

**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 Rules

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BILL: CS/SB 1934

INTRODUCER: Rules Committee and Senators Book and Taddeo

SUBJECT: Health Care Practitioner Discipline

DATE: April 16, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto Van-Winkle	Brown	HP	<b>Favorable</b>
2.	Siples	Jones	CJ	<b>Favorable</b>
3.	Rossitto Van-Winkle	Phelps	RC	<b>Fav/CS</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1934:

- Amends s. 456.072, F.S., to add to the list of offenses that are grounds for disciplinary action against the license of a health care practitioner regulated by the Department of Health (DOH), for:
  - Being convicted, found guilty, pleading guilty, or pleading nolo contendere, regardless of adjudication, to any of the crimes listed in s. 456.074(5), F.S., as amended; or
  - Attempting, soliciting, or conspiring to commit an act that would constitute a crime listed in s. 456.074(5), F.S., or similar crime in another jurisdiction.
- Amends s. 456.074(1), F.S., to add homicide to list of offenses that require the DOH to issue an Emergency Suspension Order (ESO) and broadens the application to any health care practitioner, instead of those currently listed in statute, if he or she pleads guilty to, is convicted or found guilty of, or who enter pleads nolo contendere to, regardless of adjudication.
- Amends s. 456.074(2), F.S., to specify offenses that require the DOH to issue an ESO against any health care practitioner who is arrested for such offenses. The bill requires the DOH to issue an ESO if a health care practitioner is arrested for committing or attempting, soliciting, or conspiring to commit any one of the listed criminal offenses involving a child, an individual with mental or physical disabilities, or the elderly, or a similar offense in another jurisdiction.

- Directs the Office of Program Policy Analysis and Government Accountability (OPPAGA) to analyze state laws and rules relating to grounds for health care practitioner discipline and ESOs of licenses, specifically with respect to criminal offenses, and to report to Executive and Legislative Branch leadership by January 1, 2022.

The bill provides an effective date of July 1, 2021.

## II. Present Situation:

### The Department of Health

The Legislature created the DOH to protect and promote the health of all residents and visitors in the state.<sup>1</sup> The DOH is charged with the regulation of health practitioners for the preservation of the health, safety, and welfare of the public. The Division of Medical Quality Assurance (MQA) is responsible for the boards<sup>2</sup> and professions within the DOH.<sup>3</sup> The health care practitioners licensed by the DOH include the following:

- Acupuncturists;<sup>4</sup>
- Allopathic physicians, physician assistants, anesthesiologist assistants, and medical assistants;<sup>5</sup>
- Osteopathic physicians, physician assistants, and anesthesiologist assistants;<sup>6</sup>
- Chiropractic physicians and physician assistants;<sup>7</sup>
- Podiatric physicians;<sup>8</sup>
- Naturopathic physicians;<sup>9</sup>
- Optometrists;<sup>10</sup>
- Autonomous advanced practice registered nurses, advanced practice registered nurses, registered nurses, licensed practical nurses, and certified nursing assistants;<sup>11</sup>
- Pharmacists, pharmacy interns, and pharmacy technicians;<sup>12</sup>
- Dentists, dental hygienists, and dental laboratories;<sup>13</sup>
- Midwives;<sup>14</sup>
- Speech and language pathologists;<sup>15</sup>
- Audiologists;<sup>16</sup>

<sup>1</sup> Section 20.43(1), F.S.

<sup>2</sup> Under s. 456.001(1), F.S., “board” is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the DOH or, in some cases, within the DOH MQA.

<sup>3</sup> Section 20.43(3)(g), F.S.

<sup>4</sup> Chapter 457, F.S.

<sup>5</sup> Chapter 458, F.S.

<sup>6</sup> Chapter 459, F.S.

<sup>7</sup> Chapter 460, F.S.

<sup>8</sup> Chapter 461, F.S.

<sup>9</sup> Chapter 462, F.S.

<sup>10</sup> Chapter 463, F.S.

<sup>11</sup> Chapter 464, F.S.

<sup>12</sup> Chapter 465, F.S.

<sup>13</sup> Chapter 466, F.S.

<sup>14</sup> Chapter 467, F.S.

<sup>15</sup> Part I, ch. 468, F.S.

<sup>16</sup> *Id.*

- Occupational therapists and occupational therapy assistants;<sup>17</sup>
- Respiratory therapists;<sup>18</sup>
- Dietitians and nutritionists;<sup>19</sup>
- Athletic trainers;<sup>20</sup>
- Orthotists, prosthetists, and pedorthists;<sup>21</sup>
- Electrologists;<sup>22</sup>
- Massage therapists;<sup>23</sup>
- Clinical laboratory personnel;<sup>24</sup>
- Medical physicists;<sup>25</sup>
- Opticians;<sup>26</sup>
- Hearing aid specialists;<sup>27</sup>
- Physical therapists;<sup>28</sup>
- Psychologists and school psychologists;<sup>29</sup> and
- Clinical social workers, mental health counselors, and marriage and family therapists.<sup>30</sup>

### **Disciplinary Proceeding under Chapters 456 and 120, F.S.**

Section 456.072, F.S., enumerates at least 43 specific acts that constitute grounds for disciplinary action against licensed health care practitioners in Florida. In addition, each health care practitioner's respective practice act contains specific statutory provisions on prohibited acts, disciplinary actions, grounds for discipline, and actions by the applicable board.

The DOH, on behalf of the boards, investigates any complaint that is filed against a health care practitioner if the complaint is:

- In writing;
- Signed by the complainant;<sup>31</sup> and
- Legally sufficient.<sup>32</sup>

A complaint is legally sufficient if it contains allegations of ultimate facts that, if true, show that a regulated practitioner has violated:

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<sup>17</sup> Part III, ch. 468, F.S.

<sup>18</sup> Part V, ch. 468, F.S.

<sup>19</sup> Part X, ch. 468, F.S.

<sup>20</sup> Part XIII, ch. 468, F.S.

<sup>21</sup> Part XIV, ch. 468, F.S.

<sup>22</sup> Chapter 478, F.S.

<sup>23</sup> Chapter 480, F.S.

<sup>24</sup> Part II, ch. 483, F.S.

<sup>25</sup> Part III, ch. 483, F.S.

<sup>26</sup> Part I, ch. 484, F.S.

<sup>27</sup> Part II, ch. 484, F.S.

<sup>28</sup> Chapter 486, F.S.

<sup>29</sup> Chapter 490, F.S.

<sup>30</sup> Chapter 491, F.S.

<sup>31</sup> Section 456.073(1), F.S. The DOH may also investigate an anonymous complaint, or that of a confidential informant, if the complaint is in writing and is legally sufficient, if the alleged violation of law or rules is substantial, and if the DOH has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true.

<sup>32</sup> *Id.*

- Chapter 456, F.S.;
- His or her practice act; or
- A rule of his or her board or the DOH.<sup>33</sup>

The Consumer Services Unit receives the complaints and refers them to the closest Investigative Services Unit (ISU) office. The ISU investigates complaints against health care practitioners.<sup>34</sup> Complaints that present an immediate threat to public safety are given priority; however, all complaints are investigated as timely as possible. When the complaint is assigned to an investigator, the complainant will be contacted and given the opportunity to provide additional information. A thorough investigation will be conducted. The steps taken in the investigation are determined by the specifics of the allegations, but generally include the following:

- Obtaining medical records, documents, and evidence;
- Locating and interviewing the complainant, the patient, the subject, and any witnesses; and
- Drafting and serving subpoenas for necessary information.<sup>35</sup>

The ISU includes a staff of professional investigators and senior pharmacists who conduct interviews, collect documents and evidence, prepare investigative reports for the Prosecution Services Unit (PSU), and serve subpoenas and official orders for the DOH.<sup>36</sup>

The PSU is responsible for providing legal services to the DOH in the regulation of all health care boards and councils.<sup>37</sup> The PSU will review the investigative file and report from ISU and recommend a course of action to the State Surgeon General (when an immediate threat to the health, safety, and welfare of the people of Florida exists), the appropriate board's probable cause panel, or the DOH, if there is no board, which may include:

- Having the file reviewed by an expert;
- Issuing a closing order (CO);
- Filing an administrative complaint (AC); or
- Issuing an emergency order (ERO or ESO).<sup>38</sup>

If the ISU investigative file received by the PSU does not pose an immediate threat to the health, safety, and welfare of the people of Florida, then the PSU attorneys review the file and determine, first, whether expert review is required and, then, whether to recommend to the board's probable cause panel:

- A CO;
- An AC; or

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<sup>33</sup> *Id.*

<sup>34</sup> Department of Health, Licensing and Regulation, Enforcement, Administrative Complaint Process, *Investigative Services*, available at <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/isu.html> (last visited March 18, 2021).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Department of Health, Licensing and Regulation, Enforcement, Administrative Complaint Process, *Prosecution Services*, available at <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/psu.html> (last visited March 18, 2021).

<sup>38</sup> *Id.*

- A Letter of Guidance (LOG).<sup>39,40</sup>

A CO is recommended if the investigation and/or the expert opinion does not support the allegation(s). The subject and the complainant are notified of the results. The complainant may appeal the decision within sixty (60) days of notification by providing additional information for consideration. Cases closed with no finding of probable cause are confidential and are not available through a public records request.<sup>41</sup>

An AC is recommended when the investigation and/or the expert opinion supports the allegation(s). The subject is entitled to a copy of the complete case file prior to the probable cause panel meeting. When an AC is filed with the agency clerk, the subject has the right to choose one of the following options:

- *An Administrative Hearing Involving Disputed Issues of Material Fact* – The subject disputes the facts in the AC and elects to have a hearing before the Division of Administrative Hearings (DOAH). If this occurs, all parties may be asked to testify and the administrative law judge will issue a recommended order that will then go to the board or the DOH for final agency action.
- *A Settlement/Stipulation/Consent Agreement* – The subject enters into an agreement to be presented before the board or the DOH. Terms of this agreement may impose penalties negotiated between the subject or the subject’s attorney and the DOH’s attorney.
- *A Hearing Not Involving Disputed Issues of Material Fact* – The subject of the AC does not dispute the facts. The subject elects to be heard before the board or the DOH. At that time, the subject will be permitted to give oral and/or written evidence in mitigation or in opposition to the recommended action by the DOH.
- *Voluntary Relinquishment of License* – The subject of the AC may elect to surrender his or her license and to cease practice.<sup>42</sup>

Final DOH action, including all of the above, as well as cases where the subject has failed to respond to an AC, are presented before the applicable board, or the DOH if there is no board. The subject may be required to appear. The complainant is notified of the date and location of the hearing and may attend. If the subject is entitled to, and does, appeal the final decision, PSU defends the final order before the appropriate appellate court.<sup>43</sup>

If the ISU investigative file received by the PSU presents evidence of an immediate threat to the health, safety, and welfare of the people of Florida, then the PSU will present the file to the State Surgeon General and recommend one of two types of emergency orders – ESO or ERO – which are exclusively issued by the State Surgeon General against licensees who pose such a threat to the people of Florida.<sup>44</sup>

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<sup>39</sup> Section 456.073(2), F.S. The DOH may recommend a LOG in lieu of finding probable cause if the subject has not previously been issued a LOG for a related offense.

<sup>40</sup> *Id.*

<sup>41</sup> *Supra* note 39.

<sup>42</sup> *Id.*

<sup>43</sup> *Supra* note 36.

<sup>44</sup> Sections 456.073(8) and 120.60(6), F.S.

Whether the State Surgeon General issues an ERO or an ESO depends on the level of danger the licensee presents, because the DOH is permitted to use only the “least restrictive means” to stop the danger.<sup>45</sup> The distinction between the two orders is:

- ESOs – Licensees are deemed to be a threat to the public at large; or
- EROs – Licensees are considered a threat to a segment of the population.<sup>46</sup>

The emergency order process, which restricts someone’s right to work, is carried out without a hearing, and when the order is served on the licensee, it must contain a notice to the licensee of his or her right to an immediate appeal of the emergency order.<sup>47</sup> An ESO or ERO is not considered final agency action, and the DOH must file an AC on the underlying facts supporting the ESO or ERO within 20 days of its issuance.<sup>48</sup> The appeal of the emergency order and the normal disciplinary process under the AC, and regular prosecution can run simultaneously.<sup>49</sup>

### ***Mandatory EROs and ESOs***

Section 456.074, F.S., directs that in certain cases, the DOH must issue an ESO or ERO to certain license practitioners under certain circumstances, specifically:

- If any of the following practitioners have plead guilty to, been convicted of, found guilty of, or have entered a plea of nolo contendere to, regardless of adjudication, certain offenses related to Medicare fraud, Medicaid fraud, health care fraud, controlled substances, or reproductive battery, they are subject to an ESO by the State Surgeon General:
  - Allopathic physician, physician assistants, anesthesiologist assistants, and medical assistants;
  - Osteopathic physician, physician assistants, and anesthesiologist assistants;
  - Chiropractic physician and physician assistants;
  - Podiatric physicians;
  - Naturopathic physicians;
  - Optometrists;
  - Autonomous advanced practice registered nurses, advanced practice registered nurses, registered nurses, licensed practical nurses and certified nursing assistants;
  - Pharmacists and pharmacy technicians;
  - Dentists, dental hygienist, and dental laboratories; and
  - Opticians;<sup>50</sup>
- The DOH may issue an ESO or ERO if the Board of Medicine (BOM) or Board of Osteopathic Medicine (BOOM) has previously found one of its physicians has committed

<sup>45</sup> Section 120.60(6)(b), F.S.

<sup>46</sup> Department of Health, Licensing and Regulation, Enforcement, Administrative Complaint Process, Prosecution Services, *A Quick Guide to the MQA Disciplinary Process Discretionary Emergency Orders – 3 Things to Know*, available at <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/documents/a-quick-guide-to-the-mqa-disciplinary-process-discretionary-emergency-orders.pdf> (last visited March 18, 2021).

<sup>47</sup> See Fla. Admin. Code R. 28-106.501(3) (2020), and ss. 120.569(2)(n) and 120.60(6), F.S.

<sup>48</sup> Fla. Admin. Code R. 28-106.501(3) (2020).

<sup>49</sup> Section 120.60(6)(c), F.S.

<sup>50</sup> Section 456.074(1), F.S.

medical malpractice,<sup>51</sup> gross medical malpractice, or repeated medical malpractice,<sup>52</sup> and the probable cause panel again finds probable cause for another malpractice violation. In such cases, the State Surgeon General must review the matter to determine if an ESO or ERO is warranted;<sup>53</sup>

- The DOH may issue an ESO or ERO if any practitioner governed by ch. 456, F.S., tests positive for any drug on any government or private sector pre-employment or employer-ordered confirmed drug test,<sup>54</sup> when the practitioner does not have a lawful prescription and legitimate medical reason for using such drug;<sup>55</sup>
- The DOH must issue an ESO if it receives information that a massage therapist, a person with an ownership interest in the establishment, or a massage corporate establishment corporation whose owners, officers, or individual are directly involved in the management of the establishment, has been convicted of, found guilty of, or has entered a guilty or nolo contendere plea to, regardless of adjudication, a felony under any of the following crimes anywhere, relating to:<sup>56</sup>
  - Prostitution;<sup>57</sup>
  - Kidnapping;<sup>58</sup>
  - False imprisonment;<sup>59</sup>
  - Luring or enticing a child;<sup>60</sup>
  - Human trafficking;<sup>61</sup>
  - Human smuggling;<sup>62</sup>
  - Sexual battery;<sup>63</sup>
  - Female genital mutilation;<sup>64</sup>
  - Procuring a person under 18 for prostitution;<sup>65</sup>
  - Selling or buying of minors into prostitution;<sup>66</sup>
  - Forcing, compelling, or coercing another to become a prostitute;<sup>67</sup>

<sup>51</sup> Section 456.50(1)(g), F.S., “Medical malpractice” means the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in law related to health care licensure.

<sup>52</sup> *Id.* “Repeated medical malpractice” is medical malpractice, and any similar wrongful act, neglect, or default committed in another state or country which, if committed in this state, would have been considered medical malpractice, and will be considered medical malpractice, if the standard of care and burden of proof applied in the other state or country equaled or exceeded that used in this state.

<sup>53</sup> Section 456.074(2), F.S.

<sup>54</sup> Section 112.0445, F.S., defines a “confirmed drug test” as a second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen, and must be different in scientific principle than the initial drug test.

<sup>55</sup> Section 456.074(3), F.S. The practitioner must be given 48 hours from the time of notification of the confirmed test results to produce a lawful prescription for the drug before an emergency order is issued.

<sup>56</sup> Section 456.074(4), F.S.

<sup>57</sup> Section 796.07(1)(a), F.S. “Prostitution” means the giving or receiving of the body for sexual activity for hire, but excludes sexual activity between spouses. Prostitution that took place at a massage establishment is reclassified to the next higher degree. *See s. 796.07(2)(a)*, F.S., which is reclassified under s. 796.07(7), F.S.

<sup>58</sup> Section 787.01, F.S.

<sup>59</sup> Section 787.02, F.S.

<sup>60</sup> Section 787.025, F.S.

<sup>61</sup> Section 787.06, F.S.

<sup>62</sup> Section 787.07, F.S.

<sup>63</sup> Section 794.011, F.S.

<sup>64</sup> Section 794.08, F.S.

<sup>65</sup> Former s. 796.03, F.S.

<sup>66</sup> Former s. 796.035, F.S.

<sup>67</sup> Section 796.04, F.S.

- Deriving support from the proceeds of prostitution;<sup>68</sup>
- Prohibiting prostitution and related acts;<sup>69</sup>
- Lewd or lascivious offenses committed upon or in the presence of persons under 16;<sup>70</sup>
- Lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person;<sup>71</sup>
- Sexual performance by a child;<sup>72</sup>
- Protection of minors;<sup>73</sup>
- Computer pornography;<sup>74</sup>
- Transmission of material harmful to minors, to a minor by electronic device or equipment;<sup>75</sup> and
- Selling or buying of minors.<sup>76</sup>
- The DOH must issue an ESO if a BOM or BOOM probable cause panel determines that the following constitutes a violation of the practice act and there exists an immediate danger to the public:<sup>77</sup>
  - The registered surgery office where office surgery level liposuction, or Level II or Level III office surgeries are being performed; or the physician practicing in the office, are not in compliance with the standards of practice for office surgery set by statute and board rule;<sup>78</sup> or
  - The physician is practicing beyond the scope of his or her education, training and experience, and performing procedures the licensee knows, or has reason to know, that he or she is not competent to perform.<sup>79,80</sup>

### III. Effect of Proposed Changes:

The bill:

- Amends s. 456.072, F.S., to add to the list of offenses that are grounds for disciplinary action against the license of a health care practitioner regulated by the DOH. The bill adds the following to that list: being convicted or found guilty of, entering a plea of guilty or nolo contendere to, regardless of adjudication, or committing or attempting, soliciting, or conspiring to commit an act that would constitute a violation of any of the offenses listed in s. 456.074(5), F.S., or a similar offense in another jurisdiction.
- Amends s. 456.074(1), F.S., to apply to any health care practitioner, instead of those currently specified in statute, and adds to the listed offenses a felony under ch. 782, F.S., relating to homicide for which the DOH is required to issue an ESO if the practitioner pleads

<sup>68</sup> Section 796.05, F.S.

<sup>69</sup> Section 796.07(4)(a)3., F.S., relating to a felony of the third degree for a third or subsequent violation of s. 796.07, F.S.

<sup>70</sup> Section 800.04, F.S.

<sup>71</sup> Section 825.1025(2)(b), F.S.

<sup>72</sup> Section 827.071, F.S.

<sup>73</sup> Section 847.0133, F.S.

<sup>74</sup> Section 847.0135, F.S.

<sup>75</sup> Section 847.0138, F.S.

<sup>76</sup> Section 847.0145, F.S.

<sup>77</sup> Section 456.074(5), F.S.

<sup>78</sup> *Id.* and Fla. Admin. Code Rs. 64B8-9.009 and 64B15-14.007 (2020).

<sup>79</sup> Sections 458.331(1)(v) and 459.015(1)(z), F.S.

<sup>80</sup> Section 456.074(5), F.S.



guilty to, is convicted or found guilty of, or who enter pleas of nolo contendere to, regardless of adjudication.

- Creates a new subsection (5) of s. 456.074, F.S., to require the DOH to issue an ESO against the license of any health care practitioner who is arrested for committing or attempting, soliciting, or conspiring to commit any act that would constitute a violation of any of the following criminal offenses involving a child in Florida or similar offenses in another jurisdiction:
  - Sexual misconduct against an individual with a developmental disability;<sup>81</sup>
  - Sexual misconduct against a patient of a receiving or treatment facility or in the custody of the Department of Children and Families;<sup>82</sup>
  - Kidnapping;<sup>83</sup>
  - False imprisonment;<sup>84</sup>
  - Luring or enticing a child;<sup>85</sup>
  - Human trafficking for commercial sexual activity;<sup>86</sup>
  - Human trafficking of a child under five for commercial sexual activity;<sup>87</sup>
  - Human smuggling;<sup>88</sup>
  - Sexual battery, excluding a person charged with falsely accusing certain individuals of sexual battery;<sup>89</sup>
  - Unlawful sexual activity with certain minors;<sup>90</sup>
  - Female genital mutilation;<sup>91</sup>
  - Procuring a person under age 18 for prostitution;<sup>92</sup>
  - Selling or buying of minors into prostitution;<sup>93</sup>
  - Forcing, compelling, or coercing another to become a prostitute;<sup>94</sup>
  - Deriving support from the proceeds of prostitution;<sup>95</sup>
  - Prohibiting prostitution and related acts;<sup>96</sup>
  - Lewd or lascivious offenses committed upon or in the presence of persons under age 16;<sup>97</sup>
  - Video voyeurism of a minor;<sup>98</sup>
  - Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person;<sup>99</sup>

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<sup>81</sup> Section 393.135(2), F.S.

<sup>82</sup> Section 394.4593(2), F.S.

<sup>83</sup> Section 787.01, F.S.

<sup>84</sup> Section 787.02, F.S.

<sup>85</sup> Section 787.025(2), F.S.

<sup>86</sup> Section 787.06(3)(b),(d), (f), or (g), F.S.

<sup>87</sup> Former s. 787.06(3)(h), F.S.

<sup>88</sup> Section 787.07, F.S.

<sup>89</sup> Section 794.011, F.S.

<sup>90</sup> Section 794.05, F.S.

<sup>91</sup> Section 794.08, F.S.

<sup>92</sup> Former s. 796.03, F.S.

<sup>93</sup> Former s. 796.035, F.S.

<sup>94</sup> Section 796.04, F.S.

<sup>95</sup> Section 796.05, F.S.

<sup>96</sup> Section 796.07(4)(a)3., F.S., relating to a felony of the third degree for a third or subsequent violation of s. 796.07, F.S.

<sup>97</sup> Section 800.04, F.S.

<sup>98</sup> Section 810.145(8), F.S.

<sup>99</sup> Section 825.1025, F.S.

- Sexual performance by a child;<sup>100</sup>
- Performing prohibited acts in connection with obscene, lewd, and other materials;<sup>101</sup>
- Selling, renting, loaning, for monetary consideration, materials harmful to minors, using a minor in the production of such material, or distributing such material to a minor in certain locations;<sup>102</sup>
- Exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations;<sup>103</sup>
- Selling, renting, loaning, giving away, distributing, transmitting, or showing any obscene material to a minor;<sup>104</sup>
- Computer pornography, prohibited computer usage, or traveling to meet minors, excluding owners or operators of computer services;<sup>105</sup>
- Transmission of child pornography by electronic device or equipment;<sup>106</sup>
- Transmission of material harmful to minors to a minor by electronic device or equipment;<sup>107</sup>
- Selling or buying of minors;<sup>108</sup>
- Loitering or prowling in close proximity to children;<sup>109</sup>
- Racketeering activity;<sup>110</sup>
- Sexual misconduct against a forensic client of a civil or forensic facility for defendants who have a mental illness or an intellectual disability;<sup>111</sup>
- Sexual misconduct against a juvenile offender;<sup>112</sup> and
- Any similar offense committed in this state which has been re-designated from a former statute number to one of those listed above.
- Section 3 of the bill directs the OPPAGA to analyze Florida’s laws and rules relating to grounds for health care practitioner discipline and immediate suspension of licenses, specifically with respect to criminal offenses, and report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2022. The analysis must identify all health care professions regulated by the DOH, and for each profession:
  - Indicate all sections of the Florida Statutes, and related rules, that subject practitioners to discipline or an ESO of his or her license;
  - Identify which criminal offenses are specifically listed as grounds for disciplinary action or a ESO suspending a practitioner’s license, distinguishing whether the DOH may take such action upon a health care practitioner’s arrest for the criminal offense or conduct or only if the health care practitioner is found guilty or convicted of, or enters a plea of nolo contendere to, the criminal offense;

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<sup>100</sup> Section 827.071, F.S.

<sup>101</sup> Section 847.011, F.S.

<sup>102</sup> Section 847.012, F.S.

<sup>103</sup> Section 847.013, F.S.

<sup>104</sup> Section 847.0133, F.S.

<sup>105</sup> Sections 847.0135, and 847.0135(6), F.S.

<sup>106</sup> Section 847.0137, F.S.

<sup>107</sup> Section 847.0138, F.S.

<sup>108</sup> Section 847.0145, F.S.

<sup>109</sup> Section 856.022, F.S.

<sup>110</sup> Section 895.03, F.S., if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this subsection or at least one offense listed in this subsection which was committed with sexual intent or motive.

<sup>111</sup> Section 916.1075(2), F.S.

<sup>112</sup> Section 985.701(1), F.S.

- Compare all of the information obtained and determine:
  - Whether there are disparities between the professions as to which criminal offenses are grounds for disciplinary action or grounds for an ESO; and
  - Whether there are disparities between the disciplinary guidelines adopted by the boards or the DOH for the different professions;
- Review historical disciplinary action data from the DOH, including all of the disciplinary actions taken or immediate suspensions issued by the DOH for a health care practitioner's arrest for, conviction of, or entering a plea to a criminal offense, and identifying the types of offenses and details of the corresponding disciplinary action taken, if any; and
- To the extent possible, determine how many health care practitioners in the past 10 years (or in prior years if older data are available) have been arrested for, been convicted of, or have entered a plea to a criminal offense listed in s. 456.074(5), F.S., as amended by the bill, and, for such practitioners, determine how many have had administrative complaints filed or disciplinary action taken against their license or have had their license immediately suspended by the DOH for such arrest, conviction, or criminal plea, noting the final disposition of their case with the DOH, if any; and
- Compare all of the information obtained under the analysis and determine if Florida's current laws and rules, relating to discipline and ESOs of practitioners licenses, are creating discrepancies relating to practitioners who are arrested for, convicted of, or entering pleas to criminal offenses, that pose a danger to the health, safety, and welfare of the public, but are not being subjected to disciplinary action or ESOs of their licenses.
- Requires that, upon the OPPAGA's request, all state agencies must assist the OPPAGA in its analysis and preparation of the report, including, but not limited to, providing technical assistance and any relevant information or data the OPPAGA requests.

The bill repeals the authority for the OPPAGA report on January 2, 2022.

The bill provides an effective date of July 1, 2021.

#### **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 identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DOH estimates a significant workload increase under the bill, creating the need for 31 full-time equivalent (FTE) staff and \$2,154,496 in total costs, including \$2,011,129 recurring costs. These costs for the DOH MQA are associated with suspending licensees through the issuance of emergency orders based upon arrests.<sup>113</sup>

The MQA trust fund may have sufficient revenue in the future to support these costs; however, the current SB 2500 first engrossed for Fiscal Year 2021-2022 does not include any additional FTE or budget to support the bill's requirements.

The bill might also result in increased expenses borne by the OPPAGA to cover the costs associated with producing the report required under the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

To potentially give the OPPAGA more time to conduct the analysis required under section 3 of the bill, an amendment should be considered to make that section effective upon the bill becoming law.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 456.072 and 456.074.

This bill creates a non-statutory section of the Laws of Florida.

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<sup>113</sup> Florida Department of Health, Senate Bill 1934 Agency Fiscal Analysis of Amendment 171240 (on file with Senate Committee on Rules).

**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 Rules on April 16, 2021:**

The CS:

- Adds homicide to the list of offenses that require the DOH to issue an ESO and broadens the application to any health care practitioner, not only those currently listed in statute, if a practitioner pleads guilty to, is convicted or found guilty of, or who enter pleads nolo contendere to, regardless of adjudication.
- Adds lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person to offenses that require the DOH to issue an ESO if a practitioner is arrested for such offenses and broadens the application to include any health care practitioner, instead of those listed in the underlying bill.

- B. **Amendments:**

None.