



Justice Appropriations Subcommittee

Meeting Packet

**December 2, 2015
11:30 a.m. – 1:30 p.m.
Morris Hall**



The Florida House of Representatives
APPROPRIATION COMMITTEE

Justice Appropriations Subcommittee

Steve Crisafulli
Speaker

Larry Metz
Chair

MEETING AGENDA

Morris Hall

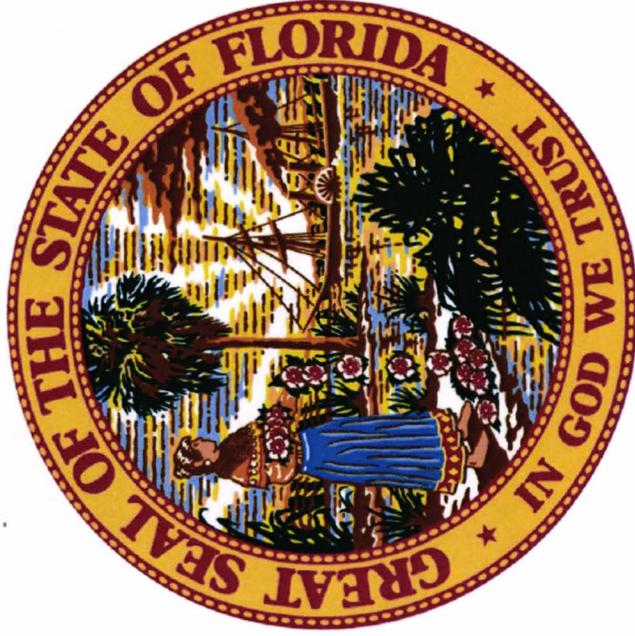
December 2, 2015

- I.** Meeting Called To Order
- II.** Opening Remarks by Chair
- III.** Governor's Recommended Budget for Fiscal Year 2016-2017
- IV.** Consideration of the following bills:
 - CS/HB 47 - Offenses Against Brokers, Broker Associates, or Sales Associates by Criminal Justice Subcommittee and Rep. Passidomo.
 - CS/HB 257 - Terroristic Threats by Criminal Justice Subcommittee & Rep. Smith
 - HB 4029 - Nonresident Plaintiffs in Civil Actions by Rep. Sprowls
- V.** Closing Remarks
- VI.** Meeting Adjourned

Governors Recommended
Budget for Fiscal Year
2016-2017

FLORIDA FIRST

GOVERNOR RICK SCOTT'S FLORIDA FIRST BUDGET 2016-2017



Public Safety Unit Budget Recommendations

FLORIDA 1ST FOR JOBS

Governor Scott's priorities to help diversify the economy to make Florida First in job creation:

Tax Cuts for Florida Families and Businesses

Over \$1 billion in Tax Cuts

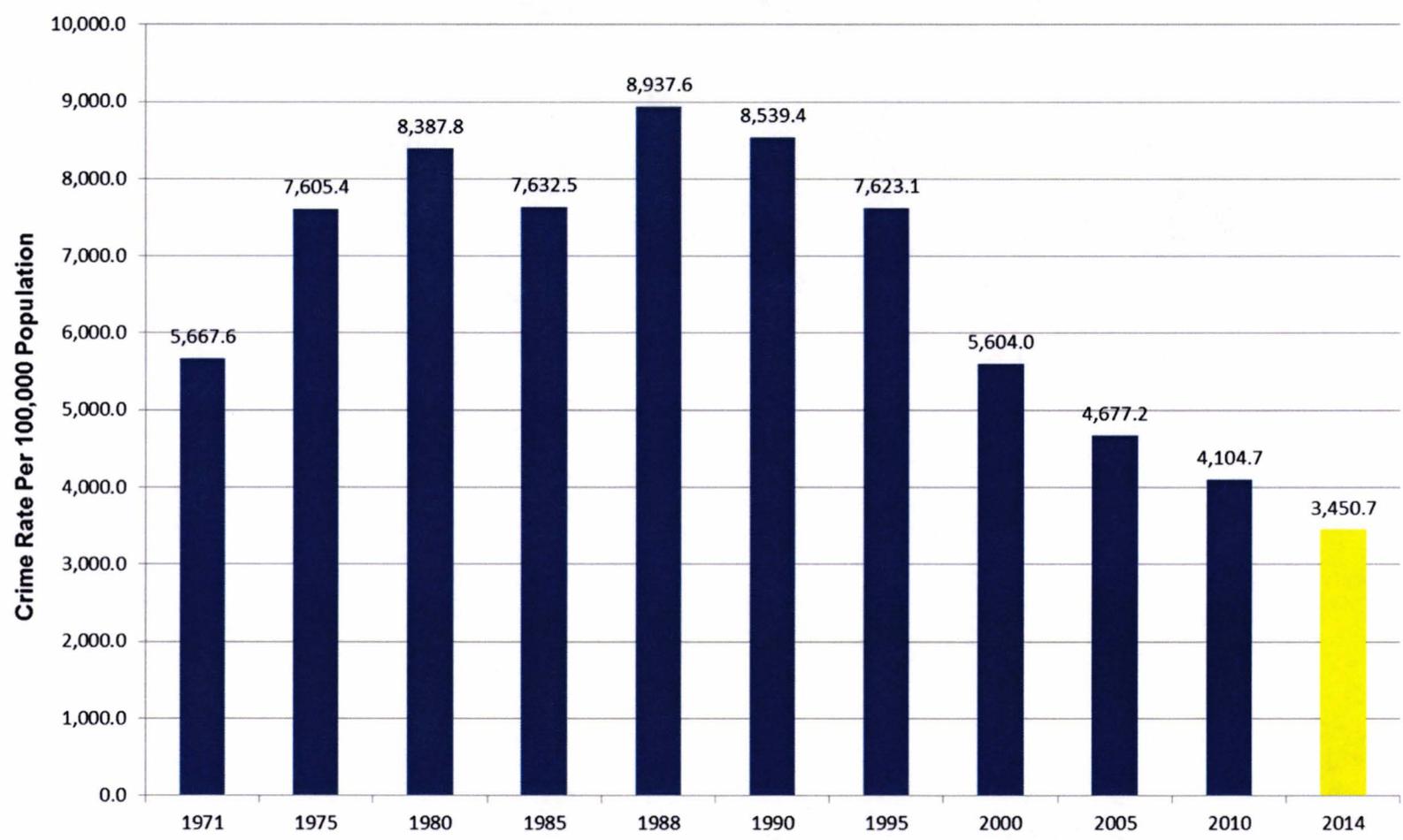
Making Florida more Competitive

Help small businesses succeed

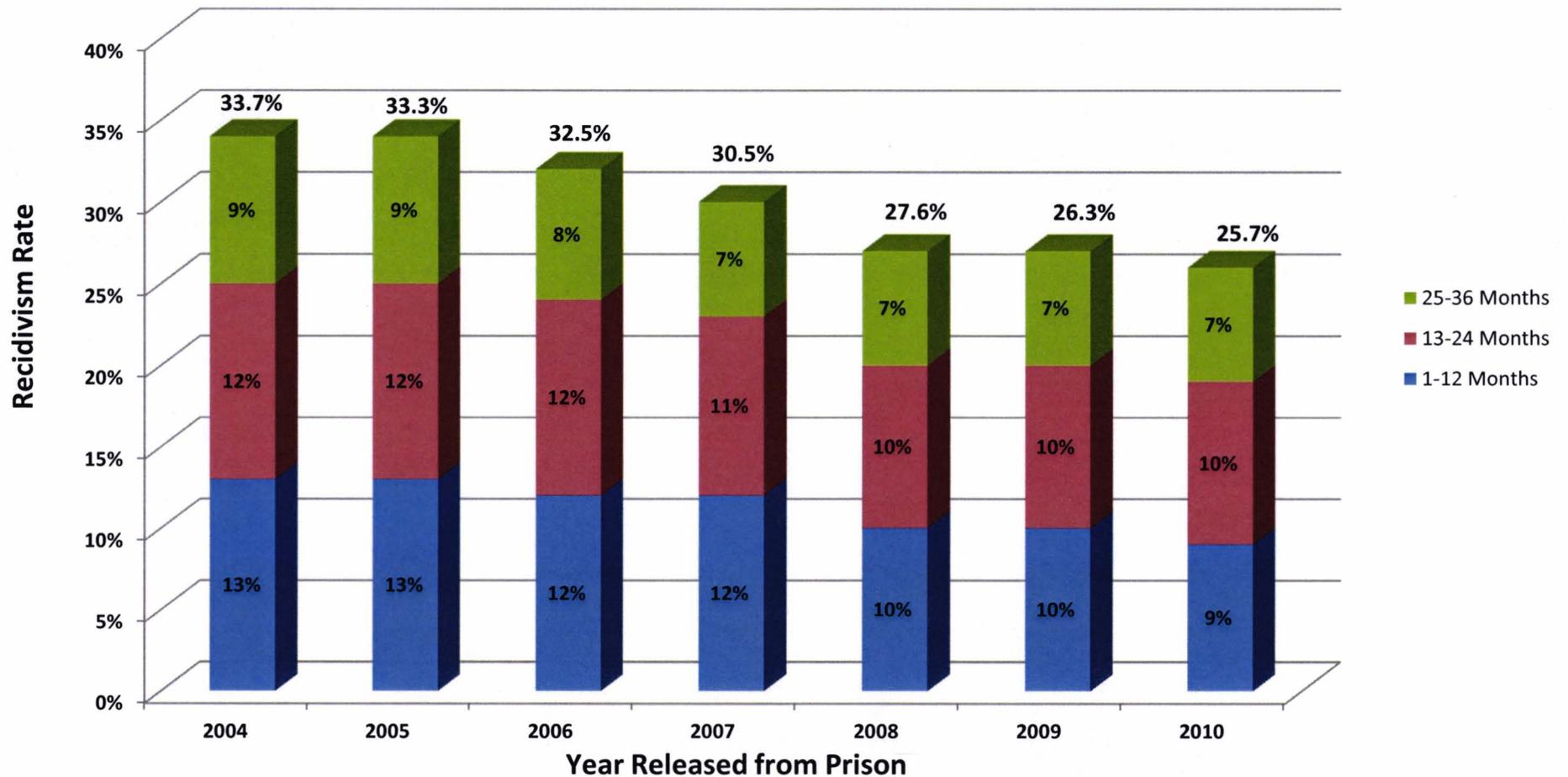
Investing Historic Funding in K-12 Education, State Colleges, and Universities

Florida will have the most highly skilled workforce in the world

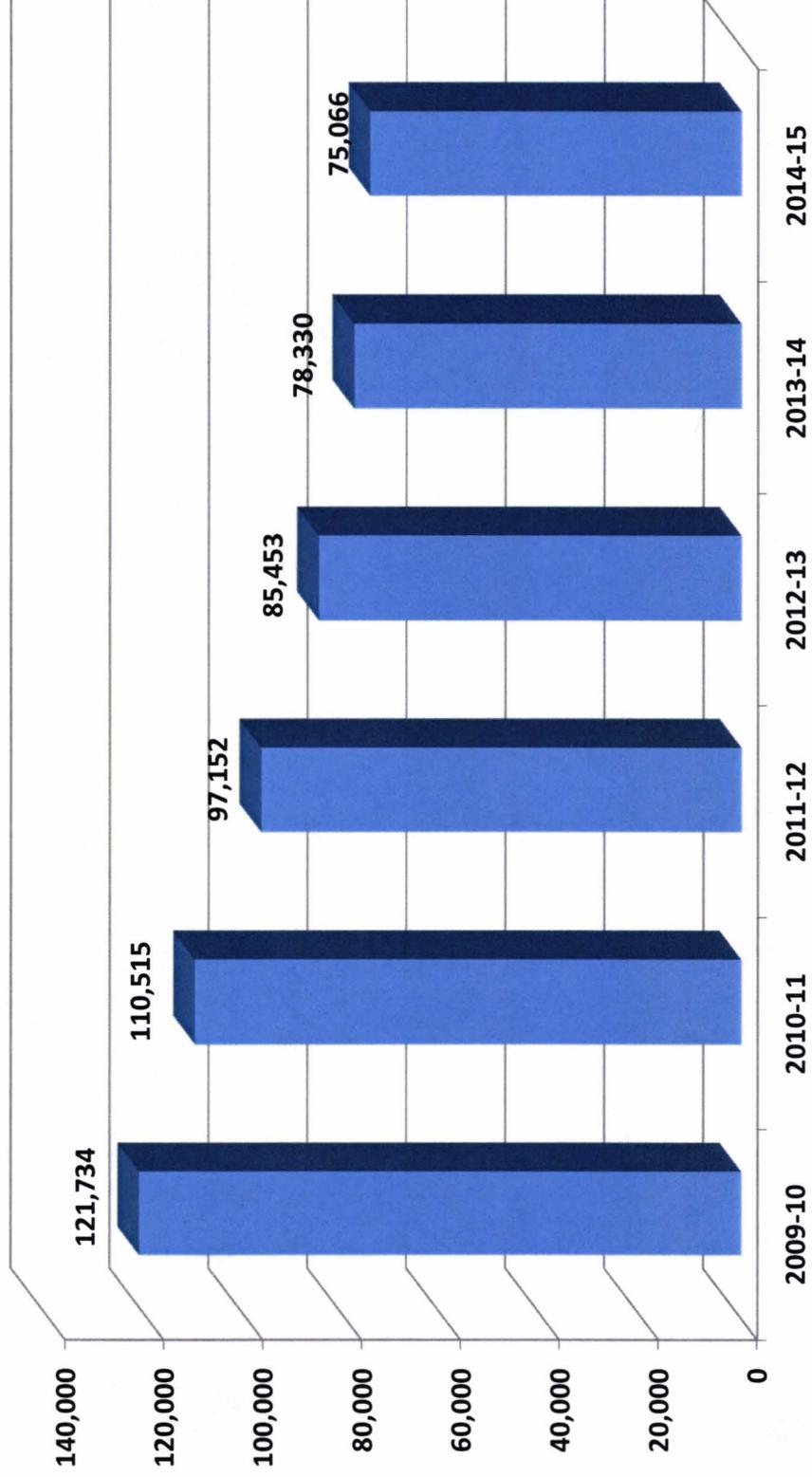
Lowest Crime Rate in 44 Years



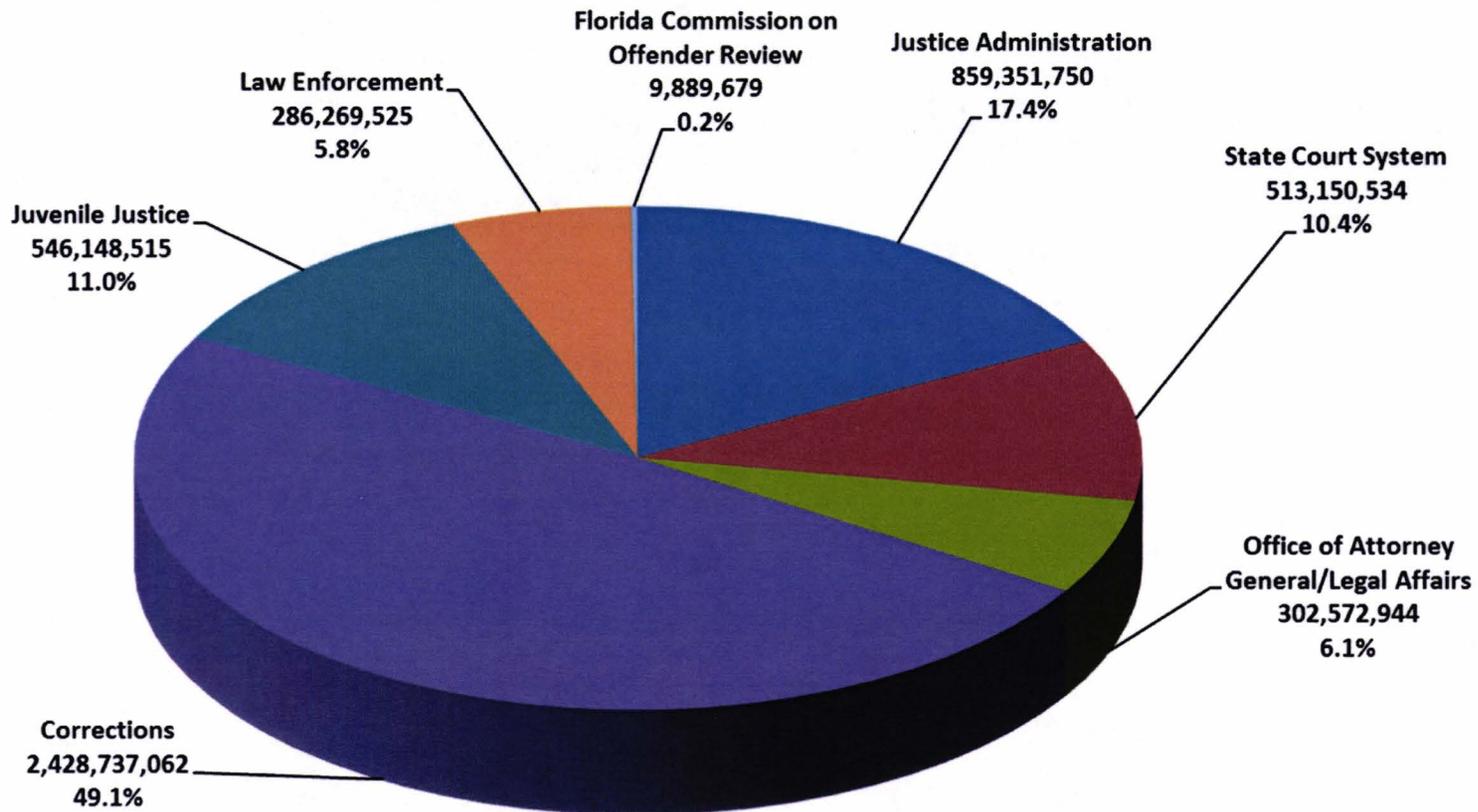
Recidivism Rates over Time



Juvenile Arrests



2016-17 Budget Recommendations by Agency \$4.9 Billion



Department of Corrections

Major Issues Funded	Amount
Major repairs and renovations to correctional facilities	\$35.9 million
Essential Correctional Officer positions	\$27.9 million
Critically needed vehicles	\$4 million
Health Services adjustment	\$14 million

Department of Juvenile Justice

Major Issues Funded	Amount
Major repairs and renovations to juvenile facilities	\$8.9 million
Improve staff-to-youth ratios	\$1.9 million
Increase prevention services	\$1.9 million

Other Priority Issues

Agency	Major Issues Funded	Amount
FDLE	State crime laboratory enhancements	\$8.5 million
FDLE	Law enforcement technology upgrades	\$7.3 million
FDLE	Florida Violent Crime and Drug Control Council	\$2 million
Legal Affairs	Criminal appeals workload	\$643,158
Legal Affairs	Medicaid fraud	\$4 million
Guardian ad Litem	Increase staff to represent dependent children	\$1.1 million
Courts	3 rd and 4 th DCA construction funding	\$11.2 million
Courts	Judicial Qualifications Commission workload	\$115,671

FLORIDA FIRST

GOVERNOR RICK SCOTT'S FLORIDA FIRST BUDGET 2016-2017

**Public Safety Unit
Office of Policy and Budget**

**Katie Cunningham, Policy Coordinator
(850) 717-9512**

FLORIDA 1ST FOR JOBS

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 47 Offenses Against Brokers, Broker Associates, or Sales Associates
SPONSOR(S): Criminal Justice Subcommittee; Passidomo and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 214

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Keegan	White
2) Justice Appropriations Subcommittee		Smith 	Lloyd 
3) Judiciary Committee			

SUMMARY ANALYSIS

Over the past several years, news outlets have reported on a number of violent crimes allegedly committed against brokers, broker associates, and sales associates (hereafter "real estate professionals"), while they were showing real property to prospective buyers. Florida law currently provides for criminal charges to be increased in severity when assault or battery is committed against various protected groups of people. Law enforcement officers, firefighters, sports officials, code inspectors, and people 65 years of age and older are some examples of protected groups. Florida law does not currently include real estate professionals as a protected group.

The bill reclassifies specific offenses committed against a real estate professional while he or she is engaged in showing real property or holding an open house of real property. The reclassified offenses include felony or misdemeanor violations of:

- Section 784.011, relating to assault;
- Section 784.021, relating to aggravated assault;
- Section 784.03, relating to battery and felony battery;
- Section 784.041(1), relating to felony battery;
- Section 784.045, relating to aggravated battery; or
- Section 794.011, relating to sexual battery.

The offenses listed above are reclassified by an increase of one degree, as follows:

- A misdemeanor of the second degree is reclassified as a misdemeanor of the first degree;
- A misdemeanor of the first degree is reclassified as a felony of the third degree;
- A felony of the third degree is reclassified as a felony of the second degree;
- A felony of the second degree is reclassified as a felony of the first degree; and
- A felony of the first degree is reclassified as a life felony.

The Criminal Justice Impact Conference met on October 28, 2015, and determined that this bill will have an insignificant prison bed impact on the Department of Corrections (i.e., an increase of 10 or fewer beds).

This bill reclassifies certain misdemeanors to felonies. Therefore this bill may decrease commitments to local jails.

The bill is effective October 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Violent Crimes against Real Estate Professionals

Over the past several years, news outlets have reported on a number of violent crimes allegedly committed against real estate brokers, broker associates, and sales associates (hereafter “real estate professionals”), while they were showing real property to prospective buyers.¹ The process for showing real estate often causes a real estate professional to be alone at a property with a prospective buyer, yet background checks cannot be completed on each prospective buyer before showing a property. A number of reported violent crimes have occurred against Florida real estate professionals while alone with prospective buyers in Manatee² and Pinellas³ counties.

Criminal Penalties

Assault

Assault is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.⁴ Assault is typically a second degree misdemeanor.⁵ However, if a perpetrator commits assault using a deadly weapon without intent to kill or commits assault with the intent to commit a felony, the crime constitutes aggravated assault⁶ and is punishable as a third degree felony.

Battery

Battery is to actually and intentionally touch or strike another person against the will of that person or intentionally causing bodily harm to another person.⁷ Battery is typically a first degree misdemeanor.⁸ However, battery can be enhanced to felony battery when a perpetrator commits a battery and causes great bodily harm, permanent disability, or permanent disfigurement to the victim,⁹ or when the perpetrator has one or more prior convictions for battery, aggravated battery, or felony battery, and commits a subsequent battery.¹⁰ Both forms of felony battery are third degree felonies.

Sexual Battery

Section 794.011, F.S., contains a variety of offenses relating to sexual battery. Depending on various factors, such as whether a deadly weapon is used or the victim is physically incapacitated, these

¹ WFTS Webteam & Michael Paluska, *Search on for Man Who Attacked Real Estate Agent*, ABC ACTION NEWS, WFTS TAMPA BAY (Aug. 11, 2015), <http://www.abcactionnews.com/news/region-sarasota-manatee/search-on-for-man-who-attacked-manatee-realtor> (last visited Oct. 21, 2015); Garrison, Trey, *After One Week, Missing Realtor's Trail Goes Cold*, HOUSING WIRE (June 24, 2015), <http://www.housingwire.com/articles/34293-after-one-week-missing-realtors-trail-goes-cold> (last visited Oct. 21, 2015); Ford, Dana, *Risky Business: Real Estate Agent's Killing Hits Home for Realtors*, CNN (Oct. 1, 2014), <http://www.cnn.com/2014/10/01/us/real-estate-risks/> (last visited Oct. 21, 2015).

² Conlon, Kendra, *Realtor Attacked during Showing in Bradenton*, 10 NEWS TAMPA BAY SARASOTA (Aug. 11, 2015), <http://www.wtsp.com/story/news/local/2015/08/10/realtor-attacked-during-showing-bradenton/31444577/> (last visited Oct. 21, 2015).

³ ABC News, *Florida Cops Fear Repeat of Attacks on Real Estate Agents*, ABC NEWS (June 5, 2015), <http://abcnews.go.com/US/florida-cops-fear-repeat-attacks-real-estate-agents/story?id=31547919> (last visited Oct. 21, 2015); Krueger, Curtis, *Man Who Attacked Realtor in St. Petersburg Home Gets Life Sentence*, TAMPA BAY TIMES (Jan. 13, 2012), <http://www.tampabay.com/news/courts/criminal/man-who-attacked-realtor-in-st-petersburg-home-gets-life-sentence/1210628> (last visited Oct. 21, 2015).

⁴ s. 784.011, F.S.

⁵ A second degree misdemeanor is punishable by up to 60 days in jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

⁶ s. 784.021, F.S.

⁷ s. 784.03, F.S.

⁸ s. 784.03(1)(b), F.S.

⁹ s. 784.041(1), F.S.

¹⁰ s. 784.03(2), F.S.

offenses can be punishable as a third degree felony, a second degree felony, a first degree felony, a life felony, or a capital felony.

Criminal Offense Ranking Chart

Sections 775.082 and 775.083, F.S., establish the following penalties applicable to felony offenses:

- A capital felony must be punished by death if a sentencing proceeding results in findings by the court that the person must be punished by death, otherwise the person must be punished by life imprisonment and is ineligible for parole;
- A life felony committed on or after July 1, 1995, is punishable by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment and a \$15,000 fine;
- A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine;
- A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine; and
- A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine.

The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998.¹¹ Criminal offenses are ranked in the Offense Severity Ranking Chart from Level 1 (least severe) to Level 10 (most severe), and are assigned points based on the severity of the offense.¹² If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.¹³

A defendant's sentence is calculated based on points assigned for factors including the offense for which the defendant is being sentenced, injury to the victim, additional offenses that the defendant committed at the time of the primary offense, the defendant's prior record, and other aggravating factors.¹⁴ A defendant's total sentence points are then entered into a mathematical computation that determines the defendant's lowest permissible sentence.¹⁵ The permissible sentence for an offense ranges from the calculated lowest permissible sentence to the statutory maximum for the primary offense (the statutory maximum sentences for felonies are described above).¹⁶

Reclassification of Offenses in Florida

Florida law currently provides for criminal charges to be increased in severity when assault or battery is committed against various protected groups of people. Law enforcement officers,¹⁷ firefighters,¹⁸ sports officials,¹⁹ code inspectors,²⁰ and people 65 years of age and older²¹ are examples of such protected groups. However, Florida law does not currently include real estate professionals as a protected group.

Effect of the Bill

The bill reclassifies specific offenses committed against a broker, broker associate, or sales associate while he or she is engaged in showing real property or holding an open house of real property. The reclassified offenses include felony or misdemeanor violations of:

- Section 784.011, relating to assault;
- Section 784.021, relating to aggravated assault;
- Section 784.03, relating to battery and felony battery;
- Section 784.041(1), relating to felony battery;
- Section 784.045, relating to aggravated battery; or

¹¹ s. 921.002, F.S.

¹² s. 921.0022, F.S.

¹³ s. 921.0023, F.S.

¹⁴ s. 921.0024, F.S.

¹⁵ *Id.* Section 921.0026, F.S., prohibits a judge from imposing a sentence below the lowest permissible sentence unless the judge makes written findings that there are "circumstances or factors that reasonably justify the downward departure."

¹⁶ Section 921.0024(2), F.S.

¹⁷ s. 784.07, F.S.

¹⁸ *Id.*

¹⁹ s. 784.081, F.S.

²⁰ s. 784.083, F.S.

²¹ s. 784.08, F.S.

- Section 794.011, relating to sexual battery.

The offenses listed above are reclassified by an increase of one degree, as follows:

- A misdemeanor of the second degree is reclassified as a misdemeanor of the first degree;
- A misdemeanor of the first degree is reclassified as a felony of the third degree;
- A felony of the third degree is reclassified as a felony of the second degree;
- A felony of the second degree is reclassified as a felony of the first degree; and
- A felony of the first degree is reclassified as a life felony.

The bill defines “broker,” “broker associate,” and “sales associate” in accordance with the definitions provided s. 475.01, F.S.

The bill provides that for the purposes of sentencing and calculation of gain-time, any felony offense that is reclassified under the bill must be ranked one level above the ranking under ss. 921.0022 or 921.0023, F.S., of the offense committed.

B. SECTION DIRECTORY:

Section 1. Creates s. 775.0863, F.S., relating to offenses against brokers, broker associates, or sales associates; reclassification of offenses.

Section 2. Provides an effective date of October 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference met on October 28, 2015, and determined that this bill will have an insignificant prison bed impact on the Department of Corrections (i.e., an increase of 10 or fewer beds).

In total, 10,153 were sentenced in fiscal year 2014-2015 with 3,709 sentenced to prison for assault and battery. (Incarceration rate: 36.5%).

The number of violent offenders to real estate professionals in the State of Florida is not currently known.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

This bill reclassifies certain misdemeanors to felonies. Therefore this bill may decrease commitments to local jails.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 4, 2015, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorable as a committee substitute. The committee substitute:

- Specifies the criminal offenses subject to increased penalties under the bill, and provides cross-references to the sections of statute relating to the specified offenses; and
- Clarifies language in the bill.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1 A bill to be entitled
 2 An act relating to offenses against brokers, broker
 3 associates, or sales associates; creating s. 775.0863,
 4 F.S.; providing definitions; providing applicability;
 5 providing for reclassification of specified offenses
 6 committed against brokers, broker associates, or sales
 7 associates; providing an effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Section 775.0863, Florida Statutes, is created
 12 to read:

13 775.0863 Offenses against brokers, broker associates, or
 14 sales associates; reclassification of offenses.-

15 (1) For purposes of this section, the terms "broker,"
 16 "broker associate," and "sales associate" have the same meanings
 17 as provided in s. 475.01.

18 (2) The degree of an offense shall be reclassified as
 19 provided in subsection (3) if the offense is committed against a
 20 broker, broker associate, or sales associate while he or she is
 21 engaged in the act of showing real property or holding an open
 22 house of real property and the offense is a felony or
 23 misdemeanor violation of:

24 (a) Section 784.011, relating to assault;

25 (b) Section 784.021, relating to aggravated assault;

26 (c) Section 784.03, relating to battery and felony

CS/HB 47

2016

27 battery;

28 (d) Section 784.041(1), relating to felony battery;

29 (e) Section 784.045, relating to aggravated battery; or

30 (f) Section 794.011, relating to sexual battery.

31 (3)(a) A misdemeanor of the second degree shall be

32 reclassified as a misdemeanor of the first degree.

33 (b) A misdemeanor of the first degree shall be

34 reclassified as a felony of the third degree.

35 (c) A felony of the third degree shall be reclassified as

36 a felony of the second degree.

37 (d) A felony of the second degree shall be reclassified as

38 a felony of the first degree.

39 (e) A felony of the first degree shall be reclassified as

40 a life felony.

41 (4) For purposes of sentencing under chapter 921 and

42 determining incentive gain-time eligibility under chapter 944, a

43 felony offense that is reclassified under this section is ranked

44 one level above the ranking under s. 921.0022 or s. 921.0023 of

45 the offense committed.

46 Section 2. This act shall take effect October 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 257 Terroristic Threats
SPONSOR(S): Criminal Justice Subcommittee; Smith
TIED BILLS: None **IDEN./SIM. BILLS:** SB 436

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Keegan	White
2) Justice Appropriations Subcommittee		McAuliffe	Lloyd
3) Judiciary Committee			

SUMMARY ANALYSIS

Florida law currently imposes criminal penalties for making specific types of threats, as well as false reports regarding explosives or other destructive devices. However, such a threat or report must fall into narrow categories to be criminal. There are a number of states throughout the nation that criminalize threats of violence when made with the intent to cause some type of harm, such as an evacuation or other serious public inconvenience. Florida currently does not have such a prohibition in place.

The bill makes it a third degree felony for a person to threaten to commit a crime of violence with the intent to cause, or with reckless disregard for causing:

- Terror; or
- The evacuation of a building, place of assembly, or facility of public transportation.

A violation is punishable as a second degree felony, if the violation:

- Causes the occupants of a building, place of assembly, or facility of public transportation to be diverted from their normal or customary operations;
- Involves a threat against instructional personnel, a law enforcement officer, state attorney or assistant state attorney, firefighter, judge, or elected official; or
- Involves a threat against a family member of instructional personnel, a law enforcement officer, state attorney or assistant state attorney, firefighter, judge, or elected official.

The Criminal Justice Impact Conference met on October 28, 2015, and determined that this bill will have an insignificant prison bed impact on the Department (i.e., an increase of ten or fewer prison beds). See Fiscal Impact Statement

This bill is effective July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida law currently imposes criminal penalties for making specific types of threats, as well as false reports regarding explosives or other destructive devices. Such a threat or report must fall into one of several narrow categories to constitute a crime, with varying penalties depending on the type of threat or report that is made.

There are a number of states throughout the nation that criminalize threats of violence against others. Many of these states criminalize threats of violence when made with the intent to cause some type of harm, such as terror, an evacuation, or other serious public inconvenience.¹ Florida currently does not have such a prohibition in place.

Written Threat to Kill

It is currently a second degree felony² to write or compose and send, or procure the sending, of any written communication containing a threat to kill or do bodily injury to the person to whom the letter is sent, or a threat to kill or do bodily injury to the family of the person to whom such letter or communication is sent.³

This prohibition does not apply to unwritten threats, such as a threat made over the telephone, nor does it apply to written threats against a third party who is not the person, or the family of the person, to whom the letter was sent.

Threat Regarding a Destructive Device

It is currently a second degree felony for any person to threaten to throw, project, place, or discharge any destructive device⁴ with intent to do bodily harm to any person or with intent to do damage to any property of any person.⁵ A conviction under this statute does not require proof that the accused actually intended to follow through with the threat, only that the threat conveyed the intent to do bodily harm to another.⁶

This prohibition applies to both written and unwritten threats, but it does not apply to threats to do violence to a person without the use of a destructive device.

Threat against a Public Servant

¹ See, e.g., ALA. CODE §13A-10-15; GA. CODE ANN. §16-11-37; N.J. STAT. ANN. §2C:12-3; WYO. STAT. ANN. §6-2-505;

² A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

³ s. 836.10, F.S.

⁴ "Destructive device" means any bomb, grenade, mine, rocket, missile, pipebomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas, which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled; any device declared a destructive device by the Bureau of Alcohol, Tobacco, and Firearms; any type of weapon which will, is designed to, or may readily be converted to expel a projectile by the action of any explosive and which has a barrel with a bore of one-half inch or more in diameter; and ammunition for such destructive devices, but not including shotgun shells or any other ammunition designed for use in a firearm other than a destructive device. "Destructive device" does not include: (1) A device which is not designed, redesigned, used, or intended for use as a weapon; (2) Any device, although originally designed as a weapon, which is redesigned so that it may be used solely as a signaling, line-throwing, safety, or similar device; (3) Any shotgun other than a short-barreled shotgun; or (4) Any nonautomatic rifle (other than a short-barreled rifle) generally recognized or particularly suitable for use for the hunting of big game.

⁵ s. 790.162, F.S.

⁶ *Reid v. State*, 405 So. 2d 500 (Fla. 2d DCA 1981).

It is unlawful to harm or threaten to harm any public servant, his or her immediate family, or any other person with whose welfare the public servant is interested, with the intent to:

- Influence the performance of any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant, in violation of a public duty, or in performance of, a public duty.
- Cause or induce the public servant to use or exert any influence on another public servant regarding any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant in violation of a public duty, or in performance of a public duty.⁷

It is a second degree felony to unlawfully harm any public servant or another other person with whose welfare the public servant is interested.⁸ It is a third degree felony⁹ to threaten unlawful harm to any public servant or to any other person with whose welfare the public servant is interested.¹⁰

This prohibition criminalizes both written and unwritten threats; however, it only applies to a threat that is made with the intent to influence or coerce a public servant. This prohibition is also limited to criminalizing threats made against public servants, their families, and other people with whose welfare the public servant is interested, and does not criminalize threats against other members of the public.

False Reports

It is a second degree felony for any person to make a false report, with intent to deceive, mislead, or otherwise misinform any person, concerning the place or planting of any bomb, dynamite, other deadly explosive, or weapon of mass destruction,¹¹ or concerning any act of arson or other violence to property owned by the state or any political subdivision.¹² Any person who is convicted of a commission of this offense that resulted in the mobilization or action of any law enforcement officer or any state or local agency, may be required by the court to pay restitution for all of the costs and damages arising from the criminal conduct.¹³

Effect of the Bill

The bill makes it a third degree felony for a person to threaten to commit a crime of violence with the intent to cause, or with reckless disregard for causing:

- Terror;¹⁴ or
- The evacuation of a building, place of assembly, or facility of public transportation.

A violation is punishable as a second degree felony, if the violation:

- Causes the occupants of a building, place of assembly, or facility of public transportation to be diverted from their normal or customary operations;
- Involves a threat against instructional personnel, a law enforcement officer, state attorney or assistant state attorney, firefighter, judge or elected official; or

⁷ s. 838.021, F.S.

⁸ s. 838.021(3)(a), F.S.

⁹ A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

¹⁰ s. 838.021(3)(b), F.S.

¹¹ "Weapon of mass destruction" is defined as (1) any device or object that is designed or intended to cause death or serious bodily injury to any human or animal, or severe emotional or mental harm to any human, through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors; (2) any device or object involving a biological agent; (3) any device or object that is designed or intended to release radiation or radioactivity at a level dangerous to human or animal life; or (4) any biological agent, toxin, vector, or delivery system. s. 790.166(a), F.S.

¹² s. 790.164, F.S.

¹³ s. 790.164(4)(d), F.S.

¹⁴ "Terror" is defined as "a very strong feeling of fear." MERRIAM-WEBSTER, *Terror*, <http://www.merriam-webster.com/dictionary/terror> (last visited Nov. 9, 2015). In Alabama, Georgia, and Kansas, which have statutes criminalizing a threat to commit violence with the purpose of terrorizing another, courts have rejected arguments that such statutes are unconstitutionally vague and overbroad. *Lansdell v. State*, 25 So.3d 1169 (Ala. Crim. App. 2007); *Lanthrip v. State*, 218 S.E.2d 771 (Ga. 1975); and *State v. Gunzelman*, 210 Kan. 481, 502 P.2d 705 (Kan. 1972).

- Involves a threat against a family member of instructional personnel, a law enforcement officer, state attorney or assistant state attorney, firefighter, judge or elected official.

A person who is convicted of a violation shall, in addition to any other restitution or penalty provided by law, pay restitution for all costs and damages caused by an evacuation resulting from the criminal conduct.

The bill provides the following definitions:

- “Family member of a person” means:
 - An individual related to the person by blood or marriage;
 - An individual living in the person's household or having the same legal residence as the person;
 - An individual who is engaged to be married to the person, or who holds himself or herself out as, or is generally known as, an individual whom the person intends to marry; or
 - An individual to whom the person stands in loco parentis.¹⁵
- “Instructional personnel” is defined in accordance with s. 1012.01, F.S.¹⁶
- “Law enforcement officer” means a current or former:
 - Law enforcement officer, correctional officer, correctional probation officer, part-time law enforcement officer, part-time correctional officer, part-time correctional probation officer, auxiliary law enforcement officer, auxiliary correctional officer, or auxiliary correctional probation officer, as those terms are respectively defined in s. 943.10, or county probation officer;
 - Employee or agent of the Department of Corrections who supervises or provides services to inmates;
 - Officer of the Florida Commission on Offender Review;
 - Federal law enforcement officer as defined in s. 901.1505; or
 - Law enforcement personnel of the Fish and Wildlife Conservation Commission or the Department of Law Enforcement.

B. SECTION DIRECTORY:

Section 1. Creates s. 836.12, F.S., relating to terroristic threats.

Section 2. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state government revenues.

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) met on October 28, 2015, and determined that this bill will have a positive insignificant prison bed impact on the Department (i.e., an increase of ten or fewer beds).

¹⁵ “In loco parentis” means “in the place of a parent.” MERRIAM-WEBSTER, *In Loco Parentis*, <http://www.merriam-webster.com/dictionary/in%20loco%20parentis> (last visited Nov. 9, 2015).

¹⁶ “Instructional personnel” means any K-12 staff member whose function includes the provision of direct instructional services to students. The term also includes K-12 personnel whose functions provide direct support in the learning process of students. s. 1012.01(2), F.S.

According to the CJIC, there are currently several statutes with similar penalties. For example, s. 836.10, F.S. contains a second degree felony for written threats to kill or do bodily harm. In Fiscal Year 2014-2015, 51 offenders were sentenced for this offense and 13 received a prison sentence (mean sentence length was 50.4 months). Also, s. 790.162, F.S., makes it a second degree felony for threatening to throw, project, place, or discharge any destructive device. In Fiscal Year 2014-2015, 14 offenders were sentenced for this offense and one received a prison sentence (mean sentence length was 14.0 months).

Additionally, s. 790.163, F.S., contains a second degree felony for a false report about planting a bomb, explosive, or weapon of mass destruction, and s. 790.164, F.S., contains a second degree felony for a false report against state-owned property. In Fiscal Year 2014-2015, 24 offenders were sentenced for a false report about planting an explosive and four received a prison sentence (mean sentence length was 27.0 months). One offender was sentenced, but did not receive a prison sentence, for a false report against state-owned property.

In Fiscal Year 2014-2015, the incarceration rate for an unranked, 3rd degree felony was 9.9 percent and for an unranked, second degree felony was 26.7 percent.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 17, 2015, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute:

- Added and clarified definitions;
- Revised the prohibition in the bill to apply to threats to commit a crime of violence with intent to cause, or reckless disregard for causing terror or the evacuation of a public building, place of assembly, or facility of public transportation; and
- Clarified the requirement for persons convicted under the bill to pay restitution.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

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A bill to be entitled
 An act relating to terroristic threats; creating s.
 775.32, F.S.; providing definitions; providing that a
 person commits the crime of terroristic threats if he
 or she communicates, directly or indirectly, a threat
 to do specified acts; providing criminal penalties;
 requiring a person convicted of terroristic threats
 to, in addition to other restitution ordered, pay
 restitution in an amount equal to the cost of
 evacuation; providing that a judgment or order of
 restitution does not preclude relief recovery in a
 civil action; providing an effective date.

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

Section 1. Section 775.32, Florida Statutes, is created to
 read:

775.32 Terroristic threats.—

(1) As used in this section, the term:

(a) "Communicate" means to convey in person, in writing,
or by electronic means to another person or other persons a
message, including words, images, or language, through the use
of electronic mail, the Internet, or any other type of
electronic communication.

(b) "Immediate family member" of a person means:

1. A spouse, parent, brother, sister, child, uncle, aunt,

27 first cousin, nephew, niece, half-brother, half-sister, father-
 28 in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-
 29 law, sister-in-law, stepparent, stepbrother, stepsister,
 30 stepchild, grandparent, great-grandparent, grandchild, great-
 31 grandchild, step grandparent, step great-grandparent, step
 32 grandchild, or step great-grandchild of the person; a person who
 33 is engaged to be married to, or who otherwise holds himself or
 34 herself out as, or is generally known as, the person whom the
 35 person intends to marry; or a person to whom the person stands
 36 in loco parentis; or

37 2. Any other person living in the person's household and
 38 related to the person by blood or marriage or any other natural
 39 person having the same legal residence as the person.

40 (c) "Law enforcement officer" includes a law enforcement
 41 officer, a correctional officer, a correctional probation
 42 officer, a part-time law enforcement officer, a part-time
 43 correctional officer, an auxiliary law enforcement officer, and
 44 an auxiliary correctional officer, as those terms are
 45 respectively defined in s. 943.10, and a county probation
 46 officer; an employee or agent of the Department of Corrections
 47 who supervises or provides services to inmates; an officer of
 48 the Florida Commission on Offender Review; a federal law
 49 enforcement officer as defined in s. 901.1505; and law
 50 enforcement personnel of the Fish and Wildlife Conservation
 51 Commission or the Department of Law Enforcement.

52 (2) A person commits the crime of terroristic threats if

53 the person communicates, directly or indirectly, a threat to do
 54 any of the following:

55 (a) Commit any violent act or any act dangerous to human
 56 life with the intent to terrorize, intimidate, injure, or coerce
 57 a person or group.

58 (b) Cause the evacuation of a building, place of assembly,
 59 or facility of public transportation.

60 (c) Cause serious public inconvenience or terror, or cause
 61 serious inconvenience with reckless disregard of the risk of
 62 causing such terror or inconvenience.

63 (3) Except as provided in subsection (4), a person who
 64 violates subsection (2) commits a felony of the third degree,
 65 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

66 (4) A person who violates subsection (2) commits a felony
 67 of the second degree, punishable as provided in s. 775.082, s.
 68 775.083, or s. 775.084, if the violation:

69 (a) Causes the occupants of the building, place of
 70 assembly, or facility of public transportation to be diverted
 71 from their normal or customary operations; or

72 (b) Involves a threat against instructional personnel as
 73 defined in s. 1012.01; a law enforcement officer; state attorney
 74 or assistant state attorney; firefighter; judge; elected
 75 official; or an immediate family member of instructional
 76 personnel as defined in s. 1012.01, a law enforcement officer,
 77 state attorney or assistant state attorney, firefighter, judge,
 78 or elected official.

79 | (5) A person convicted of violating subsection (2) shall,
80 | in addition to any other restitution that may be ordered, pay
81 | restitution in an amount equal to the cost of the evacuation,
82 | including, but not limited to, fire and police response;
83 | emergency medical service or emergency preparedness response;
84 | and transportation of an individual from the building, place of
85 | assembly, or facility of public transportation. A judgment or
86 | order of restitution does not preclude a person from recovering
87 | from the offender such relief as may be available in a civil
88 | action authorized by law, provided that a civil award shall be
89 | reduced by the amount paid under the judgment or order of
90 | restitution.

91 | Section 2. This act shall take effect October 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4029 Nonresident Plaintiffs in Civil Actions
SPONSOR(S): Sprowls
TIED BILLS: None **IDEN./SIM. BILLS:** SB 396

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N	Malcolm	Bond
2) Justice Appropriations Subcommittee		Smith 	Lloyd 
3) Judiciary Committee			

SUMMARY ANALYSIS

Current law requires a nonresident plaintiff, or a plaintiff who leaves the state after filing a lawsuit, to file a surety bond of \$100 conditioned to pay all costs for which the plaintiff may be liable. The bill repeals this requirement.

This bill expected to have an insignificant fiscal impact to the State.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Security by Nonresident Plaintiffs

Enacted in 1828 and 1829 by the Legislative Council of the Territory of Florida,¹ s. 57.011, F.S., requires a nonresident plaintiff, or a plaintiff who leaves the state after beginning an action, to file a surety bond of \$100 within 30 days after the commencement of the action or leaving the state. The bond must be conditioned to pay all costs for which the plaintiff may be liable in the action. A defendant may, after providing 20 days' notice to the plaintiff, move to dismiss the action or hold the plaintiff's attorney liable for any costs for which the plaintiff may be liable in the action up to the amount of the bond.

Costs for which a plaintiff may be liable in a lawsuit (which a cost bond in 57.011, F.S. would at least partially pay) may include court reporting costs, costs related to depositions, costs related to witnesses and testifying expert witnesses, electronic discovery expenses, and mediation fees and expenses.² Generally, these costs are only taxed against a plaintiff when the defendant prevails in the action unless a contract or statute provides otherwise.

More than 40 states have statutes similar to s. 57.011, F.S.³

Effect of Proposed Changes

The bill repeals the nonresident plaintiffs' bond requirement in s. 57.011, F.S.

B. SECTION DIRECTORY:

Section 1 repeals s. 57.011, F.S., related to costs and security by nonresidents.

Section 2 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Florida Association of Court Clerks and Comptrollers indicates that they expect an insignificant fiscal impact from this bill.⁴

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

¹ s. 8, Nov. 23, 1828; s. 4 Nov. 21, 1829.

² See ss. 57.041, 57.071; Fla. R. Civ. P. Taxation of Costs (2013).

³ See *Gerace v. Bentley*, 62 V.I. 254 (V.I. Super. 2015)(analyzing nonresident cost bond statutes in all federal jurisdictions and states). Section 57.011, F.S., has one notable distinction from similar statutes in other states: "in the event the plaintiff fails to post the statutory cost bond, plaintiffs [sic] counsel must stand in the absent surety's shoes-so that plaintiff's counsel is personally liable for the costs adjudged in the cause against the plaintiff" *Id.*

⁴ Email from Fred Baggett, General Counsel of the Florida Association of Court Clerks & Comptrollers (Nov. 19, 2015) (on file with the House Justice Appropriations Subcommittee).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The minimum premium charged by a leading surety for a cost bond like the one required in s. 57.011, F.S., is \$100.⁵

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

⁵ Jurisco, Inc., *Cost Bond*, <http://jurisco.com/bonds/plaintiffs-bonds/cost-bond/> (last visited Nov. 12, 2015).
STORAGE NAME: h4029b.JUAS.DOCX
DATE: 11/19/2015

HB 4029

2016

1 A bill to be entitled
2 An act relating to nonresident plaintiffs in civil
3 actions; repealing s. 57.011, F.S., requiring a
4 nonresident plaintiff in a civil action to post
5 security for costs; providing an effective date.

6
7 Be It Enacted by the Legislature of the State of Florida:

8
9 Section 1. Section 57.011, Florida Statutes, is repealed.

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