

Tab 1	SB 270 by Steube; (Identical to H 00947) Involuntary Examination and Involuntary Admission of Minors					
Tab 2	SB 310 by Steube (CO-INTRODUCERS) Baxley; (Compare to CS/CS/CS/H 00165) Threats to Kill or do Bodily Injury					
430460	D	S	RCS	CJ, Steube	Delete everything after	01/29 07:57 PM
Tab 3	SB 624 by Young; (Similar to CS/H 00471) Drones					
836612	D	S	RCS	CJ, Young	Delete everything after	01/29 07:57 PM
Tab 4	SB 776 by Grimsley; (Identical to H 00491) Theft					
882222	A	S	RCS	CJ, Grimsley	Delete L.26 - 30:	01/29 07:57 PM
Tab 5	SB 860 by Bracy; (Identical to H 00919) Criminal History Records					
922282	A	S	RS	CJ, Bracy	Delete L.33 - 34:	01/29 07:57 PM
935236	SA	S	RCS	CJ, Bracy	Delete L.17 - 34:	01/29 07:57 PM
Tab 6	SB 862 by Bracy; (Identical to H 00921) Public Records/Sealing of Criminal History Records					
116674	A	S	RCS	CJ, Bracy	Delete L.179:	01/29 07:57 PM
Tab 7	SB 1178 by Bracy; (Similar to H 00653) Public Records/Photographs or Video or Audio Recordings that Depict or Record Killing of a Person					
Tab 8	SB 1218 by Brandes; Persons Awaiting Trial					
584470	A	S	RCS	CJ, Brandes	Delete L.43 - 62.	01/29 07:57 PM
151886	A	S	RCS	CJ, Brandes	Delete L.136 - 142:	01/29 07:57 PM
739614	A	S	RCS	CJ, Brandes	Delete L.158 - 328.	01/29 07:57 PM
Tab 9	SB 1264 by Steube; (Similar to H 01003) Mandatory Court Costs					
Tab 10	SB 1318 by Rouson; (Similar to H 01201) Education for Prisoners					
764696	A	S	WD	CJ, Rouson	Delete L.23 - 33:	01/29 08:25 AM
Tab 11	SB 1430 by Taddeo (CO-INTRODUCERS) Book; (Similar to H 00867) Plea Agreements in Cases Involving Child Deaths					
Tab 12	SB 1440 by Powell; (Similar to H 00781) Mental Illness Training for Law Enforcement Officers					
Tab 13	SB 1490 by Bracy; (Compare to H 00967) Determining Bail					
648186	D	S	FAV	CJ, Bracy	Delete everything after	01/29 07:57 PM
683982	AA	S	FAV	CJ, Bracy	Delete L.90 - 142:	01/29 07:57 PM
Tab 14	SB 1780 by Rouson; (Similar to H 01315) Victims of Reform School Abuse					
159588	A	S	RCS	CJ, Rouson	Delete L.81:	01/29 07:57 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Bracy, Chair
Senator Baxley, Vice Chair

MEETING DATE: Monday, January 29, 2018

TIME: 4:00—6:00 p.m.

PLACE: *Mallory Horne Committee Room, 37 Senate Office Building*

MEMBERS: Senator Bracy, Chair; Senator Baxley, Vice Chair; Senators Bean, Bradley, Brandes, Grimsley, and Rouson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 270 Steube (Identical H 947)	Involuntary Examination and Involuntary Admission of Minors; Authorizing a designated law enforcement agency to decline to transport a minor 14 years of age or younger to a receiving facility for mental health or substance abuse evaluation if the parent or guardian of the minor agrees to transport the minor to the receiving facility; requiring the examination of a minor 14 years of age or younger to be initiated within 8 hours after the patient's arrival at the receiving facility, etc. CJ 01/29/2018 Favorable CF RC	Favorable Yeas 7 Nays 0
2	SB 310 Steube (Compare CS/CS/CS/H 165)	Threats to Kill or do Bodily Injury; Prohibiting a person from making a threat to kill or do bodily injury to another person in a writing or other record and transmitting that threat in any manner, etc. CJ 01/29/2018 Fav/CS AP RC	Fav/CS Yeas 6 Nays 0
3	SB 624 Young (Similar CS/H 471)	Drones; Prohibiting a person from knowingly or willingly operating a drone over, allowing a drone to make contact with, allowing a drone to come within a certain distance of, or using a drone to introduce contraband into or within the secure perimeter of a fixed-site facility; authorizing the use of a drone if a law enforcement agency possesses reasonable suspicion that, under particular circumstances, swift action is needed to facilitate the collection of evidence at a crime scene or traffic crash scene, etc. CJ 01/29/2018 Fav/CS JU RC	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Monday, January 29, 2018, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 776 Grimsley (Identical H 491)	Theft; Increasing the fine for the theft of a commercially farmed animal or a bee colony of a registered beekeeper, etc. CJ 01/29/2018 Fav/CS AG RC	Fav/CS Yeas 6 Nays 0
5	SB 860 Bracy (Identical H 919, Compare H 921, S 690, S 692, Linked S 862)	Criminal History Records; Requiring the Criminal Justice Information Program to administratively seal the criminal history records of a minor upon notification by the clerk of the court under specified circumstances, etc. CJ 01/29/2018 Fav/CS JU RC	Fav/CS Yeas 5 Nays 1
6	SB 862 Bracy (Identical H 921, Compare H 919, S 690, S 692, Linked S 860)	Public Records/Sealing of Criminal History Records; Expanding an existing public records exemption to include the administrative sealing of specified criminal history records; providing for future review and repeal of the expanded exemption; providing a statement of public necessity, etc. CJ 01/29/2018 Fav/CS GO RC	Fav/CS Yeas 5 Nays 1
7	SB 1178 Bracy (Similar H 653)	Public Records/Photographs or Video or Audio Recordings that Depict or Record Killing of a Person; Expanding an exemption from public records requirements for a photograph or video or audio recording held by an agency which depicts or records the killing of a law enforcement officer to include a photograph or video or audio recording held by an agency which depicts or records the killing of a person; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CJ 01/29/2018 Temporarily Postponed GO RC	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Monday, January 29, 2018, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 1218 Brandes	Persons Awaiting Trial; Providing that a court is not required to consider the source of funds used to post bail or procure an appearance bond when determining whether to release a defendant on bail or other conditions when such funds are provided by a charitable bail fund; requiring the Department of Corrections to develop a risk assessment instrument; creating the Risk Assessment Pilot Program for a specified period, etc. CJ 01/29/2018 Fav/CS ACJ AP	Fav/CS Yeas 4 Nays 1
9	SB 1264 Steube (Similar H 1003)	Mandatory Court Costs; Increasing the minimum amount of costs charged per case by state attorneys, etc. CJ 01/29/2018 Temporarily Postponed ACJ AP	Temporarily Postponed
10	SB 1318 Rouson (Similar H 1201)	Education for Prisoners; Authorizing the Department of Corrections to contract with certain entities to provide educational services for the Correctional Education Program; authorizing each county to contract with certain entities to provide educational services for county inmates; removing a provision prohibiting state funds for the operation of postsecondary workforce programs from being used for the education of certain state inmates, etc. CJ 01/29/2018 Favorable ACJ AP	Favorable Yeas 5 Nays 0
11	SB 1430 Taddeo (Similar H 867)	Plea Agreements in Cases Involving Child Deaths; Requiring that a state attorney make a written statement justifying a plea agreement in a case involving the death of a child in certain circumstances, etc. CJ 01/29/2018 Not Considered JU RC	Not Considered
12	SB 1440 Powell (Similar H 781)	Mental Illness Training for Law Enforcement Officers; Requiring the Department of Law Enforcement to establish a continued employment training component relating to mental illness, etc. CJ 01/29/2018 Favorable ACJ AP	Favorable Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Monday, January 29, 2018, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	SB 1490 Bracy (Compare H 967, S 1882)	Determining Bail; Creating a presumption that individuals arrested for allegedly committing nonviolent misdemeanors be released on nonmonetary conditions or nonmonetary restrictions; restricting the determinations a court must consider for bail or other conditions for persons committing crimes other than nonviolent misdemeanor offenses; authorizing a court to revoke pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new violent crime or a new dangerous crime while on pretrial release, etc. CJ 01/29/2018 Amendment Adopted - Temporarily Postponed JU RC	Amendment Adopted - Temporarily Postponed
14	SB 1780 Rouson (Similar H 1315)	Victims of Reform School Abuse; Citing this act as the "Arthur G. Dozier School and Okeechobee School Abuse Victim Certification Act"; requiring a person seeking certification under this act to apply to the Department of Juvenile Justice by a certain date; requiring the department to examine the application, notify the applicant of any errors or omissions, and request any additional information within a certain timeframe; requiring the department to certify an applicant as a victim of Florida reform school abuse if the department determines his application meets the requirements of this act, etc. CJ 01/29/2018 Fav/CS ACJ AP	Fav/CS Yeas 5 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 270

INTRODUCER: Senator Steube

SUBJECT: Involuntary Examination and Involuntary Admission of Minors

DATE: January 26, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	Favorable
2.			CF	
3.			RC	

I. Summary:

SB 270 amends the Baker Act to provide that a designated law enforcement agency may decline to transport a minor 14 years of age or younger to a receiving facility for involuntary examination if current law requirements for declining transport are met and the minor's parent or guardian agrees to transport the minor to the receiving facility.

The bill provides specific criteria for taking a minor 14 years of age or younger to a receiving facility for involuntary examination, including consent of the minor's parent or guardian. Exceptions to this consent are provided. A person 14 years of age or older is subject to the criteria in current law for taking a person to a receiving facility for involuntary examination.

If the patient is a minor 14 years of age or younger, the involuntary examination at the receiving facility must be initiated within 8 hours after the patient's arrival at the facility. If the patient is a minor older than 14 years of age, the examination must be initiated within 12 hours after the patient's arrival at the facility.

A receiving facility must release a minor 14 years of age or younger without delay to the minor's parent or guardian upon request of the parent or guardian, unless parent or guardian consent was not necessary to conduct the examination; the facility made a report with the central abuse hotline based upon knowledge or suspicion of abuse, abandonment, or neglect; or the facility filed a petition for involuntary services.

II. Present Situation:

Baker Act

In 1971, the Legislature adopted the Florida Mental Health Act, otherwise known as the Baker Act.¹ The Baker Act authorizes treatment programs for mental, emotional, and behavioral disorders. The Baker Act requires programs to include comprehensive health, social, educational, and rehabilitative services to persons requiring intensive short-term and continued treatment to facilitate recovery. Additionally, the Baker Act provides protections and rights to individuals examined or treated for mental illness. Legal procedures are addressed for mental health examination and treatment, including voluntary admission, involuntary admission, involuntary inpatient treatment, and involuntary outpatient treatment.

Receiving Facility

Individuals in acute mental or behavioral health crisis may require emergency treatment to stabilize their condition. Emergency mental health examination and stabilization services may be provided on a voluntary or involuntary basis.² Involuntary patients must be taken to a receiving facility, which is a public or private facility or hospital designated by the Department of Children and Families (DCF) to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health evaluation and to provide treatment or transportation to the appropriate service provider. A county jail is not a receiving facility.³

Criteria for Taking a Person to a Receiving Facility for Involuntary Examination

An involuntary examination includes an examination performed under s. 394.463, F.S.⁴ The purpose of the examination is to determine whether a person qualifies for involuntary services.⁵ Involuntary services include court-ordered outpatient services or inpatient placement for mental health treatment.⁶ Section 394.463, F.S., provides that a person may be taken to a receiving facility for involuntary examination if there is reason to believe that the person has a mental illness⁷ and because of his or her mental illness:

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; **or**
- The person is and is unable to determine for himself or herself whether examination is necessary; **and**

¹ Section 394.451, F.S. The act was created by ch. 71-131, L.O.F., and is codified in Part I of ch. 394, F.S. (ss. 394.451-394.47892, F.S.).

² Sections 394.4625 and 394.463, F.S.

³ Section 394.455(39), F.S.

⁴ Section 394.455(22), F.S.

⁵ *Id.*

⁶ Section 394.455(23), F.S. The bill does not amend ss. 394.4655 and 394.467, F.S., which relate, respectively, to involuntary outpatient services and involuntary inpatient placement, and therefore the criteria and procedures relevant to involuntary outpatient services and involuntary inpatient placement are not discussed in this analysis.

⁷ “Mental illness” means an impairment of the mental or emotional processes that exercise conscious control of one’s actions or of the ability to perceive or understand reality, which impairment substantially interferes with the person’s ability to meet the ordinary demands of living. For purposes of Part I of ch. 394, F.S., the term does not include a developmental disability as defined in ch. 393, F.S., intoxication, or conditions manifested only by antisocial behavior or substance abuse. Section 394.455(28), F.S.

- Either of the following applies:
 - Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being, and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services.
 - There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.⁸

Initiation of Involuntary Examination

There are three means of initiating an involuntary examination. First, a court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination and specifying the findings on which that conclusion is based. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer or other designated agent of the court takes the person into custody and delivers him or her to an appropriate, or the nearest, facility within the designated receiving system for examination.⁹

Second, a law enforcement officer must take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, facility for examination. The officer executes a written report detailing the circumstances under which the person was taken into custody, which is made a part of the patient's clinical record.¹⁰

Third, a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means, such as voluntary appearance for outpatient evaluation, are not available, a law enforcement officer takes the person named in the certificate into custody and delivers him or her to the appropriate, or nearest, facility for examination. The law enforcement officer executes a written report detailing the circumstances under which the person was taken into custody. The certificate and the law enforcement officer's report are made a part of the patient's clinical record.¹¹

Transportation to a Receiving Facility

The Baker Act requires each county to designate a single law enforcement agency within the county to transfer the person in need of services to a receiving facility for involuntary examination.¹² If the person is in custody based on noncriminal or minor criminal behavior that meets the statutory guidelines for involuntary examination under s. 394.463, F.S., the law enforcement officer must transport the person to the appropriate facility within the designated

⁸ Section 394.463(1), F.S.

⁹ Section 394.463(2)(a)1., F.S.

¹⁰ Section 394.463(2)(a)2., F.S.

¹¹ Section 394.463(2)(a)3., F.S.

¹² Section 394.462(1)(a), F.S.

receiving system pursuant to a transportation plan or an exception granted by the DCF Secretary, or to the nearest receiving facility if neither apply¹³

If the person is arrested for a felony and it appears the person meets the statutory guidelines for involuntary examination or placement under Part I of ch. 394, F.S., the person must first be processed in the same manner as any other criminal suspect. Thereafter, the law enforcement officer must immediately notify the appropriate facility within the designated receiving system pursuant to a transportation plan or an exception granted by the DCF Secretary, or to the nearest receiving facility if neither apply. The receiving facility is responsible for promptly arranging for the examination and treatment of the person, but is not required to admit a person charged with a crime for whom the facility determines and documents that it is unable to provide adequate security.¹⁴

If the law enforcement officer believes the person has an emergency medical condition, the person may be first transported to a hospital for emergency medical treatment, regardless of whether the hospital is a designated receiving facility.¹⁵

A designated law enforcement agency may decline to transport a person to a receiving facility only if:

- The jurisdiction designated by the county has contracted on an annual basis with an emergency medical transport service or private transport company for transportation of persons to receiving facilities pursuant to this section at the sole cost of the county; and
- The law enforcement agency and the emergency medical transport service or private transport company agree that the continued presence of law enforcement personnel is not necessary for the safety of the person or others.¹⁶

The appropriate facility within the designated receiving system pursuant to a transportation plan or an exception granted by the DCF Secretary, or the nearest receiving facility if neither apply, must accept a person brought by a law enforcement officer, or an emergency medical transport service or private transport company authorized by the county, for involuntary examination pursuant to s. 394.463, F.S.¹⁷

Notice by Receiving Facility to Parent or Guardian of a Minor

A receiving facility must give notice of the whereabouts of a minor who is being involuntarily held for examination pursuant to s. 394.463, F.S., to the minor's parent, guardian, caregiver, or guardian advocate, in person or by telephone or other form of electronic communication, immediately after the minor's arrival at the facility. The facility may delay notification for no more than 24 hours after the minor's arrival if the facility has submitted a report to the central abuse hotline pursuant to s. 39.201, F.S., based upon knowledge or suspicion of abuse,

¹³ Section 394.462(1)(g), F.S.

¹⁴ Section 394.462(1)(h), F.S. If the facility is unable to provide adequate security, examination or treatment of the person is provided where he or she is held. *Id.*

¹⁵ Section 394.462(1)(i), F.S.

¹⁶ Section 394.462(1)(b)1., F.S.

¹⁷ Section 394.462(1)(k), F.S.

abandonment, or neglect and if the facility deems a delay in notification to be in the minor's best interest.¹⁸

The receiving facility must also attempt to notify the minor's parent, guardian, caregiver, or guardian advocate until the receiving facility receives confirmation from the parent, guardian, caregiver, or guardian advocate, verbally, by telephone or other form of electronic communication, or by recorded message, that notification has been received. Attempts to notify the parent, guardian, caregiver, or guardian advocate must be repeated at least once every hour during the first 12 hours after the minor's arrival and once every 24 hours thereafter and must continue until such confirmation is received, unless the minor is released at the end of the 72-hour examination period, or until a petition for involuntary services is filed with the court. The receiving facility may seek assistance from a law enforcement agency to notify the minor's parent, guardian, caregiver, or guardian advocate if the facility has not received within the first 24 hours after the minor's arrival a confirmation by the parent, guardian, caregiver, or guardian advocate that notification has been received. The receiving facility must document notification attempts in the minor's clinical record.¹⁹

Time Limitations for Conducting an Involuntary Examination

Specified time periods apply to holding a person in a receiving facility for involuntary examination. Generally, the examination period must be for up to 72 hours.²⁰ However, for a minor, the examination must be initiated within 12 hours after the minor arrives at the facility.²¹ Within the examination period or, if the examination period ends on a weekend or holiday, no later than the next working day thereafter, one of the following actions must be taken, based on the individual needs of the patient:

- The patient must be released, unless he or she is charged with a crime, in which case law enforcement will resume custody;
- The patient must be released into voluntary outpatient treatment;
- The patient must be asked to give consent to be placed as a voluntary patient if placement is recommended; or
- A petition for involuntary placement must be filed in circuit court for outpatient or inpatient treatment.²²

¹⁸ Section 394.4599(2)(c)1., F.S.

¹⁹ Section 394.4599(2)(c)2., F.S.

²⁰ Section 394.463(2)(g), F.S.

²¹ *Id.*

²² *Id.* A person for whom an involuntary examination has been initiated who is being evaluated or treated at a hospital for an emergency medical condition must be examined by a facility within the examination period specified in s. 394.463(2)(g), F.S. The examination period begins when the patient arrives at the hospital and ceases when the attending physician documents that the patient has an emergency medical condition. If the patient is examined at a hospital providing emergency medical services by a professional qualified to perform an involuntary examination and is found as a result of that examination not to meet the criteria for involuntary outpatient services or involuntary inpatient placement, the patient may be offered voluntary services or placement, if appropriate, or released directly from the hospital providing emergency medical services. Section 394.463(2)(h), F.S. One of the following must occur within 12 hours after the patient's attending physician documents that the patient's medical condition has stabilized or that an emergency medical condition does not exist: the patient must be examined by a facility and released; or the patient must be transferred to a designated facility in which appropriate medical treatment is available. However, the facility must be notified of the transfer within two hours after the patient's condition has been stabilized or after determination that an emergency medical condition does not exist. Section 394.463(2)(i), F.S.

III. Effect of Proposed Changes:

The bill amends s. 394.462, F.S., to provide that a designated law enforcement agency may decline to transport a minor 14 years of age or younger to a receiving facility for involuntary examination if current law requirements for declining transport are met and the minor's parent or guardian agrees to transport the minor to the receiving facility.

The bill also amends s. 396.463, F.S., to provide that a minor 14 years of age or younger may be taken to a receiving facility for involuntary examination *with the consent of the minor's parent or guardian* if there is reason to believe that the minor has a mental illness and because of his or her mental illness:

- Without care or treatment, the minor is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or
- There is a substantial likelihood that, without care or treatment, the minor will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.

A person older than 14 years of age is subject to the criteria in current law (s. 394.463(1), F.S.) for taking a person to a receiving facility for involuntary examination.

The bill provides exceptions to the consent requirement. The consent of a parent or guardian of the minor is not required if the person who initiates the examination details in writing that at least one of the following events has occurred:

- Reasonable attempts have been made to contact the parents or guardians of the minor, and the parents or guardians could not be contacted or could not take custody of the minor within a reasonable amount of time.
- The minor was considered for an involuntary examination because he or she caused or attempted to cause serious bodily harm to himself or herself or others or possessed an item such as a weapon, a knife, a razor, a pill, or poison for the purpose of conducting such harm.
- The minor is in the custody of the DCF.
- The person who initiated the involuntary examination or the person who reported the minor's suspected mental illness to the person authorized to initiate an involuntary examination made a report to the central abuse hotline pursuant to s. 39.201, F.S., based upon knowledge or suspicion of abuse, abandonment, or neglect.

If the patient is a minor 14 years of age or younger, the involuntary examination at the receiving facility must be initiated within 8 hours after the patient's arrival at the facility. If the patient is a minor older than 14 years of age, the examination must be initiated within 12 hours after the patient's arrival at the facility.

A receiving facility must release a minor 14 years of age or younger without delay to the minor's parent or guardian upon request of the parent or guardian, unless consent of the parent or guardian was not necessary to conduct the examination (i.e., an exception to consent applies); the facility made a report with the central abuse hotline pursuant to s. 39.201, F.S., based upon

knowledge or suspicion of abuse, abandonment, or neglect; or the facility filed a petition for involuntary services.

The bill also amends ss. 394.4599 and 790.065, F.S., to conform cross-references.

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 DCF notes that the bill may have fiscal impact on the private sector:

The requirement that the examination of a minor 14 years of age or younger be conducted within the first 8 hours of their arrival at the facility could result in the need for additional clinicians at receiving facilities. As a result, the bill could increase costs for designated receiving facilities if they do not currently have enough clinicians on staff to conduct examinations within the new 8 hour requirement.²³

C. Government Sector Impact:

The DCF indicates that the bill does not have a fiscal impact on state government.²⁴ The DCF also notes that the bill may result in a cost-savings to local law enforcement agencies:

²³ 2018 Agency Legislative Bill Analysis (SB 270) (July 1, 2018), Department of Children and Families (on file with the Senate Committee on Criminal Justice).

²⁴ *Id.*

The bill authorizes a designated law enforcement agency to decline to transport ... a minor 14 years of age or younger to a designated receiving facility if the parent or guardian agrees to transport. As a result, this could reduce the number of minors 14 years of age or younger transported by a designated law enforcement agency and would result in a cost-savings for the designated law enforcement agency.²⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

Task Force Report on Involuntary Examination of Minors

In 2017, the Legislature created a task force within the DCF to address the issue of involuntary examination of minors 17 years of age or younger. The task force was required to submit a report of its findings to the Governor, President of the Senate, and Speaker of the House of Representatives by November 15, 2017.²⁶ The task force submitted its report on November 15, 2017.²⁷

One of the task force's findings is that "[i]nvoluntary examinations for children have increased over time.... From FY 2000/2001 to FY 2015/2016, there was an 86% increase in involuntary examinations for children."²⁸ However, the task force cautioned that "it is not possible to identify specific root causes directly linked to the trend of increased Baker Act initiations. There is a confluence of individual, family, community, and societal factors at play, which may vary by community."²⁹

None of the changes proposed by the bill were recommendations of the task force. However, the task force did recommend amending s. 381.0056(4)(a)19., F.S., "to require school administrators to notify a student's parent, guardian, or caregiver before a Baker Act is initiated and the student is removed from school, school transportation, or a school-sponsored activity."³⁰ The bill does not amend s. 381.0056(4)(a)19., F.S.

Section 381.0056(4)(a), F.S., requires each county health department to develop, jointly with the district school board and the local health advisory committee, a school health service plan that

²⁵ *Id.*

²⁶ Section 27, ch. 2017-151, L.O.F.

²⁷ *Task Force Report on Involuntary Examination of Minors* (Nov. 15, 2017), Office of Substance Abuse and Mental Health, Department of Children and Families, available at http://www.fccmh.org/documents/2017/Oct-Dec/TASK_FORCE_ON_INVOLUNTARY_EXAMINATION_OF_MINORS.pdf (last visited on Jan. 16, 2018).

²⁸ *Id.* at p. 11.

²⁹ *Id.* at p. 21.

³⁰ *Id.* at p. 31. Findings of the report do not specifically indicate why this recommendation was made, though the task force noted that some key stakeholder responding to a survey initiated by the task force stated that a decrease in the initiation of Baker Act examinations could be attributed to "[i]ncreased parental involvement" and the "[a]bility to better diffuse, assess, and explain the situation to the parent, who is more willing to assist in a crisis situation if they are consulted and included in the process." *Id.* at p. 25.

includes numerous, specified components. One of those components (s. 381.0056(4)(a)19., F.S.) is immediate notification to a student's parent, guardian, or caregiver if the student is removed from school, school transportation, or a school-sponsored activity and taken to a receiving facility for an involuntary examination pursuant to s. 394.463, F.S., including the requirements established under ss. 1002.20(3) and 1002.33(9), F.S., as applicable.

Section 1002.20(3)(l), F.S., requires a public school principal of a K-12 public school or the principal's designee to immediately notify the parent of a student who is removed from school, school transportation, or a school-sponsored activity and taken to a receiving facility for an involuntary examination pursuant to s. 394.463, F.S. The principal or the principal's designee may delay notification for no more than 24 hours after the student is removed if the principal or designee deems the delay to be in the student's best interest and if a report has been submitted to the central abuse hotline pursuant to s. 39.201, F.S., based upon knowledge or suspicion of abuse, abandonment, or neglect. Each district school board must develop a policy and procedures for notification under this paragraph.

Section 1002.33(9)(q), F.S., contains an identical requirement for the principal of a charter school.

DCF Concerns

The DCF states that it is unclear what the following terms used in the bill mean: "reasonable attempts," "reasonable amount of time," and "without delay." Additionally, the DCF recommends that "further clarification be provided for possession of a 'pill.' For example, is the possession of an aspirin an event that could trigger the initiation of an involuntary examination that would not require parent or guardian consent?"³¹

Inconsistent Notice

Notice provisions in the bill relevant to taking a minor 14 years of age or younger to a receiving facility for involuntary examination are narrower than and inconsistent with current requirements for notice by the receiving facility.

Section 394.4599(2)(c)1., F.S., requires a receiving facility to give notice of the whereabouts of a minor who is being involuntarily held for examination pursuant to s. 394.463, F.S., to the minor's *parent, guardian, caregiver, or guardian advocate*. Section 394.4599(2)(c)2., F.S., requires a receiving facility to attempt to notify the minor's *parent, guardian, caregiver, or guardian advocate* until the receiving facility receives confirmation from the *parent, guardian, caregiver, or guardian advocate*. (See discussion of s. 394.4599, F.S., *supra*.)

The bill requires the consent of the *parent or guardian* of a minor 14 years of age or younger before being taken to a receiving facility for involuntary examination (lines 94-96 of the bill). The bill also provides that the consent of the minor's *parent or guardian* is not required if the person who initiates the examination details in writing that at least one of four specified events has occurred. One of those events is that reasonable attempts have been made to contact the

³¹ *Supra*, n. 23.

parents or guardians of the minor, and the *parents or guardians* could not be contacted or could not take custody of the minor within a reasonable amount of time.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.462, 394.463, 394.4599, and 790.065.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Steube

23-00357-18

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A bill to be entitled

An act relating to involuntary examination and involuntary admission of minors; amending s. 394.462, F.S.; authorizing a designated law enforcement agency to decline to transport a minor 14 years of age or younger to a receiving facility for mental health or substance abuse evaluation if the parent or guardian of the minor agrees to transport the minor to the receiving facility; amending s. 394.463, F.S.; providing circumstances under which a minor 14 years of age or younger may be taken to a receiving facility for involuntary examination; requiring the examination of a minor 14 years of age or younger to be initiated within 8 hours after the patient's arrival at the receiving facility; requiring a receiving facility to release a minor 14 years of age or younger to the minor's parent or guardian; providing exceptions; amending ss. 394.4599 and 790.065, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) of section 394.462, Florida Statutes, is amended to read:

394.462 Transportation.—A transportation plan shall be developed and implemented by each county by July 1, 2017, in collaboration with the managing entity in accordance with this section. A county may enter into a memorandum of understanding with the governing boards of nearby counties to establish a

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shared transportation plan. When multiple counties enter into a memorandum of understanding for this purpose, the counties shall notify the managing entity and provide it with a copy of the agreement. The transportation plan shall describe methods of transport to a facility within the designated receiving system for individuals subject to involuntary examination under s. 394.463 or involuntary admission under s. 397.6772, s. 397.679, s. 397.6798, or s. 397.6811, and may identify responsibility for other transportation to a participating facility when necessary and agreed to by the facility. The plan may rely on emergency medical transport services or private transport companies, as appropriate. The plan shall comply with the transportation provisions of this section and ss. 397.6772, 397.6795, 397.6822, and 397.697.

(1) TRANSPORTATION TO A RECEIVING FACILITY.—

(b)1. The designated law enforcement agency may decline to transport the person to a receiving facility only if:

a. The jurisdiction designated by the county has contracted on an annual basis with an emergency medical transport service or private transport company for transportation of persons to receiving facilities pursuant to this section at the sole cost of the county; ~~and~~

b. The law enforcement agency and the emergency medical transport service or private transport company agree that the continued presence of law enforcement personnel is not necessary for the safety of the person or others; ~~and—~~

c. With respect to a minor 14 years of age or younger, the parent or guardian of the minor agrees to transport the minor to the receiving facility.

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2. The entity providing transportation may seek reimbursement for transportation expenses. The party responsible for payment for such transportation is the person receiving the transportation. The county shall seek reimbursement from the following sources in the following order:

- a. From a private or public third-party payor, if the person receiving the transportation has applicable coverage.
- b. From the person receiving the transportation.
- c. From a financial settlement for medical care, treatment, hospitalization, or transportation payable or accruing to the injured party.

Section 2. Subsection (1) and paragraph (g) of subsection (2) of section 394.463, Florida Statutes, are amended to read: 394.463 Involuntary examination.—

(1) CRITERIA.—

(a) A person older than 14 years of age may be taken to a receiving facility for involuntary examination if there is reason to believe that the person has a mental illness and because of his or her mental illness:

~~(a)~~1.a. The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; or

~~b.2-~~ The person is unable to determine for himself or herself whether examination is necessary; and

2.a.~~(b)1-~~ Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of

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willing family members or friends or the provision of other services; or

~~b.2-~~ There is a substantial likelihood that, without care or treatment, the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.

(b)1. A minor 14 years of age or younger may be taken to a receiving facility for involuntary examination with the consent of the parent or guardian of the minor if there is reason to believe that the minor has a mental illness and because of his or her mental illness:

a. Without care or treatment, the minor is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or

b. There is a substantial likelihood that, without care or treatment, the minor will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.

2. The consent of a parent or guardian of the minor is not required if the person who initiates the examination details in writing that at least one of the following events has occurred:

a. Reasonable attempts have been made to contact the parents or guardians of the minor, and the parents or guardians could not be contacted or could not take custody of the minor within a reasonable amount of time.

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b. The minor was considered for an involuntary examination because he or she caused or attempted to cause serious bodily harm to himself or herself or others or possessed an item such as a weapon, a knife, a razor, a pill, or poison for the purpose of conducting such harm.

c. The minor is in the custody of the department.

d. The person who initiated the involuntary examination or the person who reported the minor's suspected mental illness to the person authorized to initiate an involuntary examination made a report to the central abuse hotline, pursuant to s. 39.201, based upon knowledge or suspicion of abuse, abandonment, or neglect.

(2) INVOLUNTARY EXAMINATION.—

(g) 1. The examination period must be for up to 72 hours. For a minor older than 14 years of age, the examination shall be initiated within 12 hours after the patient's arrival at the facility. For a minor 14 years of age or younger, the examination shall be initiated within 8 hours after the patient's arrival at the facility. Within the examination period or, if the examination period ends on a weekend or holiday, no later than the next working day thereafter, one of the following actions must be taken, based on the individual needs of the patient:

a.1- The patient shall be released, unless he or she is charged with a crime, in which case the patient shall be returned to the custody of a law enforcement officer;

b.2- The patient shall be released, subject to subparagraph 1., for voluntary outpatient treatment;

c.3- The patient, unless he or she is charged with a crime,

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shall be asked to give express and informed consent to placement as a voluntary patient and, if such consent is given, the patient shall be admitted as a voluntary patient; or

d.4- A petition for involuntary services shall be filed in the circuit court if inpatient treatment is deemed necessary or with the criminal county court, as defined in s. 394.4655(1), as applicable. When inpatient treatment is deemed necessary, the least restrictive treatment consistent with the optimum improvement of the patient's condition shall be made available. When a petition is to be filed for involuntary outpatient placement, it shall be filed by one of the petitioners specified in s. 394.4655(4)(a). A petition for involuntary inpatient placement shall be filed by the facility administrator.

2. A receiving facility must release a minor 14 years of age or younger without delay to the minor's parent or guardian upon request unless consent was not necessary to conduct the examination under subparagraph (1)(b)2., the facility made a report with the central abuse hotline, pursuant to s. 39.201, based upon knowledge or suspicion of abuse, abandonment, or neglect, or the facility filed a petition for involuntary services.

Section 3. Paragraph (c) of subsection (2) of section 394.4599, Florida Statutes, is amended to read:

394.4599 Notice.—

(2) INVOLUNTARY ADMISSION.—

(c) 1. A receiving facility shall give notice of the whereabouts of a minor who is being involuntarily held for examination pursuant to s. 394.463 to the minor's parent, guardian, caregiver, or guardian advocate, in person or by

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175 telephone or other form of electronic communication, immediately
 176 after the minor's arrival at the facility. The facility may
 177 delay notification for no more than 24 hours after the minor's
 178 arrival if the facility has submitted a report to the central
 179 abuse hotline, pursuant to s. 39.201, based upon knowledge or
 180 suspicion of abuse, abandonment, or neglect and if the facility
 181 deems a delay in notification to be in the minor's best
 182 interest.

183 2. The receiving facility shall attempt to notify the
 184 minor's parent, guardian, caregiver, or guardian advocate until
 185 the receiving facility receives confirmation from the parent,
 186 guardian, caregiver, or guardian advocate, verbally, by
 187 telephone or other form of electronic communication, or by
 188 recorded message, that notification has been received. Attempts
 189 to notify the parent, guardian, caregiver, or guardian advocate
 190 must be repeated at least once every hour during the first 12
 191 hours after the minor's arrival and once every 24 hours
 192 thereafter and must continue until such confirmation is
 193 received, unless the minor is released at the end of the 72-hour
 194 examination period, or until a petition for involuntary services
 195 is filed with the court pursuant to s. 394.463(2)(g)1.d. ~~s.~~
 196 ~~394.463(2)(g).~~ The receiving facility may seek assistance from a
 197 law enforcement agency to notify the minor's parent, guardian,
 198 caregiver, or guardian advocate if the facility has not received
 199 within the first 24 hours after the minor's arrival a
 200 confirmation by the parent, guardian, caregiver, or guardian
 201 advocate that notification has been received. The receiving
 202 facility must document notification attempts in the minor's
 203 clinical record.

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204 Section 4. Paragraph (a) of subsection (2) of section
 205 790.065, Florida Statutes, is amended to read:

206 790.065 Sale and delivery of firearms.—

207 (2) Upon receipt of a request for a criminal history record
 208 check, the Department of Law Enforcement shall, during the
 209 licensee's call or by return call, forthwith:

210 (a) Review any records available to determine if the
 211 potential buyer or transferee:

212 1. Has been convicted of a felony and is prohibited from
 213 receipt or possession of a firearm pursuant to s. 790.23;

214 2. Has been convicted of a misdemeanor crime of domestic
 215 violence, and therefore is prohibited from purchasing a firearm;

216 3. Has had adjudication of guilt withheld or imposition of
 217 sentence suspended on any felony or misdemeanor crime of
 218 domestic violence unless 3 years have elapsed since probation or
 219 any other conditions set by the court have been fulfilled or
 220 expunction has occurred; or

221 4. Has been adjudicated mentally defective or has been
 222 committed to a mental institution by a court or as provided in
 223 sub-sub-subparagraph b.(II), and as a result is prohibited by
 224 state or federal law from purchasing a firearm.

225 a. As used in this subparagraph, "adjudicated mentally
 226 defective" means a determination by a court that a person, as a
 227 result of marked subnormal intelligence, or mental illness,
 228 incompetency, condition, or disease, is a danger to himself or
 229 herself or to others or lacks the mental capacity to contract or
 230 manage his or her own affairs. The phrase includes a judicial
 231 finding of incapacity under s. 744.331(6)(a), an acquittal by
 232 reason of insanity of a person charged with a criminal offense,

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and a judicial finding that a criminal defendant is not competent to stand trial.

b. As used in this subparagraph, "committed to a mental institution" means:

(I) Involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes involuntary inpatient placement as defined in s. 394.467, involuntary outpatient placement as defined in s. 394.4655, involuntary assessment and stabilization under s. 397.6818, and involuntary substance abuse treatment under s. 397.6957, but does not include a person in a mental institution for observation or discharged from a mental institution based upon the initial review by the physician or a voluntary admission to a mental institution; or

(II) Notwithstanding sub-subparagraph (I), voluntary admission to a mental institution for outpatient or inpatient treatment of a person who had an involuntary examination under s. 394.463, where each of the following conditions have been met:

(A) An examining physician found that the person is an imminent danger to himself or herself or others.

(B) The examining physician certified that if the person did not agree to voluntary treatment, a petition for involuntary outpatient or inpatient treatment would have been filed under s. 394.463(2)(g)1.d. ~~s. 394.463(2)(g)4.~~, or the examining physician certified that a petition was filed and the person subsequently agreed to voluntary treatment prior to a court hearing on the petition.

(C) Before agreeing to voluntary treatment, the person

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received written notice of that finding and certification, and written notice that as a result of such finding, he or she may be prohibited from purchasing a firearm, and may not be eligible to apply for or retain a concealed weapon or firearms license under s. 790.06 and the person acknowledged such notice in writing, in substantially the following form:

"I understand that the doctor who examined me believes I am a danger to myself or to others. I understand that if I do not agree to voluntary treatment, a petition will be filed in court to require me to receive involuntary treatment. I understand that if that petition is filed, I have the right to contest it. In the event a petition has been filed, I understand that I can subsequently agree to voluntary treatment prior to a court hearing. I understand that by agreeing to voluntary treatment in either of these situations, I may be prohibited from buying firearms and from applying for or retaining a concealed weapons or firearms license until I apply for and receive relief from that restriction under Florida law."

(D) A judge or a magistrate has, pursuant to sub-subparagraph c.(II), reviewed the record of the finding, certification, notice, and written acknowledgment classifying the person as an imminent danger to himself or herself or others, and ordered that such record be submitted to the department.

c. In order to check for these conditions, the department shall compile and maintain an automated database of persons who are prohibited from purchasing a firearm based on court records

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291 of adjudications of mental defectiveness or commitments to
 292 mental institutions.

293 (I) Except as provided in sub-sub-subparagraph (II), clerks
 294 of court shall submit these records to the department within 1
 295 month after the rendition of the adjudication or commitment.
 296 Reports shall be submitted in an automated format. The reports
 297 must, at a minimum, include the name, along with any known alias
 298 or former name, the sex, and the date of birth of the subject.

299 (II) For persons committed to a mental institution pursuant
 300 to sub-sub-subparagraph b.(II), within 24 hours after the
 301 person's agreement to voluntary admission, a record of the
 302 finding, certification, notice, and written acknowledgment must
 303 be filed by the administrator of the receiving or treatment
 304 facility, as defined in s. 394.455, with the clerk of the court
 305 for the county in which the involuntary examination under s.
 306 394.463 occurred. No fee shall be charged for the filing under
 307 this sub-sub-subparagraph. The clerk must present the records to
 308 a judge or magistrate within 24 hours after receipt of the
 309 records. A judge or magistrate is required and has the lawful
 310 authority to review the records ex parte and, if the judge or
 311 magistrate determines that the record supports the classifying
 312 of the person as an imminent danger to himself or herself or
 313 others, to order that the record be submitted to the department.
 314 If a judge or magistrate orders the submittal of the record to
 315 the department, the record must be submitted to the department
 316 within 24 hours.

317 d. A person who has been adjudicated mentally defective or
 318 committed to a mental institution, as those terms are defined in
 319 this paragraph, may petition the court that made the

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320 adjudication or commitment, or the court that ordered that the
 321 record be submitted to the department pursuant to sub-sub-
 322 subparagraph c.(II), for relief from the firearm disabilities
 323 imposed by such adjudication or commitment. A copy of the
 324 petition shall be served on the state attorney for the county in
 325 which the person was adjudicated or committed. The state
 326 attorney may object to and present evidence relevant to the
 327 relief sought by the petition. The hearing on the petition may
 328 be open or closed as the petitioner may choose. The petitioner
 329 may present evidence and subpoena witnesses to appear at the
 330 hearing on the petition. The petitioner may confront and cross-
 331 examine witnesses called by the state attorney. A record of the
 332 hearing shall be made by a certified court reporter or by court-
 333 approved electronic means. The court shall make written findings
 334 of fact and conclusions of law on the issues before it and issue
 335 a final order. The court shall grant the relief requested in the
 336 petition if the court finds, based on the evidence presented
 337 with respect to the petitioner's reputation, the petitioner's
 338 mental health record and, if applicable, criminal history
 339 record, the circumstances surrounding the firearm disability,
 340 and any other evidence in the record, that the petitioner will
 341 not be likely to act in a manner that is dangerous to public
 342 safety and that granting the relief would not be contrary to the
 343 public interest. If the final order denies relief, the
 344 petitioner may not petition again for relief from firearm
 345 disabilities until 1 year after the date of the final order. The
 346 petitioner may seek judicial review of a final order denying
 347 relief in the district court of appeal having jurisdiction over
 348 the court that issued the order. The review shall be conducted

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349 de novo. Relief from a firearm disability granted under this
 350 sub-subparagraph has no effect on the loss of civil rights,
 351 including firearm rights, for any reason other than the
 352 particular adjudication of mental defectiveness or commitment to
 353 a mental institution from which relief is granted.

354 e. Upon receipt of proper notice of relief from firearm
 355 disabilities granted under sub-subparagraph d., the department
 356 shall delete any mental health record of the person granted
 357 relief from the automated database of persons who are prohibited
 358 from purchasing a firearm based on court records of
 359 adjudications of mental defectiveness or commitments to mental
 360 institutions.

361 f. The department is authorized to disclose data collected
 362 pursuant to this subparagraph to agencies of the Federal
 363 Government and other states for use exclusively in determining
 364 the lawfulness of a firearm sale or transfer. The department is
 365 also authorized to disclose this data to the Department of
 366 Agriculture and Consumer Services for purposes of determining
 367 eligibility for issuance of a concealed weapons or concealed
 368 firearms license and for determining whether a basis exists for
 369 revoking or suspending a previously issued license pursuant to
 370 s. 790.06(10). When a potential buyer or transferee appeals a
 371 nonapproval based on these records, the clerks of court and
 372 mental institutions shall, upon request by the department,
 373 provide information to help determine whether the potential
 374 buyer or transferee is the same person as the subject of the
 375 record. Photographs and any other data that could confirm or
 376 negate identity must be made available to the department for
 377 such purposes, notwithstanding any other provision of state law

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378 to the contrary. Any such information that is made confidential
 379 or exempt from disclosure by law shall retain such confidential
 380 or exempt status when transferred to the department.

381 Section 5. This act shall take effect July 1, 2018.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on Pre-K - 12 Education
Children, Families, and Elder Affairs
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE

23rd District

September 25, 2017

The Honorable Randolph Bracy
Florida Senate
213 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Bracy,

I am writing this letter because my bill, SB 270 – Involuntary Examination and Involuntary Admission of Minors, has been referred to the Senate Criminal Justice Committee. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

Thank you for your consideration. Please contact me if you have any questions.

Very respectfully yours,

A handwritten signature in dark ink, appearing to be "W. Gregory Steube".

W. Gregory Steube, District 23

REPLY TO:

- ☐ 6230 University Parkway, Suite 202, Sarasota, Florida 34240 (941) 342-9162
- ☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/18
Meeting Date

270
Bill Number (if applicable)

Topic Involuntary Examination

Amendment Barcode (if applicable)

Name Michelle Prolas

Job Title Legislative Intern - Florida PTA

Address 1747 Orlando Central Parkway
Street

Phone 407-718-9925

Orlando FL 32809
City State Zip

Email legislation@floridapta.org

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/18

Meeting Date

270

Bill Number (if applicable)

Topic Inv. Exam. + Inv. Admission of Minors

Amendment Barcode (if applicable)

Name Andy Thomas

Job Title Public Defender, 2nd Circuit

Address 301 N. Monroe St., Ste. 401

Phone (850) 606-1014

Street

Tallahassee FL 32301

City

State

Zip

Email andy.thomas@flpd2.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Fla. Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1.29.18

Meeting Date

270

Bill Number (if applicable)

Topic Involuntary Examination of Minors

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

Email Barney@BarneyBishop.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 310

INTRODUCER: Criminal Justice Committee and Senators Steube and Baxley

SUBJECT: Threats to Kill or do Bodily Injury

DATE: January 30, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	Fav/CS
2.			AP	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 310 amends s. 836.10, F.S., to delete the current statutory requirements that a specific person be directly threatened by a person making a threat through means of a letter, inscribed communication, or electronic communication, and that the specific person actually receive the threat.

The bill prohibits a person from making a threat in writing or other record, including an electronic record, to kill or do great bodily injury to another person, and posting or transmitting the threat in a manner that would allow another person to view it.

Additionally, the offense is decreased from a second degree felony to a third degree felony. The bill also changes the offense from a Level 6 to a Level 4 in the Criminal Punishment Code Offense Severity Ranking Chart, which decreases the offense's sentencing points from 36 points to 22 points.

II. Present Situation:

Section 836.10, F.S., currently prohibits a person from:

- Writing or composing and sending to any person:
 - A letter,
 - Inscribed communication, or
 - Electronic communication,

- Containing a threat to kill or do bodily injury to:
 - The person to whom the letter or communication was sent, or
 - Any member of the person's family.¹

The act of “sending” under the statute requires two events – sending the communication to a particular person *and* receipt of the communication by the person being threatened.²

When the threat is not necessarily made against a particular individual who receives the threat, but the threat is more random in nature, the application of the statute breaks down, particularly as related to social media.³

Social Media

Studies indicate that social media sites are widely used to communicate with other people and to find information. For example, reports published by the Pew Research Center show that:

- 86 percent of Americans use the Internet;⁴
- Of the surveyed 1,520 adults in one study, 79 percent use Facebook, 32 percent use Instagram, 31 percent use Pinterest, 29 percent use LinkedIn, and 24 percent use Twitter;⁵ and
- In a survey of 1,060 teens ages 13-17 and their parent or guardian, when asked about the use of specific sites, 89 percent of all teens reported the use of at least one of the sites⁶ and 71 percent used two or more of the sites.⁷

Examples of Random Threats Using E-Mail and Social Media

In late 2015, there was a rash of e-mailed hoax threats against schools across the country that began in New York City and Los Angeles.⁸ The New York and Los Angeles threats were nearly identically worded. The e-mails threatened the use of bombs, nerve gas, and rifles, and were

¹ A violation of s. 836.10, F.S., is a second degree felony, punishable by up to 15 years in prison and a fine of up to \$10,000. Sections 775.082, 775.083, and 775.084, F.S.

² *J.A.W. v. State*, 210 So.3d 142, 143 (Fla. 2d DCA 2016) citing *State v. Wise*, 664 So.2d 1028, 1030 (Fla. 2d DCA 1995).

³ “[M]any threats made on social media will fall outside the narrow language of section 836.10, which was originally written with pen-and-paper letters in mind. ... The narrow language of section 836.10 will not encompass many threats made via social media because...social media is often used to post communications publicly, for the whole world to see, instead of sending those communications directly to any specific person. (citation omitted) This is problematic because, even though social media posts may not travel directly, they are often shared with the understanding or expectation that they will be widely distributed, even outside the original poster's own network of friends or followers.” *J.A.W. v. State*, 210 So.3d 142, 145-146 (Fla. 2d DCA 2016).

⁴ Pew Research Center, *Social Media Update 2016* (November 2016), available at <http://www.pewinternet.org/2016/11/11/social-media-update-2016/> (last visited January 23, 2018).

⁵ *Id.*

⁶ Pew Research Center, *Mobile Access Shifts Social Media Use and Other Online Activities*, (April 2015), available at <http://www.pewinternet.org/2015/04/09/mobile-access-shifts-social-media-use-and-other-online-activities/> (last visited January 24, 2018).

⁷ Pew Research Center, *Teens, Social Media and Technology Overview 2015* (April 2015), available at <http://www.pewinternet.org/2015/04/09/teens-social-media-technology-2015/> (last visited January 23, 2018).

⁸ The New York Times, December 15, 2015, *Los Angeles and New York Differ in Their Responses to a Terrorism Threat*, available at <https://www.nytimes.com/2015/12/16/us/los-angeles-schools-bomb-threat.html> (last visited January 23, 2018).

routed through a server in Frankfurt, Germany, apparently by the same person.⁹ A few days later, similar threats were directed at schools in Florida.¹⁰

Social media and other electronic forms of communication were used in at least 35 percent of the violent threats to schools, as reported in one recent study covering half of the 2013-14 school year in 43 states.¹¹

Florida Social Media Threats

Threats conveyed over social media to do random acts of violence at schools often disrupt student education regardless of the validity of the threat.

For example, in October 2017, three students made threats at two Panhandle high schools.¹² While no violence occurred on the high school campuses, school officials are concerned about the missed school hours, testing, and assignments resulting from the panic that can ensue from threats of violence communicated through social media.¹³

A police officer in Tarpon Springs was singled out and threatened with being killed in apparent retaliation for an officer-involved shooting in May 2017. According to a press release by the police chief, the threats, based on misinformation, were targeting an officer who had nothing to do with the officer-involved shooting.¹⁴

Case Law Applying Section 836.10, F.S.

In a 2016 court decision, a juvenile's disposition for a violation of s. 836.10, F.S., for posting written threats to kill or do bodily injury on Twitter¹⁵ was reversed.¹⁶ The juvenile made a series of public posts on Twitter over the span of several days threatening to "shoot up" his school.¹⁷

⁹ *Id.*

¹⁰ NBC News 6, December 17, 2015, *Miami-Dade, Broward Schools Receive Threats: Officials*, available at <http://www.nbcmiami.com/news/local/Miami-Dade-School-System-Receives-Threat-Officials-362740851.html> (last visited January 23, 2018). See also, WJXT News 4 Jacksonville, December 9, 2015, *Frustration over 5 school bomb threats in 2 days, False calls frustrate law enforcement, but must be taken seriously, police say*, available at <http://www.news4jax.com/news/bomb-scare-forces-evacuation-of-southside-business> (last visited January 23, 2018).

¹¹ National School Safety and Security Services, *Schools face new wave of violent threats sent by social media and other electronic means study says*, February 2014 (reporting on 315 documented school bomb threats, shooting threats, hoaxes, and acts of violence between August 2013 and January 2014), available at <http://www.schoolsecurity.org/2014/02/schools-face-new-wave-violent-threats-sent-social-media-electronic-means-study-says/> (last visited January 23, 2018).

¹² "I think people take it more seriously now than ever, there's no doubt in my mind about that and it's justly so," said Jason Weeks, Santa Rosa County School District director of high schools. *'Just a joke': Students' social media threats are disrupting schools* (October 2017), available at <http://www.pnj.com/story/news/crime/2017/10/15/how-students-social-media-threats-disrupting-schools-involving-police/753349001/> (last visited January 23, 2018).

¹³ *Id.*

¹⁴ Tarpon Springs Police Department "Information-Be On the Lookout" Bulletin and May 9, 2017 Press Release (on file with the Senate Committee on Criminal Justice).

¹⁵ "Twitter allows users to send 'updates' (or 'tweets': text based posts, up to 140 characters long) to [the] Twitter website via short message service (e.g. on a cell phone), instant messaging, from their computer at home or work, or through a third-party application." GNOTED, *What Is Twitter and How Does It Work- Beginner's Guide* (February 2009) available at <http://gnoted.com/what-is-twitter-and-how-does-it-work-beginners-guide/> (last visited January 23, 2018).

¹⁶ *J.A.W. v. State*, 210 So.3d 142 (Fla. 2d DCA 2016).

¹⁷ The following tweets were posted: "can't WAIT to shoot up my school," "it's time," "My mom and dad think I'm serious about shooting up my school I'm dying"; "school getting shot up on a Tuesday," "night f[***]king sucked can't wait to shoot

The tweets were discovered by an out-of-state watchdog group who reported the threats to local police. Local police later contacted the juvenile's school officials informing them of the threats.¹⁸

The Second District Court of Appeals found that because the juvenile publicly posted the tweets, rather than directly sending them to any student or school official, the receipt of the threats by school officials through local police was too far removed to support a conviction under s. 836.10, F.S.¹⁹

The court specifically discussed the difficulty of applying the current statute to modern forms of communication, recognizing that many threats made on social media fall outside the narrow scope of the law, which requires the threatening communication to be sent directly to a specific person who receives the threat.²⁰

III. Effect of Proposed Changes:

The bill amends s. 836.10, F.S., to delete the current statutory requirements that a specific person be directly threatened by a person making a threat through means of a letter, inscribed communication, or electronic communication, and that the specific person actually receive the threat.

The focus of the bill is on the person *making the threat* to kill or do great bodily injury to another person *and posting or transmitting the threat* in any manner that would allow another person to view the threat.

Specifically, the bill amends s. 836.10, F.S., to prohibit a person from making a threat in writing or other record, including an electronic record, to kill or do great bodily injury to another person, and posting or transmitting the threat in any manner that would allow another person to view the threat.

This bill makes s. 836.10, F.S., applicable under circumstances where a person transmits a threat to kill or do great bodily injury to another in a more public forum than the current law contemplates.

The current second degree felony²¹ is changed by the bill to a third degree felony.²² The bill also changes the offense from a Level 6 to a Level 4 in the Criminal Punishment Code Offense Severity Ranking Chart, which decreases the offense's sentencing points from 36 points to 22 points.²³

The bill is effective October 1, 2018.

up my school soon"; and "I sincerely apologize to anyone who took me seriously. I love my high school and honestly own no weapons to want to harm anyone in any way." *J.A.W. v. State*, 210 So.3d 142, 143 (Fla. 2d DCA 2016).

¹⁸ *J.A.W. v. State*, 210 So.3d 142, 143 (Fla. 2d DCA 2016).

¹⁹ *J.A.W. v. State*, 210 So.3d 142 (Fla. 2d DCA 2016).

²⁰ *Id.*

²¹ A second degree felony is punishable by up to 15 years imprisonment and a \$15,000 fine.

²² A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

²³ Section 921.0024, F.S.

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:

None.

C. Government Sector Impact:

The Judicial Administrative Commission (JAC) submitted a memorandum indicating that there is no expected fiscal impact to the JAC related to this bill.²⁴

On January 8, 2018, the Criminal Justice Impact Conference (CJIC) considered SB 310. The CJIC adopted a “positive indeterminate” estimate of the fiscal impact of the bill on prison beds, meaning that there may be an unquantifiable increase in prison beds from the bill.²⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 836.10 of the Florida Statutes.

²⁴Justice Administrative Commission, *Memorandum No. 054-17, Exec., SB 310* (October 6, 2017) (on file with the Senate Committee on Criminal Justice).

²⁵ E-mail from the Office of Economics and Demographics Research staff, January 23, 2018 (on file with Senate Committee on Criminal Justice).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on January 29, 2018:

The committee substitute:

- Changes the elements of the offense by:
 - Requiring that the threat be to kill or do *great* bodily harm to a person, not just bodily harm; and
 - Requiring that the threat be transmitted in a way that would allow another person to view it.
- Changes the statutory degree of the offense. The offense is decreased from a second degree felony to a third degree felony.
- Changes the offense from a Level 6 to a Level 4 in the Criminal Punishment Code Offense Severity Ranking Chart, which decreases the offense's sentencing points from 36 points to 22 points.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/29/2018	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Steube) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 836.10, Florida Statutes, is amended to
read:

836.10 Written threats to kill or do great bodily injury;
punishment.—A Any person who makes a threat in a writing or
other record, including an electronic record, writes or composes
and also sends or procures the sending of any letter, inscribed



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~~communication, or electronic communication, whether such letter~~
~~or communication be signed or anonymous, to any person,~~
~~containing a threat to kill or to do great bodily injury to~~
~~another the person and posts or transmits the threat in any~~
~~manner that would allow another person to view the threat to~~
~~whom such letter or communication is sent, or a threat to kill~~
~~or do bodily injury to any member of the family of the person to~~
~~whom such letter or communication is sent~~ commits a felony of
the third ~~second~~ degree, punishable as provided in s. 775.082,
s. 775.083, or s. 775.084.

Section 2. Paragraphs (d) and (f) of subsection (3) of
section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking
chart.—

(3) OFFENSE SEVERITY RANKING CHART

(d) LEVEL 4

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
499.0051(1)	3rd	Failure to maintain or deliver



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transaction history,
transaction information, or
transaction statements.

31

499.0051(5) 2nd Knowing sale or delivery, or
possession with intent to sell,
contraband prescription drugs.

32

517.07(1) 3rd Failure to register securities.

33

517.12(1) 3rd Failure of dealer, associated
person, or issuer of securities
to register.

34

784.07(2)(b) 3rd Battery of law enforcement
officer, firefighter, etc.

35

784.074(1)(c) 3rd Battery of sexually violent
predators facility staff.

36

784.075 3rd Battery on detention or
commitment facility staff.

37

784.078 3rd Battery of facility employee by
throwing, tossing, or expelling
certain fluids or materials.

38

784.08(2)(c) 3rd Battery on a person 65 years of
age or older.



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39	784.081(3)	3rd	Battery on specified official or employee.
40	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
41	784.083(3)	3rd	Battery on code inspector.
42	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
43	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
44	787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
45	787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
46			



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47	787.07	3rd	Human smuggling.
48	790.115 (1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
49	790.115 (2) (b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
50	790.115 (2) (c)	3rd	Possessing firearm on school property.
51	800.04 (7) (c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
52	810.02 (4) (a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
53	810.02 (4) (b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
54	810.06	3rd	Burglary; possession of tools.
	810.08 (2) (c)	3rd	Trespass on property, armed



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with firearm or dangerous
weapon.

812.014 (2) (c) 3. 3rd Grand theft, 3rd degree \$10,000
or more but less than \$20,000.

812.014 3rd Grand theft, 3rd degree, a
(2) (c) 4.-10. will, firearm, motor vehicle,
livestock, etc.

812.0195 (2) 3rd Dealing in stolen property by
use of the Internet; property
stolen \$300 or more.

817.505 (4) (a) 3rd Patient brokering.

817.563 (1) 3rd Sell or deliver substance other
than controlled substance
agreed upon, excluding s.
893.03 (5) drugs.

817.568 (2) (a) 3rd Fraudulent use of personal
identification information.

817.625 (2) (a) 3rd Fraudulent use of scanning
device, skimming device, or
reencoder.

817.625 (2) (c) 3rd Possess, sell, or deliver



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skimming device.

828.125(1) 2nd Kill, maim, or cause great
bodily harm or permanent
breeding disability to any
registered horse or cattle.

836.10 3rd Written threats to kill or do
great bodily injury.

837.02(1) 3rd Perjury in official
proceedings.

837.021(1) 3rd Make contradictory statements
in official proceedings.

838.022 3rd Official misconduct.

839.13(2)(a) 3rd Falsifying records of an
individual in the care and
custody of a state agency.

839.13(2)(c) 3rd Falsifying records of the
Department of Children and
Families.

843.021 3rd Possession of a concealed
handcuff key by a person in
custody.



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71	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
72	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
73	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
74	874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
75	893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
76	914.14(2)	3rd	Witnesses accepting bribes.
77	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
78	914.23(2)	3rd	Retaliation against a witness,



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victim, or informant, no bodily
injury.

918.12 3rd Tampering with jurors.

934.215 3rd Use of two-way communications
device to facilitate commission
of a crime.

(f) LEVEL 6

Florida Statute	Felony Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
499.0051(2)	2nd	Knowing forgery of transaction history, transaction



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information, or transaction
statement.

90

499.0051(3) 2nd Knowing purchase or receipt of
prescription drug from
unauthorized person.

91

499.0051(4) 2nd Knowing sale or transfer of
prescription drug to
unauthorized person.

92

775.0875(1) 3rd Taking firearm from law
enforcement officer.

93

784.021(1)(a) 3rd Aggravated assault; deadly
weapon without intent to kill.

94

784.021(1)(b) 3rd Aggravated assault; intent to
commit felony.

95

784.041 3rd Felony battery; domestic
battery by strangulation.

96

784.048(3) 3rd Aggravated stalking; credible
threat.

97

784.048(5) 3rd Aggravated stalking of person
under 16.

98



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99	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
100	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
101	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
102	784.081 (2)	2nd	Aggravated assault on specified official or employee.
103	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
104	784.083 (2)	2nd	Aggravated assault on code inspector.
105	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
106	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
	790.161 (2)	2nd	Make, possess, or throw destructive device with intent



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to do bodily harm or damage
property.

107

790.164(1) 2nd False report concerning bomb,
explosive, weapon of mass
destruction, act of arson or
violence to state property, or
use of firearms in violent
manner.

108

790.19 2nd Shooting or throwing deadly
missiles into dwellings,
vessels, or vehicles.

109

794.011(8) (a) 3rd Solicitation of minor to
participate in sexual activity
by custodial adult.

110

794.05(1) 2nd Unlawful sexual activity with
specified minor.

111

800.04(5) (d) 3rd Lewd or lascivious molestation;
victim 12 years of age or older
but less than 16 years of age;
offender less than 18 years.

112

800.04(6) (b) 2nd Lewd or lascivious conduct;
offender 18 years of age or
older.



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113	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
114	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
115	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
116	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
117	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
118	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
119	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
120	812.13(2)(c)	2nd	Robbery, no firearm or other



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weapon (strong-arm robbery).

817.4821(5) 2nd Possess cloning paraphernalia
with intent to create cloned
cellular telephones.

817.505(4) (b) 2nd Patient brokering; 10 or more
patients.

825.102(1) 3rd Abuse of an elderly person or
disabled adult.

825.102(3) (c) 3rd Neglect of an elderly person or
disabled adult.

825.1025(3) 3rd Lewd or lascivious molestation
of an elderly person or
disabled adult.

825.103(3) (c) 3rd Exploiting an elderly person or
disabled adult and property is
valued at less than \$10,000.

827.03(2) (c) 3rd Abuse of a child.

827.03(2) (d) 3rd Neglect of a child.

827.071(2) & (3) 2nd Use or induce a child in a
sexual performance, or promote



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or direct such performance.

836.05 2nd Threats; extortion.

~~836.10 2nd Written threats to kill or do
bodily injury.~~

843.12 3rd Aids or assists person to
escape.

847.011 3rd Distributing, offering to
distribute, or possessing with
intent to distribute obscene
materials depicting minors.

847.012 3rd Knowingly using a minor in the
production of materials harmful
to minors.

847.0135(2) 3rd Facilitates sexual conduct of
or with a minor or the visual
depiction of such conduct.

914.23 2nd Retaliation against a witness,
victim, or informant, with
bodily injury.

944.35(3)(a)2. 3rd Committing malicious battery
upon or inflicting cruel or



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inhuman treatment on an inmate
or offender on community
supervision, resulting in great
bodily harm.

944.40 2nd Escapes.

944.46 3rd Harboring, concealing, aiding
escaped prisoners.

944.47(1)(a)5. 2nd Introduction of contraband
(firearm, weapon, or explosive)
into correctional facility.

951.22(1) 3rd Intoxicating drug, firearm, or
weapon introduced into county
facility.

Section 3. For the purpose of incorporating the amendment
made by this act to section 836.10, Florida Statutes, in a
reference thereto, subsection (1) of section 794.056, Florida
Statutes, is reenacted to read:

794.056 Rape Crisis Program Trust Fund.—

(1) The Rape Crisis Program Trust Fund is created within
the Department of Health for the purpose of providing funds for
rape crisis centers in this state. Trust fund moneys shall be
used exclusively for the purpose of providing services for
victims of sexual assault. Funds credited to the trust fund



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consist of those funds collected as an additional court assessment in each case in which a defendant pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, an offense provided in s. 775.21(6) and (10)(a), (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); s. 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; former s. 796.03; former s. 796.035; s. 796.04; s. 796.05; s. 796.06; s. 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s. 810.14; s. 810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; s. 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s. 847.0137; s. 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a), (13), and (14)(c); or s. 985.701(1). Funds credited to the trust fund also shall include revenues provided by law, moneys appropriated by the Legislature, and grants from public or private entities.

Section 4. For the purpose of incorporating the amendment made by this act to section 836.10, Florida Statutes, in a reference thereto, section 938.085, Florida Statutes, is reenacted to read:

938.085 Additional cost to fund rape crisis centers.—In addition to any sanction imposed when a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, a violation of s. 775.21(6) and (10)(a), (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; former s.



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796.03; former s. 796.035; s. 796.04; s. 796.05; s. 796.06; s. 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s. 810.14; s. 810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; s. 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s. 847.0137; s. 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a), (13), and (14)(c); or s. 985.701(1), the court shall impose a surcharge of \$151. Payment of the surcharge shall be a condition of probation, community control, or any other court-ordered supervision. The sum of \$150 of the surcharge shall be deposited into the Rape Crisis Program Trust Fund established within the Department of Health by chapter 2003-140, Laws of Florida. The clerk of the court shall retain \$1 of each surcharge that the clerk of the court collects as a service charge of the clerk's office.

Section 5. This act shall take effect July 1, 2018.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to threats to kill or do great bodily injury; amending s. 836.10, F.S.; prohibiting a person from making a threat to kill or do great bodily injury in a writing or other record and transmitting that threat in any manner that would allow another person to view the threat; deleting requirements that a threat be sent to a specific recipient to be prohibited; revising a penalty; amending s. 921.0022,



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212 F.S.; revising the ranking of the offense of making
213 written threats to kill or do great bodily injury on
214 the offense severity ranking chart of the Criminal
215 Punishment Code; reenacting ss. 794.056(1) and
216 938.085, F.S., relating to the Rape Crisis Program
217 Trust Fund and additional cost to fund rape crisis
218 centers, respectively, to incorporate the amendments
219 made by the act; providing an effective date.

By Senator Steube

23-00244A-18

2018310__

A bill to be entitled

An act relating to threats to kill or do bodily injury; amending s. 836.10, F.S.; prohibiting a person from making a threat to kill or do bodily injury to another person in a writing or other record and transmitting that threat in any manner; deleting requirements that a threat be sent to a specific recipient to be prohibited; providing a penalty; providing an effective date.

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

Section 1. Section 836.10, Florida Statutes, is amended to read:

836.10 Written threats to kill or do bodily injury; punishment.—A Any person who makes a threat in a writing or other record, including an electronic record, writes or composes and also sends or procures the sending of any letter, inscribed communication, or electronic communication, whether such letter or communication be signed or anonymous, to any person, containing a threat to kill or to do bodily injury to another the person and posts or transmits the threat in any manner to whom such letter or communication is sent, or a threat to kill or do bodily injury to any member of the family of the person to whom such letter or communication is sent commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. This act shall take effect October 1, 2018.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on Pre-K - 12 Education
Children, Families, and Elder Affairs
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE

23rd District

October 3, 2017

The Honorable Randolph Bracy
Florida Senate
213 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Bracy,

I am writing this letter because my bill, SB 310 – Threats to Kill or do Bodily Injury, has been referred to the Senate Criminal Justice Committee. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

Thank you for your consideration. Please contact me if you have any questions.

Very respectfully yours,

A handwritten signature in dark ink, appearing to be "W. Gregory Steube". The signature is stylized with a large, looping "W" and a cursive "S" for "Steube".

W. Gregory Steube, District 23

REPLY TO:

- ☐ 6230 University Parkway, Suite 202, Sarasota, Florida 34240 (941) 342-9162
- ☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/18

Meeting Date

310

Bill Number (if applicable)

430460

Amendment Barcode (if applicable)

Topic Threats to Kill or Do Bodily Injury

Name Chief David Perry

Job Title Chief of Police, Florida State University PD

Address 830 W Jefferson St

Street

Tallahassee

City

FL

State

32306

Zip

Phone 850-644-1240

Email dlperry@fsu.edu

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing The Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/2018

Meeting Date

310

Bill Number (if applicable)

Topic Threats to Kill or do Bodily Injury

Amendment Barcode (if applicable)

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Street

Tallahassee

City

FL

State

32308

Zip

Phone mdunagan@flsheriffs.org

Email mdunagan@flsheriffs.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Jan 24, 2018

Meeting Date

310

Bill Number (if applicable)

Topic Threats to Kill

Amendment Barcode (if applicable)

Name Ken "Cope-CITEN-ski" KopczynskiJob Title LobbyistAddress 300 East Brevard St

Street

Phone 222-3374Tallah

City

FL

State

32301

Zip

Email Ken@flpba.orgSpeaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing FLA PBAAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1.29.18

Meeting Date

310

Bill Number (if applicable)

Topic Threats to Kill or do Bodily Injury

Amendment Barcode (if applicable)

Name Ron Draa

Job Title External Affairs Director

Address 2331 Phillips Road

Phone 850.410.7020

Street

Tall

City

State

Zip

Email RONALDDRAA@FDLE.STATE.FL.US

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FDLE

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-29-18

Meeting Date

S.B. 310

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Timothy Morris

Job Title F.O.P.

Address 5530 Beach Blvd
Street

Phone _____

JAX, FL 32202
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing F.O.P.

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-29-18

Meeting Date

SB-310

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name MARK Harris

Job Title FOP

Address 5530 Beach Blvd

Phone _____

Street

Jax

FL

City

State

32202

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing F.O.P.

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1.29.18

Meeting Date

310

Bill Number (if applicable)

Topic Threats to Kill or do Bodily Harm

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

Email Barney@BarneyBishop.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-29-18

Meeting Date

310

Bill Number (if applicable)

Topic THREATS Bill

Amendment Barcode (if applicable)

Name Dennis Strange

Job Title Captain

Address 2400 West Colonial Dr

Phone 407-254-7000

Orlando FL 32804
City State Zip

Email dennis.strange@ocfl.net

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Sheriff's Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

01.29.18

Meeting Date

55310

Bill Number (if applicable)

Topic

THREATS to do badly

Amendment Barcode (if applicable)

Name

Dennis Strange

Job Title

Captain

Address

2400 West Colonial Dr

Phone

407-254-7000

Street

Del

FL

32804

Email

dennis.strange@ocfl.net

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Sheriff Jerry L. Dennis, Orange County Sheriff's Office

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 624

INTRODUCER: Criminal Justice Committee and Senator Young

SUBJECT: Drones

DATE: January 30, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 624 amends the definition of “critical infrastructure facility” in s. 330.41, F.S., to include:

- A state correctional institution or a private correctional facility;
- A secure juvenile detention center or facility, a nonsecure residential facility, a high-risk residential facility, or a maximum-risk residential facility; and
- A county detention facility.

The bill amends s. 934.50, F.S., to include exceptions to the prohibitions against drone use currently found in the “Freedom from Unwarranted Surveillance Act.” The exceptions are created to:

- Facilitate the collection of evidence at a crime scene or traffic crash scene; and
- Allow drone use by a local or state agency in the assessment of damage, flood state, wildfire, or land management, or the monitoring and collection of scientific or marketing data.

The bill is effective October 1, 2018.

II. Present Situation:

Section 934.50, F.S., defines a drone as a powered, aerial vehicle that:

- Does not carry a human operator;
- Uses aerodynamic forces to provide vehicle lift;
- Can fly autonomously or be piloted remotely;

- Can be expendable or recoverable; and
- Can carry a lethal or nonlethal payload.

Drones typically range in size from wingspans of 6 inches to 246 feet and can weigh from approximately 4 ounces to over 25,600 pounds.¹ They may be controlled manually or through an autopilot which uses a data link to connect the drone's pilot to the drone.² Other terms for "drones" are Unmanned Aerial Systems (UAS) and Unmanned Aerial Vehicles (UAV).

Protection of Critical Infrastructure Facilities in Florida from Drone Traffic

Section 330.41, F.S., protects critical infrastructure facilities by prohibiting any person from knowingly or willfully:

- Operating a drone over a critical infrastructure facility, unless the drone is in transit for commercial purposes and is in compliance with Federal Aviation Administration (FAA) regulations;
- Allowing a drone to make contact with a critical infrastructure facility, including any person or object on the premises of or within the facility; or
- Allowing a drone to come within a distance of a critical infrastructure facility that is close enough to interfere with the operations of or cause a disturbance to the facility.

"Critical infrastructure facility" means any of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked with a sign or signs which indicate that entry is forbidden and which are posted on the property in a manner reasonably likely to come to the attention of intruders:

- An electrical power generation or transmission facility, substation, switching station, or electrical control center.
- A chemical or rubber manufacturing or storage facility.
- A mining facility.
- A natural gas or compressed gas compressor station, storage facility, or natural gas or compressed gas pipeline.
- A liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more. Any portion of an aboveground oil or gas pipeline.
- A wireless communications facility, including tower, antennae, support structures, and all associated ground-based equipment.

A first violation of this prohibition is a second degree misdemeanor³ and a second or subsequent violation is a first degree misdemeanor.⁴

¹ 14 CFR Part 91, Docket No. FAA-2006-25714, 72 FR 6689, Department of Transportation, Federal Aviation Administration, *Unmanned Aircraft Operations in the National Airspace System*, February 13, 2007.

² *Id.*

³ A second degree misdemeanor is punishable by up to 60 days in jail and up to a \$500 fine. Sections 775.082 and 775.083, F.S.

⁴ Section 330.41, F.S. A first degree misdemeanor is punishable by up to one year in jail and a fine of up to \$1,000.

The prohibition does not apply to prohibited actions which are committed by:

- A federal, state, or other governmental entity, or a person under contract or otherwise acting under the direction of a federal, state, or other governmental entity;
- A law enforcement agency that is in compliance with s. 934.50, F.S., or a person under contract with or otherwise acting under the direction of such law enforcement agency; or
- An owner, operator, or occupant of the critical infrastructure facility, or a person who has prior written consent of such owner, operator, or occupant.⁵

Additionally, the prohibition against operating a drone over a critical infrastructure facility does not apply to a drone operating in transit for commercial purposes in compliance with FAA regulations, authorizations, or exemptions.⁶

Introduction of Contraband into State Facilities

At least ten states have passed laws limiting drone operation near prisons.⁷ The legislation is likely a response to incidents that have been reported across the country of drones being used to drop contraband into prison yards.⁸

It is a felony offense in Florida to introduce contraband into or upon the grounds of a state correctional institution, a juvenile detention facility or commitment program, or a county detention facility.⁹

Florida Statutes define the following state facilities:

- *State correctional institution* means any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the Department of Corrections.¹⁰
- *Privatized prisons* are authorized by ch. 957, F.S. The Department of Management Services contracts with private businesses who will establish cost-effective, privately operated correctional facilities in the State of Florida.¹¹
- *Detention center or facility* means a facility used pending court adjudication or disposition or execution of court order for the temporary care of a child alleged or found to have committed a violation of law. A detention center or facility may provide secure custody. A facility used

⁵ Section 330.41(4)(c), F.S.

⁶ Section 330.41(4)(d), F.S.

⁷ National Conference of State Legislatures, *2017 Unmanned Aircraft Systems (UAS) State Legislation Update*, available at <http://www.ncsl.org/research/transportation/2017-unmanned-aircraft-systems-uas-state-legislation-update.aspx> (last visited January 26, 2018).

⁸ *Drones pose security threat at the nation's prisons and what Pa. officials want to do about it*, PennLive, July 26, 2017, available at http://www.pennlive.com/politics/index.ssf/2017/07/drones_pose_security_threat_at.html (last visited January 25, 2018).

⁹ Sections 944.47, 985.711, and 951.22, F.S.

¹⁰ Section 944.02(8), F.S.

¹¹ Section 957.04(1)(e), F.S. Currently there are seven private prison facilities housing approximately 10,000 inmates in operation in Florida. E-mail from the Senate Appropriations Committee staff, January 30, 2018 (on file with the Senate Committee on Criminal Justice).

for the commitment of adjudicated delinquents shall not be considered a detention center or facility.¹²

- *Nonsecure residential facilities* are either environmentally secure, staff secure, or are hardware-secure with walls, fencing, or locking doors. Youth assessed and classified for placement in programs at this commitment level represent a low or moderate risk to public safety and require close supervision.¹³
- *High-risk residential facilities* are hardware-secure with perimeter fencing and locking doors. Youth assessed and classified for this level of placement require close supervision in a structured residential setting. Placement in programs at this level is prompted by a concern for public safety that outweighs placement in programs at lower commitment levels.¹⁴
- *Maximum-risk residential facilities* are maximum-custody, hardware-secure with perimeter security fencing and locking doors. Youth assessed and classified for this level of placement require close supervision in a maximum security residential setting. Placement in a program at this level is prompted by a demonstrated need to protect the public.¹⁵
- *County detention facility* means 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 felony or misdemeanor.¹⁶

Using Drones for Traffic Crash Scene Investigations, Reconstruction

Several jurisdictions, including the Massachusetts State Police and the Lake County, Illinois, Police, have been reported to be using drones to assist in more efficient and timely traffic crash investigations.¹⁷

The North Carolina Department of Transportation and North Carolina State Highway Patrol conducted research demonstrating the speed and accuracy with which a large traffic crash scene can be investigated and cleared, unblocking a roadway for traffic to resume sooner than other techniques.¹⁸

¹² Section 985.03(19), F.S.

¹³ Section 985.03(44)(b), F.S.

¹⁴ Section 985.03(44)(c), F.S.

¹⁵ Section 985.03(44)(d), F.S.

¹⁶ Section 951.23(1)(a), F.S.

¹⁷ *How drones help Lake County police investigate crashes, get roads open faster*, Daily Herald, May 7, 2017, available at <http://www.dailyherald.com/news/20170506/how-drones-help-lake-county-police-investigate-crashes-get-roads-open-faster> (last visited January 25, 2014).

¹⁸ Research shows that documenting a collision scene using photogrammetry and UAS can be advantageous, especially in terms of speed and cost. With a combination of advanced imaging software and the latest unmanned aircraft systems (UAS) technology, we find that the North Carolina State Highway Patrol (NCSHP) can rapidly map collision scenes and simultaneously gather more information than legacy technologies. Indeed, large scenes can be documented in less than 30 minutes. *Collision Scene Reconstruction & Investigation Using Unmanned Aircraft Systems*, Division of Aviation, UAS Program Office, N.C. Department of Transportation, August 2017, available at <https://www.ncdot.gov/aviation/download/ncshp-uas-mapping-study.pdf> (last visited January 25, 2018).

Other Uses for Drones

Drones are being developed and used in many facets of land management including land management, forestry management, wildfire prevention and suppression, and crop analysis.

Engineers at the University of Nebraska-Lincoln designed a drone to execute and monitor prescribed burns, a common land management practice to help reduce wildfire risk by eliminating dry plant material that could fuel a wildfire.¹⁹

Researchers at Virginia Tech use a drone with sensors that capture data that will enable them to measure vegetative vigor based on chlorophyll activity differences.²⁰

Among the responsibilities of the Florida Department of Agriculture and Consumer Services (FDACS) are the following:

- Forestry and land management which includes wildfire prevention and suppression and managing over one million acres of state forests;
- Pest and crop disease observation and analysis; and
- Crop data collection.

The FDACS suggests that many uses for drones exist that would be beneficial to the FDACS in fulfilling its non-law enforcement²¹ missions.²²

Section 934.50, F.S. – Search and Seizure Using a Drone

Section 934.50, F.S., the “Freedom from Unwarranted Surveillance Act,” relates primarily to drone use by law enforcement.²³

The statute prohibits a person, state agency, or political subdivision from using a drone to record an image of either privately owned real property or a person lawfully on such property with the intent to thereby obtain information about the property or person, in violation of such person’s reasonable expectation of privacy, and without his or her written consent.²⁴

¹⁹ Digital Trends, *Researchers are using autonomous fire-bombing drones to prevent future wildfires*, November 10, 2015, available at <https://www.digitaltrends.com/cool-tech/unl-fire-starting-drone/> (last visited January 30, 2018).

²⁰ Agency 229 Annual Report, *Sky is the limit for using drones in land management*, September 28, 2016, available at <http://news.cals.vt.edu/229-report/2016/09/28/sky-is-the-limit-for-using-drones-in-land-management/> (last visited January 30, 2018).

²¹ The FDACS provides agricultural law enforcement throughout the state. The Florida Department of Agriculture and Consumer Services, Office of Agricultural Law Enforcement, available at <https://www.freshfromflorida.com/Divisions-Offices/Agricultural-Law-Enforcement> (last visited January 29, 2018).

²² E-mail from Grace Lovett, Director, Office of Legislative Affairs, Florida Department of Agriculture and Consumer Services, January 25, 2018; (on file with the Senate Committee on Criminal Justice).

²³ Section 934.50(1), F.S. Section 934.50(3)(a), F.S., specifically prohibits a law enforcement agency from using a drone to gather evidence or other information unless one of the exceptions in s. 934.50(4), F.S., apply. Evidence obtained or collected in violation of the act is inadmissible as evidence in a criminal prosecution in the state courts. Section 934.50(6), F.S.

²⁴ Section 934.50(3)(b), F.S.

In addition to the exceptions specifically related to law enforcement agencies,²⁵ the statute exempts from this prohibition the following uses of drones:

- Use by a person or an entity engaged in a business or profession licensed by the state only to perform reasonable tasks within the scope of practice or activities permitted under such person's or entity's license;²⁶
- Use by a property appraiser solely for the purpose of assessing property for ad valorem taxation;
- Use to capture images by or for an electric, water, or natural gas utility: for operations, maintenance, and inspection of utility facilities including facilities used in the generation, transmission, or distribution of electricity, gas, or water, for the purpose of maintaining utility system reliability and integrity; for assessing vegetation growth for the purpose of maintaining clearances on utility rights-of-way; for utility routing, siting, and permitting for the purpose of constructing utility facilities or providing utility service; or for conducting environmental monitoring, as provided by federal, state, or local law, rule, or permit;
- Use for aerial mapping if the person or entity using a drone for this purpose is operating in compliance with FAA regulations;
- Use to deliver cargo, if the person or entity using a drone for this purpose is operating in compliance with FAA regulations;
- Use to capture images necessary for the safe operation or navigation of a drone that is being used for a purpose allowed under federal or Florida law; and
- Use by a communications service provider or a contractor for a communications service provider for routing, siting, installation, maintenance, or inspection of facilities used to provide communications services.²⁷

Section 934.50(5), F.S., provides remedies for a violation of these prohibitions, including punitive damages.

Section 330.41, F.S. - Preemption and Construction

Section 330.41(3)(a), F.S., preempts regulation of the operation of UAS to the state except as provided in federal regulations, authorizations, or exemptions.²⁸ However, the statute does not limit the authority of a local government to enact or enforce local ordinances relating to nuisances, voyeurism, harassment, reckless endangerment, property damage, or other illegal acts arising from the use of unmanned aircraft systems if such laws or ordinances are not specifically related to the use of an unmanned aircraft system for those illegal acts.²⁹

²⁵ Section 934.50(4)(a)-(c), F.S.

²⁶ This exception does not apply to a profession in which the licensee's authorized scope of practice includes obtaining information about the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons. Section 934.50(4)(d), F.S.

²⁷ Section 934.50(4)(d)-(j), F.S.

²⁸ "Except as otherwise expressly provided, a political subdivision may not enact or enforce an ordinance or resolution relating to the design, manufacture, testing, maintenance, licensing, registration, certification, or operation of an unmanned aircraft system, including airspace, altitude, flight paths, equipment or technology requirements; the purpose of operations; and pilot, operator, or observer qualifications, training, and certification." Section 330.41(3)(b), F.S.

²⁹ Section 330.41(3)(c), F.S.

Any person or governmental entity seeking to restrict or limit the operation of drones in close proximity to infrastructure or facilities that the person or governmental entity owns or operates must apply to the FAA for such designation pursuant to section 2209 of the FAA Extension, Safety, and Security Act of 2016.³⁰

Section 330.41(4), F.S., relating to protecting critical infrastructure facilities, sunsets 60 days after the FAA process for designating critical infrastructure becomes effective.³¹ Section 330.41, F.S., must be construed in accordance with standards imposed by federal statutes, regulations, and FAA guidance on UAS.³²

III. Effect of Proposed Changes:

The bill amends s. 330.41(2)(a), F.S., to include the following structures within the definition of the term “critical infrastructure facility”:

- A state correctional institution as defined in s. 944.02, F.S., and a private prison as authorized in ch. 957, F.S.;
- A secure juvenile detention center or facility, nonsecure residential facility, high-risk residential facility, and maximum-risk residential facility as defined in s. 985.03, F.S.; and
- A county detention facility as defined in s. 951.23(1)(a), F.S.

Section 934.50(3)(a), F.S., specifically prohibits a law enforcement agency from using a drone to gather evidence or other information unless one of the exceptions in s. 934.50(4), F.S., apply. Evidence obtained or collected in violation of the act is inadmissible as evidence in a criminal prosecution in the state courts.³³

The bill amends s. 934.50, F.S., to include law enforcement using a drone to facilitate the collection of evidence at a crime scene or traffic crash scene among the exceptions authorized in s. 934.50(4), F.S.

The bill creates an additional exception to allow drone use by a local or state agency when used in the assessment of damage, flood state, wildfire, or land management, or the monitoring and collection of scientific or marketing data.

The bill is effective October 1, 2018.

³⁰ Public Law 114-190, Section 2209(b)(1)(C) (Applications for Designation); 49 USC 40101 (UAS Safety, Sec. 2209). This section provides for designation of “fixed site facilities.” Only the following can be so designated: critical infrastructure, such as energy production, transmission, and distribution facilities and equipment; oil refineries and chemical facilities; amusement parks; and other locations that warrant such restrictions. In determining whether to grant an application for designation, the FAA administrator may consider aviation safety, protection of persons and property on the ground, national security, or homeland security. In an affirmative designation, the FAA will outline the boundaries for UAS operation near the fixed site facility and such other limitations that the FAA administrator determines may be appropriate.

³¹ Section 330.41(4)(e), F.S.

³² Section 330.41(5), F.S.

³³ Section 934.50(6), F.S.

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:

None.

C. Government Sector Impact:

The Florida Department of Law Enforcement 2018 Legislative Bill Analysis for SB 624 does not indicate a fiscal impact to the department.³⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 330.41 and 934.50.

³⁴ Florida Department of Law Enforcement, *2018 Legislative Bill Analysis*, November 2, 2017; (on file with the Senate Committee on Criminal Justice).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on January 29, 2018:

The Committee Substitute amends the bill as follows:

- Adds private correctional facilities, nonsecure juvenile residential facilities, high-risk juvenile residential facilities, and maximum-risk juvenile residential facilities to the structures protected by the bill from certain drone operations under s. 330.41, F.S.
- Adds correctional facilities, juvenile facilities, and county jail facilities in the existing definition of “critical infrastructure facilities” rather than creating “fixed site facilities.”
- Creates a new exception for drone use to allow a local or state agency to use a drone in the assessment of damage, flood state, wildfire, or land management, or the monitoring and collection of scientific or marketing data.

- B. **Amendments:**

None.



836612

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/29/2018	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Young) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (a) of subsection (2) of section
330.41, Florida Statutes, is amended to read:

330.41 Unmanned Aircraft Systems Act.—

(2) DEFINITIONS.—As used in this act, the term:

(a) "Critical infrastructure facility" means any of the
following, if completely enclosed by a fence or other physical



836612

barrier that is obviously designed to exclude intruders, or if clearly marked with a sign or signs which indicate that entry is forbidden and which are posted on the property in a manner reasonably likely to come to the attention of intruders:

1. An electrical power generation or transmission facility, substation, switching station, or electrical control center.

2. A chemical or rubber manufacturing or storage facility.

3. A mining facility.

4. A natural gas or compressed gas compressor station, storage facility, or natural gas or compressed gas pipeline.

5. A liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more.

6. Any portion of an aboveground oil or gas pipeline.

7. A wireless communications facility, including the tower, antennae, support structures, and all associated ground-based equipment.

8. A state correctional institution as defined in s. 944.02 or a private correctional facility authorized under chapter 957.

9. A secure detention center or facility, a nonsecure residential facility, a high-risk residential facility, or a maximum-risk residential facility as defined in s. 985.03.

10. A county detention facility as defined in s. 951.23.

Section 2. Paragraph (c) of subsection (4) of section 934.50, Florida Statutes, is amended, and paragraph (k) is added to that subsection, to read:

934.50 Searches and seizure using a drone.—

(4) EXCEPTIONS.—This section does not prohibit the use of a drone:

(c) If the law enforcement agency possesses reasonable



836612

suspicion that, under particular circumstances, swift action is needed to prevent imminent danger to life or serious damage to property;~~;~~ to forestall the imminent escape of a suspect or the destruction of evidence;to facilitate the collection of evidence at a crime scene or traffic crash scene;~~;~~ or to achieve purposes including, but not limited to, facilitating the search for a missing person.

(k) By a local or state agency when used in the assessment of damage, flood state, wildfire, or land management, or the monitoring and collection of scientific or marketing data.

Section 3. This act shall take effect October 1, 2018.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to drones; amending s. 330.41, F.S.;
redefining the term "critical infrastructure
facility"; amending s. 934.50, F.S.; authorizing the
use of a drone if a law enforcement agency possesses
reasonable suspicion that, under particular
circumstances, swift action is needed to facilitate
the collection of evidence at a crime scene or traffic
crash scene; authorizing the use of a drone by a local
or state agency when used in the assessment of damage,
flood state, wildfire, or land management, or the
monitoring and collection of scientific or marketing
data; providing an effective date.

By Senator Young

18-00447C-18

2018624

A bill to be entitled

An act relating to drones; amending s. 330.41, F.S.; defining the term "fixed-site facility"; prohibiting a person from knowingly or willingly operating a drone over, allowing a drone to make contact with, allowing a drone to come within a certain distance of, or using a drone to introduce contraband into or within the secure perimeter of a fixed-site facility; providing criminal penalties; amending s. 934.50, F.S.; authorizing the use of a drone if a law enforcement agency possesses reasonable suspicion that, under particular circumstances, swift action is needed to facilitate the collection of evidence at a crime scene or traffic crash scene; providing an effective date.

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

Section 1. Subsections (2) and (4) of section 330.41, Florida Statutes, are amended to read:

330.41 Unmanned Aircraft Systems Act.—

(2) DEFINITIONS.—As used in this act, the term:

(a) "Critical infrastructure facility" means any of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked with a sign or signs which indicate that entry is forbidden and which are posted on the property in a manner reasonably likely to come to the attention of intruders:

1. An electrical power generation or transmission facility, substation, switching station, or electrical control center.

Page 1 of 4

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

18-00447C-18

2018624

2. A chemical or rubber manufacturing or storage facility.

3. A mining facility.

4. A natural gas or compressed gas compressor station, storage facility, or natural gas or compressed gas pipeline.

5. A liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more.

6. Any portion of an aboveground oil or gas pipeline.

7. A wireless communications facility, including the tower, antennae, support structures, and all associated ground-based equipment.

(b) "Drone" has the same meaning as s. 934.50(2).

(c) "Fixed-site facility" means any of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked with one or more signs that indicate that entry is forbidden and that are posted on the property in a manner reasonably likely to come to the attention of intruders:

1. A state correctional institution as defined in s. 944.02.

2. A secure detention center or facility, a high-risk residential facility, or a maximum-risk residential facility as defined in s. 985.03.

3. A county detention facility as defined in s. 951.23.

~~(d)~~ ~~(e)~~ "Unmanned aircraft system" means a drone and its associated elements, including communication links and the components used to control the drone which are required for the pilot in command to operate the drone safely and efficiently.

(4) PROTECTION OF CRITICAL INFRASTRUCTURE FACILITIES.—

(a) A person may not knowingly or willfully:

Page 2 of 4

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

18-00447C-18

2018624__

1. Operate a drone over a critical infrastructure facility or fixed-site facility;

2. Allow a drone to make contact with a critical infrastructure facility or fixed-site facility, including any person or object on the premises of or within the facility; ~~or~~

3. Allow a drone to come within a distance of a critical infrastructure facility or fixed-site facility which that is close enough to interfere with the operations of or cause a disturbance to the facility; or—

4. Use a drone to introduce contraband as defined in s. 944.47, s. 985.711, or s. 951.22 into a fixed-site facility, or upon the grounds of or within the secured perimeter of the fixed-site facility.

(b) A person who violates subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. paragraph (a) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who commits a second or subsequent violation of subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A person who violates subparagraph (a)4. commits a felony of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(c) This subsection does not apply to actions identified in paragraph (a) which are committed by:

1. A federal, state, or other governmental entity, or a person under contract or otherwise acting under the direction of a federal, state, or other governmental entity.

2. A law enforcement agency that is in compliance with s. 934.50, or a person under contract with or otherwise acting

18-00447C-18

2018624__

under the direction of such law enforcement agency.

3. An owner, operator, or occupant of the critical infrastructure facility, or a person who has prior written consent of such owner, operator, or occupant.

(d) Subparagraph (a)1. does not apply to a drone operating in transit for commercial purposes in compliance with Federal Aviation Administration regulations, authorizations, or exemptions.

(e) This subsection shall sunset 60 days after the date that a process pursuant to s. 2209 of the FAA Extension, Safety and Security Act of 2016 becomes effective.

Section 2. Paragraph (c) of subsection (4) of section 934.50, Florida Statutes, is amended to read:

934.50 Searches and seizure using a drone.—

(4) EXCEPTIONS.—This section does not prohibit the use of a drone:

(c) If the law enforcement agency possesses reasonable suspicion that, under particular circumstances, swift action is needed to prevent imminent danger to life or serious damage to property; ~~to forestall the imminent escape of a suspect or the destruction of evidence; to facilitate the collection of evidence at a crime scene or traffic crash scene;~~ or to achieve purposes including, but not limited to, facilitating the search for a missing person.

Section 3. This act shall take effect October 1, 2018.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

✓ COMMITTEES:

Health Policy, *Chair*
Appropriations Subcommittee on Pre-K - 12
Education, *Vice Chair*
Commerce and Tourism
Communications, Energy, and Public Utilities
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DANA YOUNG

18th District

November 2, 2017

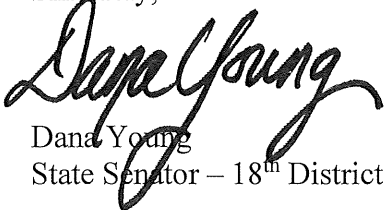
Senator Randolph Bracy, Chair
Criminal Justice Committee
510 Knott Building
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Bracy,

My Senate Bill 624 relating to Drones has been referred to your committee for a hearing. I respectfully request that this bill be placed on your next available agenda.

Should you have any questions, please do not hesitate to reach out to me.

Sincerely,


Dana Young
State Senator – 18th District

cc: Lauren Jones, Staff Director – Criminal Justice Committee

REPLY TO:

- ☐ 1211 N. Westshore Blvd, Suite 409, Tampa, Florida 33607 (813) 281-5507
- ☐ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/2018

Meeting Date

624

Bill Number (if applicable)

Topic Drones

Amendment Barcode (if applicable)

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Street

Tallahassee

City

FL

State

32308

Zip

Phone mdunagan@flsheriffs.org

Email mdunagan@flsheriffs.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/18

Meeting Date

SB 624

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Rebecca de La Rosa

Job Title _____

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing PALM BEACH COUNTY

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/2018

Meeting Date

629

Bill Number (if applicable)

Topic Drones

Amendment Barcode (if applicable)

Name Jeff Branch

Job Title Legislative Advocate

Address Bronough St.
Street

Phone _____

City

State

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-29-18

Meeting Date

624

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jess McCarty

Job Title Assistant County Attorney

Address 111 NW 1st Street, Suite 2810

Phone 305-979-7110

Street

Miami

FL

33128

Email jmm2@miamidade.gov

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Miami-Dade County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/18

Meeting Date

624

Bill Number (if applicable)

Topic DRONES

Amendment Barcode (if applicable)

Name USA HURLEY

Job Title _____

Address 311 E. Park Ave

Phone 850.224.5081

Street Valhalla City FL State FL Zip 32301

Email _____

Speaking: ☒ For ☐ Against ☐ Information

~~Waive Speaking:~~ ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA ASSOC. OF COUNTIES

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/18

Meeting Date

624

Bill Number (if applicable)

Topic Drones

Amendment Barcode (if applicable)

Name Chief Keith Touchberry

Job Title Chief of Police, Fellsmere Police Department

Address 22 S. Cypress Street

Phone 772-646-6310

Street

Fellsmere

FL

32948

Email policechief@cityoffellsmere.org

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing The Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

01-29-18

Meeting Date

53624

Bill Number (if applicable)

Topic

Drones

Amendment Barcode (if applicable)

Name

Dennis Strange

Job Title

Captain

Address

2400 West Colonial Dr

Phone

407-254-7000

Street

Orl

City

Fl

State

32804

Zip

Email

dennis.strange@ocfl.net

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Orange County Sheriff's Office

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1.29.18

Meeting Date

624

Bill Number (if applicable)

Topic Drones

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

Email Barney@BarneyBishop.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

January 29, 2018

Meeting Date

SB 624

Bill Number (if applicable)

Topic SB 624 Drones

Amendment Barcode (if applicable)

Name Jared Torres

Job Title Legislative Affairs Director

Address 501 South Calhoun Street

Street

Tallahassee

City

FL

State

32399

Zip

Phone 850-717-3045

Email Jared.Torres@fdc.myflorida.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Department of Corrections

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Jan 29, 2018
Meeting Date

624
Bill Number (if applicable)

Topic Unmanned aircraft

Amendment Barcode (if applicable)

Name DAVID DANIEL

Job Title _____

Address 311 EAST PARK AVE

Phone 224-5081

Street

TALL

City

FL

State

32301

Zip

Email ddaniel@smithbarry.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing NAS ASSOCIATION OF FLORIDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 776

INTRODUCER: Criminal Justice Committee and Senator Grimsley

SUBJECT: Theft

DATE: January 30, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	Fav/CS
2.			AG	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 776 amends s. 812.014(2)(c)7., F.S., to increase the fine in felony cases of theft of specified commercially farmed animals and registered bee colonies to \$10,000. Currently the fine is up to \$5,000.

Current law provides for a \$10,000 fine in cases of felony grand theft of aquaculture species raised at a certified aquaculture facility.

The bill is effective October 1, 2018.

II. Present Situation:

Property Theft

Section 812.014, F.S., defines and categorizes thefts into misdemeanor or felony criminal violations. Whether a theft is a misdemeanor or a felony generally depends upon the value of the property taken by the defendant, the defendant's history of theft convictions or, in some cases, the type of property taken.

A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property; or

- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.¹

Third degree grand theft, a third degree felony,² is theft of:

- Property valued at \$300 or more, but less than \$20,000.
- Specified property including:
 - A will, codicil, or testamentary instrument;
 - A firearm;
 - A motor vehicle;
 - Any commercially farmed animal including any animal of the equine,³ bovine,⁴ or swine⁵ class or other grazing animal;⁶
 - Any bee colony of a registered beekeeper;⁷
 - Any aquaculture species raised at a certified aquaculture facility;⁸
 - Any fire extinguisher;
 - Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit;
 - Property taken from a designated, posted construction site;
 - Any stop sign;
 - Anhydrous ammonia; and
 - Any amount of a controlled substance as defined in s. 893.02, F.S.⁹
- Property from a dwelling or its unenclosed curtilage if the property is valued at \$100 or more, but less than \$300.¹⁰

¹ Section 812.014(1), F.S.

² A third degree felony is punishable by up to 5 years' incarceration and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

³ "Equine" means a horse or other member of the horse family. The Oxford Dictionaries, available at <https://en.oxforddictionaries.com/definition/equine> (last visited January 24, 2018); *See also* s. 773.01, F.S.: "Equine" means a horse, pony, mule, or donkey.

⁴ "Bovine" means an animal of the cattle group, which also includes buffaloes and bison. The Oxford Dictionaries, available at <https://en.oxforddictionaries.com/definition/bovine> (last visited January 26, 2018).

⁵ "Swine" means pig. The Oxford Dictionaries, available at <https://en.oxforddictionaries.com/definition/swine> (last visited January 24, 2018).

⁶ Grazing animals may include sheep and goats in addition to horses and cattle. *Save Our Magnificent Meadows*, available at http://www.magnificentmeadows.org.uk/assets/pdfs/Types_of_Livestock.pdf (last visited January 24, 2018). *See also* s. 585.01(13), F.S.: "Livestock" means grazing animals, such as cattle, horses, sheep, swine, goats, other hoofed animals, ostriches, emus, and rheas which are raised for private use or commercial purposes.

⁷ Beekeepers are required by the Florida Department of Agriculture and Consumer Services to register and identify their hives. All honey bee hives must be permanently imprinted on the upper left-hand corner in letters at least ½ inch in height with the beekeeper's registration number issued by the department. Florida Department of Agriculture and Consumer Services, *Beekeeper Registration*, available at <https://www.freshfromflorida.com/Business-Services/Bees-Apiary/Beekeeper-Registration> (last visited January 24, 2018).

⁸ The Florida Department of Agriculture and Consumer Services inspects and certifies aquaculture businesses. Aquaculture includes fish, mollusks, and aquatic plants. Florida Department of Agriculture and Consumer Services, *Aquaculture Certification Application Taxonomic Listing and Aquaculture Best Management Practices Manual*, November 2016 available at <https://www.freshfromflorida.com/Business-Services/Aquaculture/Aquaculture-Certificate-of-Registration> (last visited January 24, 2018).

⁹ Section 812.014(2)(c), F.S.

¹⁰ Section 812.014(2)(d), F.S.

Currently, s. 812.014(2), F.S., requires that a fine of \$10,000 be imposed for theft of aquaculture species raised at a certified aquaculture facility.¹¹ The fine for theft of a commercially farmed animal or bee colony is a maximum amount of \$5,000, the general fine for a third degree felony offense.¹²

Thefts of Cattle and Beehives in Florida

Theft of cattle has been more prevalent since beef prices have risen since 2012. Yearling cows weighing 600-700 pounds that once sold for around \$600 are now worth \$1,000 to \$1,200, according to Florida Cattlemen's Association Executive Vice President Jim Handley.¹³

A cattle rancher in Martin County was the victim of what the Martin County Sheriff called "the largest cattle rustling scheme in the county's history" in 2013.¹⁴ The man accused of stealing the cattle, taking them to market, and keeping the proceeds was the manager of the ranch. The ranch manager sold 175 cows for a total of \$102,000. The total loss from the theft forced the cattle rancher to discontinue his cattle business.¹⁵

Beekeepers have been the target of theft as well with more than \$100,000 worth of hives stolen in Southwest Florida. One beekeeper who was hit by thieves explained that sometimes entire hives are taken, other times just the queen bee is taken so the thief can use her to begin a new hive.¹⁶

III. Effect of Proposed Changes:

The bill amends s. 812.014(2)(c)7., F.S., to increase the fine from up to \$5,000 to \$10,000 in cases of felony theft of a commercially farmed animal, including an animal of the equine, avian,¹⁷ bovine, or swine class or other grazing animal; or a bee colony of a registered beekeeper.

This fine increase puts these agriculture-related thefts on par with aquaculture species theft which currently requires a \$10,000 fine.¹⁸

Section 932.701(2)(a), F.S., is reenacted to incorporate the amendment made to s. 812.014(2)(c), F.S., by the bill.

¹¹ Section 812.014(2)(c)7., F.S.

¹² Section 812.014(2)(c), F.S.

¹³ *Former Osceola deputy in jail after being charged with stealing cattle*, The Orlando Sentinel, November 11, 2015, available at <http://www.orlandosentinel.com/news/breaking-news/os-keith-collins-cattle-rustling-osceola-20151106-story.html> (last visited January 23, 2018).

¹⁴ *Sheriff calls cattle theft largest in Martin County's history*, WPBF News, October 29, 2013, available at <http://www.wpbf.com/article/sheriff-calls-cattle-theft-largest-in-martin-county-s-history/1319401> (last visited January 23, 2018).

¹⁵ *Id.*

¹⁶ *Beehive theft cases on the rise in SWFL*, NBC-2 WBBH News, August 17, 2016, available at <http://www.nbc-2.com/story/32779137/10000-reward-offered-for> (last visited January 24, 2018); *See also Theft of hives hits southwest Florida bee farmers*, The Orlando Sentinel, August 28, 2016, available at <http://www.orlandosentinel.com/business/os-ap-theft-bee-hive-florida-20160828-story.html> (last visited January 23, 2018).

¹⁷ "Avian" means relating to, or derived from birds. The Merriam-Webster Dictionary, available at <https://www.merriam-webster.com/dictionary/avian> (last visited January 29, 2018).

¹⁸ Section 812.014(2)(c)7., F.S.

The bill is effective October 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 may help farmers and ranchers recover a portion of the losses experienced from the thefts of their herds, birds, or bees.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 812.014 of the Florida Statutes.

This bill reenacts section 932.701 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on January 29, 2018:

The committee substitute includes animals of the avian (bird) species among the commercially farmed animals to which the \$10,000 fine provided for in the bill would apply.

- B. **Amendments:**

None.



882222

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/29/2018	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Grimsley) recommended the following:

Senate Amendment

Delete lines 26 - 30
and insert:
the equine, avian, bovine, or swine class or other grazing
animal; a bee colony of a registered beekeeper; and aquaculture
species raised at a certified aquaculture facility. If the
property stolen is a commercially farmed animal, including an
animal of the equine, avian, bovine, or swine class or other
grazing animal; a

By Senator Grimsley

26-00367A-18

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1 A bill to be entitled
 2 An act relating to theft; amending s. 812.014, F.S.;
 3 increasing the fine for the theft of a commercially
 4 farmed animal or a bee colony of a registered
 5 beekeeper; reenacting s. 932.701(2)(a), F.S., relating
 6 to the definition of the term "contraband article," to
 7 incorporate the amendment made to s. 812.014, F.S., in
 8 a reference thereto; providing an effective date.
 9
 10 Be It Enacted by the Legislature of the State of Florida:
 11
 12 Section 1. Paragraph (c) of subsection (2) of section
 13 812.014, Florida Statutes, is amended to read:
 14 812.014 Theft.—
 15 (2)
 16 (c) It is grand theft of the third degree and a felony of
 17 the third degree, punishable as provided in s. 775.082, s.
 18 775.083, or s. 775.084, if the property stolen is:
 19 1. Valued at \$300 or more, but less than \$5,000.
 20 2. Valued at \$5,000 or more, but less than \$10,000.
 21 3. Valued at \$10,000 or more, but less than \$20,000.
 22 4. A will, codicil, or other testamentary instrument.
 23 5. A firearm.
 24 6. A motor vehicle, except as provided in paragraph (a).
 25 7. Any commercially farmed animal, including any animal of
 26 the equine, bovine, or swine class or other grazing animal; a
 27 bee colony of a registered beekeeper; and aquaculture species
 28 raised at a certified aquaculture facility. If the property
 29 stolen is a commercially farmed animal, including an animal of

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

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30 the equine, bovine, or swine class or other grazing animal; a
 31 bee colony of a registered beekeeper; or an aquaculture species
 32 raised at a certified aquaculture facility, ~~then~~ a \$10,000 fine
 33 shall be imposed.
 34 8. Any fire extinguisher.
 35 9. Any amount of citrus fruit consisting of 2,000 or more
 36 individual pieces of fruit.
 37 10. Taken from a designated construction site identified by
 38 the posting of a sign as provided for in s. 810.09(2)(d).
 39 11. Any stop sign.
 40 12. Anhydrous ammonia.
 41 13. Any amount of a controlled substance as defined in s.
 42 893.02. Notwithstanding any other law, separate judgments and
 43 sentences for theft of a controlled substance under this
 44 subparagraph and for any applicable possession of controlled
 45 substance offense under s. 893.13 or trafficking in controlled
 46 substance offense under s. 893.135 may be imposed when all such
 47 offenses involve the same amount or amounts of a controlled
 48 substance.
 49
 50 However, if the property is stolen within a county that is
 51 subject to a state of emergency declared by the Governor under
 52 chapter 252, the property is stolen after the declaration of
 53 emergency is made, and the perpetration of the theft is
 54 facilitated by conditions arising from the emergency, the
 55 offender commits a felony of the second degree, punishable as
 56 provided in s. 775.082, s. 775.083, or s. 775.084, if the
 57 property is valued at \$5,000 or more, but less than \$10,000, as
 58 provided under subparagraph 2., or if the property is valued at

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\$10,000 or more, but less than \$20,000, as provided under subparagraph 3. As used in this paragraph, the term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or the response time for first responders or homeland security personnel. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 2. For the purpose of incorporating the amendment made by this act to section 812.014, Florida Statutes, in a reference thereto, paragraph (a) of subsection (2) of section 932.701, Florida Statutes, is reenacted to read:

932.701 Short title; definitions.—

(2) As used in the Florida Contraband Forfeiture Act:

(a) "Contraband article" means:

1. Any controlled substance as defined in chapter 893 or any substance, device, paraphernalia, or currency or other means of exchange that was used, was attempted to be used, or was intended to be used in violation of any provision of chapter 893, if the totality of the facts presented by the state is clearly sufficient to meet the state's burden of establishing probable cause to believe that a nexus exists between the article seized and the narcotics activity, whether or not the use of the contraband article can be traced to a specific narcotics transaction.

2. Any gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was used, was attempted, or intended to be used in violation of the gambling

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laws of the state.

3. Any equipment, liquid or solid, which was being used, is being used, was attempted to be used, or intended to be used in violation of the beverage or tobacco laws of the state.

4. Any motor fuel upon which the motor fuel tax has not been paid as required by law.

5. Any personal property, including, but not limited to, any vessel, aircraft, item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, securities, books, records, research, negotiable instruments, or currency, which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.

6. Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which was used, is being used, or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.

7. Any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, currency, or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person who takes aquaculture products in violation of s. 812.014(2)(c).

8. Any motor vehicle offered for sale in violation of s.

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320.28.

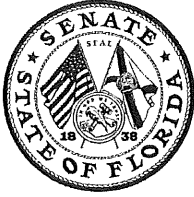
9. Any motor vehicle used during the course of committing an offense in violation of s. 322.34(9)(a).

10. Any photograph, film, or other recorded image, including an image recorded on videotape, a compact disc, digital tape, or fixed disk, that is recorded in violation of s. 810.145 and is possessed for the purpose of amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.

11. Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which is acquired by proceeds obtained as a result of Medicaid fraud under s. 409.920 or s. 409.9201; any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, or currency; or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person which is acquired by proceeds obtained as a result of Medicaid fraud under s. 409.920 or s. 409.9201.

12. Any personal property, including, but not limited to, any vehicle, item, object, tool, device, weapon, machine, money, security, book, or record, that is used or attempted to be used as an instrumentality in the commission of, or in aiding and abetting in the commission of, a person's third or subsequent violation of s. 509.144, whether or not comprising an element of the offense.

Section 3. This act shall take effect October 1, 2018.



The Florida Senate

Committee Agenda Request

To: Senator Randolph Bracy, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: December 7, 2017

I respectfully request that **Senate Bill #776**, relating to Theft, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in black ink, reading "Denise Grimsley". Above the signature is a small, curved checkmark.

Senator Denise Grimsley
Florida Senate, District 26

cc: Lauren Jones, Staff Director
Sue Arnold, Administrative Assistant

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1.29.18
Meeting Date

SB 6776
Bill Number (if applicable)

Topic THEFT

882222
Amendment Barcode (if applicable)

Name AMANDA BOWEN

Job Title _____

Address 1625 SUMMIT LAKE DR. #300
Street
TALLAHASSEE, FL 32317
City State Zip

Phone 850-402-2954

Email ABOWEN@NSTEPHENS.COM

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA POULTRY FEDERATION

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 860

INTRODUCER: Criminal Justice Committee and Senator Bracy

SUBJECT: Criminal History Records

DATE: January 30, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 860 provides for the administrative sealing of certain types of criminal history records of a minor.

The bill requires the criminal history record of a minor who is arrested or charged with a felony, misdemeanor, or violation of a comparable rule or ordinance, to be administratively sealed upon notification by the clerk of the court that all the charges related to the arrest or incident of alleged criminal activity:

- Were declined to be filed by the state attorney or statewide prosecutor;
- Were dismissed or nolle prosequi before trial; or
- Resulted in a judgment of acquittal or a not guilty verdict at trial.

The bill also requires all appeals to have been exhausted by the prosecution or the time to file an appeal must have expired in order for a criminal history record to be administratively sealed.

The bill provides that the administrative sealing of a criminal history record will have the same effect as a sealing under s. 943.059, F.S.

The bill is effective July 1, 2018.

II. Present Situation:

Access to Juvenile Criminal History Records

Florida law makes adult criminal history records accessible to the public unless the record has been sealed or expunged. Sealed records are placed under highly restricted access, while expunged records are removed from record systems and destroyed.¹

In contrast, criminal history information related to juveniles is generally confidential and exempt from public access.² Section 943.053(3)(b)1., F.S., provides that criminal history information³ relating to a juvenile compiled by the Criminal Justice Information Program (CJIP) is confidential and exempt unless the juvenile has been:

- Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult would be a felony;
- Charged with a violation of law which, if committed by an adult, would be a felony;
- Found to have committed an offense which, if committed by an adult, would be a felony; or
- Transferred to adult court pursuant to part X of ch. 985, F.S.⁴

However, a criminal history record that has been expunged or sealed will remain confidential and exempt.⁵

Criminal history information relating to juveniles that is confidential and exempt is available to:

- A criminal justice agency for criminal justice purposes;
- The person to whom the record relates, or his or her attorney;
- The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or
- An agency or entity specified in ss. 943.0585(4) or 943.059(4), F.S.⁶

¹ Florida Department of Law Enforcement, *Seal and Expunge Process*, available at <http://www.fdle.state.fl.us/Seal-and-Expunge-Process/Seal-and-Expunge-Home.aspx> (last visited January 23, 2018).

² Florida Department of Law Enforcement, *2018 Legislative Bill Analysis for SB 860*, (December 6, 2017) (on file with the Senate Criminal Justice Committee).

³ “Criminal history information” is information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. The term does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system. *See* s. 943.045(5), F.S.

⁴ Criminal history information related to a juvenile who has been transferred to adult court by waiver, direct file, or indictment, is not confidential and exempt. *See* s. 943.053(3)(b)1., F.S.

⁵ *Id.*

⁶ Sections 943.0585(4) and 943.059(4), F.S., provide that the person who is the subject of a criminal history record that is sealed or expunged may lawfully deny or fail to acknowledge the arrests covered by the sealed or expunged record, except when the subject of the record: is a candidate for employment with a criminal justice agency; is a defendant in a criminal prosecution; concurrently or subsequently petitions for relief under s. 943.053, s. 943.0585, or s. 943.059, F.S.; is a candidate for admission to The Florida Bar; is seeking appointment as a guardian, a position with a criminal justice agency or a position with an agency that is responsible for the protection of vulnerable persons, including children, the disabled, or the elderly; or is seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services. Additionally, s. 943.059(4), F.S., prohibits a person who is the subject of a criminal history record that is sealed pursuant to s. 943.059, F.S., from denying or failing to acknowledge the arrests covered by the sealed record if the person: is attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a

Sealing of Criminal History Record

Section 943.059, F.S., authorizes the sealing of a criminal history record by court order. To qualify for a court-ordered sealing, a person must first obtain a certificate of eligibility (COE) from the Florida Department of Law Enforcement (FDLE). The FDLE must issue a COE for sealing to a person who is the subject of a criminal history record provided that such person:

- Has submitted to the FDLE a certified copy of the disposition of the charge to which the petition to seal pertains;
- Remits a \$75 processing fee, unless it is waived by the executive director;
- Has never, prior to the date on which the application for a certificate of eligibility is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3)(b), F.S.;⁷
- Has not been adjudicated guilty of or adjudicated delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains;
- Has never secured a prior sealing or expunction of a criminal history record; and
- Is not under court supervision for the arrest or alleged criminal activity to which the petition to seal pertains.⁸

Upon receipt of a COE for sealing, a person must then petition the court to seal the criminal history record. The petition must include the COE and a sworn statement attesting that the petitioner:

- Has never, prior to the date on which the petition is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a specified misdemeanor;⁹
- Has not been adjudicated guilty of or adjudicated delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains;
- Has never secured a prior sealing or expunction of a criminal history record; and
- Is eligible for such a sealing and does not have any other petition to seal or expunge pending before any court.¹⁰

A copy of the completed petition is then served upon the appropriate state attorney or statewide prosecutor and the arresting agency, any of which may respond to the court regarding the

criminal history check under state or federal law; or is seeking to be licensed by the Bureau of License Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services to carry a concealed weapon or concealed firearm. *See* ss. 943.053(3)(c)1., 943.0585(4), and 943.059(4), F.S.

⁷ These offenses include assault, battery, carrying a concealed weapon, unlawful use of destructive devices or bombs, child neglect, assault on a law enforcement officer, a firefighter, or other specified officer, open carrying of a weapon, indecent exposure, unlawful possession of a firearm, petit theft, animal cruelty, arson, and unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property. *See* s. 943.051(3)(b), F.S.

⁸ Section 943.059(2), F.S.

⁹ *Supra*, n. 7.

¹⁰ Section 943.059(1)(b), F.S.

petition.¹¹ There is no statutory right to a court-ordered sealing and any request for sealing of a criminal history record may be denied at the sole discretion of the court.¹²

Effect of Sealing of Criminal History Record

If the court grants a petition to seal, the clerk of the court then certifies copies of the order to the appropriate state attorney and the arresting agency and any other agency that has received the criminal history record from the court. The arresting agency must provide the sealing order to any agencies that received the criminal history record information from the arresting agency. The FDLE must provide the sealing order to the Federal Bureau of Investigation.¹³

A criminal history record which is ordered sealed by a court pursuant to s. 943.059, F.S., is confidential and exempt from public records, and is available only to the person who is the subject of the record, the subject's attorney, criminal justice agencies for their respective criminal justice purposes, and judges in the state courts system for the purpose of assisting them in their case-related decision making responsibilities.¹⁴

Additionally, the person who has their criminal history record sealed by court order may lawfully deny or fail to acknowledge the arrests covered by the sealed record, unless they are:

- A candidate for employment with a criminal justice agency;
- A defendant in a criminal prosecution;
- Petitioning to have a court-ordered criminal history record sealed or expunged or petitioning for relief under s. 943.0583, F.S.;¹⁵
- A candidate for admission to The Florida Bar;
- Seeking appointment as a guardian or a position with an agency that is responsible for the protection of vulnerable persons, including children, the disabled, or the elderly;
- Seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services or the Bureau of License Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services to carry a concealed weapon or concealed firearm; or
- Attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law.¹⁶

An employee of an entity listed above may not disclose information relating to a sealed criminal history record, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions.¹⁷

¹¹ Section 943.059(3)(a), F.S.

¹² Section 943.059, F.S.

¹³ Section 943.059(3)(b), F.S.

¹⁴ Section 943.059(4), F.S.

¹⁵ Section 943.0583, F.S., provides that a victim of human trafficking may petition for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committing while the person was a victim or human trafficking, which offense was committed or reported to have been committed as a part of the human trafficking scheme of which the person was a victim or at the direction of an operator of the scheme, including, but not limited to, violations under chs. 796 and 847, F.S., without regard to the disposition of the arrest or of any charges. *See* s. 943.0583(3), F.S.

¹⁶ Section 943.059(4)(a)1.-10., F.S.

¹⁷ Section 943.059(4)(c), F.S.

Additionally, a person who has been granted a sealing of his or her criminal history record may not be held to commit perjury or otherwise be liable for giving a false statement by failing to recite or acknowledge a sealed criminal history record.¹⁸

Criminal Justice Information Program

The CJIP is created within the FDLE.¹⁹ The program is tasked with maintaining a system capable of transmitting criminal justice information²⁰ to and between criminal justice agencies.²¹ The program also operates a crime information system that develops and maintains an offender-based transaction system in cooperation with other criminal justice agencies.²²

Additionally, the CJIP establishes procedures and a format for each criminal justice agency to monitor its records and submit reports to the program. Each clerk of the court is required to submit the uniform dispositions²³ to the CJIP at least once a month.²⁴

III. Effect of Proposed Changes:

The bill creates s. 943.0586, F.S., authorizing the CJIP to administratively seal certain criminal history records of minors.²⁵ The bill provides that the criminal history record of a minor charged with a felony, misdemeanor, or violation of a comparable rule or ordinance by a state, county, municipal, or other law enforcement agency will be sealed upon notification by the clerk of the court that all the charges related to the arrest or incident of alleged criminal activity:

- Were declined to be filed by the state attorney or statewide prosecutor;
- Were dismissed or nolle prosequi²⁶ before trial; or

¹⁸ Section 943.059(4)(b), F.S.

¹⁹ Section 943.05(1), F.S.

²⁰ “Criminal justice information” means information on individuals collected or disseminated as a result of arrest, detention, or the initiation of a criminal proceeding by criminal justice agencies, including arrest record information, correctional and release information, criminal history record information, conviction record information, offender registration information, identification record information, and wanted persons record information. The term does not include statistically or analytical records or reports in which individuals are not identified to and from which their identities are not ascertainable. The term does not include criminal intelligence information or criminal investigative information. *See* s. 943.045(12), F.S.

²¹ Section 943.05(2)(a), F.S.

²² Section 943.05(2)(c)3., F.S.

²³ “Disposition” means details relating to the termination of an individual criminal defendant’s relationship with a criminal justice agency, including information disclosing that the law enforcement agency has elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, that a court has dealt with the individual, or that the individual has been incarcerated, paroled, pardoned, released, or granted clemency. Dispositions include, but are not limited to, acquittals, dismissals, pleas, convictions, adjudications, youthful offender determinations, determinations of mental capacity, placements in intervention programs, pardons, probations, paroles, and releases from correctional institutions. *See* s. 943.045(14), F.S.

²⁴ Section 943.052(2), F.S.

²⁵ Current law does not provide for administrative sealing of criminal history records. In contrast, s. 943.0581, F.S., provides for administrative expunction of criminal history records. The law authorizes the FDLE to administratively expunge any nonjudicial record of an arrest of a minor or an adult made contrary to law or by mistake. A law enforcement agency must apply to the FDLE for the administrative expunction or alternatively, an adult or the parent or legal guardian of a minor may apply. *See* s. 943.0581, F.S.

²⁶ Nolle prosequi is a formal entry upon the record that declares that the case will not be further prosecuted. THE LAW DICTIONARY: FEATURING BLACK’S LAW DICTIONARY FREE ONLINE LEGAL DICTIONARY (2nd ed.), available at <http://thelawdictionary.org> (last visited January 23, 2018).

- Resulted in a judgment of acquittal²⁷ or a not guilty verdict at trial.

Additionally, the bill requires that, in order for the CJIP to administratively seal a criminal history record, all appeals must have been exhausted by the prosecution or the time to file an appeal has expired.

The administrative sealing of a criminal history record under the bill would not require an application for a COE or the payment of a fee.

The bill provides that an administrative sealing of a criminal history record pursuant to s. 943.0586, F.S., will have the same effect as a court-ordered sealing under s. 943.059(4), F.S., as described above.²⁸ The bill also specifies that an administrative sealing does not prevent the minor who receives such relief from seeking an expunction or sealing under a different section of Florida law, if he or she is otherwise eligible.²⁹

Current law establishes that a misdemeanor criminal history record of a juvenile is confidential and exempt.³⁰ The bill requires this record to be administratively sealed if the misdemeanor arrest or charge was not filed, dismissed or nolle prosequi before trial, or resulted in a judgment of acquittal or a not guilty verdict at trial. The sealing of the record would permit the juvenile to lawfully deny or fail to acknowledge the existence of the record, subject to the exceptions enumerated under s. 943.059(4), F.S.³¹

This act shall take effect July 1, 2018, but only if CS/SB 862 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. The effective date of the bill will need to be linked to a specific Senate bill. CS/SB 862 (2017) is the bill connected to this bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²⁷ A judgment of acquittal is rendered when a person accused of a crime is legally freed by a court generally as a result of lack of evidence. THE LAW DICTIONARY: FEATURING BLACK'S LAW DICTIONARY FREE ONLINE LEGAL DICTIONARY (2nd ed.), available at <http://thelawdictionary.org> (last visited January 24, 2018).

²⁸ *Supra*, n. 16.

²⁹ Section 943.0582, F.S., provides for the expunction of any nonjudicial record of the arrest of a minor who has successfully completed a prearrest or postarrest diversion program for minors. Expunction or sealing granted pursuant to s. 943.0582, F.S., does not prevent the minor who receives such relief from petitioning for the expunction or sealing of a later criminal history record as provided for in ss. 943.0583, 943.0585, and 943.059, F.S., if the minor is otherwise eligible under those sections. See s. 943.0582(1) and (5), F.S.

³⁰ Section 943.053(3)(b)-(c), F.S.

³¹ *Supra*, n. 16.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The FDLE predicts a loss of \$90,000 in revenue for those people who would have submitted an application to have his or her criminal history record sealed by court order, but will instead have such record administratively sealed. The FDLE also predicts a cost of \$254,000 to implement the new programming required for the administrative sealing process.³²

VI. Technical Deficiencies:

None.

VII. Related Issues:

Current disposition reporting by the clerk of the court to the FDLE, pursuant to s. 943.052(2), F.S., does not consider whether all appeals have been exhausted by the prosecution or the time to file an appeal has expired. The bill would require changes to be made to disposition reporting to ensure that the clerks of the court are verifying that this prerequisite to administratively sealing has been met.³³

Currently, a misdemeanor criminal history record of a minor is confidential and exempt.³⁴ The bill provides that the misdemeanor criminal history record of a minor qualifies for administrative sealing if the case was not filed, dismissed or nolle prosequi, or resulted in a judgment of acquittal or a not guilty verdict at trial. The administrative sealing of a record that is already confidential and exempt will permit the subject of the criminal history record that is sealed to lawfully deny or fail to acknowledge the criminal history record at issue, subject to certain exceptions.³⁵ Additionally, a confidential and exempt record is made available to people that are otherwise unable to obtain a criminal history record that is sealed.

³² Florida Department of Law Enforcement, *2018 Legislative Bill Analysis for SB 860*, (December 6, 2017) (on file with the Senate Criminal Justice Committee).

³³ *Id.*

³⁴ Section 943.053(3)(b), F.S.

³⁵ *Supra*, n. 16.

A linked bill, CS/SB 862, expands the current public records exemption for criminal history records sealed by court order to include administratively sealed criminal history records within the scope of the exemption.

VIII. Statutes Affected:

This bill creates section 943.0586 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on January 29, 2018:

The Committee Substitute:

- Clarifies that the criminal history record of a minor charged with a felony, misdemeanor, or violation of a comparable rule or ordinance, will be administratively sealed, regardless of prior convictions or adjudications;
- Provides that an administrative sealing does not prevent a minor from seeking an expunction or sealing under a different section of Florida law, if he or she is otherwise eligible; and
- Updates a reference to CS/SB 862.

- B. **Amendments:**

None.



922282

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
01/29/2018	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Bracy) recommended the following:

Senate Amendment

Delete lines 33 - 34
and insert:

(3) Sealing granted under this section does not prevent the minor who receives such relief from petitioning for the expunction or sealing of a criminal history record as provided for in ss. 943.0582, 943.0583, 943.0585, and 943.059, if the minor is otherwise eligible under those sections.

Section 2. This act shall take effect July 1, 2018, but



922282

11 | only if SB 862 or similar legislation takes effect, if such



935236

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/29/2018	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Bracy) recommended the following:

Senate Substitute for Amendment (922282)

Delete lines 17 - 34
and insert:

(1) The Criminal Justice Information Program shall
administratively seal the criminal history records pertaining to
an arrest or incident of alleged criminal activity of a minor
charged with a felony, misdemeanor, or violation of a comparable
rule or ordinance by a state, county, municipal, or other law
enforcement agency upon notification by the clerk of the court,



935236

11 pursuant to s. 943.052(2), that all the charges related to the
12 arrest or incident of alleged criminal activity were declined to
13 be filed by the state attorney or statewide prosecutor, were
14 dismissed or nolle prosequi before trial, or resulted in a
15 judgment of acquittal or a verdict of not guilty at trial and
16 that all appeals by the prosecution have been exhausted or the
17 time to file an appeal has expired.

18 (2) The sealing under this section of a criminal history
19 record has the same effect as a sealing under s. 943.059(4).

20 (3) Sealing granted under this section does not prevent the
21 minor who receives such relief from petitioning for the
22 expunction or sealing of a criminal history record as provided
23 for in ss. 943.0582, 943.0583, 943.0585, and 943.059, if the
24 minor is otherwise eligible under those sections.

25 Section 2. This act shall take effect July 1, 2018, but
26 only if SB 862 or similar legislation takes effect, if such

By Senator Bracy

11-00373-18

2018860__

A bill to be entitled

An act relating to criminal history records; creating s. 943.0586, F.S.; requiring the Criminal Justice Information Program to administratively seal the criminal history records of a minor upon notification by the clerk of the court under specified circumstances; providing applicability for the administrative sealing of specified criminal history records; providing a contingent effective date.

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

Section 1. Section 943.0586, Florida Statutes, is created to read:

943.0586 Administrative sealing of criminal history records of minors.—

(1) Regardless of any prior criminal conviction of a minor, the Criminal Justice Information Program shall administratively seal the criminal history records pertaining to an arrest or incident of alleged criminal activity of a minor charged with a felony, misdemeanor, or violation of a comparable rule or ordinance by a state, county, municipal, or other law enforcement agency upon notification by the clerk of the court, pursuant to s. 943.052(2), that all the charges related to the arrest or incident of alleged criminal activity were declined to be filed by the state attorney or statewide prosecutor, were dismissed or nolle prosequi before trial, or resulted in a judgment of acquittal or a verdict of not guilty at trial and that all appeals by the prosecution have been exhausted or the

Page 1 of 2

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

11-00373-18

2018860__

time to file an appeal has expired.

(2) The sealing under this section of a criminal history record has the same effect as a sealing under s. 943.059(4).

Section 2. This act shall take effect July 1, 2018, but only if SB ____ or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

1.29.18

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

860

Bill Number (if applicable)

Topic Criminal History Records

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Street

Phone 510-9922

Tallahassee

FL

32301

City

State

Zip

Email Barney@BarneyBishop.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/18

Meeting Date

860

Bill Number (if applicable)

Topic Criminal History Records

Amendment Barcode (if applicable)

Name Andy Thomas

Job Title Public Defender, 2nd Circuit

Address 301 N. Monroe St., Ste. 401

Phone (850) 606-1014

Street

Tallahassee

City

FL

State

32301

Zip

Email andy.thomas@flpd2.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Fla. Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 862

INTRODUCER: Criminal Justice Committee and Senator Bracy

SUBJECT: Public Records/Sealing of Criminal History Records

DATE: January 30, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	Fav/CS
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 862, which is linked to the passage of CS/SB 860, expands an existing public records exemption to include administratively sealed criminal history records.

An administratively sealed record is a criminal history record of a minor arrested or charged with a felony, misdemeanor, or violation of a comparable rule or ordinance by a state, county, municipal, or other law enforcement agency that is sealed upon notification by the clerk of the court that all the charges related to the arrest or incident of alleged criminal activity:

- Were declined to be filed by the state attorney or statewide prosecutor;
- Were dismissed or nolle prosequi before trial; or
- Resulted in a judgment of acquittal or a not guilty verdict.

The expansion of the exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2023, unless reviewed and saved from repeal by the Legislature. The bill provides a statement of public necessity as required by the State Constitution.

The Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage because it expands an existing public records exemption.

The bill takes effect on the same date that CS/SB 860 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. Present Situation:

The Florida Constitution provides that every individual has a right of access to public records which are made or received in connection with official public business unless the records are exempt. This right applies to records of the legislative, executive, and judicial branches.¹

The Public Records Act, codified in ch. 119, F.S., expressly guarantees every person's right to inspect and copy any state or local government public record² at any reasonable time, under reasonable conditions, and under the supervision of the public records custodian.³

Only the Legislature may create an exemption to public records requirements.⁴ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.

The Open Government Sunset Review Act (OGSR) requires a newly created or expanded public records exemption be repealed on October 2 of the fifth year after enactment, unless reviewed and reenacted by the Legislature.⁵ It further provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose it serves.⁶

An exemption serves an identifiable purpose if it meets one of the following purposes and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption.
- The release of sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt.
- It protects trade or business secrets.⁷

In addition, the Legislature must find that the purpose of the exemption overrides Florida's public policy strongly favoring open government.

¹ Article I, s. 24(a), FLA. CONST.

² Section 119.011(12), F.S., defines "public record" as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

³ Section 119.07(1)(a), F.S.

⁴ Article I, s. 24(c), FLA CONST. There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Bd. of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); and *Williams v. City of Minneola*, 575 So.2d 683 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, then such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in the statutory exemption. See Op. Att'y Gen, Fla. 85-62, August 1, 1985.

⁵ Section 119.15(3), F.S.

⁶ Section 119.15(6)(b), F.S.

⁷ Section 119.15(6)(b)1.-3., F.S.

The OGSR also requires specified questions to be considered during the review process.⁸ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of the exemption. These specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?⁹

To enact an exemption, the bill may not contain other substantive provisions¹⁰ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹¹

Court-ordered Sealing of Criminal History Records

Florida law makes adult criminal history records accessible to the public unless the record has been sealed or expunged.¹² Section 943.059, F.S., provides the procedure for sealing a criminal history record, which places a record under highly restricted access pursuant to court order.¹³

A person seeking to have his or her criminal history record sealed must obtain a certificate of eligibility for sealing pursuant to requirements set forth in s. 943.059(2), F.S., and subsequently petition the court to seal the record.¹⁴

A criminal history record of a minor or an adult which is ordered sealed by a court pursuant to s. 943.059, F.S., is confidential and exempt from the provisions of s. 119.07(1), F.S., and Article I, s. 24(a) of the State Constitution.¹⁵ Such record is available only to:

- The person who is the subject of the record;
- The subject's attorney;
- Criminal justice agencies for their respective criminal justice purposes;
- Judges in the state courts system for the purpose of assisting them in their case-related decisionmaking responsibilities; and
- Entities set forth in s. 943.059(4)(a), F.S.¹⁶

⁸ Section 119.15(6)(a), F.S.

⁹ Section 119.15(6)(a)1.-6., F.S.

¹⁰ The bill may, however, contain multiple exemptions that relate to one subject.

¹¹ Article I, s. 24(c), FLA. CONST.

¹² Florida Department of Law Enforcement, *Seal and Expunge Process*, available at <http://www.fdle.state.fl.us/cms/Seal-and-Expunge-Process/Seal-and-Expunge-Home.aspx> (last visited January 22, 2018). See s. 943.053, F.S.

¹³ "Sealing of a criminal history record" is the preservation of a record under such circumstances that it is secure and inaccessible to any person not having a legal right of access to the record or the information contained and preserved therein. Section 943.045(19), F.S.

¹⁴ Section 943.059, F.S.

¹⁵ Section 943.059(4), F.S.

¹⁶ Section 943.059(4), F.S.

The person who has their criminal history record sealed may lawfully deny or fail to acknowledge the records that were sealed, unless they are:

- A defendant in a criminal prosecution;
- Seeking appointment as a guardian, a position with a criminal justice agency, a license by the Division of Insurance Agent and Agency Services within the Department of Financial Services, or a position with an agency that is responsible for the protection of vulnerable persons, including children, the disabled, or the elderly;
- Petitioning to have a court-ordered criminal history record expunged or sealed or petitioning for relief under s. 943.0583, F.S.;
- A candidate for admission to The Florida Bar;
- Attempting to purchase a firearm from a licensed imported, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law; or
- Seeking to be licensed by the Bureau of License Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services to carry a concealed weapon or concealed firearm.¹⁷

The FDLE must disclose the sealed criminal history record to the entities listed above for their respective licensing, access authorization, and employment purposes. An employee of an entity listed above may only disclose information relating to the existence of a sealed criminal history record to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions.¹⁸

If a person has his or her criminal record sealed, he or she may not be held under any provision of law of this state to commit perjury or otherwise be liable for giving a false statement for failure to acknowledge a sealed criminal history record.¹⁹

Administrative Sealing

CS/SB 860, which is linked to CS/SB 862, creates a process for the administrative sealing of certain criminal history records of a minor.

A criminal history record of a minor arrested or charged with a felony, misdemeanor, or violation of a comparable rule or ordinance by a state, county, municipal, or other law enforcement agency is administratively sealed upon notification by the clerk of the court that all the charges related to the arrest or incident of alleged criminal activity:

- Were declined to be filed by the state attorney or statewide prosecutor;
- Were dismissed or nolle prosequi before trial; or
- Resulted in a judgment of acquittal or a not guilty verdict.

Additionally, all appeals must have been exhausted by the prosecution or the time to file an appeal must have expired in order for a record to be administratively sealed.

¹⁷ Section 943.059(4)(a), F.S.

¹⁸ Section 943.059(4)(c), F.S.

¹⁹ This is subject to the exceptions enumerated in s. 943.059(4)(a), F.S., whereby a person must acknowledge a sealed criminal history record under certain circumstances. *See* s. 943.059(4)(b), F.S.

III. Effect of Proposed Changes:

The bill expands the public records exemption for sealed records in s. 943.059, F.S., to include records administratively sealed pursuant to s. 943.0586, F.S.

An administratively sealed criminal history record would be treated the same as a record sealed pursuant to s. 943.059, F.S., making such record confidential and exempt and only available to certain people. Additionally, the person who is the subject of the criminal history record that is administratively sealed would be permitted to lawfully deny or fail to acknowledge the existence of the record, with limited exceptions.²⁰

The bill provides a statement of public necessity as required by the Florida Constitution.²¹ The statement includes the following findings:

- The presence of a criminal history record in a minor's past which has not been validated through criminal proceedings can jeopardize his or her ability to obtain education, employment, and other opportunities necessary to become a productive, contributing, self-sustaining member of society; and
- Such negative consequences are unwarranted in cases in which a minor was not found to have committed the offense that is the subject of the sealed criminal history record.

The bill repeals the expansion of the exemption on October 2, 2023, unless reviewed and saved from repeal by the Legislature.

The bill provides that s. 943.059, F.S., shall revert to that in existence on June 30, 2018, if the expansion of the exemption is not saved from repeal. The bill provides that any amendments made to s. 943.059, F.S., shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of text which are not saved from repeal.

The bill takes effect on the same date that CS/SB 860 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof, and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill expands a public records exemption. Therefore, the following constitutional requirements apply.

²⁰ See s. 943.059(4), F.S.

²¹ Article I, s. 24(c), FLA. CONST.

Substance of the Bill

Article I, s. 24(c) of the State Constitution requires that laws enacted to exempt records from public inspection must contain only exemptions and relate to one subject. This bill expands a public records exemption related to sealed criminal history records.

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill expands a public records exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public records exemption and includes a public necessity statement for the expansion.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a public records exemption to be no broader than necessary to accomplish the stated purpose of the law. Based on the legislative findings in the statement of public necessity, this expansion of a public records exemption appears to be no broader than necessary to accomplish the stated purpose.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have a minimal fiscal impact on agencies responsible for complying with public records requests and redacting confidential and exempt information prior to releasing a record. However, these costs should be able to be absorbed with existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

CS/SB 860 is the related administrative sealing bill linked to this bill.

VIII. Statutes Affected:

This bill substantially amends section 943.059 of the Florida Statutes.

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

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

CS by Criminal Justice on January 29, 2018:

The Committee Substitute updates a reference to CS/SB 860.

B. Amendments:

None.



116674

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/29/2018	.	
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	.	
	.	

The Committee on Criminal Justice (Bracy) recommended the following:

Senate Amendment

Delete line 179
and insert:
SB 860 or similar legislation takes effect, if such legislation

By Senator Bracy

11-00748-18

2018862__

1 A bill to be entitled
2 An act relating to public records; amending s.
3 943.059, F.S.; expanding an existing public records
4 exemption to include the administrative sealing of
5 specified criminal history records; conforming
6 provisions to changes made by the act; providing for
7 future review and repeal of the expanded exemption;
8 providing for reversion of specified language if the
9 exemption is not saved from repeal; providing a
10 statement of public necessity; providing a contingent
11 effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Subsection (4) of section 943.059, Florida
16 Statutes, is amended to read:

17 943.059 Court-ordered sealing of criminal history records.—
18 The courts of this state shall continue to have jurisdiction
19 over their own procedures, including the maintenance, sealing,
20 and correction of judicial records containing criminal history
21 information to the extent such procedures are not inconsistent
22 with the conditions, responsibilities, and duties established by
23 this section. Any court of competent jurisdiction may order a
24 criminal justice agency to seal the criminal history record of a
25 minor or an adult who complies with the requirements of this
26 section. The court shall not order a criminal justice agency to
27 seal a criminal history record until the person seeking to seal
28 a criminal history record has applied for and received a
29 certificate of eligibility for sealing pursuant to subsection

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11-00748-18

2018862__

30 (2). A criminal history record that relates to a violation of s.
31 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03,
32 s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,
33 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
34 s. 916.1075, a violation enumerated in s. 907.041, or any
35 violation specified as a predicate offense for registration as a
36 sexual predator pursuant to s. 775.21, without regard to whether
37 that offense alone is sufficient to require such registration,
38 or for registration as a sexual offender pursuant to s.
39 943.0435, may not be sealed, without regard to whether
40 adjudication was withheld, if the defendant was found guilty of
41 or pled guilty or nolo contendere to the offense, or if the
42 defendant, as a minor, was found to have committed or pled
43 guilty or nolo contendere to committing the offense as a
44 delinquent act. The court may only order sealing of a criminal
45 history record pertaining to one arrest or one incident of
46 alleged criminal activity, except as provided in this section.
47 The court may, at its sole discretion, order the sealing of a
48 criminal history record pertaining to more than one arrest if
49 the additional arrests directly relate to the original arrest.
50 If the court intends to order the sealing of records pertaining
51 to such additional arrests, such intent must be specified in the
52 order. A criminal justice agency may not seal any record
53 pertaining to such additional arrests if the order to seal does
54 not articulate the intention of the court to seal records
55 pertaining to more than one arrest. This section does not
56 prevent the court from ordering the sealing of only a portion of
57 a criminal history record pertaining to one arrest or one
58 incident of alleged criminal activity. Notwithstanding any law

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2018862__

to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal history record of a minor or an adult which is ordered sealed by a court pursuant to this section or sealed administratively pursuant to s. 943.0586 is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, which include conducting a criminal history background check for approval of firearms purchases or transfers as authorized by state or federal law, to judges in the state courts system for the purpose of assisting them in their case-related decisionmaking responsibilities, as set forth in s. 943.053(5), or to those entities set forth in subparagraphs (a)1., 4., 5., 6., 8., 9., and 10. for their respective licensing, access authorization, and employment purposes.

(a) The subject of a criminal history record sealed under this section, under s. 943.0586, or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:

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2018862__

1. Is a candidate for employment with a criminal justice agency;
2. Is a defendant in a criminal prosecution;
3. Concurrently or subsequently petitions for relief under this section, s. 943.0583, or s. 943.0585;
4. Is a candidate for admission to The Florida Bar;
5. Is seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;
6. Is seeking to be employed or licensed by the Department of Education, a district school board, a university laboratory school, a charter school, a private or parochial school, or a local governmental entity that licenses child care facilities;
7. Is attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law;
8. Is seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services;
9. Is seeking to be appointed as a guardian pursuant to s. 744.3125; or
10. Is seeking to be licensed by the Bureau of License Issuance of the Division of Licensing within the Department of

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11-00748-18

2018862__

Agriculture and Consumer Services to carry a concealed weapon or concealed firearm. This subparagraph applies only in the determination of an applicant's eligibility under s. 790.06.

(b) Subject to the exceptions in paragraph (a), a person who has been granted a sealing under this section, s. 943.0586, former s. 893.14, former s. 901.33, or former s. 943.058 may not be held under any provision of law of this state to commit perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge a sealed criminal history record.

(c) Information relating to the existence of a sealed criminal record provided in accordance with the provisions of paragraph (a) is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the sealed criminal history record to the entities set forth in subparagraphs (a)1., 4., 5., 6., 8., 9., and 10. for their respective licensing, access authorization, and employment purposes. An employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., subparagraph (a)8., subparagraph (a)9., or subparagraph (a)10. may not disclose information relating to the existence of a sealed criminal history record of a person seeking employment, access authorization, or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions. A person who violates the provisions of this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s.

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775.083.

(d) The expansion of the public records exemption under this subsection to include records sealed administratively under s. 943.0586 is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature. If the expansion of the exemption is not saved from repeal, this subsection shall revert to that in existence on June 30, 2018, except that any amendments to such text other than by this act shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of text which expire pursuant to this paragraph.

Section 2. The Legislature finds that it is a public necessity that the criminal history records of a minor which have been administratively sealed pursuant to s. 943.0586, Florida Statutes, because a case was not filed, was dismissed or nolle prosequi, or resulted in the granting of a judgment of acquittal or verdict of not guilty be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The presence of a criminal history record in a minor's past which has not been validated through criminal proceedings can jeopardize his or her ability to obtain education, employment, and other opportunities necessary to becoming a productive, contributing, self-sustaining member of society. Such negative consequences are unwarranted in cases in which the minor was not found to have committed the offense that is the subject of the sealed criminal history record. For these reasons, the Legislature finds that it

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175 is a public necessity that the criminal history records of
176 minors which have been administratively sealed be confidential
177 and exempt from public records requirements.

178 Section 3. This act shall take effect on the same date that
179 SB ____ or similar legislation takes effect, if such legislation
180 is adopted in the same legislative session or an extension
181 thereof and becomes law.

THE FLORIDA SENATE
APPEARANCE RECORD

1.29.18

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

862

Bill Number (if applicable)

Topic Public Records Exemption - Criminal History Records

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

City

State

Zip

Email Barney@BarneyBishop.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/18

Meeting Date

862

Bill Number (if applicable)

Topic

Public Records/Sealing Records

Amendment Barcode (if applicable)

Name

Andy Thomas

Job Title

Public Defender, 2nd Circuit

Address

301 N. Monroe St., Ste 401

Phone

(850) 606-1014

Street

Tallahassee

FL

32301

City

State

Zip

Email

andy.thomas@flpd2.com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Fla. Public Defender Association

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 1178

INTRODUCER: Senator Bracy

SUBJECT: Public Records/Photographs or Video or Audio Recordings that Depict or Record Killing of a Person

DATE: January 26, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	Pre-meeting
2.			GO	
3.			RC	

I. Summary:

SB 1178 amends s. 406.136, F.S., and expands an existing public records exemption to make confidential and exempt photographs and video and audio recordings that depict or record the killing of *a person*. Currently, this statute makes confidential and exempt the photographs and video and audio recordings that depict or record the killing of *a law enforcement officer who was acting in accordance with his or her official duties*. The current exemption and the exemption created by the bill only apply to such photographs or recordings held by an agency.

The bill specifies that the term “killing of a person” does not include the killing of a person in the care and custody of a state agency.

The exemption is retroactive and applies to all such photographs or recordings, regardless of whether the killing of the person occurred before, on, or after July 1, 2015. However, the exemption does not overturn or abrogate or alter any existing orders duly entered into by any court of this state, as of the effective date of the act, which restrict or limit access to any such photographs or recordings.

The bill provides a public necessity statement as required by the Florida Constitution.

The bill provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

The Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. Because the bill expands a public record exemption, it requires a two-thirds vote for final passage.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that:

[i]t is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁷ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁸
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁹ or
- It protects trade or business secrets.²⁰

The OGSR also requires specified questions to be considered during the review process:

- What specific records or meetings are affected by the exemption?

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

¹³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁴ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁵ Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?²¹

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²² If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²³

Prior Exemption for Photographs and Recordings Depicting the Killing of a Law Enforcement Officer

In 2011, the Legislature created s. 406.136, F.S., which provided a public record exemption for photographs and video and audio recordings that depict or record the killing of *a person*.²⁴ The exemption provided that such photographs and recordings were confidential and exempt. Most of the provisions relevant to that exemption are mirrored in current law (see discussion, *infra*).

The exemption was subject to the Open Government Sunset Review Act and as such, was to be repealed on October 2, 2016, unless reviewed and reenacted by the Legislature.²⁵

Based upon the Open Government Sunset Review of the exemption, staff of the Senate Criminal Justice Committee recommended that the Legislature retain the public records exemption as originally enacted.²⁶ Staff noted that this recommendation was made:

in light of information gathered for the Open Government Sunset Review, indicating that there was a public necessity to continue protecting photographs and video and audio recordings that depict or record the killing of any person when held by an agency because they are highly sensitive and personal representations of the deceased. As such, widespread and continuous display of these photographs or recordings subjects the surviving family members to unwarranted trauma and emotional distress and harms the memory of the deceased.²⁷

²¹ Section 119.15(6)(a), F.S.

²² FLA. CONST. art. I, s. 24(c).

²³ Section 119.15(7), F.S.

²⁴ Chapter 2011-115, L.O.F. (creating s. 406.136, F.S., effective July 1, 2011). “Killing of a person” was defined to mean “all acts or events that cause or otherwise relate to the death of any human being, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death.” Section 406.136(1), F.S. (2015).

²⁵ Section 406.136(9), F.S. (2015).

²⁶ *Bill Analysis and Fiscal Impact Statement* (SB 7022) (February 23, 2016), p. 6, The Florida Senate, available at <http://www.flsenate.gov/Session/Bill/2016/7022/Analyses/2016s7022.rc.PDF> (last visited on Jan. 24, 2018).

²⁷ *Id.* The majority of responses to a staff-prepared Open Government Sunset Review survey recommended reenactment of the exemption to protect information that is personal and highly sensitive, the release of which subjects the surviving family members to further trauma and emotional distress. Survey respondents included state agencies, state universities and colleges,

Current Exemption for Photographs and Recordings Depicting the Killing of a Law Enforcement Officer

During the 2016 Regular Session, the Legislature elected not to reenact the exemption as originally enacted but rather to narrow the exemption so that it applies only to photographs and video and audio recordings that depict the killing of *a law enforcement officer who was acting in accordance with his or her official duties*.²⁸ These photographs and video and audio recordings are confidential and exempt from public record requirements, except that the exemption permits a surviving spouse to view or copy any such photograph or video recording and listen to or copy any such audio recording.²⁹ If there is no surviving spouse, the deceased's surviving parents may access the records, and if there are no surviving parents, an adult child of the deceased may access the records.³⁰ The surviving relative who has the authority to access the records may designate in writing an agent to obtain them.³¹

In addition, a local governmental entity or a state or federal agency, in furtherance of its official duties and pursuant to a written request, may view or copy any such photograph or video recording and listen to or copy any such audio recording. Unless otherwise required in the performance of the entity's or agency's duties, the identity of the deceased must remain confidential and exempt.³²

Persons other than those covered by these exceptions may only have access to such photographs and recordings if they obtain a court order. Upon a showing of good cause, a court may issue an order authorizing any person to view or copy any such photograph or video recording and listen to or copy any such audio recording. The court may prescribe any restrictions or stipulations that the court deems appropriate. In determining good cause, the court must consider:

- Whether such disclosure is necessary for the public evaluation of governmental performance;
- The seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available; and
- The availability of similar information in other public records, regardless of form.³³

municipalities, and local law enforcement agencies that receive or maintain such records. "Reenactment was generally recommended to continue protecting the surviving family members from emotional distress and trauma and protecting the memory of the deceased." *Bill Analysis and Fiscal Impact Statement* (SB 7022) (February 23, 2016), p. 6, n. 37, The Florida Senate, available at <http://www.flsenate.gov/Session/Bill/2016/7022/Analyses/2016s7022.rc.PDF> (last visited on Jan. 24, 2018).

²⁸ Chapter 2016-214, L.O.F. The term "killing of a law enforcement officer who was acting in accordance with his or her official duties" is defined to mean all acts or events that cause or otherwise relate to the death of a law enforcement officer who was acting in accordance with his or her official duties, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death. Section 406.136(1), F.S.

²⁹ Section 406.136(2), F.S.

³⁰ *Id.*

³¹ Section 406.136(3)(a), F.S.

³² Section 406.136(3)(b), F.S.

³³ Section 406.136(4), F.S.

In all cases, the viewing, copying, listening to, or other handling of any such photograph or recording must be under the direct supervision of the custodian of the record or the custodian's designee.³⁴

If a petition is filed with the court to view, listen to, or copy such photograph or recording, a surviving spouse must be given reasonable notice that the petition has been filed, a copy of the petition, and reasonable notice of the opportunity to be present and heard at any hearing on the matter. If there is no surviving spouse, notice must be given to the parents of the deceased and, if the deceased has no living parent, then to the adult children of the deceased.³⁵

It is a third degree felony for any custodian of such photograph or recording to willfully and knowingly violate these provisions.³⁶ The same penalty applies to anyone who willfully and knowingly violates a court order issued under these provisions.³⁷

The exemption does not apply to photographs or video or audio recordings submitted as part of a criminal or administrative proceeding; however, nothing prohibits a court in such proceedings, upon good cause shown, from restricting or otherwise controlling the disclosure of a killing, crime scene, or similar photograph or video or audio recording in the same manner as previously described.³⁸

The exemption is retroactive and applies to all such photographs or recordings, regardless of whether the killing of the person occurred before, on, or after July 1, 2011. However, the exemption does not overturn or abrogate or alter any existing orders duly entered into by any court of this state, as of the effective date of the act, which restrict or limit access to any such photographs or recordings.³⁹

III. Effect of Proposed Changes:

The bill amends s. 406.136, F.S., and expands an existing public records exemption to make confidential and exempt photographs and video and audio recordings that depict or record the killing of *a person*.⁴⁰ Currently, this statute makes confidential and exempt the photographs and video and audio recordings that depict or record the killing of *a law enforcement officer who was acting in accordance with his or her official duties*. The current exemption and the exemption created by the bill only apply to such photographs or recordings held by an agency.

The bill specifies that the term “killing of a person” does not include the killing of a person in the care and custody of a state agency. The term “care and custody of a state agency” includes, but is

³⁴ Section 406.136(4)(c), F.S.

³⁵ Section 406.136(5), F.S.

³⁶ Section 406.136(6)(a), F.S. A third degree felony is punishable by a term of imprisonment up to 5 years, a fine up to \$5,000, or both. Sections 775.082 and 775.083, F.S.

³⁷ Section 406.136(6)(b), F.S.

³⁸ Section 406.136(6)(c), F.S. In *State v. Schenecker*, No. 11-CF-001376A (Fla. 13th Cir.Ct. August 3, 2011), *cert. denied sub nom.*, *Media General Operations v. State*, 71 So. 3d 124 (Fla. 2d DCA 2011), the circuit court applied the exemption to crime scene photographs of homicide victims.

³⁹ Section 406.136(7), F.S.

⁴⁰ This change not only expands the existing exemption but reverts the exemption back to the exemption that was in place from 2011 until the Legislature narrowed the exemption in 2016.

not limited to: a protective investigation, protective supervision, or foster care as those terms are defined in s. 39.01, F.S.; a protective investigation or protective supervision of a vulnerable adult as those terms are defined in s. 415.102, F.S.; or an inmate in custody of the Department of Corrections.

The bill also retains provisions relevant to the current exemption, such as who may access the records and in what manner, but substitutes the term “person” for “a law enforcement officer who was acting in accordance with his or her official duties.”

The exemption is retroactive and applies to all such photographs or recordings, regardless of whether the killing of the person occurred before, on, or after July 1, 2015. However, the exemption does not overturn or abrogate or alter any existing orders duly entered into by any court of this state, as of the effective date of this act, which restrict or limit access to such photographs or recordings.

The bill provides a public necessity statement as required by the Florida Constitution. The statement includes legislative findings that indicate:

- Photographs and video and audio recordings are highly sensitive representations of the deceased that, if heard, viewed, copied, or publicized, could result in trauma, sorrow, humiliation, or emotional injury to the immediate family of the deceased and detract from the memory of the deceased;
- Dissemination of the photographs and video and audio recordings may be used by terrorists to attract followers, inspire others to kill, or educe violent acts;
- There are other types of available information, such as crime scene reports, which are less intrusive and injurious to the immediate family of the deceased and which continue to provide for public oversight; and
- The exemption should be given retroactive application because it is remedial in nature.

The bill provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill takes effect October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. Because the bill expands a public record exemption, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. The bill expands a public record exemption, and includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the stated purpose of the law. Based on the legislative findings in the statement of public necessity, the public records exemption in this bill appears to be no broader than necessary to accomplish its stated purpose.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have an indeterminate fiscal impact on agencies relating to training and redaction of exempt information. However, costs may be minimal and would be absorbed by the agencies because training and redaction of exempt information are part of the day-to-day responsibilities of agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 406.136 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Bracy

11-01201-18

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1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 406.136, F.S.; defining the terms "killing of a
 4 person" and "care and custody of a state agency";
 5 expanding an exemption from public records
 6 requirements for a photograph or video or audio
 7 recording held by an agency which depicts or records
 8 the killing of a law enforcement officer to include a
 9 photograph or video or audio recording held by an
 10 agency which depicts or records the killing of a
 11 person; specifying that the exemption from public
 12 records requirements does not apply to the killing of
 13 a person in the care and custody of a state agency;
 14 providing for future legislative review and repeal of
 15 the exemption; providing a statement of public
 16 necessity; providing an effective date.
 17
 18 Be It Enacted by the Legislature of the State of Florida:
 19
 20 Section 1. Section 406.136, Florida Statutes, is amended to
 21 read:
 22 406.136 A photograph or video or audio recording that
 23 depicts or records the killing of a person ~~law enforcement~~
 24 ~~officer who was acting in accordance with his or her official~~
 25 ~~duties.~~
 26 (1) As used in this section, the term "killing of a person"
 27 ~~"killing of a law enforcement officer who was acting in~~
 28 ~~accordance with his or her official duties"~~ means all acts or
 29 events that cause or otherwise relate to the death of any human

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30 ~~being a law enforcement officer who was acting in accordance~~
 31 ~~with his or her official duties~~, including any related acts or
 32 events immediately preceding or subsequent to the acts or events
 33 that were the proximate cause of death. The term does not
 34 include the killing of a person in the care and custody of a
 35 state agency. For purposes of this subsection, the term "care
 36 and custody of a state agency" includes, but is not limited to,
 37 a protective investigation, protective supervision, or foster
 38 care as those terms are defined in s. 39.01; a protective
 39 investigation or protective supervision of a vulnerable adult as
 40 those terms are defined in s. 415.102; or an inmate in custody
 41 of the Department of Corrections.
 42 (2) A photograph or video or audio recording that depicts
 43 or records the killing of a person ~~law enforcement officer who~~
 44 ~~was acting in accordance with his or her official duties~~ is
 45 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 46 of the State Constitution, except that a surviving spouse of the
 47 ~~deceased decedent~~ may view and copy any such photograph or video
 48 recording or listen to or copy any such audio recording. If
 49 there is no surviving spouse, ~~then~~ the surviving parents shall
 50 have access to such records. If there is no surviving spouse or
 51 parent, ~~the then an adult~~ children ~~child~~ shall have access to
 52 such records.
 53 (3) (a) The deceased's surviving relative, with whom
 54 authority rests to obtain such records, may designate in writing
 55 an agent to obtain such records.
 56 (b) A local governmental entity, or a state or federal
 57 agency, in furtherance of its official duties, pursuant to a
 58 written request, may view or copy a photograph or video

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recording or may listen to or copy an audio recording of the killing of a person ~~law enforcement officer who was acting in accordance with his or her official duties~~ and, unless otherwise required in the performance of ~~its~~ their duties, the identity of the deceased shall remain confidential and exempt.

(c) The custodian of the record, or his or her designee, may not permit any other person to view or copy such photograph or video recording or listen to or copy such audio recording without a court order.

(4)(a) The court, upon a showing of good cause, may issue an order authorizing any person to view or copy a photograph or video recording that depicts or records the killing of a person ~~law enforcement officer who was acting in accordance with his or her official duties~~ or to listen to or copy an audio recording that depicts or records the killing of a person ~~law enforcement officer who was acting in accordance with his or her official duties~~ and may prescribe any restrictions or stipulations that the court deems appropriate.

(b) In determining good cause, the court shall consider:

1. Whether such disclosure is necessary for the public evaluation of governmental performance;
2. The seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available; and
3. The availability of similar information in other public records, regardless of form.

(c) In all cases, the viewing, copying, listening to, or other handling of a photograph or video or audio recording that depicts or records the killing of a person ~~law enforcement~~

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~~officer who was acting in accordance with his or her official duties~~ must be under the direct supervision of the custodian of the record or his or her designee.

(5) A surviving spouse shall be given reasonable notice of a petition filed with the court to view or copy a photograph or video recording that depicts or records the killing of a person ~~law enforcement officer who was acting in accordance with his or her official duties~~ or to listen to or copy any such audio recording, a copy of such petition, and reasonable notice of the opportunity to be present and heard at any hearing on the matter. If there is no surviving spouse, ~~then~~ such notice must be given to the parents of the deceased and, if the deceased has no surviving living parent, ~~then~~ to the adult children of the deceased.

(6)(a) Any custodian of a photograph or video or audio recording that depicts or records the killing of a person ~~law enforcement officer who was acting in accordance with his or her official duties~~ who willfully and knowingly violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person who willfully and knowingly violates a court order issued pursuant to this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A criminal or administrative proceeding is exempt from this section but, unless otherwise exempted, is subject to all other provisions of chapter 119; it provided, however, ~~that~~ this section does not prohibit a court in a criminal or administrative proceeding upon good cause shown from restricting

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or otherwise controlling the disclosure of a killing, crime scene, or similar photograph or video or audio recording ~~recordings~~ in the manner prescribed in this section ~~herein~~.

(7) ~~The~~ This exemption in this section shall be given retroactive application and shall apply to all photographs or video or audio recordings that depict or record the killing of a person law enforcement officer who was acting in accordance with his or her official duties, regardless of whether the killing of the person occurred before, on, or after July 1, 2015 ~~2011~~. However, ~~nothing~~ this section herein is not intended to, and ~~nor~~ may not be construed to, overturn or abrogate or alter any existing orders duly entered into by any court of this state, as of the effective date of this act, which restrict or limit access to any photographs or video or audio recordings that depict or record the killing of a person law enforcement officer who was acting in accordance with his or her official duties.

(8) This section only applies to such photographs and video and audio recordings held by an agency as defined in s. 119.011.

(9) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that photographs and video and audio recordings that depict or record the killing of a person be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State Constitution. The Legislature finds that photographs and video and audio recordings that depict or record the killing of a person render a graphic and often disturbing

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visual or aural representation of the deceased. Such photographs and video and audio recordings provide a view of the deceased in the final moments of life, often bruised, bloodied, broken, with bullet wounds or other wounds, cut open, dismembered, or decapitated. As such, photographs and video and audio recordings that depict or record the killing of a person are highly sensitive representations of the deceased which, if heard, viewed, copied, or publicized, could result in trauma, sorrow, humiliation, or emotional injury to the immediate family of the deceased and detract from the memory of the deceased. The Legislature recognizes that the existence of the Internet and the proliferation of personal computers and cellular telephones throughout the world encourage and promote the wide dissemination of such photographs and video and audio recordings and that widespread unauthorized dissemination of such photographs and video and audio recordings would subject the immediate family of the deceased to continuous injury.

(2) In addition to the emotional and mental injury that these photographs and recordings may cause family members, the Legislature is also concerned that dissemination of photographs and video and audio recordings that depict or record the killing of a person is harmful to the public. The Legislature is gravely concerned and saddened by the horrific mass killings perpetrated at the Pulse nightclub in Orlando and the Fort Lauderdale-Hollywood International Airport. The Legislature is concerned that, if these photographs and recordings are released, terrorists will use them to attract followers, bring attention to their causes, and inspire others to kill. The Legislature also finds that dissemination of these photographs and

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175 recordings may also educe violent acts by the mentally ill or
176 morally corrupt.

177 (3) The Legislature further recognizes that there continues
178 to be other types of available information, such as crime scene
179 reports, which are less intrusive and injurious to the immediate
180 family of the deceased and which continue to provide for public
181 oversight. The Legislature further finds that the exemption
182 provided in this act should be given retroactive application
183 because it is remedial in nature.

184 Section 3. This act shall take effect October 1, 2018.

THE FLORIDA SENATE
APPEARANCE RECORD

1.29.18

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1178

Bill Number (if applicable)

Topic Public Records Exemption - Photographs/Video/Audio of Killing of a Person

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

Email Barney@BarneyBishop.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-29-18

Meeting Date

1178

Bill Number (if applicable)

Topic Depictions of Search

Amendment Barcode (if applicable)

Name DENNIS STRANGE

Job Title Captain

Address 2400 West Colonial Dr

Phone 407-254-7000

Street

Del

City

FL

State

32801

Zip

Email Dennis.Strange@OCH.net

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Orange County Sheriff's Office

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 1218

INTRODUCER: Criminal Justice Committee and Senator Brandes

SUBJECT: Persons Awaiting Trial

DATE: January 30, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1218 creates a three-year Risk Assessment Pilot Program, contingent upon appropriations and a contract with each participating county and the Department of Corrections (DOC). The bill provides that the counties eligible for participation include Hillsborough, Pasco, and Pinellas Counties. The sheriff from each participating county must enter into a contract with the DOC to utilize the risk assessment instrument (RAI). The RAI must be administered to all persons arrested for a felony and the results of the RAI used as a tool for determining appropriate programming and sentencing with the goal of reducing recidivism.

The bill requires the DOC to develop a RAI by March 1, 2019, and implement the RAI by June 30, 2019. The RAI must consider specified criteria and the DOC is authorized to utilize or modify an existing RAI if it contains the criteria enumerated in the bill.

The bill requires each participating county to provide specified information to the DOC annually by July 1 of each year of the pilot program. The DOC is required to compile the county reports and submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1 of each year of the pilot program. The bill also provides legislative findings for the program.

The bill will likely have a fiscal impact on counties and the DOC. See Section V. Fiscal Impact Statement.

The bill is effective upon becoming law.

II. Present Situation:

Bond

There are three types of pretrial release for a person who is awaiting trial: the posting of a bail or surety bond, pretrial release conditions, or the release on his or her own recognizance.¹

Bail and Surety Bond

The purpose of a bail determination in criminal proceedings is to ensure the appearance of a defendant, regardless of the severity of his or her crime, at subsequent proceedings and to protect the community against unreasonable danger from the defendant.² Bail is a common monetary condition of pretrial release, governed by ch. 903, F.S.³ For the defendant to be released from jail, a court may require bail by a defendant to provide security, such as cash or a bond that he or she will return for trial and any other required court appearances.⁴

As an alternative to posting the entire bail amount, a defendant may provide a criminal surety bail bond⁵ executed by a bail bond agent. Generally, the defendant or another person on the defendant's behalf pays the bail bond agent a nonrefundable fee equal to ten percent of the bond amount set by the court. If the defendant does not appear in court, the bail bond agent is responsible for paying the entire amount of the bond.⁶

Pretrial Release Conditions

A judge can release a defendant with any combination of the following pretrial release conditions:

- Release on the defendant's own recognizance;
- Execute an unsecured appearance bond in an amount specified by the judge;
- Comply with any court-imposed restrictions on travel, association, or place of abode during the period of release;
- Be placed in the custody of a designated person or organization agreeing to supervise the defendant;
- Have a designate execute a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or
- Comply with any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.⁷

¹ See art. I, s. 14, Fla. Const.; See also ss. 903.046 and 907.041, F.S.

² Section 903.046(1), F.S.

³ "Bail," Black's Law Dictionary (3rd Pocket Edition). The purpose of a bail bond is to guarantee the defendant's presence in court to face criminal charges.

⁴ *Universal Bail Bonds v. State*, 929 So.2d 697, 699 (Fla. 3d DCA 2006).

⁵ Sections 903.011 and 903.105, F.S.

⁶ Office of Program Policy Analysis & Gov't Accountability, *County Pretrial Release Programs: Calendar Year 2016*, Report No. 17-12, at 2. (Dec. 2017) available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1712rpt.pdf> (last visited January 24, 2018).

⁷ Rule 3.131(b)(1), Fla. R. Crim. Pro.

Release on Recognizance

A defendant released on his or her own recognizance is released without a monetary requirement and without any conditions of release or supervision of any type.⁸

A Court's Determination of Pretrial Release

The judge must consider all available relevant factors during the first appearance hearing to determine what form of pretrial release is necessary to assure the defendant's appearance and the community's safety. One factor that the court must consider when determining whether to release a defendant on bail or other pretrial conditions is the source of funds used to post bail or procure an appearance bond. The court must specifically determine whether the proffered funds, real property, property, or any proposed collateral or bond premium may be linked to or derived from the crime alleged to have been committed or from any other criminal or illicit activities. The burden of establishing that the funds for the bond or bond premium are not involved or derived from criminal or other illicit activity rests with the defendant or other person proffering them to obtain the defendant's release.⁹

Evidence-Based Risk Assessment Tools

Risk and needs assessment instruments measure a defendant's criminal risk factors and specific needs that, if addressed, will reduce the likelihood of future criminal activity.¹⁰ RAIs consist of a set of questions that guide face-to-face interviews with a defendant, intended to evaluate behaviors and attitudes that research shows are related to criminal reoffending. The questioner typically supplements the interview with an official records check, including prior arrests and incarcerations. Responses are statistically weighted, based on research that shows how strongly each item correlates with recidivism. The RAI then calculates an overall score that classifies a defendant as being at high, moderate, or low risk for reoffending.¹¹

Research has identified both static and dynamic risk factors that are related to criminal behavior. Static risk factors do not change, while dynamic risk factors can either change on their own or be changed through an intervention. Some examples of static factors considered include age at first arrest, gender, past problems with substance or alcohol abuse, prior mental health problems, or a past history of violating terms of supervision.¹² Dynamic risk factors, also called "criminogenic¹³ needs," can be affected through interventions and include factors such as current age, education level, or marital status; being currently employed or in substance or alcohol abuse treatment; and having a stable residence.¹⁴

⁸ Release on recognizance is defined to mean the pretrial release of an arrested person who promises, usually in writing, but without supplying a surety of posting bond, to appear for trial at a later date. BLACK'S LAW DICTIONARY 606 (3d Pocket ed. 2006).

⁹ Section 903.046(2)(f), F.S.

¹⁰ Congressional Research Service, *Risk and Needs Assessment in the Criminal Justice System*, Nathan James, p. 2 (October 13, 2015), available at <https://fas.org/sgp/crs/misc/R44087.pdf> (last visited January 25, 2018) (hereinafter cited at CRS Report).

¹¹ *Id.*, p. 2-4.

¹² CRS Report, p. 3.

¹³ "Criminogenic" is commonly understood to mean factors that can contribute to criminal behavior. CRS Report, p. 3.

¹⁴ CRS Report, p. 3.

The Risk-Needs-Responsivity (RNR) model has become the dominant paradigm in risk and needs assessment. The risk principle states that high-risk offenders need to be placed in programs that provide more intensive treatment and services while low-risk offenders should receive minimal or even no intervention. The need principle states that effective treatment should focus on addressing needs that contribute to criminal behavior. The responsivity principle states that rehabilitative programming should be delivered in a style and mode that is consistent with the ability and learning style of the offender.¹⁵

In general, research suggests that the most commonly used assessment instruments can, with a moderate level of accuracy, predict who is at risk for violent recidivism. It also suggests that no single instrument is superior to any other when it comes to predictive validity.¹⁶

Use of Risk Assessment Instruments by the Department of Corrections

The DOC has created a RAI, known as Spectrum, which is administered to an inmate at reception through motivational interviewing techniques.¹⁷ Spectrum, as well as its predecessor, the Corrections Integrated Needs Assessment System, is based on the RNR model and contains responsivity elements.¹⁸ Spectrum has been independently verified through the School of Criminology at the Florida State University.¹⁹

Spectrum hosts an array of assessments and screenings across multiple disciplines including mental health, substance abuse, academic and workforce education.²⁰ Spectrum calculates an individual's overall risk of returning to prison upon release and identifies those needs within seven criminogenic domains²¹ and three core program areas.²²

The DOC utilizes the results from the Spectrum assessment to create an evidence-driven performance plan that matches the inmate's needs with services and programming offered in the DOC. Data collected during the administration of Spectrum is also used to assist with

¹⁵ CRS Report, p. 2 and 6.

¹⁶ *Id.*

¹⁷ DOC, Spectrum Video, available at <https://www.youtube.com/watch?v=WR15ldWf5MY&feature=youtu.be> (last visited January 25, 2018) (hereinafter cited as "Spectrum Video"); DOC, *Program Information: Compass 100, Spectrum, Academic & Workforce Education/GED* (on file with the Senate Criminal Justice Committee) (hereinafter cited as "DOC Program Information").

¹⁸ Email from Jared Torres, DOC, Director of Legislative Affairs (January 25, 2018) (on file with Senate Criminal Justice Committee).

¹⁹ Letter from Dr. William D. Bales and Jennifer M. Brown, ABD to DOC Secretary, Julie Jones, (January 19, 2018) (on file with the Senate Criminal Justice Committee). Dr. Bales provides that Spectrum "produces a level of predictive accuracy that is above the conventional threshold of acceptability and is consistent with risk assessment systems used by other correctional systems throughout the United States."

²⁰ DOC Program Information.

²¹ The criminogenic domains include social awareness (antisocial personality); criminal associates; substance abuse history; family and marital relationships; wellness; criminal thinking or attitude; and employment and education history. Spectrum Video.

²² The three core program areas include GED, Career & Technical skills (vocation), and substance use treatment and is part of the needs portion of the RNR model as they address criminogenic risk factors. Email from Jared Torres, DOC, Director of Legislative Affairs (January 25, 2018) (on file with the Senate Criminal Justice Committee).

transitioning an inmate back into the community upon release through relaying the information to reentry service providers in the local community and community corrections.²³

Spectrum was competed in September, 2016, and subsequently deployed throughout the state. In the press release announcing the completion, Secretary Julie Jones stated the DOC is using Spectrum to gather the information needed to build individual re-entry and rehabilitation plans for inmates under the supervision of the DOC. Secretary Jones further stated that the proper utilization of this information will enable the DOC staff to provide the right services at the right time to have the greatest impact on the rehabilitative process.²⁴

III. Effect of Proposed Changes:

Risk Assessment Pilot Program

The bill creates a Risk Assessment Pilot Program. The bill provides legislative findings for the program, specifically that the Legislature finds that:

- There is a need to use evidence-based methods to reduce recidivism.
- The use of actuarial instruments that classify offenders according to levels of risk to reoffend provides a more consistent and accurate assessment of an offender's risk and needs.
- Research indicates that using accurate risk and needs assessment instruments to identify appropriate interventions and programming for offenders reduces recidivism.

Pilot Program Creation and Counties

The bill creates a three-year pilot program, contingent upon appropriations and a contract with each participating county and the DOC. The bill provides that the counties eligible for participation include Hillsborough, Pasco, and Pinellas Counties. The sheriff from each participating county must enter into a contract²⁵ with the DOC to utilize the RAI that is developed under the act.

Risk Assessment Instrument Criteria

The bill requires the DOC to develop a RAI by March 1, 2019, for use in evaluating proper placement and programming needs for a person who is arrested. The RAI must consider at a minimum the following criteria:

- The nature and circumstances of the offense the person committed.
- The nature and extent of the person's prior criminal history, if any.
- Any prior history of the person failing to appear in court.
- The person's employment history, employability skills, and employment interests.
- The person's educational, vocational, and technical training.
- The person's background, including his or her family, home, and community environment.
- The person's physical and mental health history, including any substance use.
- An evaluation of the person's criminal thinking, criminal associates, and social awareness.

²³ *Id.*

²⁴ DOC, *FDC Implements Research-Based Programming to Reduce Recidivism*, September 21, 2016, available at <http://www.dc.state.fl.us/secretary/press/2016/09-21-Recidivism.html> (last visited January 25, 2018).

²⁵ Contracts are awarded on a first-come, first-served basis up to the maximum appropriation allowable for this purpose.

The DOC is authorized to utilize or modify an existing RAI if it contains the above-listed criteria.

Implementation Requirements

The bill authorizes the DOC to begin implementation of the RAI immediately upon completion, but requires implementation to be completed no later than June 30, 2019. The bill provides that implementation includes the training of all staff that will administer the risk assessment instrument.

Administration of the Risk Assessment Instrument

The bill provides that a representative of the county's chief correctional officer (sheriff) is to administer the RAI to a person as early as reasonably possible subsequent to the person's arrest, but no later than ten days after the arrest. The RAI may be conducted via video teleconference. In the event that a person is released from custody on pretrial release before the RAI has been administered, the sheriff or his or her representative must schedule a time for the person to come back to the jail to have the RAI administered. The person must be provided written notice of the appointment upon release.

Upon completion of a RAI report, the report must be provided to the:

- Person that had the RAI administered upon him or her;
- Defense counsel; and
- State attorney.

The DOC is required to submit the report to the court, but the court may not review the report unless the person who is the subject of the report and his or her legal counsel agree.

Pilot Program Requirements

The bill requires the counties participating in the program to administer the RAI to all persons arrested for a felony and utilize the results of the RAI as a tool for determining appropriate programming and sentencing with the goal of reducing recidivism. By July 1 of each year, each participating county must provide an annual report to the DOC detailing the results of the administration of the RAI, programming used for persons who received the RAI, and the success rate of such programming.

The DOC is required to compile the county reports and submit one annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1 of each year of the pilot program.

Rulemaking Authority

The bill provides rulemaking authority to the DOC to implement the act. The rules must be developed in consultation with the sheriff, chief judge, state attorney, and public defender of each participating county.

The bill is effective upon becoming law.

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:

None.

C. Government Sector Impact:

The bill creates a Risk Assessment Pilot Program that utilizes a RAI to ensure better programming for defendants after arrest. To the extent that this provision reduces recidivism, the bill may have a negative jail bed impact on both local governments and the DOC. However, there will also likely be costs associated with creating, implementing, and operating the Risk Assessment Pilot Program. The extent of these costs are indeterminate at this time.

The bill requires the DOC to create or modify a RAI for use with the Risk Assessment Pilot Program. This provision of the bill will likely result in an indeterminate negative fiscal impact to the DOC.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 907.042 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on January 29, 2018:

The committee substitute removes all provisions related to the charitable bail program and clarifies that the office of the county chief correctional officer will administer the RAI to persons arrested for a felony in the participating county.

- B. **Amendments:**

None.



584470

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/29/2018	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 43 - 62.

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

And the title is amended as follows:

Delete lines 2 - 7

and insert:

An act relating to persons awaiting trial;



151886

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/29/2018	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 136 - 142
and insert:
Corrections for the ability to utilize the risk assessment
instrument that is developed in accordance with this section.

(5) PILOT PROGRAM REQUIREMENTS.-

(a) The participating counties shall administer the risk
assessment instrument to all persons arrested for a felony and
utilize the results of such risk assessment instrument as a tool



151886

11 for determining appropriate

12

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

14 And the title is amended as follows:

15 Delete lines 21 - 22

16 and insert:

17 instrument; requiring all counties to administer the
18 risk assessment instrument to all persons arrested for
19 a felony; requiring each participating county to



739614

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/29/2018	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 158 - 328.

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

And the title is amended as follows:

Delete lines 30 - 39

and insert:

providing an effective date.

By Senator Brandes

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1 A bill to be entitled
 2 An act relating to persons awaiting trial; amending s.
 3 903.046, F.S.; providing that a court is not required
 4 to consider the source of funds used to post bail or
 5 procure an appearance bond when determining whether to
 6 release a defendant on bail or other conditions when
 7 such funds are provided by a charitable bail fund;
 8 creating s. 907.042, F.S.; providing legislative
 9 findings; requiring the Department of Corrections to
 10 develop a risk assessment instrument; authorizing the
 11 department to use or modify an existing risk
 12 assessment instrument; requiring the department to
 13 develop or modify the risk assessment instrument by a
 14 certain date; specifying requirements for the use,
 15 implementation, and distribution of the risk
 16 assessment instrument; creating the Risk Assessment
 17 Pilot Program for a specified period; specifying the
 18 participating counties; requiring each participating
 19 county's chief correctional officer to contract with
 20 the department to administer the risk assessment
 21 instrument for all persons arrested for felony
 22 violations; requiring each participating county to
 23 submit a report annually by a certain date to the
 24 department with specified information; requiring the
 25 department to compile the information of the findings
 26 from the participating counties and submit an annual
 27 report by a certain date to the Governor and the
 28 Legislature; authorizing the department, in
 29 consultation with specified persons, to adopt rules;

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

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30 reordering and amending s. 932.701, F.S.; defining the
 31 term "charitable bail fund"; amending s. 932.7055,
 32 F.S.; providing that certain proceeds from seized
 33 property which are deposited in a special law
 34 enforcement trust fund and interest from such proceeds
 35 may be used to establish and maintain a charitable
 36 bail fund, if such a bail fund is established by the
 37 county or municipality; amending ss. 210.095, 213.295,
 38 893.147, and 932.703, F.S.; conforming cross-
 39 references; providing an effective date.
 40
 41 Be It Enacted by the Legislature of the State of Florida:
 42
 43 Section 1. Paragraph (f) of subsection (2) of section
 44 903.046, Florida Statutes, is amended to read:
 45 903.046 Purpose of and criteria for bail determination.—
 46 (2) When determining whether to release a defendant on bail
 47 or other conditions, and what that bail or those conditions may
 48 be, the court shall consider:
 49 (f) The source of funds used to post bail or procure an
 50 appearance bond, particularly whether the proffered funds, real
 51 property, property, or any proposed collateral or bond premium
 52 may be linked to or derived from the crime alleged to have been
 53 committed or from any other criminal or illicit activities. The
 54 burden of establishing the noninvolvement in or nonderivation
 55 from criminal or other illicit activity of such proffered funds,
 56 real property, property, or any proposed collateral or bond
 57 premium falls upon the defendant or other person proffering them
 58 to obtain the defendant's release.

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

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59 This paragraph does not apply when the funds used to post the
60 defendant's bail or procure an appearance bond are provided by a
61 charitable bail fund, as defined in s. 932.701.
62

63 Section 2. Section 907.042, Florida Statutes, is created to
64 read:

65 907.042 Risk Assessment Pilot Program.—

66 (1) LEGISLATIVE FINDINGS.—The Legislature finds that there
67 is a need to use evidence-based methods to reduce recidivism.
68 The Legislature finds that the use of actuarial instruments that
69 classify offenders according to levels of risk to reoffend
70 provides a more consistent and accurate assessment of an
71 offender's risk and needs. The Legislature also finds that
72 research indicates that using accurate risk and needs assessment
73 instruments to identify appropriate interventions and
74 programming for offenders reduces recidivism.

75 (2) RISK ASSESSMENT INSTRUMENT.—

76 (a) The Department of Corrections shall develop a risk
77 assessment instrument that conducts a criminogenic assessment
78 for use in evaluating the proper placement and programming needs
79 for a person who is arrested. The risk assessment instrument
80 must consider, but need not be limited to, the following
81 criteria:

82 1. The nature and circumstances of the offense the person
83 committed.

84 2. The nature and extent of the person's prior criminal
85 history, if any.

86 3. Any prior history of the person failing to appear in
87 court.

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88 4. The person's employment history, employability skills,
89 and employment interests.

90 5. The person's educational, vocational, and technical
91 training.

92 6. The person's background, including his or her family,
93 home, and community environment.

94 7. The person's physical and mental health history,
95 including any substance use.

96 8. An evaluation of the person's criminal thinking,
97 criminal associates, and social awareness.

98 (b) The Department of Corrections may use or modify an
99 existing risk assessment instrument, if the instrument contains
100 the criteria enumerated in paragraph (a).

101 (c) The Department of Corrections shall complete the
102 development or modification of a risk assessment instrument no
103 later than March 1, 2019. The department may begin to implement
104 the risk assessment instrument immediately upon completion.
105 Implementation, including training all staff that will
106 administer the risk assessment instrument, must be completed by
107 June 30, 2019.

108 (d) A representative of the county's chief correctional
109 officer shall administer the risk assessment instrument as early
110 as reasonably possible after a person's arrest, but no later
111 than 10 business days after the arrest. If a person is released
112 from jail pursuant to chapter 903 before the administration of
113 the risk assessment instrument, the chief correctional officer,
114 or his or her representative, must schedule and provide written
115 notification of a date and time for the person to return to the
116 jail for the administration of the risk assessment instrument.

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The date and time must be provided in writing upon the person's pretrial release. The risk assessment instrument may be conducted by video teleconference.

(e) A risk assessment instrument report must be made available to the person to whom the instrument is administered, his or her legal counsel, and the state attorney upon completion of the report. The Department of Corrections shall submit to the court the risk assessment instrument report, but the court may not review it without the consent of the person who is the subject of the report and his or her legal counsel.

(3) CREATION.—Contingent upon appropriations and a contract with each participating county, it is the intent of the Legislature to establish a 3-year Risk Assessment Pilot Program to perform a risk assessment evaluation on all persons arrested for a felony in participating counties.

(4) PARTICIPATING COUNTIES.—Participation in the pilot program is limited to Hillsborough, Pasco, and Pinellas Counties. Each participating county's chief correctional officer shall enter into a 3-year contract with the Department of Corrections to administer risk assessments on all persons arrested for a felony violation in the county. Contracts shall be awarded on a first-come, first-served basis up to the maximum appropriation allowable for this purpose.

(5) PILOT PROGRAM REQUIREMENTS.—

(a) The participating counties shall use the risk assessment instrument as a tool for determining appropriate programming and sentencing with the goal of reducing recidivism.

(b) Each county participating in the pilot program shall provide an annual report to the Department of Corrections by

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July 1 of each year of the pilot program which details the results of the administration of the risk assessment instrument, programming used for persons who received the assessment, and the success rate of such programming. The department shall compile the county reports and submit one annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1 of each year of the pilot program.

(6) RULEMAKING.—The Department of Corrections, in consultation with a participating county's chief correctional officer, chief judge, state attorney, and public defender, may adopt rules to administer this section.

Section 3. Subsection (2) of section 932.701, Florida Statutes, is amended to read:

932.701 Short title; definitions.—

(2) As used in the Florida Contraband Forfeiture Act, the term:

(f) ~~(a)~~ "Contraband article" means:

1. Any controlled substance as defined in chapter 893 or any substance, device, paraphernalia, or currency or other means of exchange that was used, was attempted to be used, or was intended to be used in violation of any provision of chapter 893, if the totality of the facts presented by the state is clearly sufficient to meet the state's burden of establishing probable cause to believe that a nexus exists between the article seized and the narcotics activity, whether or not the use of the contraband article can be traced to a specific narcotics transaction.

2. Any gambling paraphernalia, lottery tickets, money,

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175 currency, or other means of exchange which was used, was
 176 attempted, or intended to be used in violation of the gambling
 177 laws of the state.

178 3. Any equipment, liquid or solid, which was being used, is
 179 being used, was attempted to be used, or intended to be used in
 180 violation of the beverage or tobacco laws of the state.

181 4. Any motor fuel upon which the motor fuel tax has not
 182 been paid as required by law.

183 5. Any personal property, including, but not limited to,
 184 any vessel, aircraft, item, object, tool, substance, device,
 185 weapon, machine, vehicle of any kind, money, securities, books,
 186 records, research, negotiable instruments, or currency, which
 187 was used or was attempted to be used as an instrumentality in
 188 the commission of, or in aiding or abetting in the commission
 189 of, any felony, whether or not comprising an element of the
 190 felony, or which is acquired by proceeds obtained as a result of
 191 a violation of the Florida Contraband Forfeiture Act.

192 6. Any real property, including any right, title,
 193 leasehold, or other interest in the whole of any lot or tract of
 194 land, which was used, is being used, or was attempted to be used
 195 as an instrumentality in the commission of, or in aiding or
 196 abetting in the commission of, any felony, or which is acquired
 197 by proceeds obtained as a result of a violation of the Florida
 198 Contraband Forfeiture Act.

199 7. Any personal property, including, but not limited to,
 200 equipment, money, securities, books, records, research,
 201 negotiable instruments, currency, or any vessel, aircraft, item,
 202 object, tool, substance, device, weapon, machine, or vehicle of
 203 any kind in the possession of or belonging to any person who

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204 takes aquaculture products in violation of s. 812.014(2)(c).

205 8. Any motor vehicle offered for sale in violation of s.
 206 320.28.

207 9. Any motor vehicle used during the course of committing
 208 an offense in violation of s. 322.34(9)(a).

209 10. Any photograph, film, or other recorded image,
 210 including an image recorded on videotape, a compact disc,
 211 digital tape, or fixed disk, that is recorded in violation of s.
 212 810.145 and is possessed for the purpose of amusement,
 213 entertainment, sexual arousal, gratification, or profit, or for
 214 the purpose of degrading or abusing another person.

215 11. Any real property, including any right, title,
 216 leasehold, or other interest in the whole of any lot or tract of
 217 land, which is acquired by proceeds obtained as a result of
 218 Medicaid fraud under s. 409.920 or s. 409.9201; any personal
 219 property, including, but not limited to, equipment, money,
 220 securities, books, records, research, negotiable instruments, or
 221 currency; or any vessel, aircraft, item, object, tool,
 222 substance, device, weapon, machine, or vehicle of any kind in
 223 the possession of or belonging to any person which is acquired
 224 by proceeds obtained as a result of Medicaid fraud under s.
 225 409.920 or s. 409.9201.

226 12. Any personal property, including, but not limited to,
 227 any vehicle, item, object, tool, device, weapon, machine, money,
 228 security, book, or record, that is used or attempted to be used
 229 as an instrumentality in the commission of, or in aiding and
 230 abetting in the commission of, a person's third or subsequent
 231 violation of s. 509.144, whether or not comprising an element of
 232 the offense.

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(b) "Bona fide lienholder" means the holder of a lien perfected pursuant to applicable law.

(c) "Charitable bail fund" means a fund established and administered by a county or municipality which posts bail for indigent defendants.

(i) ~~(e)~~ "Promptly proceed" means to file the complaint within 45 days after seizure.

(e) ~~(d)~~ "Complaint" is a petition for forfeiture filed in the civil division of the circuit court by the seizing agency requesting the court to issue a judgment of forfeiture.

(h) ~~(e)~~ "Person entitled to notice" means any owner, entity, bona fide lienholder, or person in possession of the property subject to forfeiture when seized, who is known to the seizing agency after a diligent search and inquiry.

(a) ~~(f)~~ "Adversarial preliminary hearing" means a hearing in which the seizing agency is required to establish probable cause that the property subject to forfeiture was used in violation of the Florida Contraband Forfeiture Act.

(g) "Forfeiture proceeding" means a hearing or trial in which the court or jury determines whether the subject property shall be forfeited.

(d) ~~(h)~~ "Claimant" means any party who has proprietary interest in property subject to forfeiture and has standing to challenge such forfeiture, including owners, registered owners, bona fide lienholders, and titleholders.

Section 4. Paragraph (a) of subsection (5) of section 932.7055, Florida Statutes, is amended to read:

932.7055 Disposition of liens and forfeited property.—

(5) (a) If the seizing agency is a county or municipal

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agency, the remaining proceeds shall be deposited in a special law enforcement trust fund established by the board of county commissioners or the governing body of the municipality. Such proceeds and interest earned therefrom shall be used for school resource officer, crime prevention, safe neighborhood, drug abuse education and prevention programs; to establish and maintain a charitable bail fund, if the county or municipality establishes such a fund; or for other law enforcement purposes, which include defraying the cost of protracted or complex investigations, providing additional equipment or expertise, purchasing automated external defibrillators for use in law enforcement vehicles, and providing matching funds to obtain federal grants. The proceeds and interest may not be used to meet normal operating expenses of the law enforcement agency.

Section 5. Paragraph (f) of subsection (8) of section 210.095, Florida Statutes, is amended to read:

210.095 Mail order, Internet, and remote sales of tobacco products; age verification.—

(8)

(f) Any fixture, equipment, or other material or personal property on the premises of any person who, with the intent to defraud this state, mails or ships tobacco products into this state and fails to satisfy any of the requirements of this section is a contraband article as defined in s. 932.701 ~~within the definition of s. 932.701(2)(a)3.~~

Section 6. Subsection (4) of section 213.295, Florida Statutes, is amended to read:

213.295 Automated sales suppression devices.—

(4) An automated sales suppression device, a zipper,

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phantom-ware, or any device containing such device or software
 is a contraband article as defined in s. 932.701 ~~provided in s.~~
~~932.701(2)(a)~~ and may be seized and forfeited pursuant to the
 Florida Contraband Forfeiture Act.

Section 7. Subsection (4) of section 893.147, Florida
 Statutes, is amended to read:

893.147 Use, possession, manufacture, delivery,
 transportation, advertisement, or retail sale of drug
 paraphernalia.—

(4) TRANSPORTATION OF DRUG PARAPHERNALIA.—It is unlawful to
 use, possess with the intent to use, or manufacture with the
 intent to use drug paraphernalia, knowing or under circumstances
 in which one reasonably should know that it will be used to
 transport:

(a) A controlled substance in violation of this chapter; or

(b) Contraband as defined in s. 932.701(2)(f)1. ~~s.~~
~~932.701(2)(a)1.~~

Any person who violates this subsection commits a felony of the
 third degree, punishable as provided in s. 775.082, s. 775.083,
 or s. 775.084.

Section 8. Subsection (5) of section 932.703, Florida
 Statutes, is amended to read:

932.703 Forfeiture of contraband article; exceptions.—

(5) In any incident in which possession of any contraband
 article defined in s. 932.701 ~~s. 932.701(2)(a)~~ constitutes a
 felony, the vessel, motor vehicle, aircraft, other personal
 property, or real property in or on which such contraband
 article is located at the time of seizure shall be contraband

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subject to forfeiture. It shall be presumed in the manner
 provided in s. 90.302(2) that the vessel, motor vehicle,
 aircraft, other personal property, or real property in which or
 on which such contraband article is located at the time of
 seizure is being used or was attempted or intended to be used in
 a manner to facilitate the transportation, carriage, conveyance,
 concealment, receipt, possession, purchase, sale, barter,
 exchange, or giving away of a contraband article defined in s.
 932.701(2).

Section 9. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator Randolph Bracy
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: December 24, 2017

I respectfully request that **Senate Bill #1218**, relating to **Persons Awaiting Trial**, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", is written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-29-18

Meeting Date

SB-1218

Bill Number (if applicable)

Topic Risk Assessment

Amendment Barcode (if applicable)

Name Mike Harrison

Job Title Agency Owner

Address 3039 Crawfordville Hwy
Street

Phone 850-926-2299

Crawfordville FL 32327
City State Zip

Email harrisonbailbonds@aol.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Bail Agents Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-29-2018

Meeting Date

SB-1218

Bill Number (if applicable)

Topic Persons Awaiting Trial

Amendment Barcode (if applicable)

Name Alan Lassiter

Job Title Bail Bond Agent

Address PO Box 1637

Phone 863-287-7095

Street

Winter Haven FL 33882

Email alanbailpi@gmail.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/18

Meeting Date

SB 1218
2018

Bill Number (if applicable)

Topic risk assessment

Amendment Barcode (if applicable)

Name Jerilyn Rodriguez

Job Title surety agent

Address 125 N Market St
Street

Phone 904-380-1145

Jacksonville FL 32202
City State Zip

Email jerilynanncook@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing my self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-29-18
Meeting Date

SB-1218
Bill Number (if applicable)

Topic Risk Assessment + Charity Bail

Amendment Barcode (if applicable)

Name Ana Teague

Job Title Retired

Address 6964 Ln Loma Dr
Street

Phone 904-910-9230

Jay FL 32217
City State Zip

Email Ballady32202@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Jan. 29, 2018
Meeting Date

SB 1218
Bill Number (if applicable)

Topic Risk Assessment

Amendment Barcode (if applicable)

Name Jane Rodgers

Job Title Direct Support Professional

Address 118 E Pine St.
Street

Phone (856) 506-4851

Millville NJ 08332
City State Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Crime Victims

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1.29.18

Meeting Date

1218

Bill Number (if applicable)

Topic Persons Awaiting Trial

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

Email Barney@BarneyBishop.com

City

State

Zip

Speaking: ☐ For ☒ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-29-2017

Meeting Date

SB 1218

Bill Number (if applicable)

Topic ~~SB~~ Risk Assessment tool Studies

Amendment Barcode (if applicable)

Name Blair Harvey

Job Title Vice President - Roche Surety

Address 4107 N Himes ave

Phone 813-623-5042

Street

Tampa FL 33607

City

State

Zip

Email Blair@rochesurety.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Roche Surety & Casualty Co, Inc

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/18
Meeting Date

1218
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name JEFF KOTTKAMP

Job Title _____

Address _____

Phone _____

Street

Tallahassee

City

FL

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Financial Casualty + Surety

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/18
Meeting Date

1218
Bill Number (if applicable)

Topic Risk Assessment

Amendment Barcode (if applicable)

Name Shawn Foster

Job Title Lobbyist

Address 5957 Riviera Lane

Phone 727-808-4131

New Port Richey, FL 34653
City State Zip

Email foster@scgroup.us

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Bail Agents Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 1264

INTRODUCER: Senator Steube

SUBJECT: Mandatory Court Costs

DATE: January 26, 2018

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Cellon	Jones	CJ	Pre-meeting
2. _____	_____	ACJ	_____
3. _____	_____	AP	_____

I. Summary:

SB 1264 increases the minimum amounts a court may assess a defendant at sentencing for the costs of prosecution in adult and juvenile misdemeanor, criminal traffic, and felony cases.

Currently, the court is required to assess a minimum of \$50 in misdemeanor and criminal traffic cases for the costs of prosecution. The bill increases the minimum assessment to \$100.

The current minimum costs of prosecution assessment in felony cases is \$100. The bill increases this to \$200.

The bill is effective July 1, 2018.

II. Present Situation:

Costs of Prosecution

Section 938.27, F.S., provides that convicted persons are liable for costs of prosecution at the rate of \$50 in misdemeanor or criminal traffic offense cases and \$100 in felony criminal cases, unless the prosecutor proves that costs are higher in the particular case before the court.¹ The costs of prosecution are deposited into the State Attorneys Revenue Trust Fund.²

Conviction, for this purpose, includes “a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld.”³

¹ Section 938.27(8), F.S.

² *Id.*

³ Section 938.27(1), F.S.

Section 938.27, F.S., requires a court to impose the costs of prosecution notwithstanding the convicted person's present ability to pay.⁴

Clerks to Collect and Disburse Funds

Section 28.246(2), F.S., requires the clerk of the circuit court (clerk) to establish and maintain a system of accounts receivable for court-related fees, charges, and costs.

The clerk may accept partial payments for all fees, charges, and costs in accordance with the terms of an established payment plan. The clerk may enter into a payment plan when an individual is determined to be indigent for costs by the court.⁵

Delinquency Case Disposition

Costs of prosecution are assessed for juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld.⁶ If the juvenile is found by the court to be unable to pay, the court may order the juvenile to complete community service in lieu of paying the assessed costs.⁷

Cash Bond Used to Pay Fines, Costs, and Fees

Section 903.286, F.S., requires the clerk to withhold the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent to pay court fees, criminal penalties, and court costs including costs of prosecution and costs of representation.

If sufficient funds are not available to pay the above costs, the clerk will immediately obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246, F.S.⁸

All cash bond forms must prominently display a notice explaining that all funds are subject to forfeiture and withholding by the clerk for the payment of the above costs on behalf of the criminal defendant regardless of who posted the funds.⁹

III. Effect of Proposed Changes:

The bill increases the minimum required assessment in misdemeanor, criminal traffic, and felony cases for the costs of prosecution. The assessment applies in both adult and juvenile cases.

⁴ The court must require the defendant to pay the costs within a specified period or pursuant to a payment plan under s. 28.246(4), F.S. Section 938.27(2)(a), F.S. *See also* Section 938.27(1), F.S., referencing the assessment of investigative costs.

⁵ Section 28.246(4), F.S. "A monthly payment amount, calculated based upon all fees and all anticipated costs, is presumed to correspond to the person's ability to pay if the amount does not exceed two percent of the person's annual net income, as defined in s. 27.52(1), divided by 12." Section 28.246(4), F.S.

⁶ Section 985.032(2), F.S.

⁷ Section 985.455(1)(d), F.S.

⁸ Section 903.286(1), F.S.

⁹ Section 903.286(2), F.S.

The bill increases the amounts from \$50 to \$100 in misdemeanor and criminal traffic cases. In felony cases, the assessment is increased from \$100 to \$200.

The bill is effective 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:

Criminal defendants who are convicted and therefore required to pay costs of prosecution, including juvenile offenders, will be required to pay the increased amount for the costs of prosecution. The costs will increase from \$50 for misdemeanor and criminal traffic offenses to \$100. Felony costs of prosecution will increase from \$100 to \$200.

C. Government Sector Impact:

From Fiscal Year 2014-15 to Fiscal Year 2016-17, the revenues accruing to the State Attorney Revenue Trust Fund declined from \$32.5 million to \$29.3 million, approximately a 10 percent decline. Similarly, revenues collected for costs of prosecution declined from \$24.2 million to \$22.7 million, almost 6 percent during that time period.¹⁰

Increasing criminal defendant's and juvenile offender's costs of prosecution responsibility may slow the decline in the State Attorney Revenue Trust Fund, however it cannot be predicted to what degree since collections of costs of prosecution cannot be predicted with any certainty.

¹⁰ Information provided by the Senate Appropriations Subcommittee on Civil and Criminal Justice, e-mail dated January 21, 2018 (on file with the Senate Committee on Criminal Justice).

The Florida Public Defender Association reports that the bill “could have an indirect fiscal impact on Public Defender budgets.” Although a policy argument against the bill is made, there is no real fiscal analysis presented in the document received from the association.¹¹

The Justice Administrative Commission (Commission) reports no fiscal impact from the bill with the caveat that the Commission directs its comments only on behalf of the Commission, not the judicial-related offices administratively served by the Commission.¹²

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 938.29, F.S., provides that convicted persons are liable for payment of the \$50 public defender application fee under s. 27.52(1)(b), F.S., and attorney’s fees and costs if he or she received assistance from the public defender’s office, a special assistant public defender, the office of criminal conflict and civil regional counsel, or a private conflict attorney, or who has received due process services after being found indigent for costs.

Costs of representation may be imposed at the rate of \$50 in misdemeanor or criminal traffic offense cases and \$100 in felony criminal cases. The court may set a higher amount upon showing of sufficient proof of higher fees or costs incurred. The costs of representation are deposited into the Indigent Criminal Defense Trust Fund.¹³

Costs of representation are not addressed by the bill.

VIII. Statutes Affected:

This bill substantially amends section 938.27 of the Florida Statutes.

This bill reenacts section 985.032 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

¹¹ Florida Public Defender Association, *Fiscal Analysis of SB 1264*, December 27, 2017 (on file with the Senate Committee on Criminal Justice).

¹² Justice Administrative Commission, *Memorandum No. 076-17, Exec, Bill Analysis Response for Senate Bill 1264*, December 21, 2017 (on file with the Senate Committee on Criminal Justice).

¹³ Section 27.562, F.S.

B. Amendments:

None.

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

By Senator Steube

23-01291-18

20181264__

1 A bill to be entitled
 2 An act relating to mandatory court costs; amending s.
 3 938.27, F.S.; increasing the minimum amount of costs
 4 charged per case by state attorneys; reenacting s.
 5 985.032, F.S., relating to the legal representation
 6 for delinquency cases, to incorporate the amendment
 7 made to s. 938.27, F.S., in a reference thereto;
 8 providing an effective date.
 9
 10 Be It Enacted by the Legislature of the State of Florida:
 11
 12 Section 1. Subsection (8) of section 938.27, Florida
 13 Statutes, is amended to read:
 14 938.27 Judgment for costs of prosecution and
 15 investigation.—
 16 (8) Costs for the state attorney must be set in all cases
 17 at no less than \$100 ~~\$50~~ per case when a misdemeanor or criminal
 18 traffic offense is charged and no less than \$200 ~~\$100~~ per case
 19 when a felony offense is charged, including a proceeding in
 20 which the underlying offense is a violation of probation or
 21 community control. The court may set a higher amount upon a
 22 showing of sufficient proof of higher costs incurred. Costs
 23 recovered on behalf of the state attorney under this section
 24 must be deposited into the State Attorneys Revenue Trust Fund to
 25 be used during the fiscal year in which the funds are collected,
 26 or in any subsequent fiscal year, for actual expenses incurred
 27 in investigating and prosecuting criminal cases, which may
 28 include the salaries of permanent employees, or for any other
 29 purpose authorized by the Legislature.

Page 1 of 2

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

23-01291-18

20181264__

30 Section 2. For the purpose of incorporating the amendment
 31 made by this act to section 938.27, Florida Statutes, in a
 32 reference thereto, section 985.032, Florida Statutes, is
 33 reenacted to read:
 34 985.032 Legal representation for delinquency cases.—
 35 (1) For cases arising under this chapter, the state
 36 attorney shall represent the state.
 37 (2) A juvenile who has been adjudicated delinquent or has
 38 adjudication of delinquency withheld shall be assessed costs of
 39 prosecution as provided in s. 938.27.
 40 Section 3. This act shall take effect July 1, 2018.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on Pre-K - 12 Education
Children, Families, and Elder Affairs
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE

23rd District

January 11, 2018

The Honorable Randolph Bracy
Florida Senate
213 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Bracy,

I am writing this letter because my bill, SB 1264 – Court Costs, has been referred to the Senate Criminal Justice Committee. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

Thank you for your consideration. Please contact me if you have any questions.

Very respectfully yours,

A handwritten signature in dark ink, appearing to be "W. Gregory Steube".

W. Gregory Steube, District 23

REPLY TO:

- ☐ 6230 University Parkway, Suite 202, Sarasota, Florida 34240 (941) 342-9162
- ☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

1/29/2018

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 1264

Bill Number (if applicable)

Topic Mandatory Court Costs

Amendment Barcode (if applicable)

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

Street

Tallahassee

FL

32302

City

State

Zip

Email scott.mccoy@splcenter.org

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Southern Poverty Law Center

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

8 001 (10/14/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1.29.18

Meeting Date

1264

Bill Number (if applicable)

Topic Mandatory Costs

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

Email Barney@BarneyBishop.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 1318

INTRODUCER: Senator Rouson

SUBJECT: Education for Prisoners

DATE: January 26, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Favorable
2.			ACJ	
3.			AP	

I. Summary:

SB 1318 amends ss. 951.176 and 944.801, F.S., authorizing a county or municipal detention facility or the Department of Corrections (DOC) to contract with a district school board, the Florida Virtual School, 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 also amends s. 1011.80, F.S., to allow state funding for postsecondary education to be used on inmates with less than 24 months of time remaining on his or her sentence.

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 the lump sum appropriation provided to the K-20 entities for workforce education or the lump sum appropriation provided to the DOC or county and municipal entities for the education of inmates.

The bill is effective July 1, 2018.

II. Present Situation:

A defendant that is convicted of a crime in the state of Florida is subject to county jail or prison time 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.¹

¹ Section 775.082(4), F.S.

For a defendant convicted of a felony offense, the Criminal Punishment Code² (Code) applies to sentencing for felony offenses committed on or after October 1, 1998.³ 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.⁴

Education For County Inmates

Section 951.176, F.S., requires county and municipal detention facilities⁵ 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.⁶ 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.⁷

Florida law is silent as to whether a county or municipal detention facility is required to provide educational services to its adult inmates. However, s. 951.175, F.S., requires women inmates in a county or municipal detention facility to have access to programs of education and vocational training that are equivalent to those programs which are provided to male inmates.

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.⁸ 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.⁹

² 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.

³ Section 921.0022, F.S.

⁴ See s. 775.082, F.S.

⁵ 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.

⁶ Section 951.176, F.S.

⁷ 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.

⁸ Section 944.801(1), F.S.

⁹ 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.

- 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.¹⁰
- 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.¹¹
- Ensuring that such local agreements require minimum performance standards and standards for measurable objectives, in accordance with established Department of Education standards.¹²
- 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.¹³
- 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.,¹⁴ attends not less than 150 hours of sequential instruction in a correctional adult basic education program.¹⁵
- Ensure that all education staff are certified in accordance with the Department of Education standards.¹⁶

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.¹⁷ Among providing traditional instruction to its K-20 students, 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.¹⁸

¹⁰ Section 944.801(3)(d), F.S.

¹¹ Section 944.801(3)(e), F.S.

¹² *Id.*

¹³ Section 944.801(3)(g), F.S.

¹⁴ 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.

¹⁵ 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.

¹⁶ Section 944.801(3)(k), F.S. See ss. 1002.33(12)(f), 1012.54, 1012.55, and 1012.56, F.S.

¹⁷ Section 1001.31, F.S.

¹⁸ Section 1001.14, F.S.

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.”¹⁹ The charter exempts the school from many regulations applicable to traditional public schools to encourage the use of innovative learning methods.²⁰ 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.²¹ 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 organization.²² A district school board may sponsor a charter school in the county over which the district school board has jurisdiction.²³

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.²⁴ 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.²⁵

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 also 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.²⁶ 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.²⁷

¹⁹ Section 1002.33(5)(a), (6)(h), (7) and (9)(a), F.S.

²⁰ Section 1002.33(2)(b)3. and (16), F.S.

²¹ Section 1002.33(2)(a)1., F.S.

²² Section 1002.33(12)(i), F.S.

²³ Section 1002.33(5)(a)1., F.S.

²⁴ Section 1002.37(1), F.S.

²⁵ Section 1002.37(b), F.S.

²⁶ Section 1004.93(1), F.S.

²⁷ Section 1004.93(3)(a), F.S.

Any workforce education program may be conducted by a Florida College System institution and school district unless restricted by statute.²⁸ 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
- With the intention of supporting economic development in Florida by increasing adult literacy and producing an educated workforce.²⁹

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.³⁰

Funding for Workforce Education Programs

State funding and student fees for workforce education instruction are established as follows:

- 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 shall equal 100 percent of the average cost of instruction.³¹

Since 2011, state funds allocated for postsecondary workforce programs are explicitly prohibited from being used to educate state or federal inmates.³²

III. Effect of Proposed Changes:

The bill amends ss. 951.176 and 944.801, F.S., authorizing a county or municipal detention facility or the DOC to contract with a district school board, the Florida Virtual School, 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 also amends s. 1011.80, F.S., to allow state funding for postsecondary education to be used on inmates with less than 24 months of time remaining on his or her sentence.

²⁸ 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.

²⁹ Section 1004.98, F.S.

³⁰ See s. 1004.98, F.S.

³¹ Section 1011.80(5), F.S.

³² Section 1011.80(7) F.S. and ch. 2011-63, s. 35, L.O.F.

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.

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 would be provided by the school providers through the workforce education models that currently exist and out of the lump sum of money that is provided to the school providers for these programs. The DOC or a county and municipal detention facility can utilize funds appropriated for the education of inmates to contract with the school providers to offer such educational services.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 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.)

None.

B. Amendments:

None.

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



764696

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/29/2018	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Rouson) recommended the following:

Senate Amendment

Delete lines 23 - 33
and insert:
board, the Florida Virtual School, a charter school authorized
to operate under s. 1002.33, or a virtual school accredited by
AdvancED and the Southern Association of Colleges and Schools
which offers career-based, online high school diplomas to
provide education services for the Correctional Education
Program. The educational services may include any educational,



764696

11 career, or vocational training that is authorized by the
12 department.

13 Section 2. Section 951.176, Florida Statutes, is amended to
14 read:

15 951.176 Provision of education ~~programs for youth.~~—

16 (1) Each county may contract with a district school board,
17 the Florida Virtual School, a charter school authorized to
18 operate under s. 1002.33, or a virtual school accredited by
19 AdvancED and the Southern Association of Colleges and Schools
20 which offers career-based, online high school diplomas to
21 provide educational services for

By Senator Rouson

19-00514D-18

20181318__

1 A bill to be entitled
 2 An act relating to education for prisoners; amending
 3 s. 944.801, F.S.; authorizing the Department of
 4 Corrections to contract with certain entities to
 5 provide educational services for the Correctional
 6 Education Program; amending s. 951.176, F.S.;
 7 authorizing each county to contract with certain
 8 entities to provide educational services for county
 9 inmates; amending s. 1011.80, F.S.; removing a
 10 provision prohibiting state funds for the operation of
 11 postsecondary workforce programs from being used for
 12 the education of certain state inmates; providing an
 13 effective date.
 14
 15 Be It Enacted by the Legislature of the State of Florida:
 16
 17 Section 1. Present subsections (4) and (5) of section
 18 944.801, Florida Statutes, are renumbered as subsections (5) and
 19 (6), respectively, and a new subsection (4) is added to that
 20 section, to read:
 21 944.801 Education for state prisoners.—
 22 (4) The department may contract with a district school
 23 board, the Florida Virtual School, or a charter school
 24 authorized to operate under s. 1002.33 to provide educational
 25 services for the Correctional Education Program. The educational
 26 services may include any educational, career, or vocational
 27 training that is authorized by the department.
 28 Section 2. Section 951.176, Florida Statutes, is amended to
 29 read:

Page 1 of 3

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

19-00514D-18

20181318__

30 951.176 Provision of education ~~programs for youth.~~
 31 (1) Each county may contract with a district school board,
 32 the Florida Virtual School, or a charter school authorized to
 33 operate under s. 1002.33 to provide educational services for
 34 inmates at county detention facilities. The educational services
 35 may include any educational, career, or vocational training that
 36 is authorized by the sheriff or chief correctional officer, or
 37 his or her designee.
 38 (2) Minors who have not graduated from high school and
 39 eligible students with disabilities under the age of 22 who have
 40 not graduated with a standard diploma or its equivalent who are
 41 detained in a county or municipal detention facility as defined
 42 in s. 951.23 shall be offered educational services by the local
 43 school district in which the facility is located. These
 44 educational services shall be based upon the estimated length of
 45 time the youth will be in the facility and the youth's current
 46 level of functioning. School district superintendents or their
 47 designees shall be notified by the county sheriff or chief
 48 correctional officer, or his or her designee, upon the
 49 assignment of a youth under the age of 21 to the facility. A
 50 cooperative agreement with the local school district and
 51 applicable law enforcement units shall be developed to address
 52 the notification requirement and the provision of educational
 53 services to these youth.
 54 Section 3. Paragraph (b) of subsection (7) of section
 55 1011.80, Florida Statutes, is amended to read:
 56 1011.80 Funds for operation of workforce education
 57 programs.—
 58 (7)

Page 2 of 3

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

19-00514D-18

20181318__

59 (b) State funds provided for the operation of postsecondary
60 workforce programs may not be expended for the education of
61 state inmates with more than 24 months of time remaining to
62 serve on their sentence or federal inmates.
63 Section 4. This act shall take effect July 1, 2018.



The Florida Senate

Committee Agenda Request

To: Senator Randolph Bracy, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: January 12, 2018

I respectfully request that **Senate Bill # 1318**, relating to Education for Prisoners, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in cursive script, reading "Darryl Rouson", is written over a horizontal line.

Senator Darryl Rouson
Florida Senate, District 19

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/18

Meeting Date

1318

Bill Number (if applicable)

Topic

Education for Prisoners

Amendment Barcode (if applicable)

Name

Andy Thomas

Job Title

Public Defender, 2nd Circuit

Address

301 N. Monroe St., Ste. 401

Phone

(850) 606-1014

Street

Tallahassee

State

FL

Zip

32301

Email

andy.thomas@fpd2.com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Fla. Public Defender Association

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1.29.18

Meeting Date

1318

Bill Number (if applicable)

Topic Education for Prisoners

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

Email Barney@BarneyBishop.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 1430

INTRODUCER: Senators Taddeo and Book

SUBJECT: Plea Agreements in Cases Involving Child Deaths

DATE: January 26, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 1430 requires state attorneys to provide the court with a written statement of the reasons for a plea agreement under conditions where a state attorney has made a plea agreement with a defendant:

- In a case where a child victim has died as a result of the offense; and
- The plea offer is for an offense that is of a lesser statutory degree or subjects the defendant to lesser penalties.

The bill is effective October 1, 2018.

II. Present Situation:

Plea agreements are an essential component of the administration of justice.¹ The prosecuting attorney and the defense attorney, or the defendant representing himself or herself, are encouraged to discuss and agree on pleas for a case. These agreements can occur at any time during the pendency of a criminal case.² A plea agreement is essentially a contract between the prosecution and the defense, and contract law applies.³

The terms of a plea agreement may include, but not necessarily be limited to:

- The charges a prosecutor will drop⁴ or reduce in exchange for the defendant's plea; and

¹ *Santobello v. New York*, 404 U.S. 257, 260 (1971).

² Rule 3.171(a), Fla. R. Crim. Pro.

³ *Garcia v. State*, 722 So.2d 905, 907 (Fla. 3d DCA 1998).

⁴ The legal term used for "dropping" any number of charges or all charges in a case is *nolle prosequi*, meaning an entry on the record of a legal action denoting that the prosecutor will proceed no further in an action either as a whole or as to some count (charge) or as to one or more of several defendants. Merriam-Webster Law Dictionary, available at <https://www.merriam-webster.com/dictionary/nolle%20prosequi>, (last visited January 24, 2018).

- An agreed-upon sentencing recommendation to the court, or, alternatively, an agreement to not make a sentencing recommendation at all, or that the prosecutor will not oppose a defendant's request for a particular sentence.⁵

It is only after a defendant has waived his right to a jury trial and knowingly, freely, and voluntarily entered a plea thereby exposing him or herself to a potential loss of liberty, that the agreement may have an effect.⁶

Many considerations enter into decisions surrounding the plea bargain and agreement process for both the defendant and the prosecution. As a practical matter, both parties should assess the overall strength of the prosecution's evidence in the case, because the prosecution not the defense, has the burden of proof. Also, there can be times when the defense may be expected to present evidence tending to create a reasonable doubt, and that potential evidence should be assessed.

For example, the prosecution and the defense will likely consider:

- The availability⁷ and credibility⁸ of the witnesses;
- Whether the case is strictly circumstantial⁹ or if there is eyewitness testimony; and
- The sentence the defendant may face should he or she be convicted of the charges as filed by the prosecutor.

A court is not bound by a plea agreement entered into by the parties.¹⁰ There is a clear demarcation of roles, or a tension between the parties and the court. This tension is based upon the separation of powers¹¹ of the judicial and the executive branches of government and the differing responsibilities of each within the process.¹²

III. Effect of Proposed Changes:

The bill creates s. 921.144, F.S. The bill requires that a state attorney must provide the court with a written statement of the reasons justifying a plea agreement if:

- The agreement with the defendant is made in a case where a child was the victim who died as the result of the offense; and

⁵ Rule 3.171(b), Fla. R. Crim. Pro.

⁶ *Mabry v. Johnson*, 467 U.S. 504, 507-508 (1984). See also *State v. Vixamar*, 687 So.2d 300, 301 (Fla. 4th DCA 1997).

⁷ See *Baby Chance's mother death could derail trial*, NBC-2 WBBH News, September 11, 2016, available at <http://www.nbc-2.com/story/33063585/baby-chances-mother-death-could-derail-trial> (last visited January 21, 2018); *Bradenton mom accused of killing daughter, putting body in freezer accepts plea deal*, WFLA News Channel 8, August 9, 2017, available at <http://wfla.com/2017/08/09/plea-deal-today-for-bradenton-mom-accused-of-killing-daughter-putting-body-in-freezer/> (last visited January 21, 2018).

⁸ See *Plea Deal Negotiated in Levy Child Death Case*, WGLF My CBS4.com (January 24, 2014) available at <http://mycbs4.com/archive/plea-deal-negotiated-in-child-death-case> (last visited January 22, 2018).

⁹ *Id.*

¹⁰ Rule 3.171(g) and (h), Fla. R. Crim. Pro.

¹¹ Article II, s. 7, FLA. CONST.

¹² "[T]here is considerable authority for the proposition that prosecutorial discretion is itself an incident of the constitutional separation of powers, and that as a result the courts are not to interfere with the free exercise of the discretionary powers of the prosecutor in his control over criminal prosecutions." (footnote omitted); *State v. Cain*, 381 So.2d 1361, 1367 n. 8 (Fla.1980). See also *United States v. Cox*, 342 F.2d 167, 171 (5th Cir.1965); *Barnett v. Antonacci*, 122 So.3d 400, 405 (Fla. 4th DCA 2013).

- The plea offer is for an offense that is of a lesser statutory degree or subjects the defendant to lesser penalties.

The bill is effective October 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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 921.144 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Taddeo

40-01492-18

20181430__

A bill to be entitled

An act relating to plea agreements in cases involving child deaths; creating s. 921.144, F.S.; requiring that a state attorney make a written statement justifying a plea agreement in a case involving the death of a child in certain circumstances; providing an effective date.

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

Section 1. Section 921.144, Florida Statutes, is created to read:

921.144 Plea agreements; deaths of children.—In a prosecution for an offense in which the victim of the offense was a child who died as a result of the offense, if the state attorney makes a plea agreement with the defendant for a plea of guilty to an offense that is of a lesser statutory degree or that otherwise would subject the offender to lesser penalties than the offense initially charged, the state attorney must provide the court with a written statement of the reasons justifying the plea agreement.

Section 2. This act shall take effect October 1, 2018.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on General
Government
Banking and Insurance
Environmental Preservation and Conservation
Military and Veterans Affairs, Space, and
Domestic Security
Transportation

SENATOR ANNETTE TADDEO

40th District

MEMORANDUM

To: Senator Bracy Chair of the Criminal Justice Committee
From: Senator Annette Taddeo
Subject: Committee Agenda Request
Date: January 17, 2018

I respectfully request that **Senate Bill 1430**, relating to Plea Agreements in Cases Involving Child Deaths, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in black ink, appearing to be "A. Taddeo", written over a horizontal line.

Senator Annette Taddeo
Florida Senate, District 40

REPLY TO:

- ☐ 10689 North Kendall Drive, Suite 212, Miami, Florida 33176 (305) 596-3003
- ☐ 224 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 1440

INTRODUCER: Senator Powell

SUBJECT: Mental Illness Training for Law Enforcement Officers

DATE: January 26, 2018

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Jones	CJ	Favorable
2. _____	_____	ACJ	_____
3. _____	_____	AP	_____

I. Summary:

SB 1440 requires the Florida Department of Law Enforcement (FDLE) to establish a continued employment training component relating to mental illness. The bill specifies instructions to be included in the training component. Completion of the training component may count toward the 40 hours of instruction for continued employment or appointment as a law enforcement officer.

The FDLE estimates that it will cost \$11,602 to develop the mental illness training course. See Section V. Fiscal Impact Statement.

II. Present Situation:

“Mental Illness” and the Baker Act

The Florida Mental Health Act, otherwise known as the Baker Act,¹ authorizes treatment programs for mental, emotional, and behavioral disorders. According to the National Alliance on Mental Illness, “law enforcement agencies have increasingly become de facto first responders to people experiencing mental health crisis.”² The Baker Act requires a law enforcement officer to take a person who appears to meet Baker Act criteria for involuntary examination for mental illness into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, receiving facility for examination.³

¹ Section 394.451, F.S. The act was created by ch. 71-131, L.O.F., and is codified in Part I of ch. 394, F.S. (ss. 394.451-394.47892, F.S.). The Baker Act requires programs to include comprehensive health, social, educational, and rehabilitative services to persons requiring intensive short-term and continued treatment to facilitate recovery. Additionally, the Baker Act provides protections and rights to individuals examined or treated for mental illness. Legal procedures are addressed for mental health examination and treatment, including voluntary admission, involuntary admission, involuntary inpatient treatment, and involuntary outpatient treatment.

² “Law Enforcement and Mental Health,” National Alliance on Mental Illness, available at <https://www.nami.org/Get-Involved/Law-Enforcement-and-Mental-Health> (last visited on Jan. 23, 2018).

³ Section 394.463(2)(a)2., F.S.

“Mental illness” is defined in s. 394.455(28), F.S., of the Baker Act as an impairment of the mental or emotional processes that exercise conscious control of one’s actions or of the ability to perceive or understand reality, which impairment substantially interferes with the person’s ability to meet the ordinary demands of living. For purposes of the Baker Act, the term does not include a developmental disability as defined in ch. 393, F.S., intoxication, or conditions manifested only by antisocial behavior or substance abuse.

Mental Illness Training Provided by the FDLE

According to the FDLE, mental illness training similar to that proposed by the bill (see discussion of bill, *infra*) “exists in the current Criminal Justice Standards and Training Commission (CJSTC) Law Enforcement Basic Recruit Training Program. CJSTC also maintains post-basic training courses that include training on mental illness: (1) a 32-hour Specialized Training Program Course (#1149 Special Populations) and (2) a 40-hour Advanced Training Program Course (#53 Crisis Intervention).”⁴

Continued Employment Training

Section 943.135(1), F.S., provides that the CJSTC within FDLE shall, by rule,⁵ adopt a program that requires all law enforcement officers, as a condition of continued employment or appointment as officers, to receive periodic commission-approved continuing training or education. This training or education shall be required at the rate of 40 hours every four years.

III. Effect of Proposed Changes:

The bill requires the FDLE to establish a continued employment training component relating to mental illness as defined in s. 394.455, F.S., of the Baker Act. The training component must include, but need not be limited to, instruction on the recognition of the symptoms and characteristics of an individual with a mental illness and appropriate responses to an individual exhibiting such symptoms and characteristics.

Completion of the training component may count toward the 40 hours of instruction for continued employment or appointment as a law enforcement officer required under s. 943.135, F.S.

The bill takes effect October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁴ 2018 FDLE Legislative Bill Analysis (SB 1440) (Jan. 8, 2018), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice).

⁵ Rule 11B-27.00212 (Maintenance of Officer Certification), Florida Administrative Code, available at <https://www.flrules.org/gateway/readFile.asp?sid=0&tid=17913104&type=1&file=11B-27.00212.doc> (last visited on Jan. 23, 2018).

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:

None.

C. Government Sector Impact:

The FDLE anticipates using existing course material to create a shorter stand-alone course on mental illness in the Specialized Training Program. The FDLE estimates it will cost \$11,602 to develop the mental illness course proposed by the bill.⁶ Provided is the FDLE's breakdown of costs:

Mental Illness Training for Law Enforcement Officers⁷	
This course will be developed using research from existing course material and input from subject matter experts	
Development of Post-Basic Course on Mental Illness	Estimated Costs
Task 1 – Preliminary Research, Review, and Planning 1 Research and Training Specialist x 20 hours (1/2 work week) x \$18.59 to identify subject matter experts and retain their services	\$372
Task 2 – Modify existing course material to meet requirements for Mental Illness training for Law Enforcement Officers (One- 4-day Workshop) Salary for 1 Research & Training Specialist x 40 hours x \$18.59/hour for workshop preparation	\$744
Salary for 1 Research & Training Specialist x 120 (3 weeks) x \$18.59/hour to facilitate job analysis workshops, post workshop development, drafting of course	\$2,231
Travel, hotel, and per diem for 7 Subject Matter Experts at approximately \$1,073 per SME x 7 x 1 workshop	\$7,511
Task 5- Editing and Final Course Review Salary for 1 Research & Training Specialist x 40 hours (1 week) x \$18.59/hour to edit the course and finalize the course	\$744
Total	\$11,602

⁶ *Supra*, n. 4.

⁷ *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the section 943.17161 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Powell

30-01433-18

20181440__

A bill to be entitled

An act relating to mental illness training for law enforcement officers; creating s. 943.17161, F.S.; requiring the Department of Law Enforcement to establish a continued employment training component relating to mental illness; defining the term "mental illness"; specifying instruction to be included in the training component; providing that completion of the training may count toward continued employment or appointment instruction requirements; providing an effective date.

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

Section 1. Section 943.17161, Florida Statutes, is created to read:

943.17161 Continued employment training relating to mental illness.—The department shall establish a continued employment training component relating to mental illness as defined in s. 394.455. The training component shall include, but need not be limited to, instruction on the recognition of the symptoms and characteristics of an individual with a mental illness and appropriate responses to an individual exhibiting such symptoms and characteristics. Completion of the training component may count toward the 40 hours of instruction for continued employment or appointment as a law enforcement officer required under s. 943.135.

Section 2. This act shall take effect October 1, 2018.



The Florida Senate

Committee Agenda Request

To: Randolph Bracy, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: January 18, 2018

I respectfully request that **Senate Bill #1440**, relating to Mental Illness Training for Law Enforcement Officer, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in dark ink, appearing to read "Bobby Powell".

Senator Bobby Powell
Florida Senate, District 30

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/18

Meeting Date

1440

Bill Number (if applicable)

Topic Mental Illness Training for officers

Amendment Barcode (if applicable)

Name Alisa LaBotz

Job Title Executive Director

Address PO Box 961
Street

Phone 850 671-4445

TLH 32302
City State Zip

Email alisa@namiFlorida.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing National Alliance on Mental Illness - Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/18

Meeting Date

1440

Bill Number (if applicable)

Topic Mental Fitness Training for L.E. Officers

Amendment Barcode (if applicable)

Name Andy Thomas

Job Title Public Defender, 2nd Circuit

Address 301 N. Monroe, Ste. 401

Phone (850) 606-1014

Street

Tallahassee

FL

State

32301

Zip

Email andy.thomas@flpd2.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Fla. Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/18

Meeting Date

1440

Bill Number (if applicable)

Topic MENTAL ILLNESS TRAINING FOR LAW ENFORCEMENT OFFICERS

Amendment Barcode (if applicable)

Name DAPHNEE SAINVIL

Job Title POLICY ADVISOR

Address 115 S. ANDREWS AVE.

Street

Phone 954-253-7320

FT. LAUDERDALE

City

FL

State

33301

Zip

Email dsainvil@broward.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing BROWARD COUNTY GOVT

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1.29.18

Meeting Date

1440

Bill Number (if applicable)

Topic Mental Illness Training for Law Enforcement Officers

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

Email Barney@BarneyBishop.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 1490

INTRODUCER: Senator Bracy

SUBJECT: Determining Bail

DATE: January 26, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 1490 amends a variety of provisions related to bond and pretrial release. The purpose of and legislative findings applicable to bail and pretrial detention are amended to focus on defendants charged with violent crimes, rather than defendants charged with any crime. The bill creates a presumption that a defendant charged with a nonviolent misdemeanor will be released on nonmonetary conditions. A nonviolent misdemeanor is defined in the bill to exclude assault as defined in s. 784.011, F.S.

The bill deletes two circumstances from s. 907.041(4)(c), F.S., that the court can find when determining whether a defendant charged with driving under the influence manslaughter poses a threat of harm to the community and must therefore be detained pretrial.

The bill amends s. 903.0471, F.S., limiting the court's authority to revoke a defendant's bond or pretrial release conditions to circumstances where the court finds probable cause that he or she committed a new violent or dangerous crime while on pretrial release, rather than the probable cause that he or she committed *any* new offense.

The bill is effective July 1, 2018.

II. Present Situation:

Upon being arrested for a crime in Florida, a person is taken to the county jail for processing.¹ An arrestee must be brought before a judge for a first appearance hearing within 24 hours of

¹ See s. 907.04, F.S.

arrest.² The Florida Constitution provides that every person charged with a crime is entitled to pretrial release with reasonable conditions.³

Types of Pretrial Release

There are three types of pretrial release for a person who is awaiting trial: the posting of a bail or surety bond, pretrial release conditions, or the release on his or her own recognizance.⁴

Bail and Surety Bond

The purpose of a bail determination in criminal proceedings is to ensure the appearance of a defendant, regardless of the severity of his or her crime, at subsequent proceedings and to protect the community against unreasonable danger from the defendant.⁵ Bail is a common monetary condition of pretrial release, governed by ch. 903, F.S.⁶ For the defendant to be released from jail, a court may require bail by a defendant to provide security, such as cash or a bond to ensure that he or she will return for trial and any other required court appearances.⁷

As an alternative to posting the entire bail amount, a defendant may provide a criminal surety bail bond⁸ executed by a bail bond agent. Generally, the defendant or another person on the defendant's behalf pays the bail bond agent a nonrefundable fee equal to 10 percent of the bond amount set by the court. If the defendant does not appear in court, the bail bond agent is responsible for paying the entire amount of the bond.⁹

Pretrial Release Conditions

A judge can release a defendant with any combination of the following pretrial release conditions:

- Release on the defendant's own recognizance;
- Execute an unsecured appearance bond in an amount specified by the judge;
- Comply with any court-imposed restrictions on travel, association, or place of abode during the period of release;
- Be placed in the custody of a designated person or organization agreeing to supervise the defendant;
- Have a designate execute a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

² Rules 3.130(a) and 3.132(a), Fla. R. Crim. Pro. Rule 3.130 further provides that at the first hearing the court must advise the defendant about the criminal charge; appoint counsel, if the defendant is indigent, or allow the defendant to have his or her hired counsel present; and determine terms of pretrial release.

³ Article I, s. 14, FLA CONST. This right does not apply to persons charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great. *Id.*

⁴ See art. I, s. 14, Fla. Const.; See also ss. 903.046 and 907.041, F.S.

⁵ Section 903.046(1), F.S.

⁶ "Bail," Black's Law Dictionary (3rd Pocket Edition). The purpose of a bail bond is to guarantee the defendant's presence in court to face criminal charges.

⁷ *Universal Bail Bonds v. State*, 929 So.2d 697, 699 (Fla. 3d DCA 2006).

⁸ Sections 903.011 and 903.105, F.S.

⁹ Office of Program Policy Analysis & Gov't Accountability, *County Pretrial Release Programs: Calendar Year 2016*, Report No. 17-12, at 2. (Dec. 2017) available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1712rpt.pdf> (last visited January 24, 2018).

- Comply with any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.¹⁰

A judge also can release a defendant to a pretrial release program. Generally, judges allow a defendant to be released to a pretrial release program without posting a bond, however a judge can require a defendant to post a bond and participate in the program.¹¹ Specifically, s. 907.041, F.S., provides a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release unless such person is charged with a dangerous crime.¹² These programs supervise defendants with various methods, from phone contact, to electronic monitoring.¹³

Release on Recognizance

A defendant released on his or her own recognizance is released without a monetary requirement and without any conditions of release or supervision of any type.¹⁴

A Court's Determination of Pretrial Release

The judge must consider all available relevant factors during the first appearance hearing to determine what form of release is necessary to assure the defendant's appearance and the community's safety, including, but not limited to:

- The nature and circumstances of the offense charged.
- The weight of the evidence against the defendant.
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition.
- The defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings.
- The nature and probability of danger which the defendant's release poses to the community.
- The source of funds used to post bail or procure an appearance bond, particularly whether the proffered funds, real property, property, or any proposed collateral or bond premium may be

¹⁰ Rule 3.131(b)(1), Fla. R. Crim. Pro.

¹¹ *Id.* If a monetary bail is required, the judge must determine a separate amount for each charge or offense. Rule 3.131(b)(2), Fla. R. Crim. Pro.

¹² Section 907.041, F.S., defines a dangerous crime to mean any of the following: Arson; Aggravated assault; Aggravated battery; Illegal use of explosives; Child abuse or aggravated child abuse; Abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult; Aircraft piracy; Kidnapping; Homicide; Manslaughter; Sexual battery; Robbery; Carjacking; Lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; Sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; Burglary of a dwelling; Stalking and aggravated stalking; Act of domestic violence as defined in s. 741.28, F.S.; Home invasion robbery; Act of terrorism as defined in s. 775.30, F.S.; Manufacturing any substances in violation of ch. 893, F.S.; Attempting or conspiring to commit any such crime; and Human trafficking.

¹³ *Supra* n. 9.

¹⁴ Release on recognizance is defined to mean the pretrial release of an arrested person who promises, usually in writing, but without supplying a surety of posting bond, to appear for trial at a later date. BLACK'S LAW DICTIONARY 606 (3d Pocket ed. 2006).

linked to or derived from the crime alleged to have been committed or from any other criminal or illicit activities.¹⁵

- Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence.
- The street value of any drug or controlled substance connected to or involved in the criminal charge.
- The nature and probability of intimidation and danger to victims.
- Whether there is probable cause to believe that the defendant committed a new crime while on pretrial release.
- Any other facts that the court considers relevant.¹⁶

Section 903.047, F.S., provides additional conditions that a defendant must comply with upon release from custody pending trial, including:

- Refrain from criminal activity of any kind;
- Refrain from contact of any type with the victim, except through pretrial discovery pursuant to the Florida Rules of Criminal Procedure, if applicable;¹⁷ and
- Comply with all conditions of pretrial release.

Standard Bond Schedule

Florida does not have a statewide bond schedule, but each circuit has developed a standard bond schedule. Courts create uniform bail bond schedules to ensure that alleged offenders are provided equal treatment when charged with similar crimes and generally apply to all felonies, misdemeanors and county or municipal ordinance violations as the presumptive bond to be set unless ordered differently by a judge.¹⁸ Even though a county may have an established standard

¹⁵ Section 903.046(2)(f), F.S., places the burden on the defendant to establish that the funds, real property, property, or any proposed collateral or bond premium is not involved in or derived from criminal or other illicit activity.

¹⁶ Section 903.046(2), F.S. *See also* Rule 3.131(b)(3), Fla. R. Crim. Pro.

¹⁷ Section 903.047(1)(b), F.S., provides that in a case where the court imposes a no contact order, the defendant must be informed in writing of the order of no contact, including the specified prohibited acts, before the defendant is released from custody on pretrial release. No contact includes: a) communicating orally or in any written form in a variety of modes, including either directly or indirectly through a third person, with the victim or any other person named in the order. However, if the defendant and victim have children in common, the court may designate an appropriate third person to contact the victim for the sole purpose of facilitating the defendant's contact with the children; b) having physical or violent contact with the victim or other named person or his or her property; c) being within 500 feet of the victim's or other named person's residence, even if the defendant and the victim or other named person share the residence; and d) being within 500 feet of the victim's or other named person's vehicle, place of employment, or a specified place frequented regularly by such person. Section 903.047(2), F.S., also provides that a no contact order may be modified by the court upon motion of the defendant.

¹⁸ Some common ways to address the bond schedules are to either have a standard based on the degree of the offense (for example a \$5,000 bond for all second degree felonies, as seen in the Tenth Judicial Circuit) or a specific amount agreed upon for a specific offense, as seen in the Sixth Judicial Circuit. *See* Tenth Judicial Circuit, In and For Hardee, Highlands, and Polk Counties, *Administrative Order IN RE: Uniform Bond Schedule*, available at <http://jud10.flcourts.org/sites/all/files/docs/2-49.8.pdf>; Wakulla Sheriff's Office, Corrections, *Bond Schedule*, available at <http://www.wcso.org/bond-schedule/>; Sixth Judicial Circuit, In and For Pasco and Pinellas Counties, *Administrative Order NO. 2009-021 PA-CIR, RE: Uniform Bond Schedule – Pasco County*, available at <http://www.jud6.org/LegalCommunity/LegalPractice/AOSAndRules/aos/aos2009/2009-021.htm> (last visited all sites January 22, 2018).

bond schedule, a judge has the discretion to impose a bond that is above or below such schedule if he or she deems it is necessary based upon the circumstances of the case.¹⁹

Pretrial Detention

If the court believes that there are no conditions of release that can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.²⁰

Section 907.041(4)(c), F.S., provides that a defendant may be detained pretrial if the court finds with substantial probability, based on a defendant's history, any of the following circumstances exist, including, in part:

- The defendant, with the intent to obstruct the judicial process, has threatened, intimidated, or injured any victim, potential witness, juror, or judicial officer, or has attempted or conspired to do so, and that no condition of release will reasonably prevent the obstruction of the judicial process;
- The defendant is charged with DUI manslaughter, as defined by s. 316.193, F.S., and that there is a substantial probability that the defendant committed the crime and that the defendant poses a threat of harm to the community, which can be supported by a finding that the defendant poses a threat of harm to the community based upon the presence of any of the following:
 - The defendant has previously been convicted of any crime under s. 316.193, F.S., or of any crime in any other state or territory of the United States that is substantially similar to any crime under s. 316.193, F.S.;
 - The defendant was driving with a suspended driver license when the charged crime was committed; or
 - The defendant has previously been found guilty of, or has had adjudication of guilt withheld for, driving while the defendant's driver license was suspended or revoked in violation of s. 322.34, F.S.; or
- The defendant was on probation, parole, or other release pending completion of sentence or on pretrial release for a dangerous crime at the time the current offense was committed.²¹

An arresting agency is required to notify the state attorney when a person is arrested for a crime for which pretrial detention could be ordered. The notification to the state attorney from the arresting agency must provide specified information related to the offense, evidence, and the defendant's criminal history and ties to the community.²² The arresting agency is authorized to detain such a defendant for up to 24 hours before the state attorney files a motion seeking pretrial

¹⁹ *Mehaffie v. Rutherford*, 143 So.3d 432 at 434 (Fla. 1st DCA 2014). Section 903.286, F.S., authorizes the clerk of the court is to withhold from the return of a cash bond posted on behalf of a criminal defendant sufficient funds to pay any unpaid costs of prosecution, costs of representation, court fees, court costs, and criminal penalties. If sufficient funds are not available to pay all unpaid costs associated with the criminal case, the clerk of the court must immediately obtain payment from the defendant or enroll the defendant in a payment plan. This section does not apply to the portion that is paid by a licensed bail bond agent.

²⁰ Rule 3.131(a), Fla. R. Crim. Pro.

²¹ Section 907.041(4)(g), F.S., provides that the state attorney has the burden of showing the need for pretrial detention.

²² Section 907.041(4)(d), F.S.

detention.²³ The pretrial detention hearing must be held within five days of the filing by the state attorney of a complaint to seek pretrial detention and the defendant may be detained pending the hearing. The defendant may request a continuance, but the continuance may not be more than five days unless there are extenuating circumstances. The state attorney is entitled to one continuance for good cause.²⁴

For the hearing to determine whether the defendant will be detained pretrial, the defendant is entitled to be represented by counsel, to present witnesses and evidence, and to cross-examine witnesses. The court may admit relevant evidence without complying with the rules of evidence, but evidence secured in violation of the Constitution is not be admissible. Any testimony provided by the defendant cannot be admitted to prove guilt at any other judicial proceeding, but such testimony may be admitted in an action for perjury, based upon the defendant's statements made at the pretrial detention hearing, or for impeachment.²⁵

The pretrial detention order of the court must be based solely upon evidence produced at the hearing and be justified by findings of fact and conclusions of law. The order must be made in writing or orally on the record within 24 hours of the pretrial detention hearing.²⁶

Violation of Pretrial Release Conditions

A defendant that does not comply with the terms of the pretrial release can have his or her bond forfeited if certain factors are proven.²⁷ Section 903.0471, F.S., authorizes the court to, on its own motion, revoke pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new crime while on pretrial release.²⁸

III. Effect of Proposed Changes:

Bail

The bill amends the purpose of bail provided for in s. 903.046, F.S., to apply to violent criminal defendants, rather than all criminal defendants. Thus, the purpose of bail is limited to ensuring the appearance in court of a violent criminal defendant and protecting the community against danger from the violent criminal defendant.

²³ Section 907.041(4)(e), F.S.

²⁴ Section 907.041(4)(f), F.S.

²⁵ Section 907.041(4)(h), F.S.

²⁶ Section 907.041(4)(i), F.S.

²⁷ See s. 903.26, F.S. Rule 3.131(c)(1), Fla. R. Crim. Pro., further provides that a defendant who willfully fails to appear and breaches a bond is not eligible for recognizance bond. Rule 3.131(c)(2), Fla. R. Crim. Pro., provides that if the defendant fails to appear and is arrested, he or she is not eligible for a recognizance bond or any form of bond that does not require a monetary undertaking or commitment equal to or greater than \$2,000 or twice the value of the monetary commitment or undertaking of the original bond, whichever is greater. Also, s. 903.046(2)(d), F.S., provides that any defendant that has failed to appear on the day of any required court proceeding in the case at issue, but who had later voluntarily appeared or surrendered, is not eligible for a recognizance bond; and any defendant who failed to appear on the day of any required court proceeding in the case at issue and who was later arrested is not eligible for a recognizance bond or for any form of bond which does not require a monetary undertaking or commitment equal to or greater than \$2,000 or twice the value of the monetary commitment or undertaking of the original bond, whichever is greater. But, the court has discretion in determining conditions of release if the defendant proves circumstances beyond his or her control for the failure to appear.

²⁸ This discretion is provided regardless of the conditions for granting pretrial release provided for in s. 907.041, F.S.

The bill adds language in s. 903.046, F.S., providing that there is a presumption that an individual arrested for a nonviolent misdemeanor must be released on nonmonetary conditions pending trial. For this section of the bill, a nonviolent misdemeanor is defined to exclude assault as defined in s. 784.011, F.S.

Pretrial Release Conditions

Currently, s. 907.041, F.S., provides a presumption in favor of release on nonmonetary conditions for persons who are granted pretrial release unless the person is charged with a dangerous crime. The bill provides that it is the intent of the Legislature that persons arrested for a nonviolent misdemeanor who do not pose a threat to the safety of the community must be released on nonmonetary conditions while awaiting trial. Thus, s. 907.041, F.S., no longer contains a presumption of release on nonmonetary conditions for any person granted pretrial release.

The bill does not define a nonviolent misdemeanor offense in s. 907.041, F.S.

Pretrial Detention

The bill amends s. 907.041(4)(c), F.S., deleting several of the above-described circumstances that the court can find when making a pretrial detention determination. Specifically, a court can consider certain conditions for a defendant who is charged with driving under the influence manslaughter when determining if he or she poses a threat of harm to the community. The bill removes the following conditions, including that the defendant:

- Was driving with a suspended driver license when the charged crime was committed; and
- Has previously been found guilty of, or has had adjudication of guilt withheld for, driving while the defendant's driver license was suspended or revoked in violation of s. 322.34, F.S.

Violation of Pretrial Release Conditions

The bill amends s. 903.0471, F.S., limiting the court's authority to revoke a defendant's bond or pretrial release conditions to only if the court finds probable cause that he or she committed a new violent or dangerous crime while on pretrial release, rather than the probable cause that he or she committed any new offense.

Legislative Findings Supporting Pretrial Release

The legislative intent language found in s. 907.041, F.S., is amended to provide that a defendant who commits a nonviolent misdemeanor offense and who does not pose a risk of threat to the community must be released until adjudication is determined.

The bill also amends the legislative intent language providing that the primary consideration for detaining a defendant is whether the individual presents risk of physical harm to persons.

The bill amends s. 790.065, F.S., correcting cross-reference changes made by the act.

The bill is effective 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:

None.

C. Government Sector Impact:

The bill creates a presumption that a person charged with nonviolent misdemeanors is to be released on nonmonetary conditions while awaiting trial. To the extent that this results in more defendants being released that are currently unable to be released from custody pretrial, the bill may result in a positive jail bed impact (i.e. a reduction in the number of jail bed used) and a positive fiscal impact on sheriff's offices who do not have to pay the per diem for such defendants.

Additionally, the bill removes two conditions related to driving offenses that the court can use to make a finding of danger to the community for pretrial detention. To the extent this results in fewer defendants being detained pretrial, the bill will likely result in a positive jail bed impact (i.e. a reduction in the number of jail bed used) and a positive fiscal impact on sheriff's offices who do not have to pay the per diem for such defendants.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 903.046, 903.0471, 907.041, and 790.065.

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

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

None.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/29/2018	.	
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The Committee on Criminal Justice (Bracy) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present subsection (2) of section 903.046 is
redesignated as subsection (3), and a new subsection (2) is
added to that section, to read:

903.046 Purpose of, presumption in, and criteria for bail
determination.—

(2) There is a presumption that an individual arrested for



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committing a nonviolent misdemeanor crime shall be released on nonmonetary conditions while he or she awaits trial. As used in this section, the term "nonviolent misdemeanor" means any misdemeanor offense other than battery, assault, or stalking.

Section 2. Section 903.0471, Florida Statutes, is amended to read:

903.0471 Violation of condition of pretrial release.—

~~Notwithstanding s. 907.041,~~ A court may, on its own motion, revoke pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new dangerous crime, as defined in s. 907.041, while on pretrial release.

Section 3. Paragraph (a) of subsection (3), paragraphs (b) and (c) of subsection (4) of section 907.041, Florida Statutes, is amended to read:

907.041 Pretrial detention and release.—

(3) RELEASE ON NONMONETARY CONDITIONS.—

(a)1. It is the intent of the Legislature to create a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release unless such person is charged with a dangerous crime as defined in subsection (4). Such person shall be released on monetary conditions if it is determined that such monetary conditions are necessary to assure the presence of the person at trial or at other proceedings, to protect the community from risk of physical harm to persons, to assure the presence of the accused at trial, or to assure the integrity of the judicial process.

2. It is the intent of the Legislature that a person arrested for a nonviolent misdemeanor who is determined to not



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pose a threat to the safety of the community shall be released on nonmonetary conditions until adjudication has been determined. For purposes of this section, a "nonviolent misdemeanor" means any misdemeanor offense other than battery, assault, or stalking.

(4) PRETRIAL DETENTION.—

(b) A ~~No~~ person charged with a dangerous crime may not ~~shall~~ be granted nonmonetary pretrial release at a first appearance hearing; however, the court may release ~~shall retain the discretion to release~~ an accused person on electronic monitoring or on recognizance bond if the findings on the record of facts and circumstances warrant such a release.

(c) The court may order pretrial detention if it finds a substantial probability, based on a defendant's past and present patterns of behavior, the criteria in s. 903.046, and any other relevant facts, that any of the following circumstances exist:

1. The defendant has previously violated conditions of release and that no further conditions of release are reasonably likely to assure the defendant's appearance at subsequent proceedings;

2. The defendant, with the intent to obstruct the judicial process, has threatened, intimidated, or injured any victim, potential witness, juror, or judicial officer, or has attempted or conspired to do so, and that no condition of release will reasonably prevent the obstruction of the judicial process;

3. The defendant is charged with trafficking in controlled substances as defined by s. 893.135, that there is a substantial probability that the defendant has committed the offense, and that no conditions of release will reasonably assure the



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defendant's appearance at subsequent criminal proceedings;

4. The defendant is charged with DUI manslaughter, as defined by s. 316.193, and that there is a substantial probability that the defendant committed the crime and that the defendant poses a threat of harm to the community; a condition ~~conditions~~ that would support a finding by the court pursuant to this subparagraph that the defendant poses a threat of harm to the community is if ~~include, but are not limited to, any of the following:~~

~~a. the defendant has previously been convicted of any crime under s. 316.193, or of any crime in any other state or territory of the United States that is substantially similar to any crime under s. 316.193.~~

~~b. The defendant was driving with a suspended driver license when the charged crime was committed; or~~

~~c. The defendant has previously been found guilty of, or has had adjudication of guilt withheld for, driving while the defendant's driver license was suspended or revoked in violation of s. 322.34;~~

5. The defendant poses the threat of harm to the community. The court may so conclude, if it finds that the defendant is presently charged with a dangerous crime as defined in paragraph (b), that there is a substantial probability that the defendant committed such crime, that the factual circumstances of the crime indicate a disregard for the safety of the community, and that there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons;

6. The defendant was on probation, parole, or other release pending completion of sentence or on pretrial release for a



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dangerous crime at the time the current offense was committed;

7. The defendant has violated one or more conditions of pretrial release or bond for the offense currently before the court and the violation, in the discretion of the court, supports a finding that no conditions of release can reasonably protect the community from risk of physical harm to persons or assure the presence of the accused at trial; or

8.a. The defendant has ever been sentenced pursuant to s. 775.082(9) or s. 775.084 as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal, or the state attorney files a notice seeking that the defendant be sentenced pursuant to s. 775.082(9) or s. 775.084, as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal;

b. There is a substantial probability that the defendant committed the offense; and

c. There are no conditions of release that can reasonably protect the community from risk of physical harm or ensure the presence of the accused at trial.

Section 4. Section 907.042, Florida Statutes, is created to read:

907.042 Supervised bond program.-

(1) LEGISLATIVE FINDINGS.-The Legislature finds that there is a need to use evidence-based methods to identify defendants that can successfully comply with specified pretrial release conditions. The Legislature finds that the use of actuarial instruments that evaluate criminogenic based needs and classify defendants according to levels of risk provides a more



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127 consistent and accurate assessment of a defendant's risk of
128 noncompliance while on pretrial release pending trial. The
129 Legislature also finds that both the community and a defendant
130 are better served when a defendant, who poses a low risk to
131 society, is provided the opportunity to fulfill employment and
132 familial responsibilities in the community under a structured
133 pretrial release plan that ensures the best chance of remaining
134 compliant with all pretrial conditions rather than remaining in
135 custody. The Legislature finds that there is a need to establish
136 a supervised bond program in each county for the purpose of
137 providing pretrial release to certain defendants who may not
138 otherwise be eligible for pretrial release on unsupervised
139 nonmonetary conditions and who do not have the ability to
140 satisfy the bond imposed by the court. The Legislature finds
141 that the creation of such a program will reduce the likelihood
142 of persons remaining unnecessarily in custody pending trial.

143 (2) CREATION.—A supervised bond program shall be
144 established in each county by March 1, 2019, with the terms of
145 each program to be developed with concurrence of the chief judge
146 of the circuit, the chief county correctional officer, the state
147 attorney, and the public defender.

148 (3) EXCEPTION.—

149 (a) Counties or municipalities which have already adopted a
150 supervised bond program that meets the requirements contained in
151 this section, or have chosen to opt out of this section in the
152 manner provided herein, are exempt from the requirement to
153 establish such a program.

154 (b) The governing body of a fiscally constrained county as
155 defined in this section may elect to opt out of the requirements



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of this section, by a 60 percent vote of the voting members of the governing board, notwithstanding a contrary decision of the governing body of a county. Any local government that has properly opted out of this section but subsequently chooses to establish a supervised bond program may do so only pursuant to the requirements of this section and may not deviate from such requirements.

(c) For purposes of this section, the term "fiscally constrained county" means a county within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656 or each county for which the value of a mill will raise no more than \$5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., from the previous July 1.

(4) PROGRAM REQUIREMENTS.—A supervised bond program, at a minimum, shall:

(a) Require the county's chief correctional officer to administer the supervised bond program.

(b) Require the county's chief correctional officer, or his or her designate, to administer the risk assessment instrument to a potential defendant.

(c) Utilize a risk assessment instrument to determine eligible defendants and determine an appropriate level of supervision for each defendant upon release.

(d) Provide for the reduction of the court-ordered bond, up to its entirety, upon the court's verification that a risk assessment instrument has been administered and, as a result of such assessment, the chief county correctional officer is prepared to accept the defendant into the supervised bond



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program.

(e) Provide that the findings of the risk assessment instrument will be used to create an individualized supervision plan for each defendant that is tailored to the defendant's risk level and needs.

(f) Require, as part of the individualized supervision plan, any defendant released in the supervised bond program to be placed on active electronic monitoring or active continuous alcohol monitoring, or both, dependent upon the level of risk indicated by the risk assessment instrument.

(g) Require weekly communication between the office of the chief county correctional officer and the defendant as part of the individualized supervision plan, which can be satisfied via telephone or in person contact, dependent upon the level of risk indicated by the risk assessment instrument.

(h) Establish procedures for addressing defendants who do not comply with the terms of the individualized supervision plan imposed through the supervised bond program.

(5) RISK ASSESSMENT INSTRUMENT.—

(a) The risk assessment instrument must consider, but need not be limited to, the following criteria:

1. The nature and circumstances of the offense the defendant is alleged to have committed.

2. The nature and extent of the defendant's prior criminal history, if any.

3. Any prior history of the defendant failing to appear in court.

4. The defendant's employment history, employability skills, and employment interests.



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5. The defendant's educational, vocational, and technical training.

6. The defendant's background, including his or her family, home, and community environment.

7. The defendant's physical and mental health history, including any substance use.

8. An evaluation of the defendant's criminal thinking, criminal associates, and social awareness.

(b) A county must use an independently validated risk assessment instrument that contains the criteria enumerated in paragraph (a).

(6) REPORTING.—Each county shall provide an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1 of each year which details the results of the administration of the risk assessment instrument, programming used for defendants who received the assessment and were accepted into the supervised bond program, the success rate of such program, and savings realized by each county as a result of such defendants being released from custody pending trial. The first report shall be submitted no later than October 1, 2020.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to pretrial release; amending s.
903.046, F.S.; creating a presumption that individuals



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arrested for allegedly committing nonviolent misdemeanors be released on nonmonetary conditions; defining the term "nonviolent misdemeanor"; amending s. 903.0471, F.S.; authorizing a court to revoke pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new dangerous crime while on pretrial release; amending s. 907.041, F.S.; providing that it is the intent of the Legislature that individuals arrested for allegedly committing nonviolent misdemeanors be released on nonmonetary conditions; defining the term "nonviolent misdemeanor"; making technical changes; deleting conditions that the court may use to determine that a defendant charged with DUI manslaughter poses a threat to the community; creating s. 907.042, F.S.; providing legislative findings; creating a supervised bond release program in each county; establishing the program with the concurrence of the chief judge, chief county correctional officer, state attorney, and public defender; providing exceptions for county establishing a program; authorizing a fiscally constrained county to the opt out of establishing a program; defining "fiscally constrained county"; providing specified program components; providing guidelines for the risk assessment instrument; requiring each county to submit a report annually by a certain date to the Governor, President of the Senate, and Speaker of the House of Representatives; providing



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reporting requirements; providing an effective date.



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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/29/2018	.	
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The Committee on Criminal Justice (Bracy) recommended the following:

Senate Amendment to Amendment (648186)

Delete lines 90 - 142
and insert:
presently charged with a dangerous crime, that there is a
substantial probability that the defendant committed such crime,
that the factual circumstances of the crime indicate a disregard
for the safety of the community, and that there are no
conditions of release reasonably sufficient to protect the
community from the risk of physical harm to persons;



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6. The defendant was on probation, parole, or other release pending completion of sentence or on pretrial release for a dangerous crime at the time the current offense was committed;

7. The defendant has violated one or more conditions of pretrial release or bond for the offense currently before the court and the violation, in the discretion of the court, supports a finding that no conditions of release can reasonably protect the community from risk of physical harm to persons or assure the presence of the accused at trial; or

8.a. The defendant has ever been sentenced pursuant to s. 775.082(9) or s. 775.084 as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal, or the state attorney files a notice seeking that the defendant be sentenced pursuant to s. 775.082(9) or s. 775.084, as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal;

b. There is a substantial probability that the defendant committed the offense; and

c. There are no conditions of release that can reasonably protect the community from risk of physical harm or ensure the presence of the accused at trial.

Section 4. Section 907.042, Florida Statutes, is created to read:

907.042 Supervised bond program.-

(1) LEGISLATIVE FINDINGS.-The Legislature finds that there is a need to use evidence-based methods to identify defendants that can successfully comply with specified pretrial release conditions. The Legislature finds that the use of actuarial



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40 instruments that evaluate criminogenic based needs and classify
41 defendants according to levels of risk provides a more
42 consistent and accurate assessment of a defendant's risk of
43 noncompliance while on pretrial release pending trial. The
44 Legislature also finds that both the community and a defendant
45 are better served when a defendant, who poses a low risk to
46 society, is provided the opportunity to fulfill employment and
47 familial responsibilities in the community under a structured
48 pretrial release plan that ensures the best chance of remaining
49 compliant with all pretrial conditions rather than remaining in
50 custody. The Legislature finds that there is a need to establish
51 a supervised bond program in each county for the purpose of
52 providing pretrial release to certain defendants who may not
53 otherwise be eligible for pretrial release on unsupervised
54 nonmonetary conditions and who do not have the ability to
55 satisfy the bond imposed by the court. The Legislature finds
56 that the creation of such a program will reduce the likelihood
57 of defendants remaining unnecessarily in custody pending trial.

By Senator Bracy

11-01367-18

20181490__

1 A bill to be entitled
 2 An act relating to determining bail; amending s.
 3 903.046, F.S.; revising the purpose of a bail
 4 determination; creating a presumption that individuals
 5 arrested for allegedly committing nonviolent
 6 misdemeanors be released on nonmonetary conditions or
 7 nonmonetary restrictions; defining the term
 8 "nonviolent misdemeanor"; restricting the
 9 determinations a court must consider for bail or other
 10 conditions for persons committing crimes other than
 11 nonviolent misdemeanor offenses; amending s. 903.0471,
 12 F.S.; authorizing a court to revoke pretrial release
 13 and order pretrial detention if the court finds
 14 probable cause to believe that the defendant committed
 15 a new violent crime or a new dangerous crime while on
 16 pretrial release; amending s. 907.041, F.S.; revising
 17 legislative intent; making technical changes; amending
 18 s. 790.065, F.S.; conforming a cross-reference;
 19 providing an effective date.
 20
 21 Be It Enacted by the Legislature of the State of Florida:
 22
 23 Section 1. Section 903.046, Florida Statutes, is amended to
 24 read:
 25 903.046 Purpose of, presumption in, and criteria for bail
 26 determination.—
 27 (1) The purpose of a bail determination in criminal
 28 proceedings is to ensure the appearance of a violent ~~the~~
 29 criminal defendant at subsequent proceedings and to protect the

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

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30 community against ~~unreasonable~~ danger from the violent criminal
 31 defendant.
 32 (2) There is a presumption that an individual arrested for
 33 allegedly committing a nonviolent misdemeanor crime will be
 34 released on nonmonetary conditions or nonmonetary restrictions
 35 while he or she awaits trial. As used in this subsection, the
 36 term "nonviolent misdemeanor" excludes assault as defined in s.
 37 784.011.
 38 (3)(2) For an individual who is alleged to have committed a
 39 crime not included in subsection (2), when determining whether
 40 to release a defendant on bail or other conditions, and what
 41 that bail or those conditions may be, the court shall consider:
 42 (a) The nature and circumstances of the offense charged.
 43 (b) The weight of the evidence against the defendant.
 44 (c) The defendant's family ties, length of residence in the
 45 community, employment history, financial resources, and mental
 46 condition.
 47 (d) The defendant's past and present conduct, including any
 48 record of convictions, previous flight to avoid prosecution, or
 49 failure to appear at court proceedings. However, any defendant
 50 who had failed to appear on the day of any required court
 51 proceeding in the case at issue, but who had later voluntarily
 52 appeared or surrendered, shall not be eligible for a
 53 recognizance bond; and any defendant who failed to appear on the
 54 day of any required court proceeding in the case at issue and
 55 who was later arrested shall not be eligible for a recognizance
 56 bond or for any form of bond which does not require a monetary
 57 undertaking or commitment equal to or greater than \$2,000 or
 58 twice the value of the monetary commitment or undertaking of the

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

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original bond, whichever is greater. Notwithstanding anything in this section, the court has discretion in determining conditions of release if the defendant proves circumstances beyond his or her control for the failure to appear. This section may not be construed as imposing additional duties or obligations on a governmental entity related to monetary bonds.

(e) The nature and probability of danger which the defendant's release poses to the community.

(f) The source of funds used to post bail or procure an appearance bond, particularly whether the proffered funds, real property, property, or any proposed collateral or bond premium may be linked to or derived from the crime alleged to have been committed or from any other criminal or illicit activities. The burden of establishing the noninvolvement in or nonderivation from criminal or other illicit activity of such proffered funds, real property, property, or any proposed collateral or bond premium falls upon the defendant or other person proffering them to obtain the defendant's release.

(g) Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence.

(h) The street value of any drug or controlled substance connected to or involved in the criminal charge. It is the finding and intent of the Legislature that crimes involving drugs and other controlled substances are of serious social concern, that the flight of defendants to avoid prosecution is of similar serious social concern, and that frequently such defendants are able to post monetary bail using the proceeds of their unlawful enterprises to defeat the social utility of

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pretrial bail. Therefore, the courts should carefully consider the utility and necessity of substantial bail in relation to the street value of the drugs or controlled substances involved.

(i) The nature and probability of intimidation and danger to victims.

(j) Whether there is probable cause to believe that the defendant committed a new crime while on pretrial release.

(k) Any other facts that the court considers relevant.

(l) Whether the crime charged is a violation of chapter 874 or alleged to be subject to enhanced punishment under chapter 874 or reclassification under s. 843.22. If any such violation is charged against a defendant or if the defendant is charged with a crime that is alleged to be subject to such enhancement or reclassification, he or she is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

(m) Whether the defendant, other than a defendant whose only criminal charge is a misdemeanor offense under chapter 316, is required to register as a sexual offender under s. 943.0435 or a sexual predator under s. 775.21; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

Section 2. Section 903.0471, Florida Statutes, is amended to read:

903.0471 Violation of condition of pretrial release.—
~~Notwithstanding s. 907.041,~~ A court may, on its own motion, revoke pretrial release and order pretrial detention if the

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117 court finds probable cause to believe that the defendant
 118 committed a new violent crime or a new dangerous crime, as
 119 defined in s. 907.041, while on pretrial release.

120 Section 3. Subsection (1), paragraph (a) of subsection (3),
 121 and paragraphs (a), (b), and (c) of subsection (4) of section
 122 907.041, Florida Statutes, are amended to read:

123 907.041 Pretrial detention and release.—

124 (1) LEGISLATIVE INTENT.—It is the policy of this state that
 125 persons committing violent or serious criminal offenses, posing
 126 a threat to the safety of the community or the integrity of the
 127 judicial process, or failing to appear at trial be detained upon
 128 arrest. However, persons committing nonviolent misdemeanor
 129 offenses and not posing a threat to the safety of the community
 130 found to meet specified criteria shall be released under certain
 131 conditions until proceedings are concluded and adjudication has
 132 been determined. The Legislature finds that this policy of
 133 pretrial detention and release will assure the detention of
 134 those persons posing a threat to society while reducing the
 135 costs for incarceration by releasing, until trial, those persons
 136 not considered a danger to the community who meet certain
 137 criteria. It is the intent of the Legislature that the primary
 138 consideration for detaining an individual is whether the
 139 individual presents a ~~be the protection of the community from~~
 140 risk of physical harm to persons.

141 (3) RELEASE ON NONMONETARY CONDITIONS.—

142 (a) It is the intent of the Legislature that individuals
 143 arrested for nonviolent misdemeanors who do not pose a threat to
 144 the safety of the community shall be released to create a
 145 presumption in favor of release on nonmonetary conditions while

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146 ~~they await trial for any person who is granted pretrial release~~
 147 ~~unless such person is charged with a dangerous crime as defined~~
 148 ~~in subsection (4). Such person shall be released on monetary~~
 149 ~~conditions if it is determined that such monetary conditions are~~
 150 ~~necessary to assure the presence of the person at trial or at~~
 151 ~~other proceedings, to protect the community from risk of~~
 152 ~~physical harm to persons, to assure the presence of the accused~~
 153 ~~at trial, or to assure the integrity of the judicial process.~~

154 (4) PRETRIAL DETENTION.—

155 (a) A person charged with a dangerous crime, as defined in
 156 paragraph (b), may not be granted pretrial release at a first
 157 appearance hearing; however, the court may release the accused
 158 person on electronic monitoring or on recognizance bond if the
 159 findings on the record of facts and circumstances warrant such a
 160 release.

161 (b) As used in this subsection, "dangerous crime" means any
 162 of the following:

- 163 1. Arson;
- 164 2. Aggravated assault;
- 165 3. Aggravated battery;
- 166 4. Illegal use of explosives;
- 167 5. Child abuse or aggravated child abuse;
- 168 6. Abuse of an elderly person or disabled adult, or
- 169 aggravated abuse of an elderly person or disabled adult;
- 170 7. Aircraft piracy;
- 171 8. Kidnapping;
- 172 9. Homicide;
- 173 10. Manslaughter;
- 174 11. Sexual battery;

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- 175 12. Robbery;
- 176 13. Carjacking;
- 177 14. Lewd, lascivious, or indecent assault or act upon or in
- 178 presence of a child under the age of 16 years;
- 179 15. Sexual activity with a child, who is 12 years of age or
- 180 older but less than 18 years of age, by or at solicitation of
- 181 person in familial or custodial authority;
- 182 16. Burglary of a dwelling;
- 183 17. Stalking and aggravated stalking;
- 184 18. Act of domestic violence as defined in s. 741.28;
- 185 19. Home invasion robbery;
- 186 20. Act of terrorism as defined in s. 775.30;
- 187 21. Manufacturing any substances in violation of chapter
- 188 893;
- 189 22. Attempting or conspiring to commit any such crime; and
- 190 23. Human trafficking.
- 191 ~~(b) No person charged with a dangerous crime shall be~~
- 192 ~~granted nonmonetary pretrial release at a first appearance~~
- 193 ~~hearing; however, the court shall retain the discretion to~~
- 194 ~~release an accused on electronic monitoring or on recognizance~~
- 195 ~~bond if the findings on the record of facts and circumstances~~
- 196 ~~warrant such a release.~~
- 197 (c) The court may order pretrial detention if it finds a
- 198 substantial probability, based on a defendant's past and present
- 199 patterns of behavior, the criteria in s. 903.046, and any other
- 200 relevant facts, that any of the following circumstances exist:
- 201 1. The defendant has previously violated conditions of
- 202 release and that no further conditions of release are reasonably
- 203 likely to assure the defendant's appearance at subsequent

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- 204 proceedings;
- 205 2. The defendant, with the intent to obstruct the judicial
- 206 process, has threatened, intimidated, or injured any victim,
- 207 potential witness, juror, or judicial officer, or has attempted
- 208 or conspired to do so, and that no condition of release will
- 209 reasonably prevent the obstruction of the judicial process;
- 210 3. The defendant is charged with trafficking in controlled
- 211 substances as defined by s. 893.135, that there is a substantial
- 212 probability that the defendant has committed the offense, and
- 213 that no conditions of release will reasonably assure the
- 214 defendant's appearance at subsequent criminal proceedings;
- 215 4. The defendant is charged with DUI manslaughter, as
- 216 defined by s. 316.193, and that there is a substantial
- 217 probability that the defendant committed the crime and that the
- 218 defendant poses a threat of harm to the community; a condition
- 219 ~~conditions~~ that would support a finding by the court pursuant to
- 220 this subparagraph that the defendant poses a threat of harm to
- 221 the community is if include, but are not limited to, any of the
- 222 following:
- 223 a. the defendant has previously been convicted of any crime
- 224 under s. 316.193, or of any crime in any other state or
- 225 territory of the United States that is substantially similar to
- 226 any crime under s. 316.193;
- 227 ~~b. The defendant was driving with a suspended driver~~
- 228 ~~license when the charged crime was committed; or~~
- 229 ~~c. The defendant has previously been found guilty of, or~~
- 230 ~~has had adjudication of guilt withheld for, driving while the~~
- 231 ~~defendant's driver license was suspended or revoked in violation~~
- 232 ~~of s. 322.34;~~

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233 5. The defendant poses the threat of harm to the community.
 234 The court may so conclude, if it finds that the defendant is
 235 presently charged with a dangerous crime as defined in paragraph
 236 (b), that there is a substantial probability that the defendant
 237 committed such crime, that the factual circumstances of the
 238 crime indicate a disregard for the safety of the community, and
 239 that there are no conditions of release reasonably sufficient to
 240 protect the community from the risk of physical harm to persons;

241 6. The defendant was on probation, parole, or other release
 242 pending completion of sentence or on pretrial release for a
 243 dangerous crime at the time the current offense was committed;

244 7. The defendant has violated one or more conditions of
 245 pretrial release or bond for the offense currently before the
 246 court and the violation, in the discretion of the court,
 247 supports a finding that no conditions of release can reasonably
 248 protect the community from risk of physical harm to persons or
 249 assure the presence of the accused at trial; or

250 8.a. The defendant has ever been sentenced pursuant to s.
 251 775.082(9) or s. 775.084 as a prison releasee reoffender,
 252 habitual violent felony offender, three-time violent felony
 253 offender, or violent career criminal, or the state attorney
 254 files a notice seeking that the defendant be sentenced pursuant
 255 to s. 775.082(9) or s. 775.084, as a prison releasee reoffender,
 256 habitual violent felony offender, three-time violent felony
 257 offender, or violent career criminal;

258 b. There is a substantial probability that the defendant
 259 committed the offense; and

260 c. There are no conditions of release that can reasonably
 261 protect the community from risk of physical harm or ensure the

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262 presence of the accused at trial.

263 Section 4. Paragraph (c) of subsection (2) of section
 264 790.065, Florida Statutes, is amended to read:

265 790.065 Sale and delivery of firearms.—

266 (2) Upon receipt of a request for a criminal history record
 267 check, the Department of Law Enforcement shall, during the
 268 licensee's call or by return call, forthwith:

269 (c)1. Review any records available to it to determine
 270 whether the potential buyer or transferee has been indicted or
 271 has had an information filed against her or him for an offense
 272 that is a felony under either state or federal law, or, as
 273 mandated by federal law, has had an injunction for protection
 274 against domestic violence entered against the potential buyer or
 275 transferee under s. 741.30, has had an injunction for protection
 276 against repeat violence entered against the potential buyer or
 277 transferee under s. 784.046, or has been arrested for a
 278 dangerous crime as specified in s. 907.041(4)(b) ~~or~~
 279 ~~907.041(4)(a)~~ or for any of the following enumerated offenses:

280 a. Criminal anarchy under ss. 876.01 and 876.02.

281 b. Extortion under s. 836.05.

282 c. Explosives violations under s. 552.22(1) and (2).

283 d. Controlled substances violations under chapter 893.

284 e. Resisting an officer with violence under s. 843.01.

285 f. Weapons and firearms violations under this chapter.

286 g. Treason under s. 876.32.

287 h. Assisting self-murder under s. 782.08.

288 i. Sabotage under s. 876.38.

289 j. Stalking or aggravated stalking under s. 784.048.

290

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291 If the review indicates any such indictment, information, or
292 arrest, the department shall provide to the licensee a
293 conditional nonapproval number.

294 2. Within 24 working hours, the department shall determine
295 the disposition of the indictment, information, or arrest and
296 inform the licensee as to whether the potential buyer is
297 prohibited from receiving or possessing a firearm. For purposes
298 of this paragraph, "working hours" means the hours from 8 a.m.
299 to 5 p.m. Monday through Friday, excluding legal holidays.

300 3. The office of the clerk of court, at no charge to the
301 department, shall respond to any department request for data on
302 the disposition of the indictment, information, or arrest as
303 soon as possible, but in no event later than 8 working hours.

304 4. The department shall determine as quickly as possible
305 within the allotted time period whether the potential buyer is
306 prohibited from receiving or possessing a firearm.

307 5. If the potential buyer is not so prohibited, or if the
308 department cannot determine the disposition information within
309 the allotted time period, the department shall provide the
310 licensee with a conditional approval number.

311 6. If the buyer is so prohibited, the conditional
312 nonapproval number shall become a nonapproval number.

313 7. The department shall continue its attempts to obtain the
314 disposition information and may retain a record of all approval
315 numbers granted without sufficient disposition information. If
316 the department later obtains disposition information which
317 indicates:

318 a. That the potential buyer is not prohibited from owning a
319 firearm, it shall treat the record of the transaction in

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320 accordance with this section; or

321 b. That the potential buyer is prohibited from owning a
322 firearm, it shall immediately revoke the conditional approval
323 number and notify local law enforcement.

324 8. During the time that disposition of the indictment,
325 information, or arrest is pending and until the department is
326 notified by the potential buyer that there has been a final
327 disposition of the indictment, information, or arrest, the
328 conditional nonapproval number shall remain in effect.

329 Section 5. This act shall take effect July 1, 2018.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/18

Meeting Date

1490

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name JEFF KORTKAMP

Job Title _____

Address _____

Phone _____

Street

TALLEHASSEE

City

FL

State

Zip

Email JEFFKORTKAMP@GMAIL.COM

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FINANCIAL CASUALTY & SURETY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/2018

Meeting Date

1490

Bill Number (if applicable)

Topic Bail Reform

Amendment Barcode (if applicable)

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

Street

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

City

State

Zip

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Southern Poverty Law Center

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/18

Meeting Date

1490

Bill Number (if applicable)

Topic Bail

Amendment Barcode (if applicable)

Name MARCUS DIXON

Job Title POLITICAL DIRECTOR

Address 2881 Corporate Way

Street

Miramar

City

FL

State

33025

Zip

Phone (305) 720-1627

Email Marcus.Dixon@seinflog

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing SEIU Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/18
Meeting Date

1490
Bill Number (if applicable)

Topic Determining Bail / Criminal Justice Amendment Barcode (if applicable)

Name Matthew Jones

Job Title President

Address 312 May St
Street

Phone 239-896-2811

Punta Gorda FL 33950
City State Zip

Email _____

Speaking: ☐ For ☒ Against ☒ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Florida Bail Agents Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name

Job Title

Address

Street

City

State

Zip

Phone

Email

Speaking:

☐

For

☐

Against

☒

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-29-18
Meeting Date

1490
Bill Number (if applicable)

Topic Criminal Justice Reform

Amendment Barcode (if applicable)

Name Rolando Betancourt

Job Title International Recovery Agent

Address 7035 NW 41 ST
Street

Phone 305 325 8011

Miami FL 33166
City State Zip

Email rolandob@usa.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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1.29.18

Meeting Date

1490

Bill Number (if applicable)

Topic Determining Bail

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

Email Barney@BarneyBishop.com

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

APPEARANCE RECORD

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1490

SB 0210

1-29-18

Meeting Date

Bill Number (if applicable)

Determining Bail / Risk Assessment
Pretrial Release

Topic

Amendment Barcode (if applicable)

Name

Ken Berke

Job Title

Vice President

Address

Street

4107 North Himes Ave

Phone

813-623-5042

City

Tampa FL

State

Zip

33607

Email

Ken@rochesurety.com

Speaking:

☐

For

☒

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Roche Surety & Casualty Co Inc

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☒

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/18
Meeting Date

1490
Bill Number (if applicable)

Topic Determining Bail

Amendment Barcode (if applicable)

Name Shawn Foster

Job Title Lobbyist

Address 5957 Riviera Lane
Street

Phone 727-808-4131

New Port Richy, FL 34653
City State Zip

Email fostorasigroup.us

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Florida Bail Agents Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/18

Meeting Date

1490

Bill Number (if applicable)

Topic Determining Bail

Amendment Barcode (if applicable)

Name Andy Thomas

Job Title Public Defender, 2nd Circuit

Address 301 N. Monroe St., Ste 401

Phone (850) 606-1014

Street

Tallahassee

City

FL

State

32301

Zip

Email andy.thomas@fpd2.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Fla. Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-29-2018

Meeting Date

SB-1490

Bill Number (if applicable)

Topic Determining Bail

Amendment Barcode (if applicable)

Name Alan Lassiter

Job Title Bail Bond Agent

Address PO Box 1637

Phone 863-287-7095

Street

Winter Haven

State

FL

Zip

33882

Email alanbailpi@gmail.com

Speaking: ☐ For ☒ Against ☐ Information
NA

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-29-15

Meeting Date

SB-1490-1490

Bill Number (if applicable)

Topic Defeating Bail

Amendment Barcode (if applicable)

Name Ann Teague

Job Title Retired

Address 6969 Ln Loma Ave

Phone 904-910-9230

Street

Jax

City

FL

State

32217

Zip

Email Bd.Hady32202@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/29/18

Meeting Date

SB 1490 (2018)

Bill Number (if applicable)

Topic determining bail

Amendment Barcode (if applicable)

Name Jervilyn Rodriguez

Job Title Surety Agent

Address 125 N Market

Phone 904 380-1145

Street

Jacksonville

FL

32202

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 1780

INTRODUCER: Criminal Justice Committee and Senator Rouson

SUBJECT: Victims of Reform School Abuse

DATE: January 30, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1780 creates the “Arthur G. Dozier School and Okeechobee School Abuse Victim Certification Act.”

The bill creates the act in recognition of the abuse that took place at the Arthur G. Dozier School and the Florida School for Boys at Okeechobee.

The bill defines the term “victim of Florida reform school abuse” as it is used under the act. The bill requires a person seeking to be certified as a victim of Florida reform school abuse to submit an application to the Department of Juvenile Justice (DJJ) by October 1, 2018.

The bill requires the DJJ to notify the applicant of its determination within five business days after processing and reviewing the application. If the DJJ determines that an application meets the requirements of the act, the DJJ must certify the applicant as a victim of Florida reform school abuse.

The bill requires the DJJ to process and review all applications that were submitted by October 1, 2018, and submit a list of all certified victims to the President of the Senate and the Speaker of the House of Representatives by March 1, 2019.

This act is effective upon becoming law.

II. Present Situation:

The Dozier School

From January 1, 1900, to June 30, 2011, the state operated the Florida State Reform School in Marianna.¹ Over the years, the school has operated under several different names: Florida State Reform School, Florida Industrial School for Boys, Florida School for Boys, and Arthur G. Dozier School for Boys (hereinafter, Dozier School). The school originally housed children as young as five years old, who had committed minor criminal offenses, such as incorrigibility and truancy. Additionally, many children who were wards of the state and orphans were also committed to the school, despite not having been charged with a crime.²

As early as 1901, reports surfaced of children being chained to walls in irons, brutal whippings, and peonage (involuntary servitude).³ In the first 13 years of operation, six state-led investigations took place. Those investigations found that children as young as five years old were being hired out for labor, unjustly beaten, and were without education or proper food and clothing.⁴

In 1955, the state opened a new reform school in Okeechobee to address overcrowding at the Dozier School.⁵ Staff members of the Dozier School were transferred to the Florida School for Boys at Okeechobee (hereinafter, Okeechobee School), where they instituted the same degrading policies and abusive practices as those implemented at the Dozier School.⁶

In 2005, former students of the Dozier School began to publish accounts of the abuse they experienced at the school.⁷ These stories prompted Governor Charlie Crist to direct the Florida Department of Law Enforcement to investigate the Dozier School and the deaths that were alleged and occurred at the school.⁸

University of South Florida Forensic Investigation

From 2013-2016, the University of South Florida conducted a forensic investigation, funded by the Legislature, into the deaths and burials at the Dozier School.⁹ The purpose of the investigation was to determine the location of the missing children buried at the Dozier School.¹⁰

¹ Erin H. Kimmerle, Ph.D.; E. Christian Wells, Ph.D.; and Antoinette Jackson, Ph.D.; Florida Institute for Forensic Anthropology & Applied Sciences, University of South Florida, *Report on the Investigation into the Deaths and Burials at the Former Arthur G. Dozier School for Boys in Marianna, Florida*, pg. 22 (January 24, 2018) (on file with the Senate Committee on Criminal Justice).

² *Id.*

³ *Id.* at 12.

⁴ *Id.* at 27.

⁵ *Id.* at 22.

⁶ *Id.*

⁷ *Id.* at 30.

⁸ *Id.*

⁹ *Id.* at 4.

¹⁰ *Id.* at 11.

The investigation found records of nearly 100 deaths from 1900-1973.¹¹ Of those 100 deaths recorded in documents maintained by the school, two deaths were staff members, while the remaining were boys ranging in age from 6 to 18 years old. The investigation noted that the historical records are incomplete and the cause and manner of death for the majority of cases are unknown. The investigation also found that there are at least 22 deaths in the records for which no burial location is documented.¹²

The investigation noted that while other state-run institutions kept detailed records of burials made on the property of the institution, the Dozier School did not keep any record showing the location of specific graves, nor did the school even mark the graves.¹³ The investigation implied that this lack of record keeping suggests an intent to cloud the true number of burials located at the school and potentially hinder later investigations into the true causes of individual's deaths.¹⁴

Additionally, the investigation revealed that the Dozier School consistently underreported the number of deaths that occurred in their bi-annual reports to the state.¹⁵

Legislative Resolutions Addressing Florida Reform School Abuse at the Dozier School and the Okeechobee School

During the 2017 Legislative Session, the Legislature unanimously issued a formal apology to the victims of reform school abuse and their families with the passage of CS/HR 1335 and CS/SR 1440. In those resolutions, the Legislature acknowledged that the treatment of boys who were sent to the Dozier School and the Okeechobee School was cruel, unjust, and a violation of human decency. The resolutions expressed regret for the treatment of boys at the schools and apologized to the victims for the wrongs committed against them by state employees. The resolutions also expressed commitment to ensuring that children who have been placed in the state's care will be protected from abuse and violations of fundamental human decency.¹⁶

III. Effect of Proposed Changes:

The bill creates the “Arthur G. Dozier School and Okeechobee School Abuse Victim Certification Act.”

The bill defines a “victim of Florida reform school abuse” as a living person who was confined at the Dozier School or the Okeechobee School at any time between 1940 and 1975 and who was subjected to physical or sexual abuse perpetrated by personnel of the school during the period of confinement.

¹¹ *Id.* at 14.

¹² *Id.*

¹³ *Id.* at 15.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *See* CS/HR 1335 and CS/SR 1440 (2017).

The bill requires a person seeking to be certified as a victim of Florida reform school abuse to submit an application to the DJJ by October 1, 2018. The application must include:

- An affidavit stating:
 - That the applicant was confined at the Dozier School or the Okeechobee School;
 - The beginning and ending days of the confinement; and
 - That the applicant was subjected to physical or sexual abuse perpetrated by school personnel during the confinement.
- Documentation from the State Archives of Florida, the Dozier School, or the Okeechobee School, demonstrating that the applicant was confined at the school for any length of time between 1940 and 1975; and
- Proof of identification, including a current form of photo ID.

The bill requires the DJJ to examine an application within 30 days of receipt and notify the applicant of any errors or omissions or request any additional information relevant to the review of the application. Should the DJJ need additional information from the applicant to process the application, the applicant will have 15 days after receiving such notification from the DJJ to complete or modify the application.

The bill prohibits the DJJ from denying an application due to the applicant's failure to correct an error or submit additional information requested by the DJJ if the DJJ failed to timely notify the applicant of the error.

The bill requires the DJJ to notify the applicant of its determination within five business days after processing and reviewing the application. If the DJJ determines that an application meets the requirements of the act, the DJJ must certify the applicant as a victim of Florida reform school abuse.

The bill requires the DJJ to process and review all applications that were submitted by October 1, 2018, and submit a list of all certified victims to the President of the Senate and the Speaker of the House of Representatives by March 1, 2019.

The act is effective upon becoming law.

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:

None.

C. Government Sector Impact:

The implementation of this act will likely result in a negative fiscal impact on the DJJ. The bill requires the DJJ to process and review applications to determine if an applicant is a “victim of Florida reform school abuse” as provided under the act. The fiscal impact is indeterminate at this time, but the DJJ estimates that an additional full-time employee may be needed to process applications.¹⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an undesignated section of the Florida statutes.

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

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

CS by Criminal Justice on January 29, 2018:

The Committee Substitute corrects a reference to the House resolution made in the bill.

B. Amendments:

None.

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

¹⁷ Florida Department of Juvenile Justice, *2018 Legislative Bill Analysis for SB 1780*, (January 17, 2018) (on file with the Senate Criminal Justice Committee).



159588

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/29/2018	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Rouson) recommended the following:

Senate Amendment

Delete line 81
and insert:
of abuse with the passage of CS/SR 1440 and CS/HR 1335,

By Senator Rouson

19-01086C-18

20181780__

1 A bill to be entitled
 2 An act relating to victims of reform school abuse;
 3 providing a short title; defining the term "victim of
 4 Florida reform school abuse"; requiring a person
 5 seeking certification under this act to apply to the
 6 Department of Juvenile Justice by a certain date;
 7 prohibiting the estate of a decedent or the personal
 8 representative of a decedent from submitting an
 9 application on behalf of the decedent; requiring that
 10 the application include certain information and
 11 documents; requiring the department to examine the
 12 application, notify the applicant of any errors or
 13 omissions, and request any additional information
 14 within a certain timeframe; providing that the
 15 applicant has 15 days after notification to complete
 16 the application; requiring the department to process
 17 and review a completed application within a certain
 18 timeframe; prohibiting the department from denying an
 19 application for specified reasons and under certain
 20 circumstances; requiring the department to notify the
 21 applicant of its determination within a certain
 22 timeframe; requiring the department to certify an
 23 applicant as a victim of Florida reform school abuse
 24 if the department determines his application meets the
 25 requirements of this act; requiring the department to
 26 submit a list of all certified victims to the
 27 President of the Senate and the Speaker of the House
 28 of Representatives; providing an effective date.
 29

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

19-01086C-18

20181780__

30 WHEREAS, the Florida State Reform School, also known as the
 31 "Florida Industrial School for Boys," the "Florida School for
 32 Boys," the "Arthur G. Dozier School for Boys," and the "Dozier
 33 School," was opened by the state in 1900 in Marianna to house
 34 children who had committed minor criminal offenses, such as
 35 incorrigibility, truancy, and smoking, as well as more serious
 36 offenses, such as theft and murder, and
 37 WHEREAS, throughout the Dozier School's history, reports of
 38 abuse, suspicious deaths, and threats of closure plagued the
 39 school, and
 40 WHEREAS, many former students of the Dozier School have
 41 sworn under oath that they were beaten at a facility located on
 42 the school grounds known as the "White House," and
 43 WHEREAS, a psychologist employed at the Dozier School
 44 testified under oath at a 1958 United States Senate Judiciary
 45 Committee hearing that boys at the school were beaten by an
 46 administrator, that the blows were severe and dealt with great
 47 force with a full arm swing over the head and down, that a
 48 leather strap approximately 10 inches long was used, and that
 49 the beatings were "brutality," and
 50 WHEREAS, a former Dozier School employee stated in
 51 interviews with law enforcement that, in 1962, several employees
 52 of the school were removed from the facility based upon
 53 allegations that they made sexual advances toward boys at the
 54 facility, and
 55 WHEREAS, a forensic investigation funded by the Legislature
 56 and conducted from 2013 to 2016 by the University of South
 57 Florida found incomplete records regarding deaths and 45 burials
 58 that occurred at the Dozier School between 1900 and 1960 and

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

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found that families were often notified of the death after the child was buried or were denied access to their child's remains at the time of burial, and

WHEREAS, the excavations conducted as part of the forensic investigation revealed more burials than reported in official records, and

WHEREAS, in 1955, this state opened a new reform school in Okeechobee called the Florida School for Boys at Okeechobee, referred to in this act as "the Okeechobee School," to address overcrowding at the Dozier School, and staff members of the Dozier School were transferred to the Okeechobee School, where similar disciplinary practices were implemented, and

WHEREAS, many former students of the Okeechobee School have sworn under oath that they were beaten at a facility on school grounds known as the "Adjustment Unit," and

WHEREAS, more than 500 former students of the Dozier School and the Okeechobee School have come forward with reports of physical, mental, and sexual abuse by school staff during the 1940s, 1950s, and 1960s and the resulting trauma that has endured throughout their lives, and

WHEREAS, during the 2017 legislative session, the Legislature unanimously issued a formal apology to the victims of abuse with the passage of CS/SR 1440 and CS/SR 1335, expressing regret for the treatment of boys who were sent to the Dozier School and the Okeechobee School; acknowledging that the treatment was cruel, unjust, and a violation of human decency; and expressing its commitment to ensure that children who have been placed in this state's care will be protected from abuse and violations of human decency, NOW, THEREFORE,

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

Section 1. (1) This act may be known and cited as the "Arthur G. Dozier School and Okeechobee School Abuse Victim Certification Act."

(2) As used in this act, the term "victim of Florida reform school abuse" means a living person who was confined at the Arthur G. Dozier School for Boys or the Okeechobee School at any time between 1940 and 1975 and who was subjected to physical or sexual abuse perpetrated by personnel of the school during the period of confinement.

(3) (a) A person seeking to be certified as a victim of Florida reform school abuse must submit an application to the Department of Juvenile Justice no later than October 1, 2018. The estate of a decedent or the personal representative for a decedent may not submit an application on behalf of the decedent.

(b) The application must include:

1. An affidavit stating that the applicant was confined at the Arthur G. Dozier School for Boys or the Okeechobee School, the beginning and ending dates of the confinement, and that the applicant was subjected to physical or sexual abuse perpetrated by school personnel during the confinement;

2. Documentation from the State Archives of Florida, the Arthur G. Dozier School for Boys, or the Okeechobee School which shows that the applicant was confined at the schools for any length of time between 1940 and 1975; and

3. Positive proof of identification, including a current

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117 form of photo identification.

118 (c) Within 30 calendar days after receipt of an
119 application, the Department of Juvenile Justice shall examine
120 the application and notify the applicant of any errors or
121 omissions or request any additional information relevant to the
122 review of the application. The applicant has 15 calendar days
123 after receiving such notification to complete the application by
124 correcting any errors or omissions or submitting any additional
125 information requested by the department. The department shall
126 review and process each completed application within 90 calendar
127 days after receipt of the application.

128 (d) The Department of Juvenile Justice may not deny an
129 application due to the applicant failing to correct an error or
130 omission or failing to submit additional information the
131 department requested unless the department timely notified the
132 applicant of such error or omission or timely requested
133 additional information as provided in paragraph (c).

134 (e) The Department of Juvenile Justice shall notify the
135 applicant of its determination within 5 business days after
136 processing and reviewing the application. If the department
137 determines that an application meets the requirements of this
138 act, the department must certify the applicant as a victim of
139 Florida reform school abuse.

140 (f) No later than March 1, 2019, the Department of Juvenile
141 Justice must process and review all applications that were
142 submitted by October 1, 2018, and must submit a list of all
143 certified victims to the President of the Senate and the Speaker
144 of the House of Representatives.

145 Section 2. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator Randolph Bracy, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: January 12, 2018

I respectfully request that **Senate Bill # 1780**, relating to Victims of Reform School Abuse, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in cursive script, reading "Darryl Rouson".

Senator Darryl Rouson
Florida Senate, District 19

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB1780
Bill Number (if applicable)

Meeting Date _____

Topic DOZIER

Amendment Barcode (if applicable) _____

Name BRYANT E. MIDDLETON

Job Title CPT U.S. ARMY RET

Address 5017 NW 69 PLACE

Phone 352 240 6539

Street

GAINESVILLE FLA 32653

City

State

Zip

Email RANGER5988@aol.com

Speaking: ☒ For ☐ Against ☒ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing myself (White House Boy)

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Jan 29, 18
Meeting Date

SB 1780

Bill Number (if applicable)

Topic Florida Reform School Abuse

Amendment Barcode (if applicable)

Name Jerry Cooper

Job Title President, White House Boys

Address 9654 Sugarberry Way
Street

Phone 234-887-3597

Ft. Myers Fla. 33905
City State Zip

Email Samohi@comcast.net

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing White House Boys

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1.29.18

Meeting Date

1780

Bill Number (if applicable)

Topic Victims of Reform School ABuse

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 294 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

Email Barney@BarneyBishop.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/29/18

Meeting Date

SB 1780

Bill Number (if applicable)

Topic Victims of Reform School Abuse

Amendment Barcode (if applicable)

Name Bob Martinez (Former Gaerpor)

Job Title Senior Policy Advisor

Address 100 N. Tampa St

Phone (813) 227-6308

Tampa, FL 33602
City State Zip

Email bob.martinez@hklaw.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing White House Boys

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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

S-001 (10/14/14)

CourtSmart Tag Report

Room: LL 37

Case No.:

Type:

Caption: Senate Criminal Justice Committee

Judge:

Started: 1/29/2018 4:31:35 PM

Ends: 1/29/2018 6:00:34 PM

Length: 01:29:00

4:31:39 PM Meeting called to order
4:31:41 PM Roll call
4:32:26 PM Tab 1- SB 270 Involuntary Examination and Involuntary Admission of Minors by Senator
4:32:33 PM Steube
4:34:42 PM Speakers waive in support
4:35:05 PM Roll call on SB 270
4:35:23 PM Tab 2- SB 310 Threats to Kill or do Bodily Injury by Senator Steube
4:35:35 PM Amendment Barcode 430460 by Senator Steube
4:37:19 PM Speaker waives in support of the amendment
4:37:26 PM Back on SB 310 as amended
4:37:41 PM Speaker waives in support
4:38:16 PM Roll call on SB 310
4:39:03 PM Tab 9- SB 1264 Mandatory Court Costs by Senator Steube is temporarily postponed
4:39:14 PM Tab 12- SB 1440 Mental Illness Training for Law Enforcement Officers by Senator Powell
4:40:27 PM Speakers waive in support
4:40:48 PM Roll call on SB 1440
4:41:12 PM Tab 4- SB 776 Theft by Senator Grimsley
4:41:44 PM Amendment Barcode 882222 by Senator Grimsley
4:42:48 PM Speaker waives in support to the amendment
4:43:06 PM Back on SB 776 as amended
4:43:12 PM Roll call on SB 776
4:43:43 PM Tab 8- SB 1218 Persons Awaiting Trial by Senator Brandes
4:44:48 PM Amendment Barcode 584470 by Senator Brandes
4:45:12 PM Amendment Barcode 151886 by Senator Brandes
4:45:28 PM Amendment Barcode 739614 by Senator Brandes
4:45:45 PM Back on SB 1218 as amended
4:46:10 PM Speaker Shawn Foster from Florida Bail Agents Association
4:51:11 PM Speaker Jeff Kottkamp from Financial Casualty
4:53:33 PM Speaker Blair Harvey from Roche Surety and Casualty CO
4:56:27 PM Speaker Barney Bishop from FL Smart Justice Alliance
4:59:35 PM Speaker June Rodgers from Crime Victims
5:05:51 PM Speakers waive in opposition
5:06:16 PM Speaker Mike Harrison from Florida Bail Agent Association
5:08:28 PM Vice Chair Baxley recognized in debate on SB 1218
5:09:32 PM Senator Brandes closes on SB 1218
5:11:14 PM Roll call on SB 1218
5:12:08 PM Senators Bradley and Rouson make a motion to reflect their vote records
5:12:18 PM Tab 3- SB 624 Drones by Senator Young
5:13:07 PM Amendment Barcode 836612 by Senator Young
5:13:30 PM Back on SB 624 as amended
5:13:46 PM Speakers waive in support
5:14:31 PM Roll call on SB 624
5:14:58 PM Tab 10- SB 1318 Education for Prisoners by Senator Rouson
5:16:11 PM Speakers waive in support
5:16:21 PM Roll call on SB 1318
5:16:48 PM Tab 14- SB 1780 Victims of Reform School Abuse by Senator Rouson
5:20:03 PM Senator Bradley has a question regarding the review process
5:21:27 PM Amendment Barcode 159588 by Senator Rouson
5:21:42 PM Back on SB 1780 as amended
5:22:07 PM Speaker Bob Martinez from White House Boys
5:23:28 PM Speakers waive in support
5:23:39 PM Speaker Jerry Cooper from White House Boys

5:25:42 PM	Speaker Bryant Middleton from White House Boys
5:30:23 PM	Debate on SB 1780
5:32:01 PM	Close on SB 1780
5:32:49 PM	Roll call on SB 1780
5:33:22 PM	Tab 5- SB 860 Criminal History Records by Senator Bracy
5:34:01 PM	Amendment Barcode 935236 by Senator Bracy
5:35:17 PM	Back on SB 860 as amended
5:35:29 PM	Speakers waive in support
5:35:45 PM	Close on SB 860
5:35:57 PM	Roll call on SB 860
5:36:20 PM	Tab 6- SB 862 Public Records/Sealing of Criminal History Records by Senator Bracy
5:36:46 PM	Amendment Barcode 116674 by Senator Bracy
5:37:07 PM	Back on SB 862 as amended
5:37:23 PM	Speakers waive in support
5:37:41 PM	Roll call on SB 862
5:38:02 PM	Tab 7- SB 1178 Public Records/Photographs or Video or Audio Recordings that Depict or
5:38:11 PM	Record Killing of a Person by Senator Bracy
5:39:02 PM	Senator Bradley questions about a specific case that could be applicable
5:40:49 PM	Staff Mike Erickson answers questions about specific cases
5:46:11 PM	Speakers waive in support
5:51:01 PM	Close on SB 1178
5:52:34 PM	Roll call on SB 1178
5:53:21 PM	Motion to reconsider the vote and SB 1178 is temporarily postponed
5:55:14 PM	Tab 13- SB 1490 Determining Bail by Senator Bracy
5:55:23 PM	Amendment Barcode 648186 by Senator Bracy
5:56:06 PM	Amendment Barcode 683982 by Senator Bracy
5:56:34 PM	Back on Amendment 648186 as amended
5:56:51 PM	Back on SB 1490 as amended
5:57:17 PM	Speakers indicate if they are waiving in opposition or support
6:00:05 PM	SB 1490 is temporarily postponed due to time running out