of age, and pass a nursing assistant competency examination. Alternatively, a person may be certified in Florida if he or she is certified by another state and has not been found to have committed abuse, neglect, or exploitation in that state.<sup>74</sup>

The qualifications for certification as a CNA do not specifically refer to a person’s criminal background, but an applicant must pass a background screening pursuant to s. 400.215, F.S., which requires the personnel of nursing homes and related healthcare facilities to pass a level two background screening, or s. 408.809, F.S.<sup>75</sup> The background screening must be completed every five years following licensure, employment, or entering into contract in a capacity that requires background screening.<sup>76</sup>

Level two background screening ensures that a subject of the screening has not been arrested for, is not awaiting final disposition of, has not been found guilty of, regardless of adjudication, or not entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent and the record has not been sealed or expunged for, any of the 52 prohibited offenses.<sup>77</sup> The prohibited offenses include violent crimes, property crimes, and sexual offenses.<sup>78</sup>

In addition to the crimes specified under s. 435.04, F.S., a CNA may not have a felony record for certain specified felony financial crimes, including Medicaid fraud and forgery.<sup>79</sup>

A level two background screening includes fingerprinting for statewide criminal history records checks through the Florida Department of Law Enforcement (FDLE) and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies. Once the background screening is complete, and the FDLE receives the information from the FBI, the criminal history information is transmitted to the DOH. The DOH determines if the screening contains any disqualifying information for employment.

If a person is disqualified from employment due to failing the required background screening, the DOH may grant an exemption from disqualification for:

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<sup>72</sup> Section 464.201(5), F.S.

<sup>73</sup> *Id.*

<sup>74</sup> Section 464.203, F.S.

<sup>75</sup> Section 408.809(1), F.S.

<sup>76</sup> Section 408.809(2), F.S.

<sup>77</sup> Section 435.04, F.S.

<sup>78</sup> *See* s. 435.04(2), F.S.

<sup>79</sup> *See* s. 408.809(4), F.S.

- Felonies for which at least three years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying felony;
- Misdemeanors prohibited under any of the statutes cited in this chapter or under similar statutes of other jurisdictions for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court;
- Offenses that were felonies when committed but that are now misdemeanors and for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court; or
- Findings of delinquency.<sup>80</sup>

However, DOH may not grant an exemption until at least three years have elapsed since the applicant's completion or lawful release from confinement, supervision, or nonmonetary condition imposed by the court for the offense if the:

- Applicant was a juvenile at the time of the commission of the offense;
- Offense committed is a disqualifying crime that would be considered a felony if committed by an adult; and
- Record has not been sealed or expunged.<sup>81</sup>

An applicant who seeks an exemption must first pay any court-ordered amount for any fee, fine, fund, lien, civil judgment, application, costs of prosecution, trust, or restitution as part of the judgment and sentence for the disqualifying crime.<sup>82</sup>

However, the DOH may not grant an exemption to an individual who is found guilty of, regardless of adjudication, or who has entered a plea of nolo contendere or guilty to, any felony covered by s. 435.03, F.S., or s. 435.04, F.S., solely by reason of any pardon, executive clemency, or restoration of civil rights.<sup>83</sup>

An exemption may also not be granted to anyone who is a sexual predator, career offender, or sexual offender (unless not required to register).<sup>84</sup> The agency may not grant an exemption from disqualification to persons with a criminal history that includes other violent felonies, crimes against children, and sex-related crimes, such as felony domestic violence, luring or enticing a child, sexual battery, child pornography, and child abuse.<sup>85</sup>

### III. Effect of Proposed Changes:

#### Education of State and County Inmates (Sections 5 through 7)

The bill amends ss. 951.176 and 944.801, F.S., respectively, to authorize a county or municipal detention facility or the DOC to contract with a district school board, the Florida Virtual School,

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<sup>80</sup> Section 435.07(1)(a), F.S.

<sup>81</sup> *Id.*

<sup>82</sup> Section 435.07(1)(b), F.S.

<sup>83</sup> *See* s. 435.07(4)(a), F.S.

<sup>84</sup> *See* s. 435.07(4)(b), F.S.

<sup>85</sup> *See* s. 435.07(4)(c), F.S.

a Florida College System institution, a virtual education provider approved by the State Board of Education, or a charter school to provide educational services. The educational services may include any educational, career, or vocational training that is authorized by a county or municipal detention facility or the DOC.

The bill amends s. 1011.80, F.S., to allow state funding for postsecondary education to be used on inmates with less than 60 months of time remaining on his or her sentence.

### **Declaratory Statements (Section 1)**

The bill creates a new declaratory statement process that permits a person who desires to become licensed in a state-regulated profession or occupation to obtain a binding determination of whether his or her criminal conviction or sanction will prevent such licensure, registration, or certification in the profession or occupation.

A person may seek the agency's opinion prior to the person possessing the training or education required for the license, registration, or certificate in the profession or occupation. Additionally, he or she may request the agency's determination while still under criminal confinement or supervision.

The petition may include mitigating factors or other information the petitioner believes relevant to establish the petitioner's eligibility, including, but not limited to:

- The time elapsed since completion of or lawful release from confinement, supervision, or nonmonetary condition imposed by the court for a disqualifying offense; and
- The petitioner's standing in his or her community.

The agency's declaratory statement must further indicate whether:

- The petitioner is disqualified from obtaining the license, registration, or certification due to the petitioner's criminal background, regardless of the petitioner's education, training, experience, or other prerequisites required for the license, registration, or certification.
- The petitioner is not eligible for a specified occupational or professional license, registration, or certification because of his or her criminal background.
- The agency's determination of disqualification as a result of criminal background may be reversed based on evidence of rehabilitation or mitigation.
- Any federal laws or regulations or any conditions imposed by the court on the petitioner may impede his or her licensure, registration, or certification in the profession or occupation.
- Conditions or restrictions imposed by the court on the petitioner for a disqualifying offense may impede the petitioner's licensure, registration, or certification in the profession or occupation.

The agency's conclusion is binding on the agency as to the petitioner, but any subsequent criminal history may form an independent basis for denial of licensure, registration, or certification.

An agency may require a petitioner to submit the following with his or her petition for declaratory statement:

- A fee of not more than \$100;

- A certified copy of each criminal judgment rendered against the petitioner;
- A complete set of fingerprints; and
- A fingerprint processing fee.

The agency must submit the fingerprints to the FDLE for a state criminal history record check and the FDLE must forward the fingerprints to the FBI for a national criminal history record check.

### **Licensing and Criminal Background (Sections 2 through 4)**

The bill creates a process for reviewing the criminal history of applicants for specified professions or occupations regulated by the DBPR and the DOH.

The bill amends s. 455.213, F.S., dealing with the general licensing provisions of the DBPR, and s. 464.203, F.S., dealing with the certification requirements for certified nursing assistants under the DOH.

The license application review process in the bill applies to the following professions and occupations:

- Barbers.
- Cosmetologists and cosmetology specialists (i.e., hair braiders, hair wrappers, and body wrappers).
- Construction Professionals, including:
  - Air-conditioning contractor;
  - Electrical contractor;
  - Mechanical contractor;
  - Plumbing contractor;
  - Pollutant storage systems contractor;
  - Roofing contractor;
  - Septic tank contractor;
  - Sheet metal contractor;
  - Solar contractor;
  - Swimming pool and spa contractor;
  - Underground utility and excavation contractor; and
  - Other specialty contractors whose scope of work and responsibility is limited to a particular phase of construction, e.g. drywall, glazing, swimming pool excavation, etc.
- Certified Nursing Assistants.

The process created in the bill:

- Permits a person to apply for a license while under criminal confinement (incarceration) or supervision.
- Limits the period during which the agency may consider criminal history as an impairment to licensure to seven years from the date of the criminal conviction for CNAs and five years from the date of criminal conviction for all other professions covered by the bill.
- Requires each agency to identify by rule the crimes that do not impair a person's qualifications for licensure.

- Requires each agency to identify by rule the crimes that do impair a person's qualifications for licensure.
- Prohibits the board from denying an application for a license solely on the basis of the applicant's current confinement or supervision.
- Authorizes board to stay the issuance of a license until the applicant is lawfully released from confinement or supervision, the applicant notifies the board of such release, and the board has verified the release with the DOC.
- Requires an agency to 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.
- Requires the DOC to cooperate and coordinate with the board or department, as applicable, to facilitate the appearance of the applicant at the hearing in person, by teleconference, or by video conference, as appropriate.

The bill amends s. 400.211, F.S., incorporating changes made by the act.

The bill takes effect July 1, 2018.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill authorizes a charter school or virtual instruction provider, which can be managed by a for-profit entity, to contract with the DOC or a county or municipal entity to provide educational services to inmates. To the extent that this bill increases the pool of students that a private company can serve, it may result in a positive fiscal impact to the private company.

Additionally, persons who submit a petition for a declaratory statement from an agency to determine whether the petitioner's criminal history affects the person's eligibility for a



license, registration, or certificate, must pay a filing fee not to exceed \$100 for the petition and the actual cost of state and federal processing related to the criminal background check. However, such individuals may also forego certain unnecessary schooling, training, or application costs, depending on the agency's determination.

**C. Government Sector Impact:**

The bill authorizes the state or a local entity to contract with district, charter, or virtual school entities (school providers) to offer educational services to its inmates. Such services will be provided by the school providers through the workforce education models that currently exist. The DOC or a county and municipal detention facility may use funds appropriated for the education of inmates to contract with the school providers to offer such educational services.

The bill authorizes persons to submit a petition for a declaratory statement from an agency to determine whether the petitioner's criminal history affects the person's eligibility for a license, etc. To the extent that the bill results in an increase in submissions of petitions for declaratory statements, this may result in an increased workload to government agencies that provide occupational or professional licenses. Additionally, the agencies will likely have increased revenues associated with the declaratory statement petition fee of not more than \$100.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

SB 2500 appropriates \$2,000,000 from the General Revenue Fund for postsecondary education of state inmates.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 120.565, 400.211, 455.213, 464.203, 944.801, 951.176, and 1011.80.

**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 14, 2018:**

The committee substitute:

- Permits a person to submit a petition for declaratory statement to any Florida agency to determine the effect of a criminal background on his or her eligibility for occupational or professional licensure;

- Requires the agency to indicate specified information in its declaratory statement conclusion;
- Requires the agency's conclusion in the declaratory statement is binding on the agency as to the petitioner;
- Requires specified submissions to be included with the petition for declaratory statement, including a fee of not more than \$100;
- Prohibits an agency from denying an application for licensure for certain professions if a specific duration has passed since the applicant's conviction;
- Authorizes a person to apply for licensing from the DBPR prior to being released from incarceration and provides a process for the staying of the issuance of the license until the person's release from custody;
- Specifies accommodations that an agency must make for applicants who are under confinement or supervision at the time of their application;
- Requires pertinent boards under the DBPR and the DOH to adopt rules that specify crimes that constitute grounds for licensure denial;
- Expands the entities that the DOC or a county may contract with to provide educational services for inmates to include a Florida College System institution or a virtual education provider approved by the State Board of Education; and
- Allows state funds to be expended for inmates that have 60 months left on the term of incarceration.

B. Amendments:

None.