

CS/SB 342 by JU, Simmons; (Similar to H 0717) No Contact Orders

971428	A	S	RCS	CJ, Brandes	Delete L.26:	03/10 03:37 PM
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SB 378 by Garcia, Gibson (CO-INTRODUCERS) Bullard, Smith, Detert; Juvenile Justice

615206	A	S	WD	CJ, Brandes	Delete L.50 - 67:	03/10 03:37 PM
720812	A	S	RCS	CJ, Brandes	Delete L.52 - 67:	03/10 03:37 PM
349368	AA	S	UNFAV	CJ, Gibson	Delete L.16:	03/10 03:37 PM
131462	AA	S	RCS	CJ, Bradley	Delete L.16:	03/10 03:37 PM

SB 664 by Altman; (Compare to H 0139) Sentencing in Capital Felonies

SB 764 by Evers; (Similar to H 0287) Controlled Substances

608310	D	S	WD	CJ, Clemens	Delete everything after	03/10 03:37 PM
321456	SD	S	WD	CJ, Clemens	Delete everything after	03/10 03:37 PM
109668	D	S	WD	CJ, Clemens	Delete everything after	03/10 03:37 PM
358368	SD	S	WD	CJ, Clemens	Delete everything after	03/10 03:37 PM
461754	A	S	WD	CJ, Clemens	btw L.292 - 293:	03/10 03:37 PM
484890	SA	S	WD	CJ, Clemens	btw L.292 - 293:	03/10 03:37 PM
104854	A	S	RCS	CJ, Evers	Delete L.292:	03/10 03:37 PM
447022	A	S	RCS	CJ, Clemens	btw L.292 - 293:	03/10 03:37 PM

SB 1286 by Simmons; (Identical to H 1037) Electronic Monitoring Devices

843982	A	S	RCS	CJ, Brandes	Delete L.26 - 31:	03/10 03:37 PM
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Evers, Chair
Senator Gibson, Vice Chair

MEETING DATE: Tuesday, March 10, 2015
TIME: 10:00 a.m.—12:00 noon
PLACE: Mallory Horne Committee Room, 37 Senate Office Building

MEMBERS: Senator Evers, Chair; Senator Gibson, Vice Chair; Senators Bradley, Brandes, and Clemens

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	Testimony by employees of the Department of Corrections, other state employees, and other individuals on the safety and security of the state correctional system.		Discussed
2	CS/SB 342 Judiciary / Simmons (Similar H 717)	No Contact Orders; Providing for the effect and enforceability of orders of no contact as a part of pretrial release; specifying acts prohibited by a no contact order, etc. JU 02/17/2015 Fav/CS CJ 03/10/2015 Fav/CS RC	Fav/CS Yeas 5 Nays 0
3	SB 378 Garcia / Gibson	Juvenile Justice; Authorizing a law enforcement officer to issue a warning to a juvenile who admits having committed a misdemeanor or to inform the child's parent or guardian of the child's infraction; requiring a law enforcement officer who does not exercise one of these options to issue a civil citation or require participation in a similar diversion program; providing that, in exceptional situations, a law enforcement officer may arrest a first-time misdemeanor offender in the interest of protecting public safety, etc. CJ 03/02/2015 Temporarily Postponed CJ 03/10/2015 Fav/CS CF RC	Fav/CS Yeas 5 Nays 0
4	SB 664 Altman (Compare H 139)	Sentencing in Capital Felonies; Requiring that an advisory sentence of death be made by a unanimous recommendation of the jury after a defendant's conviction or adjudication of guilt for a capital felony or capital drug trafficking felony; requiring the court to instruct the jury that, in order for the jury to recommend to the court that the death penalty be imposed, the jury must find that sufficient aggravating circumstances exist which outweigh the mitigating circumstances found to exist, etc. CJ 03/10/2015 Not Considered JU AP	Not Considered

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, March 10, 2015, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	SB 764 Evers (Similar H 287)	Controlled Substances; Including kratom in a schedule of controlled substances, etc. CJ 03/10/2015 Fav/CS AHS AP	Fav/CS Yeas 3 Nays 2
6	SB 1286 Simmons (Identical H 1037, Compare H 203, S 134)	Electronic Monitoring Devices; Prohibiting the removal, destruction, or circumvention of the operation of an electronic monitoring device being used by a person for specified purposes; prohibiting requesting or soliciting a person to perform such an act; providing criminal penalties, etc. CJ 03/10/2015 Fav/CS ACJ FP	Fav/CS Yeas 5 Nays 0
Other Related Meeting Documents			

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-10-15
Meeting Date

Bill Number (if applicable)

Topic FDOC

Amendment Barcode (if applicable)

Name Doug Glisson

Job Title INSPECTOR SUPERVISOR

Address 201 S. CALHOUN ST Phone 778-6789

Street
TALL, FL City State Zip

Email glisson.doug@mail.dc.state.fl.us

Speaking: For Against Information

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

Representing FDOC

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)

3/10/15
Meeting Date

Bill Number (if applicable)

Topic FDOC

Amendment Barcode (if applicable)

Name MIKE HARRISON

Job Title GULF COUNTY SHERIFF

Address 1000 CECIL G. COSTIN BLVD

Phone 850-227-8706

Street

PORT ST. JOE, FL 32456

City

State

Zip

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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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 FDOL 016 Amendment Barcode (if applicable) _____

Name Aubrey Land

Job Title Inspector

Address _____ Phone _____

Street _____

City Mary State FL Zip 32066 Email _____

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

Representing Was Requested

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)

3-10-15

Meeting Date

Bill Number (if applicable)

Topic Staff shortage

Amendment Barcode (if applicable)

Name Andrea Shaw

Job Title Sergeant

Address P.O. Box 81

Phone 229-379-6233

Street

Boston Ga 31624

City

State

Zip

Email Baddandrea@gmail

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.

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)

Meeting Date _____ Bill Number (if applicable) _____

Topic FOOC _____ Amendment Barcode (if applicable) _____

Name John Wm _____

Job Title Senior Law Enforcement Inspector _____

Address Cuttail Drive _____ Phone 850-556-0431 _____

Street
Maitson FL 32307
City State Zip

Email john-wm@att.net

Speaking: For Against Information

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

Representing FOOC _____

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)

3-10-15
Meeting Date

Bill Number (if applicable)

Topic Dept of Correction

Amendment Barcode (if applicable)

Name Timothy Butler

Job Title C/O

Address P.O. Box 492
Street

Phone 850-321-7913

Havana Fla 32333
City State Zip

Email Tim B2Butler@gmail

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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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-10-15

Meeting Date

Bill Number (if applicable)

Topic FDOC/IG

Amendment Barcode (if applicable)

Name Stacy L. Harris

Job Title Law Enforcement Inspector

Address 1911 Institution Rd.

Phone 850-951-6450

Street

DeFuniak Springs FL 32533

City

State

Zip

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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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/10/15
Meeting Date

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Julie Mader

Job Title _____

Address 6354 Bullfrog Dr
Street
Bascom FL 32423
City State Zip

Phone 850 209 7090

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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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/10/15

Meeting Date

Topic CRJ (Probation)

Bill Number _____
(if applicable)

Name Kim Schwitz

Amendment Barcode _____
(if applicable)

Job Title Probation Officer

Address 18360 NE 22 Ave
Street

Phone (786) 344 9483

NMB FL 33160
City State Zip

E-mail Schwitzlegal@gmail.com

Speaking: For Against Information

Representing Transfers local 2011

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)

3/10/15

Meeting Date

Bill Number (if applicable)

Topic FDOC

Amendment Barcode (if applicable)

Name Christina Bullins

Job Title _____

Address 2380 SW 34 Way

Phone 954-816-8385

Street

Fort Lauderdale

Email avramc@bellsouth.net

City

State

Zip

Speaking: For Against Information

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

Representing self/citizen

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

COMMITTEE WITNESS OATH

CHAIR:

Please raise your right hand and be sworn in as a witness.

Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

WITNESS'S NAME: DOUG GLISSON

ANSWER: YES
Pursuant to §90.605(1), Florida Statutes: "The witness's answer shall be noted in the record."

COMMITTEE NAME: Senate Criminal Justice Committee

DATE: 3/10/15

THE FLORIDA SENATE

COMMITTEE WITNESS OATH

CHAIR:

Please raise your right hand and be sworn in as a witness.

Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

WITNESS'S NAME: Shearff Mike Harrison

ANSWER: I do

Pursuant to §90.605(1), *Florida Statutes*: "The witness's answer shall be noted in the record."

COMMITTEE NAME: Senate Criminal Justice Committee

DATE: 3-10-15

THE FLORIDA SENATE

COMMITTEE WITNESS OATH

CHAIR:

Please raise your right hand and be sworn in as a witness.

Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

WITNESS'S NAME: Timothy Butler

ANSWER: Yes sir, I do

Pursuant to §90.605(1), Florida Statutes: "The witness's answer shall be noted in the record."

COMMITTEE NAME: Senate Criminal Justice Committee

DATE: 3-10-15

THE FLORIDA SENATE

COMMITTEE WITNESS OATH

CHAIR:

Please raise your right hand and be sworn in as a witness.

Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

WITNESS'S NAME: John Wilm

ANSWER: I do

Pursuant to §90.605(1), Florida Statutes: "The witness's answer shall be noted in the record."

COMMITTEE NAME: Senate Criminal Justice Committee

DATE: 3-10-15

THE FLORIDA SENATE

COMMITTEE WITNESS OATH

CHAIR:

Please raise your right hand and be sworn in as a witness.

Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

WITNESS'S NAME: Sgt Andrea Shaw

ANSWER: yes, sir

Pursuant to §90.605(1), *Florida Statutes*: "The witness's answer shall be noted in the record."

COMMITTEE NAME: Senate Criminal Justice Committee

DATE: 3-10-15

THE FLORIDA SENATE

COMMITTEE WITNESS OATH

CHAIR:

Please raise your right hand and be sworn in as a witness.

Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

WITNESS'S NAME: Aubrey Land

ANSWER: I do, sir

Pursuant to §90.605(1), Florida Statutes: "The witness's answer shall be noted in the record."

COMMITTEE NAME: Senate Criminal Justice Committee

DATE: 3-10-15

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/CS/SB 342

INTRODUCER: Criminal Justice Committee; Judiciary Committee; and Senator Simmons

SUBJECT: No Contact Orders

DATE: March 10, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 342 defines what is meant by an order of no contact in a court order granting the pretrial release of a criminal defendant.

Under current law, when a person is detained and charged with a crime, he or she is brought before the court for a bail determination. If the court sets bail, the court may impose conditions of pretrial release. One mandatory condition of pretrial release is that the defendant have no contact with the victim.

The bill provides that an order of no contact is effective immediately and enforceable for the duration of pretrial release or until the court modifies the order of no contact. The defendant will receive a copy of the order of no contact before he or she is released from custody on pretrial release under the provisions of the bill.

Under the bill, a defendant who is ordered to have “no contact” may not:

- Communicate orally or in writing with the victim in any manner, in person, telephonically, or electronically directly or through a third person, other than through an attorney and for lawful purposes;
- Have physical or violent contact with the victim or other person identified in the order or his or her property;
- Be within 500 feet of the victim’s or other identified person’s residence, even if the defendant and victim or other named person share the residence; and
- Be within 500 feet of the victim’s or other identified person’s vehicle, place of work, or a specified place frequented regularly by either of them.

II. Present Situation:

Bail Determination

The Florida Constitution creates a presumption in favor of release for a defendant charged with a crime and who is detained pending resolution of the charge. Section 14, Article I of the Florida Constitution provides, in part:

Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime ... shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm ..., assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

The pretrial release provision in Florida Rule of Criminal Procedure 3.131 contains language identical to that of the state constitution.

In setting reasonable conditions for pretrial release as required by the Florida Constitution, a court must set conditions:

- Ensuring the appearance of the criminal defendant in court; and
- Protecting the community from unreasonable danger.¹

In determining whether to grant a pretrial release or set conditions of pretrial release, a court must consider:

- The nature and circumstances of the offense charged;
- The weight of 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 convictions, previous flight to avoid prosecution, or failure to appear in court;
- The nature and probability of danger from release;
- The source of funds used to post bail;
- Whether the defendant is already on release for another criminal charge or on probation, parole, or other release pending completion of a sentence;
- The street value of any drug or controlled substance connected to the criminal charge;
- The nature and probability of intimidation and danger to victims;
- Whether probable cause exists that the defendant committed a new crime while on pretrial release;
- Any other facts that the court considers relevant;
- Whether the crime charged is gang-related or alleged to be subject to enhanced punishment due to gang involvement under chapter 874, F.S.;
- Whether the defendant is required to register as a sexual offender or predator; and

¹ Section 903.046(1), F.S.

- Whether a burglary is reclassified based on a person intending to cross county lines in the commission of a burglary to reduce the ability of a law enforcement officer to track stolen goods.²

When granting pretrial release the court must impose, at minimum, the statutory conditions of pretrial release. These conditions are that the defendant:

- Refrain from criminal activity of any kind;
- Refrain from any contact of any type with the victim, except through pretrial discovery; and
- Comply with all conditions of pretrial release.³

Injunction for Domestic Violence

Domestic violence is any assault or aggravated assault, battery or aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one person which is caused by a family or household member.⁴ A victim of domestic violence or a person who has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence may file a petition for an injunction for protection against domestic violence.⁵

Section 741.31, F.S., provides that a person who violates an injunction for protection against domestic violence commits a first degree misdemeanor. A court will consider a person to have violated a protective injunction if he or she commits any of the following acts:

- Refusing to vacate the dwelling that the parties share;
- Going to, or being within 500 feet of the victim's residence, school, employment, or a place frequented regularly by the victim and any named family or household member;
- Committing an act of domestic violence against the victim;
- Intentionally making an unlawful threat, word, or act to do violence to the victim;
- Phoning, contacting, or otherwise communicating with the victim directly or indirectly unless the order permits indirect contact;
- Knowingly and intentionally coming within 100 feet of the victim's vehicle, whether or not the vehicle is occupied;
- Defacing or destroying the victim's personal property, including a motor vehicle; or
- Refusing to surrender firearms or ammunition if ordered to do so by the court.⁶

Filing a motion for a domestic violence injunction is at the discretion of the victim. A victim of domestic violence might not pursue an injunction based on fear or other reasons. In these situations, a defendant on pretrial release is subject only to the more general "no contact" prohibition which applies to all pretrial release cases involving a victim. Whether a court or a law enforcement officer would interpret the general "no contact" prohibition to include nonphysical contact, such as harassing phone calls or other forms of intimidation is unknown.

² Section 903.046(2), F.S.

³ Section 903.047(1), F.S.

⁴ Section 741.28(2), F.S.

⁵ Section 741.30(1), F.S.

⁶ Section 741.31(4)(a), F.S.

III. Effect of Proposed Changes:

When a person is detained and charged with a crime, he or she is brought before the court for a bail determination. If the court sets bail, the court may impose conditions of pretrial release. One of the conditions required by statute is that the defendant have no contact with the victim.

Although current law requires a defendant to “refrain from contact of any type with the victim,” this concept is not defined in law. The bill defines what is meant by the condition of no contact, and includes various forms of nonphysical contact in the definition. Also, the bill prohibits a defendant from contacting others named in the court order, not just the victim.

Under the bill, acts prohibited by a no contact order specifically include:

- Communicating orally or in writing with the victim in any manner, in person, telephonically, electronically or through a third person, other than through an attorney and for lawful purposes;
- Having physical or violent contact with the victim or other person named in the order or his or her property;
- Being within 500 feet of the victim’s or other named person’s residence, even if the defendant and victim or other named person share the residence; and
- Being within 500 feet of the victim’s or other named person’s vehicle, place of work, or a specified place frequented regularly by the person.

The bill does not limit the authority of the court to impose additional conditions of pretrial release or the court’s authority to modify the conditions of a no contact order when appropriate. The defendant will receive a copy of the order of no contact before he or she is released from custody on pretrial release under the provisions of the bill.

The way that the bill defines “no contact” is similar to the provisions that constitute a violation of an injunction for domestic violence. In instances in which a victim of domestic violence does not pursue an injunction, the defendant will still be subject to similar prohibited acts of “no contact.”

The bill provides that an order of no contact is effective immediately and enforceable for the duration of pretrial release or until the court modifies the order of no contact. By providing for immediate effect of a no contact order, a detainee, for example, would be prevented from making harassing phone calls to the victim while in jail awaiting a pretrial release.

The bill takes effect October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not affect cities or counties. Additionally, the bill relates to criminal law, specifically pretrial detention, which is exempt from the limitations on the power of the Legislature to enact mandates.

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 Office of the State Courts Administrator (OSCA) anticipates that the bill may cause a temporary increase in the number of contempt proceedings or prosecutions for violations of conditions of release. However, OSCA cannot accurately determine the fiscal impact of the legislation due to the unavailability of data needed to determine its impact on judicial workloads. Nevertheless, OSCA anticipates that the impact of the bill will be manageable within its existing resources.⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 903.047 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 741.29, 784.046, and 901.15.

⁷ Office of the State Courts Administrator, *2015 Judicial Impact Statement, SB 342* (Feb. 2, 2015); on file with the Senate Judiciary Committee.

IX. Additional Information:

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

CS/CS by Criminal Justice on March 10, 2015:

Provides that the defendant will receive a copy of the court's order of no contact, which specifies the applicable prohibited acts, before the defendant is released from custody on pretrial release.

CS by Judiciary on February 17, 2015:

Creates an exception to the list of prohibited acts in a "no contact" order to allow contact by an attorney for the defendant with a victim or other person named in the order for lawful purposes.

- B. **Amendments:**

None.



971428

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/10/2015	.	
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	.	

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

Senate Amendment (with title amendment)

Delete line 26

and insert:

release or until it is modified by the court. The defendant shall receive a copy of the order of no contact which specifies the applicable prohibited acts before the defendant is released from custody on pretrial release. As used in this

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



971428

11 And the title is amended as follows:
12 Delete line 5
13 and insert:
14 pretrial release; requiring that the defendant receive
15 a copy of the order of no contact prior to release;
16 specifying acts prohibited by a no

By the Committee on Judiciary; and Senator Simmons

590-01676-15

2015342c1

A bill to be entitled

An act relating to no contact orders; amending s. 903.047, F.S.; providing for the effect and enforceability of orders of no contact as a part of pretrial release; specifying acts prohibited by a no contact order; reenacting ss. 741.29(6), 784.046(13) and (15), and 901.15(13), F.S., relating to domestic violence, repeat, sexual, or dating violence, and arrest without a warrant, respectively, to incorporate the amendments made to s. 903.047, F.S., in references thereto; providing an effective date.

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

Section 1. Section 903.047, Florida Statutes, is amended to read:

903.047 Conditions of pretrial release.—

(1) As a condition of pretrial release, whether such release is by surety bail bond or recognizance bond or in some other form, the defendant must ~~shall~~:

(a) Refrain from criminal activity of any kind.

(b) Refrain from any contact of any type with the victim, except through pretrial discovery pursuant to the Florida Rules of Criminal Procedure. An order of no contact is effective immediately and enforceable for the duration of the pretrial release or until it is modified by the court. As used in this section, unless otherwise specified by the court, the term "no contact" includes the following prohibited acts:

1. Communicating orally or in any written form, either in

590-01676-15

2015342c1

person, telephonically, electronically, or in any other manner, either directly or indirectly through a third person, with the victim or any other person named in the order. However, this subparagraph does not prohibit an attorney for the defendant, consistent with rules regulating The Florida Bar, from communicating with any person protected by the no contact order for lawful purposes.

2. Having physical or violent contact with the victim or other named person or his or her property.

3. 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.

4. 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.

(c) Comply with all conditions of pretrial release.

(2) Upon motion by the defendant when bail is set, or upon later motion properly noticed pursuant to law, the court may modify the condition required by paragraph (1)(b) if good cause is shown and the interests of justice so require. The victim shall be permitted to be heard at any proceeding in which such modification is considered, and the state attorney shall notify the victim of the provisions of this subsection and of the pendency of any such proceeding.

Section 2. For the purpose of incorporating the amendment made by this act to section 903.047, Florida Statutes, in a reference thereto, subsection (6) of section 741.29, Florida Statutes, is reenacted to read:

741.29 Domestic violence; investigation of incidents;

590-01676-15

2015342c1

59 notice to victims of legal rights and remedies; reporting.-

60 (6) A person who willfully violates a condition of pretrial
61 release provided in s. 903.047, when the original arrest was for
62 an act of domestic violence as defined in s. 741.28, commits a
63 misdemeanor of the first degree, punishable as provided in s.
64 775.082 or s. 775.083, and shall be held in custody until his or
65 her first appearance.

66 Section 3. For the purpose of incorporating the amendment
67 made by this act to section 903.047, Florida Statutes, in a
68 reference thereto, subsections (13) and (15) of section 784.046,
69 Florida Statutes, are reenacted to read:

70 784.046 Action by victim of repeat violence, sexual
71 violence, or dating violence for protective injunction; dating
72 violence investigations, notice to victims, and reporting;
73 pretrial release violations; public records exemption.-

74 (13) Whenever a law enforcement officer determines upon
75 probable cause that an act of dating violence has been committed
76 within the jurisdiction, or that a person has violated a
77 condition of pretrial release as provided in s. 903.047 and the
78 original arrest was for an act of dating violence, the officer
79 may arrest the person or persons suspected of its commission and
80 charge such person or persons with the appropriate crime. The
81 decision to arrest and charge shall not require consent of the
82 victim or consideration of the relationship of the parties.

83 (15) A person who willfully violates a condition of
84 pretrial release provided in s. 903.047, when the original
85 arrest was for an act of dating violence as defined in this
86 section, commits a misdemeanor of the first degree, punishable
87 as provided in s. 775.082 or s. 775.083, and shall be held in

Page 3 of 4

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590-01676-15

2015342c1

88 custody until his or her first appearance.

89 Section 4. For the purpose of incorporating the amendment
90 made by this act to section 903.047, Florida Statutes, in a
91 reference thereto, subsection (13) of section 901.15, Florida
92 Statutes, is reenacted to read:

93 901.15 When arrest by officer without warrant is lawful.-A
94 law enforcement officer may arrest a person without a warrant
95 when:

96 (13) There is probable cause to believe that the person has
97 committed an act that violates a condition of pretrial release
98 provided in s. 903.047 when the original arrest was for an act
99 of domestic violence as defined in s. 741.28, or when the
100 original arrest was for an act of dating violence as defined in
101 s. 784.046.

102 Section 5. This act shall take effect October 1, 2015.

Page 4 of 4

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



The Florida Senate

Committee Agenda Request



To: Senator Greg Evers, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: February 18, 2015

I respectfully request that **Senate Bill 342**, relating to No Contact Orders, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons".

Senator David Simmons
Florida Senate, District 10

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/10/2015

342

Meeting Date

Bill Number (if applicable)

Topic No Contract Orders

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Public Defender, 2nd Judicial Circuit

Address 301 S. Monroe Street

Phone 850.606.1000

Street

Tallahassee

FL

32301

Email nancy.daniels@flpd2.com

City

State

Zip

Speaking: For Against Information

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

Amendment

Representing FL Public Defender Association, 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.

THE FLORIDA SENATE

APPEARANCE RECORD

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3-10-15

Meeting Date

342

Bill Number (if applicable)

Topic No Contact Orders

Amendment Barcode (if applicable)

Name Sarah Carroll

Job Title

Address 123 S. Adams St

Phone (671)-4401

Street

Tallahassee

32301

City

State

Zip

Email

Speaking: [X] For [] Against [] Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] 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)

3/10/15
Meeting Date

342
Bill Number (if applicable)

Topic No Contact Orders

Amendment Barcode (if applicable)

Name Leisa Wiseman

Job Title Director, Communications & Government Affairs

Address 425 office Plaza DR

Phone 850/425-2749

Street

Tallahassee FL 32317

Email wiseman-leisa@adv.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Coalition Against Domestic Violence

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 378

INTRODUCER: Criminal Justice Committee and Senators Garcia, Gibson, and others

SUBJECT: Juvenile Justice

DATE: March 10, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/CS
2.			CF	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 378 expands juvenile civil citation by allowing law enforcement to issue a civil citation to youth who have committed a second or subsequent misdemeanor. (Civil citation is presently only available to youth who admit to committing a first-time misdemeanor.)

In addition, law enforcement will be authorized to issue a simple warning to the youth or inform the youth's parents of the misdemeanor, as well as issue a civil citation or require participation in a similar diversion program under the bill.

The bill also states that if an arrest is made, law enforcement must provide written documentation as to why the arrest is warranted.

II. Present Situation:

Section 985.12, F.S., establishes a civil citation process that provides an efficient and innovative alternative to the Department of Juvenile Justice's (DJJ) custody for youth who commit nonserious delinquent acts.¹ The DJJ is required to encourage and assist in the implementation and improvement of civil citation programs or other similar diversion programs around the state.²

¹ Section 985.12(1), F.S.

² *Id.*

It must also develop guidelines for civil citation which include intervention services that are based upon proven civil citation or similar diversion programs within the state.³

These programs are to be established at the local level in concurrence with the chief circuit judge, state attorney, public defender, and head of each local law enforcement agency. The statute provides that a law enforcement officer may issue a civil citation to a youth who admits to committing a misdemeanor without having to take the youth into custody. Only first-time misdemeanants are eligible.⁴ (A law enforcement officer currently has the discretion to give a warning to the youth, inform the parents, issue a civil citation, or arrest a youth.)

The law enforcement officer must send a copy of the citation to the department, sheriff, state attorney, the DJJ's intake office or the community service performance monitor, parent or guardian of the youth, and the victim.⁵ The issuance of a civil citation is not considered a referral to the department.⁶

A civil citation program or similar diversion program may be operated by law enforcement, the department, a juvenile assessment center, a county or municipality, or an entity selected by the county or municipality. Operations must be in consultation and agreement with the state attorney and local law enforcement agencies.⁷

Youth issued a civil citation may be assigned up to 50 hours of community service and are required to participate in intervention services as indicated by a needs assessment. Intervention services include family counseling, urinalysis monitoring, substance abuse and mental health treatment services.⁸ At the time a civil citation is issued, the law enforcement officer must advise the youth that he or she has the option of refusing the civil citation and of being referred to the DJJ. The youth may refuse the civil citation at any time before completion of the work assignment.⁹

The youth is required to report to a community service performance monitor within seven working days after the civil citation has been issued. The youth must also complete at least five community service hours per week. The monitor reports information to the DJJ regarding the youth's service hour completion and the expected completion date.¹⁰ If the youth fails to timely report or complete a work assignment, fails to timely comply with assigned intervention services, or if the youth commits a subsequent misdemeanor, the law enforcement officer must issue a report to the DJJ alleging that the youth has committed a delinquent act, thereby initiating formal judicial processing.¹¹

³ Section 985.12(2), F.S.

⁴ Section 985.12(1)

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Section 985.12(6), F.S.

¹⁰ Section 985.12(4), F.S.

¹¹ Section 985.12(5), F.S.

According to the DJJ, there are currently 59 counties that have implemented civil citation programs. In contrast, Bradford, Polk, Taylor, Calhoun, Gulf, Hardee, Sarasota, and Washington counties have not yet implemented one. However, these counties have similar diversion programs available.¹²

Additionally, the department states that in calendar years 2013 and 2014, there were 16,149 civil citations issued (7,634 in 2013 and 8,515 in 2014). In fiscal year 2013-14, there were 34,485 arrests of youth for misdemeanors. Of those arrests, 21,349 youth were eligible for civil citation and of those, 8,059 or 38%, received one. The DJJ also found that the recidivism rate for youth completing civil citation during fiscal year 2012-13 was 5 percent. (To calculate this rate, the department monitored the youth for 12 months to determine if there was a subsequent adjudication, adjudication withheld, or an adult conviction.)¹³

III. Effect of Proposed Changes:

The bill expands juvenile civil citation by allowing law enforcement to issue a civil citation to youth who have committed a second or subsequent misdemeanor. Civil citation will no longer only be available to first-time misdemeanor offenders under the bill.

In addition, law enforcement will be authorized to issue a simple warning to the youth or inform the youth's parents of the misdemeanor, as well as issue a civil citation or require participation in a similar diversion program under the bill.

The bill also states that if an arrest is made, law enforcement must provide written documentation as to why the arrest is warranted.

The effective date of the bill is October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹² Electronic mail from Meredith Stanfield, DJJ Legislative Director, dated February 25, 2015 (on file with the Senate Criminal Justice Committee).

¹³ *Id.*

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

None.

B. Private Sector Impact:

Expanding civil citation could result in more youth having future opportunities for employment since these youth will not have the hurdle of an arrest record.

C. Government Sector Impact:

To the extent that youth are diverted from the more costly juvenile justice system, the greater the potential cost savings are to the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 985.12 of the Florida Statutes.

The bill reenacts sections 943.051 and 985.11 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 March 10, 2015:

- Makes issuing a civil citation discretionary.
- Deletes the provision allowing law enforcement to arrest a first-time juvenile misdemeanor under exceptional circumstances.
- Provides that if an arrest is made, law enforcement must give written documentation as to why the arrest is warranted.

B. Amendments:

None.



615206

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/10/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 50 - 67

and insert:

committed a misdemeanor, may, with the victim's consent, issue a simple warning or inform the child's guardian or parent of the child's infraction, or may issue a civil citation or require participation in a similar diversion program, and assess up to ~~not more than~~ 50 community service hours, and require participation in intervention services as indicated by an



615206

11 assessment of the needs of the juvenile, including family
12 counseling, urinalysis monitoring, and substance abuse and
13 mental health treatment services. Absent exceptional situations,
14 the Legislature encourages law enforcement officers to issue a
15 civil citation, unless the misdemeanor is a threat to public
16 safety. A copy of each citation issued under this section shall
17 be provided to the department, and the department shall enter
18 appropriate information into the juvenile offender information
19 system. Use of the civil citation or similar diversion program
20 is not limited to first-time offenses and may be used in a
21 second or subsequent offense. ~~Only first-time misdemeanor~~
22 ~~offenders are~~

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

24 And the title is amended as follows:

25 Delete lines 3 - 17

26 and insert:

27 985.12, F.S.; authorizing a law enforcement officer,
28 with the victim's consent, to choose to issue a
29 warning to a juvenile who admits having committed a
30 misdemeanor or to inform the juvenile's parent or
31 guardian of the juvenile's infraction; authorizing a
32 law enforcement officer who does not exercise one of
33 these options to issue a civil citation or require
34 participation in a similar diversion program;
35 providing that, absent exceptional situations, the
36 Legislature encourages law enforcement officers to
37 issue a civil citation, unless the misdemeanor is a
38 threat to public safety; providing that repeat
39 misdemeanor offenders may participate in the civil



615206

40
41

citation program or a similar diversion program under
certain circumstances; reenacting



720812

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/10/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 52 - 67

and insert:

or may issue a civil citation or require participation in a similar diversion program, and assess up to ~~not more than~~ 50 community service hours, and require participation in intervention services as indicated by an assessment of the needs of the juvenile, including family counseling, urinalysis monitoring, and substance abuse and mental health treatment



720812

11 services. A copy of each citation issued under this section
12 shall be provided to the department, and the department shall
13 enter appropriate information into the juvenile offender
14 information system. Use of the civil citation or similar
15 diversion program is not limited to first-time misdemeanors and
16 may be used in a second or subsequent misdemeanor. ~~Only first-~~
17 ~~time misdemeanor offenders are~~

18

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

20 And the title is amended as follows:

21 Delete lines 7 - 17

22 and insert:

23 allowing a law enforcement officer who does not
24 exercise one of these options to issue a civil
25 citation or require participation in a similar
26 diversion program; providing that repeat misdemeanor
27 offenders may participate in the civil citation
28 program or a similar diversion program under certain
29 circumstances; reenacting



349368

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/10/2015	.	
	.	
	.	
	.	

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

1 **Senate Amendment to Amendment (720812) (with title**
2 **amendment)**

3
4 Delete line 16
5 and insert:
6 may be used in a second or subsequent misdemeanor. If an arrest
7 is made, a law enforcement officer must provide written
8 documentation as to why an arrest was warranted to protect
9 public safety. Only first-
10



349368

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

12 And the title is amended as follows:

13 Delete line 26

14 and insert:

15 diversion program; requiring a law enforcement officer
16 to provide written documentation in certain
17 circumstances; providing that repeat misdemeanor



131462

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/10/2015	.	
	.	
	.	
	.	

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

1 **Senate Amendment to Amendment (720812) (with title**
2 **amendment)**

3
4 Delete line 16

5 and insert:

6 may be used in a second or subsequent misdemeanor. If an arrest
7 is made, a law enforcement officer must provide written
8 documentation as to why an arrest was warranted. ~~Only first-~~

9
10 ===== T I T L E A M E N D M E N T =====



131462

11 And the title is amended as follows:
12 Delete line 26
13 and insert:
14 diversion program; requiring a law enforcement officer
15 to provide written documentation in certain
16 circumstances; providing that repeat misdemeanor

By Senator Garcia

38-00317A-15

2015378__

1 A bill to be entitled
 2 An act relating to juvenile justice; amending s.
 3 985.12, F.S.; authorizing a law enforcement officer to
 4 issue a warning to a juvenile who admits having
 5 committed a misdemeanor or to inform the child's
 6 parent or guardian of the child's infraction;
 7 requiring a law enforcement officer who does not
 8 exercise one of these options to issue a civil
 9 citation or require participation in a similar
 10 diversion program; providing that repeat misdemeanor
 11 offenders may participate in the civil citation
 12 program or a similar diversion program under certain
 13 circumstances; providing that, in exceptional
 14 situations, a law enforcement officer may arrest a
 15 first-time misdemeanor offender in the interest of
 16 protecting public safety; requiring certain written
 17 documentation if such an arrest is made; reenacting
 18 ss. 943.051(3)(b) and 985.11(1)(b), F.S., relating to
 19 the issuance of a civil citation, and the issuance of
 20 a civil citation or similar diversion program,
 21 respectively, to incorporate the amendments made to s.
 22 985.12, F.S., in references thereto; providing an
 23 effective date.

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

26
 27 Section 1. Subsection (1) of section 985.12, Florida
 28 Statutes, is amended to read:
 29 985.12 Civil citation.—

Page 1 of 6

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

38-00317A-15

2015378__

30 (1) There is established a juvenile civil citation process
 31 for the purpose of providing an efficient and innovative
 32 alternative to custody by the Department of Juvenile Justice for
 33 children who commit nonserious delinquent acts and to ensure
 34 swift and appropriate consequences. The department shall
 35 encourage and assist in the implementation and improvement of
 36 civil citation programs or other similar diversion programs
 37 around the state. The civil citation or similar diversion
 38 program shall be established at the local level with the
 39 concurrence of the chief judge of the circuit, state attorney,
 40 public defender, and the head of each local law enforcement
 41 agency involved. The program may be operated by an entity such
 42 as a law enforcement agency, the department, a juvenile
 43 assessment center, the county or municipality, or another ~~some~~
 44 ~~other~~ entity selected by the county or municipality. An entity
 45 operating the civil citation or similar diversion program must
 46 do so in consultation and agreement with the state attorney and
 47 local law enforcement agencies. Under such a juvenile civil
 48 citation or similar diversion program, a ~~any~~ law enforcement
 49 officer, upon making contact with a juvenile who admits having
 50 committed a misdemeanor, may choose to issue a simple warning or
 51 inform the child's guardian or parent of the child's infraction,
 52 or shall ~~may~~ issue a civil citation or require participation in
 53 a similar diversion program, and assess up to ~~not more than~~ 50
 54 community service hours, and require participation in
 55 intervention services as indicated by an assessment of the needs
 56 of the juvenile, including family counseling, urinalysis
 57 monitoring, and substance abuse and mental health treatment
 58 services. A copy of each citation issued under this section

Page 2 of 6

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38-00317A-15

2015378__

59 shall be provided to the department, and the department shall
 60 enter appropriate information into the juvenile offender
 61 information system. Use of the civil citation or similar
 62 diversion program is not limited to first-time offenses and may
 63 be used in a second or subsequent offense. In exceptional
 64 situations, a local law enforcement officer may arrest a
 65 juvenile for a first-time misdemeanor if he or she provides
 66 written documentation as to why an arrest was warranted to
 67 protect public safety. Only first-time misdemeanor offenders are
 68 eligible for the civil citation or similar diversion program. At
 69 the conclusion of a juvenile's civil citation program or similar
 70 diversion program, the agency operating the program shall report
 71 the outcome to the department. The issuance of a civil citation
 72 is not considered a referral to the department.

73 Section 2. For the purpose of incorporating the amendment
 74 made by this act to section 985.12, Florida Statutes, in a
 75 reference thereto, paragraph (b) of subsection (3) of section
 76 943.051, Florida Statutes, is reenacted to read:

77 943.051 Criminal justice information; collection and
 78 storage; fingerprinting.—

79 (3)

80 (b) A minor who is charged with or found to have committed
 81 the following offenses shall be fingerprinted and the
 82 fingerprints shall be submitted electronically to the
 83 department, unless the minor is issued a civil citation pursuant
 84 to s. 985.12:

- 85 1. Assault, as defined in s. 784.011.
- 86 2. Battery, as defined in s. 784.03.
- 87 3. Carrying a concealed weapon, as defined in s. 790.01(1).

Page 3 of 6

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38-00317A-15

2015378__

- 88 4. Unlawful use of destructive devices or bombs, as defined
 89 in s. 790.1615(1).
- 90 5. Neglect of a child, as defined in s. 827.03(1)(e).
- 91 6. Assault or battery on a law enforcement officer, a
 92 firefighter, or other specified officers, as defined in s.
 93 784.07(2)(a) and (b).
- 94 7. Open carrying of a weapon, as defined in s. 790.053.
- 95 8. Exposure of sexual organs, as defined in s. 800.03.
- 96 9. Unlawful possession of a firearm, as defined in s.
 97 790.22(5).
- 98 10. Petit theft, as defined in s. 812.014(3).
- 99 11. Cruelty to animals, as defined in s. 828.12(1).
- 100 12. Arson, as defined in s. 806.031(1).
- 101 13. Unlawful possession or discharge of a weapon or firearm
 102 at a school-sponsored event or on school property, as provided
 103 in s. 790.115.

104 Section 3. For the purpose of incorporating the amendment
 105 made by this act to section 985.12, Florida Statutes, in a
 106 reference thereto, paragraph (b) of subsection (1) of section
 107 985.11, Florida Statutes, is reenacted to read:

108 985.11 Fingerprinting and photographing.—

109 (1)

110 (b) Unless the child is issued a civil citation or is
 111 participating in a similar diversion program pursuant to s.
 112 985.12, a child who is charged with or found to have committed
 113 one of the following offenses shall be fingerprinted, and the
 114 fingerprints shall be submitted to the Department of Law
 115 Enforcement as provided in s. 943.051(3)(b):

- 116 1. Assault, as defined in s. 784.011.

Page 4 of 6

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38-00317A-15

2015378__

117 2. Battery, as defined in s. 784.03.
 118 3. Carrying a concealed weapon, as defined in s. 790.01(1).
 119 4. Unlawful use of destructive devices or bombs, as defined
 120 in s. 790.1615(1).
 121 5. Neglect of a child, as defined in s. 827.03(1)(e).
 122 6. Assault on a law enforcement officer, a firefighter, or
 123 other specified officers, as defined in s. 784.07(2)(a).
 124 7. Open carrying of a weapon, as defined in s. 790.053.
 125 8. Exposure of sexual organs, as defined in s. 800.03.
 126 9. Unlawful possession of a firearm, as defined in s.
 127 790.22(5).
 128 10. Petit theft, as defined in s. 812.014.
 129 11. Cruelty to animals, as defined in s. 828.12(1).
 130 12. Arson, resulting in bodily harm to a firefighter, as
 131 defined in s. 806.031(1).
 132 13. Unlawful possession or discharge of a weapon or firearm
 133 at a school-sponsored event or on school property as defined in
 134 s. 790.115.
 135
 136 A law enforcement agency may fingerprint and photograph a child
 137 taken into custody upon probable cause that such child has
 138 committed any other violation of law, as the agency deems
 139 appropriate. Such fingerprint records and photographs shall be
 140 retained by the law enforcement agency in a separate file, and
 141 these records and all copies thereof must be marked "Juvenile
 142 Confidential." These records are not available for public
 143 disclosure and inspection under s. 119.07(1) except as provided
 144 in ss. 943.053 and 985.04(2), but shall be available to other
 145 law enforcement agencies, criminal justice agencies, state

Page 5 of 6

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38-00317A-15

2015378__

146 attorneys, the courts, the child, the parents or legal
 147 custodians of the child, their attorneys, and any other person
 148 authorized by the court to have access to such records. In
 149 addition, such records may be submitted to the Department of Law
 150 Enforcement for inclusion in the state criminal history records
 151 and used by criminal justice agencies for criminal justice
 152 purposes. These records may, in the discretion of the court, be
 153 open to inspection by anyone upon a showing of cause. The
 154 fingerprint and photograph records shall be produced in the
 155 court whenever directed by the court. Any photograph taken
 156 pursuant to this section may be shown by a law enforcement
 157 officer to any victim or witness of a crime for the purpose of
 158 identifying the person who committed such crime.
 159 Section 4. This act shall take effect October 1, 2015.

Page 6 of 6

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THE FLORIDA SENATE

APPEARANCE RECORD

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3.10.15

Meeting Date

378

Bill Number (if applicable)

Topic Civil Citation

Amendment Barcode (if applicable)

Name Sarah Carroll

Job Title

Address 123 S. Adams

Phone 671-4401

Street

Tallahassee

32301

Email

City

State

Zip

Speaking: For Against Information

→ if not amended

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

3.10.2015

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378

Meeting Date

Bill Number (if applicable)

Topic JUVENILE JUSTICE

Amendment Barcode (if applicable)

Name JOHN S. ADLER

Job Title THE REV DR, PASTOR, TREASURER

Address 1406 S. LARKWOOD SQ

Phone 239.571.3600

Street

FORT MYERS FL

City

State

33919

Zip

Email johnadler@comcast.net

Speaking: For Against Information

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

Representing LIFE - FORT MYERS (LEE INTERFAITH FOR EMPOWERMENT)

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)

3/10/15

Meeting Date

378

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

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32301

State

Zip

Email samantha@frf.org

Speaking: For Against Information

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

Representing Florida Retail Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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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)

378

Meeting Date _____ Bill Number (if applicable) _____

Topic Juvenile Justice Amendment Barcode (if applicable) _____

Name Rev. Tan C. Moss

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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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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3/10/15

Meeting Date

378

Bill Number (if applicable)

720812

Amendment Barcode (if applicable)

Topic CIVIL CITATIONS

Name STEPHAN DEMBINSKY

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Speaking: For Against Information

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

Representing FLORIDA POLICE CHIEFS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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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)

10 MAR 2015
Meeting Date

378
Bill Number (if applicable)

Topic JUVENILE JUSTICE CITATIONS

Amendment Barcode (if applicable)

Name LAURA YOUMANS

Job Title ADVOCATE

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Speaking: For Against Information

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

Representing ASSOC. OF COUNTIES

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE
APPEARANCE RECORD

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3/10/15
Meeting Date

SB 378
Bill Number (if applicable)

Topic R/t Juvenile Justice (Civil Citations)

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title President & CEO of Florida Smart Justice Alliance

Address 204 S. Monroe St.
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Phone _____

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City State Zip

Email Barney@barneybishops.com

Speaking: For Against Information

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

Representing The Florida Smart Justice Alliance

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)

Meeting Date _____ Bill Number (if applicable) 378

Topic Civil Citation Amendment Barcode (if applicable) Brandes Amendment

Name Jeanne Howard

Job Title Asst. State Attorney -

Address SAE 15 - 401 N. Dixie Hwy Phone _____
Street

WPB FL 33401 Email _____
City State Zip

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

Representing Florida Prosecuting Attorneys Assoc.

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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3/10/15
Meeting Date

378
Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Nick Matthews

Job Title Intergovernmental Affairs

Address 115 S. Andrews Ave.

Phone _____

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Fort Lauderdale FL 33301

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Email NMatthews@Broward.org

Speaking: For Against Information

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

Representing Broward 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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3/10/2015

378

Meeting Date

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Nancy Daniels

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Tallahassee

FL

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City

State

Zip

Speaking: For Against Information

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

Representing FL Public Defender Association, Inc.

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
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3/10/15

Meeting Date

378

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns/Respect Life

Address 20 W Park Ave Phone _____
Street

Tallahassee FL 32301 Email _____
City State Zip

Speaking: For Against Information

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

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE
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378

Meeting Date

Bill Number (if applicable)

Topic Civil Citations

Amendment Barcode (if applicable)

Name RYAN REITER

Job Title Gov. Affairs Mgr.

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Phone 954 687 5266

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Lauderhill

FL

33319

Email PREITER@CSCBroward.org

City

State

Zip

Speaking: For Against Information

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

Representing Childrens Services Council of Broward

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)

3/10/15
Meeting Date

378
Bill Number (if applicable)

Topic Civil Citations

605206
Amendment Barcode (if applicable)

Name Samantha Sexton

Job Title Associate Direc. of Government Affairs

Address One West Adams St #301 Phone 904-383-9403
Street

Jacksonville FL 32202 Email samantha.sexton@pacecenter.org
City State Zip

Speaking: For Against Information

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

Representing PACE Center for Girls Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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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)

3-10-15

Meeting Date

378

Bill Number (if applicable)

615206

Amendment Barcode (if applicable)

Topic Civil Citation

Name Sarrah Carroll

Job Title _____

Address 123 S. Adams St

Phone 671-4401

Street

Tallahassee

32301

Email _____

City

State

Zip

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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/10/15
Meeting Date

378
Bill Number (if applicable)

Topic Civil Citations

Amendment Barcode (if applicable)

Name Amy Mercer

Job Title Director

Address PO Box 14035

Phone

Tallahassee, FL

Email

Speaking: For Against Information

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

Representing FL Police Chiefs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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Tab 3 - SB 378
 Handout from Barney Bishop
 Fla. Smart Justice

Civil Citations Issued by County from December 2013 – November 2014

County	Eligible Youth	Arrested	Issued a Civil Citation	% Issued a Civil Citation
Statewide	21,235	12,775	8,460	40%
Alachua	400	229	171	43%
Baker	43	26	17	40%
Bay	455	161	294	65%
Bradford	26	26	0	0%
Brevard	582	447	135	23%
Broward	1508	487	1021	68%
Calhoun	14	14	0	0%
Charlotte	232	183	49	21%
Citrus	79	55	24	30%
Clay	287	272	15	5%
Collier	475	279	196	41%
Columbia	63	45	18	29%
Desoto	74	60	14	19%
Dixie	13	13	0	0%
Duval	864	583	281	33%
Escambia	502	276	226	45%
Flagler	111	72	39	35%
Franklin	11	10	1	9%
Gadsden	36	28	8	22%
Gilchrist	10	7	3	30%
Glades	3	2	1	33%
Hamilton	14	10	4	29%
Hardee	46	46	0	0%
Hendry	89	69	20	22%
Hernando	219	74	145	66%
Highlands	149	132	17	11%
Hillsborough	1525	1025	500	33%
Holmes	11	11	0	0%
Indian River	152	107	45	30%
Jackson	26	22	4	15%
Jefferson	8	7	1	13%

*Data-Figure Source: Florida Department of Juvenile Justice Website <http://www.djj.state.fl.us/research/delinquency-data/civil-citation-dashboard>

Washington	24	24	0	0%
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Highest Areas of Priority for Juvenile Civil Citations				
Rank	Eligible Youth	Arrested	Issued a Civil Citation	% Issued a Civil Citation
1	Miami-Dade – 1,602	Orange – 1,266	Miami-Dade – 1,458	Miami-Dade – 91%
2	Orange – 1,554	Hillsborough – 1,025	Broward – 1,021	Pinellas – 79%
3	Hillsborough – 1,525	Polk – 982	Pinellas – 1,004	Monroe – 77%
4	Broward – 1,508	Palm Beach – 656	Hillsborough – 500	Broward – 68%
5	Pinellas – 1276	Duval – 583	Seminole – 394	Hernando – 66%
6	Polk – 982	Volusia – 559	Bay - 294	Seminole – 65%
7	Palm Beach – 948	Broward – 487	Palm Beach – 292	Bay – 65%
8	Duval – 864	Lee – 483	Orange – 288	Leon – 60%
9	Volusia – 744	Brevard – 447	Duval – 281	Marion – 55%
10	Lee – 660	Manatee – 408	Marion – 278	Pasco – 44%

Counties Issuing the Lowest Percentage of Civil Citations Given Eligible Youth				
Rank	County	Eligible Youth	Issued a Civil Citation	% Issued a Civil Citation
1	Polk	982	0	0%
2	Sarasota	193	0	0%
3	Osceola	465	51	11%
4	Manatee	459	51	11%
5	Okaloosa	336	38	11%
6	Orange	1,554	288	19%
7	Volusia	744	185	25%
8	Brevard	582	135	23%
9	Lee	660	177	27%
10	Lake	360	85	24%

**All computation was done by Staff at Barney Bishop Consulting, LLC*

*Data-Figure Source: Florida Department of Juvenile Justice Website <http://www.djj.state.fl.us/research/delinquency-data/civil-citation-dashboard>

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 664

INTRODUCER: Senator Altman

SUBJECT: Sentencing in Capital Felonies

DATE: March 9, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Pre-meeting
2.			JU	
3.			AP	

I. Summary:

SB 664 requires the sentencing jury to render a recommendation for the death penalty by a unanimous vote rather than a simple majority vote. It requires the jury to certify in writing that the vote for death was unanimous.

The bill effects sentencing proceedings in death penalty cases commencing on or after July 1, 2015. The new procedures created by this bill will apply to capital crimes committed both before and after July 1, 2015.

The bill requires that in order to recommend the death penalty, the jury must find that “sufficient aggravating circumstances exist which outweigh any mitigating circumstances found to exist.” This is the opposite of the findings required under current law where the mitigators must outweigh the aggravators.

The jury must certify in writing that each aggravating circumstance used to support its recommendation of death was found to exist beyond a reasonable doubt by a unanimous vote.

The bill limits the sentencing judge to consideration of only the aggravating factors unanimously found to exist by the jury as the judge determines the sentence in the case.

II. Present Situation:

Florida's Capital Sentencing Law

The Jury's Role

In Florida, after a guilty verdict in a capital case, the jury issues a sentencing recommendation – death or life imprisonment – unless the jury is waived.¹ During the sentencing phase the jury hears evidence to establish statutory aggravating factors and statutory or nonstatutory mitigating circumstances.² The aggravating factors must be established beyond a reasonable doubt.³ The fact-finder must only be convinced by the greater weight of the evidence (a lower standard of proof than beyond a reasonable doubt) as to the existence of mitigating factors.⁴

If the jury finds one or more aggravating circumstances and determines that these circumstances are sufficient to recommend the death penalty, it must determine whether sufficient mitigating circumstances exist to outweigh the aggravating circumstances. Based upon these considerations, the jury must recommend whether the defendant should be sentenced to life imprisonment or death.⁵ However, even if the aggravating circumstances are found to outweigh the mitigating circumstances, the jury is never required to return a recommendation for death and must be so instructed.⁶

¹ With the issue of guilt or innocence disposed of, the jury can then view the question of penalty as a separate and distinct issue. The fact that the defendant has committed the crime no longer determines automatically that he must die in the absence of a mercy recommendation. They must consider from the facts presented to them-facts in addition to those necessary to prove the commission of the crime-whether the crime was accompanied by aggravating circumstances sufficient to require death, or whether there were mitigating circumstances which require a lesser penalty. *State v. Dixon*, 283 So.2d 1 (Fla. 1973).

² “An aggravating circumstance is a standard to guide the jury in making the choice between the alternative recommendations of life imprisonment without the possibility of parole or death. It is a statutorily enumerated circumstance which increases the gravity of a crime or the harm to a victim.” *Fla. Standard Jury Instructions, Criminal Cases, Penalty Proceedings Capital Cases*, Instr. 7.11.

³ “An aggravating circumstance must be proven beyond a reasonable doubt before it may be considered by you in arriving at your recommendation. In order to consider the death penalty as a possible penalty, you must determine that at least one aggravating circumstance has been proven.” ... “If you find the aggravating circumstances do not justify the death penalty, your advisory sentence should be one of life imprisonment without possibility of parole.” *Id.*

⁴ “Should you find sufficient aggravating circumstances do exist to justify recommending the imposition of the death penalty, it will then be your duty to determine whether the mitigating circumstances outweigh the aggravating circumstances that you find to exist.

A mitigating circumstance is not limited to the facts surrounding the crime. It can be anything in the life of the defendant which might indicate that the death penalty is not appropriate for the defendant. In other words, a mitigating circumstance may include any aspect of the defendant's character, background or life or any circumstance of the offense that reasonably may indicate that the death penalty is not an appropriate sentence in this case.

A mitigating circumstance need not be proved beyond a reasonable doubt by the defendant. A mitigating circumstance need only be proved by the greater weight of the evidence, which means evidence that more likely than not tends to prove the existence of a mitigating circumstance. If you determine by the greater weight of the evidence that a mitigating circumstance exists, you may consider it established and give that evidence such weight as you determine it should receive in reaching your conclusion as to the sentence to be imposed.” *Id.*

⁵ “The process of weighing aggravating and mitigating factors to determine the proper punishment is not a mechanical process. The law contemplates that different factors may be given different weight or values by different jurors. In your decision-making process, you, and you alone, are to decide what weight is to be given to a particular factor.” *Id.*

⁶ “The sentence that you recommend to the court must be based upon the facts as you find them from the evidence and the law. If, after weighing the aggravating and mitigating circumstances, you determine that at least one aggravating circumstance is found to exist and that the mitigating circumstances do not outweigh the aggravating circumstances, or, in the absence of mitigating factors, that the aggravating factors alone are sufficient, you may recommend that a sentence of death

A simple majority of the jury is necessary for recommendation of the death penalty. It is not necessary for the jury to list on the verdict the aggravating and mitigating circumstances it finds or to disclose the number of jurors making such findings.⁷

The aggravating and mitigating circumstances and the method by which they must be determined to apply for sentencing are set forth in s. 921.141, F.S., as follows:

(2) **ADVISORY SENTENCE BY THE JURY.**—After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:

- (a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);
- (b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and
- (c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

(3) **FINDINGS IN SUPPORT OF SENTENCE OF DEATH.**—Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:

- (a) That sufficient aggravating circumstances exist as enumerated in subsection (5), and
- (b) That there are insufficient mitigating circumstances to outweigh the aggravating circumstances.

In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact based upon the circumstances in subsections (5) and (6) and upon the records of the trial and the sentencing proceedings. If the court does not make the findings requiring the death sentence within 30 days after the rendition of the judgment and sentence, the court shall impose sentence of life imprisonment in accordance with s. 775.082.

be imposed rather than a sentence of life in prison without the possibility of parole. Regardless of your findings in this respect, however, you are neither compelled nor required to recommend a sentence of death. If, on the other hand, you determine that no aggravating circumstances are found to exist, or that the mitigating circumstances outweigh the aggravating circumstances, or, in the absence of mitigating factors, that the aggravating factors alone are not sufficient, you must recommend imposition of a sentence of life in prison without the possibility of parole rather than a sentence of death.” *Id.*

⁷ “If a majority of the jury, seven or more, determine that (defendant) should be sentenced to death, your advisory sentence will be:
A majority of the jury by a vote of _____ to _____ advise and recommend to the court that it impose the death penalty upon (defendant).

On the other hand, if by six or more votes the jury determines that (defendant) should not be sentenced to death, your advisory sentence will be:

The jury advises and recommends to the court that it impose a sentence of life imprisonment upon (defendant) without possibility of parole.” *Id.*

(5) AGGRAVATING CIRCUMSTANCES.—Aggravating circumstances shall be limited to the following:

(a) The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation.

(b) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.

(c) The defendant knowingly created a great risk of death to many persons.

(d) The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any: robbery; sexual battery; aggravated child abuse; abuse of an elderly person or disabled adult resulting in great bodily harm, permanent disability, or permanent disfigurement; arson; burglary; kidnapping; aircraft piracy; or unlawful throwing, placing, or discharging of a destructive device or bomb.

(e) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(f) The capital felony was committed for pecuniary gain.

(g) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(h) The capital felony was especially heinous, atrocious, or cruel.

(i) The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.

(j) The victim of the capital felony was a law enforcement officer engaged in the performance of his or her official duties.

(k) The victim of the capital felony was an elected or appointed public official engaged in the performance of his or her official duties if the motive for the capital felony was related, in whole or in part, to the victim's official capacity.

(l) The victim of the capital felony was a person less than 12 years of age.

(m) The victim of the capital felony was particularly vulnerable due to advanced age or disability, or because the defendant stood in a position of familial or custodial authority over the victim.

(n) The capital felony was committed by a criminal gang member, as defined in s. 874.03.

(o) The capital felony was committed by a person designated as a sexual predator pursuant to s. 775.21 or a person previously designated as a sexual predator who had the sexual predator designation removed.

(p) The capital felony was committed by a person subject to an injunction issued pursuant to s. 741.30 or s. 784.046, or a foreign protection order accorded full faith and credit pursuant to s. 741.315, and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.

(6) MITIGATING CIRCUMSTANCES.—Mitigating circumstances shall be the following:

(a) The defendant has no significant history of prior criminal activity.

(b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

- (c) The victim was a participant in the defendant's conduct or consented to the act.
- (d) The defendant was an accomplice in the capital felony committed by another person and his or her participation was relatively minor.
- (e) The defendant acted under extreme duress or under the substantial domination of another person.
- (f) The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired.
- (g) The age of the defendant at the time of the crime.
- (h) The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty.⁸

Judicial Determination of Sentence

After receiving the jury's recommendation the judge must then decide the appropriate sentence.⁹ The judge weighs the jury's recommendation and conducts his or her own analysis of the aggravating and mitigating factors. The recommendation of the jury must be given great weight in the judge's decision-making process on the sentence handed down.¹⁰ The judge may sentence a defendant in a different manner than the jury recommends – this is known as an “override.”

Records suggest that no Florida judge has overridden a jury's verdict of a life sentence since 1999. According to U.S. Supreme Court Justice Sotomayor's opinion dissenting from the Court's denial of certiorari review in the Alabama death penalty case of *Woodward v. Alabama*:

Even after this Court upheld Florida's capital sentencing scheme in *Spaziano v. Florida*, 468 U. S. 447 (1984), the practice of judicial overrides consistently declined in that State. Since 1972, 166 death sentences have been imposed in Florida following a jury recommendation of life imprisonment. Between 1973 and 1989, an average of eight people was sentenced to death on an override each year. That average number dropped by 50 percent between 1990 and 1994, and by an additional 70 percent from 1995 to 1999. The practice then stopped completely. It has been more than 14 years since the last life-to-death override in Florida; the last person sentenced to death after a jury recommendation of life imprisonment was Jeffrey Weaver, sentenced in August 1999.¹¹

⁸ Aggravating and mitigating circumstances appear in s. 921.142, F.S., which applies to Capital Drug Trafficking Felonies. Section 921.142, F.S., is also amended by this bill.

⁹ “The punishment for this crime is either death or life imprisonment without the possibility of parole. The final decision as to which punishment shall be imposed rests with the judge of this court; however, the law requires that you, the jury, render to the court an advisory sentence as to which punishment should be imposed upon the defendant.” *Fla. Standard Jury Instructions, Criminal Cases, Penalty Proceedings Capital Cases, Instr. 7.11.*

¹⁰ What is referred to as the *Tedder* “Great Weight” Standard was announced by the Florida Supreme Court in *Tedder v. State*, 322 So.2d 908 (Fla. 1975). In that case, the court determined that “[a] jury recommendation under our trifurcated death penalty statute should be given great weight. In order to sustain a sentence of death following a jury recommendation of life, the facts suggesting a sentence of death should be so clear and convincing that virtually no reasonable person could differ.”

¹¹ 571 U.S. ____ (2013), in which Justice Breyer joined this part of the dissent.

Proportionality Review

The judgment of conviction and sentence of death is subject to automatic review by the Supreme Court of Florida.¹² The sentence, and the reasons for it, must be reduced to writing so that the Florida Supreme Court can engage in a meaningful review.¹³

The Florida Supreme Court engages in proportionality review in all cases in which the death penalty is handed down. Proportionality review is the comparison of one case in which the defendant was sentenced to death with other similar death cases.

When the U.S. Supreme Court upheld Florida's current death penalty sentencing law in 1976, the court seemed to rely quite heavily on the Florida Supreme Court's promise to give each death case a meaningful review.¹⁴ The *Proffitt* court stated:

[T]he Florida statute has a provision designed to assure that the death penalty will not be imposed on a capriciously selected group of convicted defendants. The Supreme Court of Florida reviews each death sentence to ensure that similar results are reached in similar cases....In fact, it is apparent that the Florida court has undertaken responsibility to perform its function of death sentence review with a maximum of rationality and consistency. For example, it has several times compared the circumstances of a case under review with those of previous cases in which it has assessed the imposition of death sentences (citations omitted).¹⁵

To date, Florida's capital sentencing scheme has withstood challenges based on the 8th, 14th, and 6th Amendments.¹⁶

Other States¹⁷

Of the 32 states that currently authorize capital punishment, 31 require jury participation in the sentencing decision; only Montana leaves the jury with no sentencing role in capital cases.¹⁸ In 27 of those 31 states, plus the federal system,¹⁹ the jury's decision to impose life imprisonment is final and may not be disturbed by the trial judge under any circumstance.

In the remaining four states, the jury has a role in sentencing but is not the final decisionmaker. In Nebraska, the jury is responsible for finding aggravating circumstances, while a three-judge panel determines mitigating circumstances and weighs them against the aggravating circumstances to make the ultimate sentencing decision.²⁰

¹² s. 921.141, F.S.

¹³ *State v. Dixon*, 283 So.2d 1 (Fla. 1973).

¹⁴ *Proffitt v. Florida*, 428 U.S. 242 (1976). It is important to note that *Proffitt* was decided on 8th and 14th Amendment grounds (cruel or unusual punishment and due process), not on 6th Amendment (right to a jury trial) grounds.

¹⁵ *Id.*, 258-259.

¹⁶ Cruel or unusual punishment, due process and right to jury trial. *Proffitt v. Florida*, 428 U.S. 242 (1976); *Spaziano v. Florida*, 468 U.S. 447 (1984); *Hildwin v. Florida*, 490 U.S. 638 (1989).

¹⁷ Taken from Justice Sotomayor's dissent in *Woodward v. Alabama*, 571 U.S. ____ (2013), in which Justice Breyer joined this part of the dissent.

¹⁸ Mont. Code Ann. §§46-18-301, 46-18-305 (2013).

¹⁹ 18 U. S. C. §3593.

²⁰ Neb. Rev. Stat. §§29-2520, 29-2521 (2008).

Three states—Alabama,²¹ Delaware, and Florida—permit the trial judge to override the jury’s sentencing decision.²²

State v. Steele, The Florida Jury’s Responsibility in Finding Aggravating Factors

Although the U.S. Supreme Court issued rulings in two death penalty cases indicating that aggravating factors operate as the “functional equivalent of an element of a greater offense,”²³ and therefore must be decided by a jury, the Florida Supreme Court has not yet held that those decisions apply within the context of Florida’s death penalty sentencing scheme.²⁴

In *Steele*, Justice Cantero wrote for the majority:

Even if *Ring* did apply in Florida—an issue we have yet to conclusively decide—we read it as requiring only that the jury make the finding of “an element of a greater offense.” *Id.* That finding would be that at least one aggravator exists—not that a specific one does. But given the requirements of section 921.141 and the language of the standard jury instructions, such a finding already is implicit in a jury’s recommendation of a sentence of death. Our interpretation of *Ring* is consistent with the United States Supreme Court’s assessment of Florida’s capital sentencing statute. In *Jones v. United States*, 526 U.S. 227, 250–51, 119 S.Ct. 1215, 143 L.Ed.2d 311 (1999), the Court noted that in its decision in *Hildwin v. Florida*, 490 U.S. 638, 109 S.Ct. 2055, 104 L.Ed.2d 728 (1989), in which it concluded that the Sixth Amendment does not require explicit jury findings on aggravating circumstances, “a jury made a sentencing recommendation of death, thus necessarily engaging in the factfinding required for imposition of a higher sentence, that is, the determination that at least one aggravating factor had been proved.” In requiring the jury to consider by majority vote each particular aggravator submitted rather than merely specifying whether one or more aggravators exist, the trial court in this case imposed a greater burden than the one the Supreme Court imposed in reviewing Arizona’s judge-only capital sentencing scheme in *Ring*.²⁵

Although the Florida Supreme Court declined to require more or different factfinding by a death penalty jury, the *Steele* opinion did contain “suggestions” from the court: “in light of developments in other states and at the federal level, the Legislature should revisit the statute to require some unanimity in the jury’s recommendations.”²⁶

The court examined the death penalty sentencing requirements of the other 37 states (at the time of the opinion) and concluded that “Florida is now the only state in the country that allows a jury

²¹ In Alabama, a 10-2 vote is sufficient for the jury to recommend a death sentence. Ala. Code § 13A-5-44-53.

²² In *Spaziano v. Florida*, 468 U. S. 447 (1984), the U.S. Supreme Court upheld Florida’s judicial-override sentencing statute.

²³ See *Ring v. Arizona*, 536 U.S. 584, 609 (2002) (ruling that aggravating circumstances must be determined by the jury and established beyond a reasonable doubt; quoting *Apprendi v. New Jersey*, 530 U.S. 466 (2000)

²⁴ *State v. Steele*, 921 So.2d 538 (Fla. 2005).

²⁵ *Id.*

²⁶ *Id.* at 548.

to decide that aggravators exist *and* to recommend a sentence of death by a mere majority vote.”²⁷ Finally, Justice Cantero wrote: “Assuming that our system continues to withstand constitutional scrutiny, we ask the Legislature to revisit it to decide whether it wants Florida to remain the outlier state.”²⁸

Florida-Specific Statistical Information

Table 1 shows that under current law and practice only 20 percent of death cases over a twelve year period had unanimous jury verdicts. Based on this analysis it is impossible to predict with any degree of accuracy whether requiring a unanimous jury recommendation would result in a marked decline in death cases. It would appear from the current practice that a decline is likely if this bill becomes law, but the degree of the decline is uncertain.

TABLE 1
Distribution of Jury Votes in Death Cases
by Calendar Year of Disposition by Florida Supreme Court²⁹
(N=296)

Original Jury Vote	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11	'12	Total	% ³⁰	Cum %
7-5	6	1	4	4	0	3	0	2	4	1	3	2	2	32	11%	11%
8-4	4	6	2	6	2	0	3	0	2	9	2	1	5	42	14%	25%
9-3	4	4	3	6	2	2	11	3	5	6	6	9	5	66	22%	47%
10-2	3	12	4	3	3	3	2	2	2	5	11	1	3	54	18%	66%
11-1	2	8	5	5	3	1	1	2	1	5	5	1	3	42	14%	80%
12-0	9	6	8	4	2	3	6	7	6	0	1	6	2	60	20%	100%
Subtotal	28	37	26	28	12	12	23	16	20	26	28	20	20	296	100%	
Other ³¹	3	1	2	3	4	2	0	0	1	4	3	1	0	24		
TOTAL	31	38	28	31	16	14	23	16	21	30	31	21	20	320		

Table 2 analyzes the degree to which a unanimous jury vote results in the case being more likely to be affirmed by the Florida Supreme Court on direct appeal. Sixty-three percent of the 12-0 cases were affirmed by the court compared to 53 percent of the 7-5 cases. It appears then that a unanimous jury vote is not as strongly correlated with an affirmed sentence as perhaps logically predicted.

²⁷ *Id.*

²⁸ *Id.* at 549.

²⁹ Thirteen years of data compiled by the Supreme Court Clerk’s Office.

³⁰ Calculated percentage excludes the “other” category.

³¹ Includes: waiver of penalty phase, and judicial overrides from jury recommendation of life to judge imposing death.

TABLE 2

Distribution of Jury Votes in Death Cases Disposed by the Florida Supreme Court on Direct Appeal from Calendar Year 2000 to 2012³² (N=296)					
Original Jury Vote For Death	TOTAL	Death Sentence Affirmed	Percent Affirmed	Death Sentence Not Affirmed ³³	Percent Not Affirmed
7 to 5	32	17	53%	15	47%
8 to 4	42	31	74%	11	26%
9 to 3	66	48	73%	18	27%
10 to 2	54	39	72%	15	28%
11 to 1	42	37	88%	5	12%
12 to 0	60	38	63%	22	37%
TOTAL	296	210	71%	86	29%

In summary, both Tables 1 and 2 illustrate the wide variability in voting practices in these complex and emotionally charged death cases. Given this wide variability, it is difficult to predict the impact on future death cases and voting practices if SB 664 passes and becomes law.

American Bar Association Report (2006) and Section Report to the House of Delegates (2015)

In September of 2006, the American Bar Association (ABA) issued a report entitled “Evaluating Fairness and Accuracy in State Death Penalty Systems: The Florida Death Penalty Assessment Report.”

The authors of the report acknowledged that the Florida Supreme Court has consistently rejected the claims under the U.S. Supreme Court’s decision in *Ring v. Arizona* that the jury must make a unanimous advisory sentence.³⁴ Despite this recognition and Florida’s practice of not requiring unanimity, the ABA report asserts that by not requiring a unanimous recommendation, meaningful jury deliberation is lessened.³⁵

The ABA report cites to a survey of Florida capital jurors who were not required to reach a unanimous vote to recommend a death sentence.³⁶ The ABA report argues that these jurors were less likely to take longer than 3 hours to reach a sentencing decision and less likely to demonstrate emotional commitment to the punishment decision.³⁷

In its recent Report to the House of Delegates, the Section of Individual Rights and Responsibilities of the ABA points out that the penalty phase jury is asked to perform a

³² Source document: Supreme Court Death Penalty Direct Appeals Disposed- With Jury Votes, 2000 to 2012

³³ Includes: reversal and remand for trial, reduced to life, dismissal, deceased defendant, and acquittal.

³⁴ “Evaluating Fairness and Accuracy in State Death Penalty Systems: The Florida Death Penalty Assessment Report,” American Bar Association, Death Penalty Moratorium Implementation Project (2006), pg. 287.

³⁵ *Id.* pg. 303.

³⁶ *Id.*

³⁷ *Id.* pg. 304.

“complicated and unique analysis” as it weighs aggravating and mitigating factors.³⁸ The report suggests that “requiring unanimity...promotes a thorough and reasoned resolution.”³⁹

III. Effect of Proposed Changes:

The provisions in the bill apply to s. 921.141, F.S., which relates to sentencing in capital felonies as well as s. 921.142, F.S., which applies to sentencing for capital drug trafficking felonies.

The bill effects sentencing proceedings in death penalty cases commencing on or after July 1, 2015. This effective date means that the new procedures will apply to capital crimes committed before July 1, 2015.

Effect of the Bill on the Jury’s Role

Rather than having the sentencing jury render a recommendation for the death penalty by a simple majority vote, the bill requires a unanimous recommendation. It requires the jury to certify in writing that the vote for death was unanimous.

In the penalty phase of a capital case, aggravating factors must be proven to exist at the “beyond a reasonable doubt” standard while mitigating factors must only be shown to exist at the “greater weight of the evidence” standard. The bill requires that in order to recommend the death penalty, the jury must find that “sufficient aggravating circumstances exist which outweigh any mitigating circumstances found to exist.” This is the opposite of current law which requires that sufficient mitigators outweigh any aggravators found to exist. It is unclear how this change will actually effect a jury’s penalty phase deliberations.

The same new analysis of mitigating and aggravating factors must be applied by the sentencing judge. The judge is limited by the bill to considering only the aggravating factors unanimously found by the jury to exist.

The jury must record its certification that each aggravating circumstance used to support its recommendation of death was found to exist beyond a reasonable doubt by a unanimous vote.

The application of the provisions in the bill will require that the jury be provided with a special verdict form. Jury instructions in capital cases must also be created to conform to the provisions in the bill.

Effect of the Bill on the Judicial Sentencing Function

Under current law, the sentencing court is required to weigh the jury’s recommended sentence, which is given great weight in the court’s decision to impose a death or life in prison sentence. The court is also required to conduct its own independent analysis of the aggravating and mitigating circumstances. If the court imposes a death sentence, the sentencing order must

³⁸ ABA Death Penalty Due Process Review Project, Section of Individual Rights and Responsibilities, Report to the House of Delegates, February, 2015, pg. 4.

³⁹ *Id.*

contain specific findings of fact based upon the aggravating and mitigating factors, the trial record, and sentencing proceedings.⁴⁰

The bill restricts the court's ability to consider aggravating factors. The bill requires that the court only consider the aggravating factors "unanimously found to exist by the jury."⁴¹ Therefore the court will not be able to engage in weighing the evidence of mitigating and aggravating factors as it currently does in determining its sentence in a case.

Other Potential Implications

Although the new sentencing provisions are effective for "sentencing proceedings commencing on or after July 1, 2015," it cannot be ruled out that persons sentenced to death prior to the effective date will nonetheless raise the issue of the application of the provisions to their cases. This could result in a substantial number of appeals and they must be answered and litigated by the Attorney General.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. OTHER CONSTITUTIONAL ISSUES:

The bill is effective for sentencing proceedings commencing on or after July 1, 2015.⁴² Generally when the Legislature amends a "criminal statute" the amendment effects criminal conduct occurring after the effective date of the amendment.

The bill's effective date means that a defendant who committed a capital murder offense at any time, even decades ago, who has not been sentenced for the crime prior to July 1, 2015, will be sentenced under the new capital case sentencing procedures created by the bill.

Arguably this effective date, because it is an unusual one, could result in litigation focusing on matters such as whether the new sentencing scheme is a "benefit" to a

⁴⁰ s. 921.141(3), F.S. See also s. 921.142(4), F.S.

⁴¹ See lines 74-77 and 133-136 of the bill.

⁴² See lines 40-41 and 99-100 of the bill.

defendant and, if so, whether the Savings Clause in the Florida Constitution is somehow implicated.⁴³

Likewise, a defendant sentenced after July 1, 2015, but who committed the murder for which he or she faces the possibility of the death penalty prior to that date, might argue that the pre-July 1 sentencing procedures could have been a benefit to him or her and therefore a violation of the constitutional prohibition on ex post facto laws has occurred.⁴⁴

Although it is unlikely either of these constitutional arguments will prevail, it can be stated with near certainty that the issues will at least be litigated.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There may be a fiscal impact to the Attorney General's Office and the court system that is a result of the potential appellate practice resulting from this bill. According to historical Supreme Court documents, legislation requiring a unanimous jury vote may have a notable workload reduction to the Supreme Court.⁴⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 921.141 and 921.142.

⁴³ Article X, Section 9 of the Florida Constitution provides: Repeal of criminal statutes.—Repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed.

⁴⁴ Article I, Section 10 of the Florida Constitution provides: No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed. A primary purpose of the Ex Post Facto Clause is to ensure that citizens have prior notice of the consequences of committing a crime before the crime is committed. *Westerheide v. State*, App. 5 Dist., 767 So.2d 637 (Fla. 2000), review granted 786 So.2d 1192, approved 831 So.2d 93.

⁴⁵ Minutes of the October 24, 2001 Meeting, Supreme Court Workload Study Commission; *2001 Final Report of the Supreme Court Workload Study Commission*, page 11.

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 Altman

16-00577D-15

2015664__

A bill to be entitled

An act relating to sentencing in capital felonies; amending ss. 921.141 and 921.142, F.S.; requiring that an advisory sentence of death be made by a unanimous recommendation of the jury after a defendant's conviction or adjudication of guilt for a capital felony or capital drug trafficking felony; requiring the court to instruct the jury that, in order for the jury to recommend to the court that the death penalty be imposed, the jury must find that sufficient aggravating circumstances exist which outweigh the mitigating circumstances found to exist; requiring the court to instruct the jury that each aggravating circumstance used to support the jury's recommendation of death must be proven beyond a reasonable doubt by a unanimous vote; requiring that the court provide a special verdict form specifying each aggravating circumstance found; limiting the court's findings concerning aggravating circumstances to those found by the jury; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 921.141, Florida Statutes, are amended to read:

921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.—

(2) ADVISORY SENTENCE BY THE JURY.—After hearing all the evidence, the jury shall deliberate and render an advisory

Page 1 of 5

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

16-00577D-15

2015664__

sentence to the court, based upon the following matters:

(a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);

(b) Whether the aggravating circumstances found to exist are sufficient to outweigh the mitigating circumstances found to exist ~~sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist~~; and

(c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

Effective for sentencing proceedings commencing on or after July 1, 2015, an advisory sentence of death must be based on a unanimous vote for death by the jury. The verdict of the jury must be in writing, and an advisory sentence of death must certify the vote for death was unanimous. The court shall instruct the jury that, in order for the jury to recommend to the court that the death penalty be imposed, the jury must first find that sufficient aggravating circumstances exist which outweigh the mitigating circumstances found to exist. The court shall further instruct the jury that each aggravating circumstance used to support the jury's recommendation of death must be proven beyond a reasonable doubt as found by a unanimous vote. The court shall provide a special verdict form that specifies which, if any, aggravating circumstances were found to exist and certifies that the vote for each aggravating circumstance found was unanimous.

(3) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—

Notwithstanding the recommendation of a ~~majority~~ of the jury, the court, after weighing the aggravating and mitigating

Page 2 of 5

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16-00577D-15

2015664

59 circumstances, shall enter a sentence of life imprisonment or
60 death, but if the court imposes a sentence of death, it shall
61 set forth in writing its findings upon which the sentence of
62 death is based as to the facts:

63 (a) That sufficient aggravating circumstances exist as
64 enumerated in subsection (5);~~r~~ and

65 (b) That the aggravating circumstances found to exist are
66 sufficient to outweigh the mitigating circumstances found to
67 exist ~~there are insufficient mitigating circumstances to~~
68 ~~outweigh the aggravating circumstances.~~

69
70 In each case in which the court imposes the death sentence, the
71 determination of the court shall be supported by specific
72 written findings of fact based upon the circumstances in
73 subsections (5) and (6) and upon the records of the trial and
74 the sentencing proceedings, except that the court's
75 consideration and finding of any fact based upon the
76 circumstances in subsection (5) shall be limited to those
77 unanimously found to exist by the jury. If the court does not
78 make the findings requiring the death sentence within 30 days
79 after the rendition of the judgment and sentence, the court
80 shall impose sentence of life imprisonment in accordance with s.
81 775.082.

82 Section 2. Subsections (3) and (4) of section 921.142,
83 Florida Statutes, are amended to read:

84 921.142 Sentence of death or life imprisonment for capital
85 drug trafficking felonies; further proceedings to determine
86 sentence.—

87 (3) ADVISORY SENTENCE BY THE JURY.—After hearing all the

Page 3 of 5

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

16-00577D-15

2015664

88 evidence, the jury shall deliberate and render an advisory
89 sentence to the court, based upon the following matters:

90 (a) Whether sufficient aggravating circumstances exist as
91 enumerated in subsection (6);

92 (b) Whether the aggravating circumstances found to exist
93 are sufficient to outweigh the mitigating circumstances found to
94 exist ~~sufficient mitigating circumstances exist which outweigh~~
95 ~~the aggravating circumstances found to exist;~~ and

96 (c) Based on these considerations, whether the defendant
97 should be sentenced to life imprisonment or death.

98
99 Effective for sentencing proceedings commencing on or after July
100 1, 2015, an advisory sentence of death must be based on a
101 unanimous vote for death by the jury. The verdict of the jury
102 must be in writing, and an advisory sentence of death must
103 certify the vote for death was unanimous. The court shall
104 instruct the jury that, in order for the jury to recommend to
105 the court that the death penalty be imposed, the jury must first
106 find that sufficient aggravating circumstances exist which
107 outweigh the mitigating circumstances found to exist. The court
108 shall further instruct the jury that each aggravating
109 circumstance used to support the jury's recommendation of death
110 must be proven beyond a reasonable doubt as found by a unanimous
111 vote. The court shall provide a special verdict form that
112 specifies which, if any, aggravating circumstances were found to
113 exist and certifies that the vote for each aggravating
114 circumstance found was unanimous.

115 (4) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—

116 Notwithstanding the recommendation of a ~~majority~~ of the jury,

Page 4 of 5

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16-00577D-15

2015664__

117 the court, after weighing the aggravating and mitigating
118 circumstances, shall enter a sentence of life imprisonment or
119 death, but if the court imposes a sentence of death, it shall
120 set forth in writing its findings upon which the sentence of
121 death is based as to the facts:

122 (a) That sufficient aggravating circumstances exist as
123 enumerated in subsection (6);~~7~~ and

124 (b) That the aggravating circumstances found to exist are
125 sufficient to outweigh the mitigating circumstances found to
126 exist ~~there are insufficient mitigating circumstances to~~
127 ~~outweigh the aggravating circumstances.~~

128

129 In each case in which the court imposes the death sentence, the
130 determination of the court shall be supported by specific
131 written findings of fact based upon the circumstances in
132 subsections (6) and (7) and upon the records of the trial and
133 the sentencing proceedings, except that the court's
134 consideration and finding of any fact based upon the
135 circumstances in subsection (6) shall be limited to those
136 unanimously found to exist by the jury. If the court does not
137 make the findings requiring the death sentence within 30 days
138 after the rendition of the judgment and sentence, the court
139 shall impose sentence of life imprisonment in accordance with s.
140 775.082, and the defendant ~~that person~~ shall be ineligible for
141 parole.

142 Section 3. This act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/10/2015

664

Meeting Date

Bill Number (if applicable)

Topic Sentencing in Capital Sentences

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Public Defender, 2nd Judicial Circuit

Address 301 S. Monroe Street

Phone 850.606.1000

Street

Tallahassee

FL

32301

Email nancy.daniels@flpd2.com

City

State

Zip

Speaking: For Against Information

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

Representing FL Public Defender Association, 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

664

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

Meeting Date

Bill Number (if applicable)

Topic Death Penalty Bill

Amendment Barcode (if applicable)

Name Bill Eddins

Job Title State Attorney 1st Circuit

Address 198 Gov. Center

Phone 850 595 4761

Street

Pens FL 32501

City

State

Zip

Email

Speaking: For Against Information

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

Representing FRAA

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)

3/10/15
Meeting Date

SB 664
Bill Number (if applicable)

Topic Sentencing in Capital Felonies

Amendment Barcode (if applicable)

Name Michael Ufferman

Job Title appellate attorney

Address 2022-1 Raymond Diehl Rd
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Tallahassee FL 32308
City State Zip

Email ufferman@uffermanlaw.com

Speaking: For Against Information

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

Representing Florida Association of Criminal Defense Lawyers

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)

3/10/

Meeting Date

669

Bill Number (if applicable)

Topic Sentencing in Capital Felonies

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title

Address 104 S. Monroe Street

Phone 850-425-13

Street

Tallahassee FL 32301

Email TcgLobby@aol.com

City

State

Zip

Speaking: For Against Information

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

Representing ACLU 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/10/15

Meeting Date

6604

Bill Number (if applicable)

Topic Sentencing in Capital Felonies

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns/Respect Life

Address 201 W Park Ave Phone _____

Street

Tallahassee

City

FL

State

32301

Zip

Email _____

Speaking: For Against Information

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

Representing Florida Conference of Catholic Bishops

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)

March 10, 2015
Meeting Date

SB 664
Bill Number (if applicable)

Topic sentencing in capital felonies

Amendment Barcode (if applicable)

Name Steven Been

Job Title Assistant Public Defender (capital trial division)

Address Leon County Courthouse
Street

Phone _____

Tallahassee
City State Zip

Email steve.been@flpd2.com

Speaking: For Against Information

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

Representing Florida Capital Resource 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/10/15
Meeting Date

ip64
Bill Number (if applicable)

Topic Unanimous Jury

Amendment Barcode (if applicable)

Name Alice Vickers

Job Title attorney

Address 623 Beard St.

Phone 850 536 3121

Tallahassee, FL
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Zip

Email alicevickers@flap.org

Speaking: For Against Information

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

Representing Florida Bar Public Interest Law Section

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 764

INTRODUCER: Criminal Justice Committee and Senator Evers

SUBJECT: Controlled Substances

DATE: March 10, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/CS
2.			AHS	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 764 makes mitragynine and 7-hydroxymitragynine Schedule I controlled substances. These substances are “pharmacologically active constituents” of the plant kratom (*Mitragyna speciosa*).¹ An exception is created for FDA-approved drugs. The bill also makes it a first degree misdemeanor to possess, purchase, sell, deliver, manufacture, or bring into this state these substances.

II. Present Situation:

Schedule I Controlled Substances

A substance is a “controlled substance” if it is listed in any of five schedules in s. 893.03, F.S. The particular scheduling determines penalties which may be imposed for unlawful possession, sale, etc., and the conditions under which the substance can be legally possessed, prescribed, sold, etc. Relevant to the bill, a substance in Schedule I is considered to have a high potential for

¹ Prozialeck WC, Jivan JK, Andurkar SV. Pharmacology of kratom: an emerging botanical agent with stimulant, analgesic and opioid-like effects. *J Am Osteopath Assoc.* 2012 Dec; 112(12): 792-9, at p. 792 (abstract). This article is available at <http://www.jaoa.osteopathic.org/content/112/12/792.full.pdf> (last viewed on February 23, 2015).

abuse² and no currently accepted medical use in treatment in the United States and, in its use under medical supervision, does not meet accepted safety standards.³

Non-Trafficking Controlled Substance Offenses

The bill does not amend s. 893.135, F.S., the drug trafficking statute. Section 893.13, F.S., contains the general penalties for possession, sale, etc., of controlled substances.⁴

Under the bill, mitragynine and 7-hydroxymitragynine are listed in s. 893.03(1)(c), F.S. (Schedule I(c) of the controlled substance schedules). Generally, selling, manufacturing, delivering, or possessing with intent to sell, manufacture, or deliver, a controlled substance listed in s. 893.03(1)(c), F.S., is a third degree felony.⁵ However, if any of these acts are committed within 1,000 feet of certain designated places, the felony degree and penalties are greater.⁶ For example, selling a controlled substance listed in s. 893.03(1)(c), F.S., within 1,000 feet of the real property of a child care facility or secondary school is a second degree felony.⁷

Possessing, purchasing, or possessing with intent to purchase, a controlled substance listed in s. 893.13(1)(c), F.S., is a third degree felony.⁸

Kratom

The Florida Department of Law Enforcement (FDLE) has provided the following information regarding kratom:

Kratom (*Mitragyna speciosa* korth) is a tropical tree which is indigenous to areas of Southeast Asia (e.g. Thailand, Malaysia, and Myanmar); and is in the same family as the coffee tree. The ingestion of Kratom involves the use of the leaves either whole or crushed, prepared as a tea, smoked and/or chewed; it can also be found in the form of an extract, and/or encapsulated powder. Kratom is not currently enumerated as a controlled substance under federal law (Controlled Substances Act);⁹ or within Florida under

² “Potential for abuse” means that a substance has properties of a central nervous system stimulant or depressant or an hallucinogen that create a substantial likelihood of its being: (a) Used in amounts that create a hazard to the user’s health or the safety of the community; (b) Diverted from legal channels and distributed through illegal channels; or (c) Taken on the user’s own initiative rather than on the basis of professional medical advice. Section 893.02(20), F.S.

³ Section 893.03(1), F.S.

⁴ Section 893.13(9), F.S., provides an exception to the unlawful acts specified in s. 893.13(1)-(8), F.S., for delivery to, or actual or constructive possession for medical or scientific use or purpose only of controlled substances by, persons included in classes specified in this subsection, or the agents or employees of those persons, for use in the usual course of their business or profession or in the performance of their official duties.

⁵ Section 893.13(1)(a)2., F.S. A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S. However, if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.

⁶ Section 893.13(1)(c)-(f) and (h), F.S.

⁷ Section 893.13(1)(c)2., F.S. A second degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both. Sections 775.082 and 775.083, F.S.

⁸ Section 893.13(2)(a)2. and (6)(a), F.S.

⁹ Kratom is on the Drug Enforcement Administration’s list of Drugs or Chemicals of Concern. Drug Fact Sheet/Kratom, available at http://www.dea.gov/druginfo/drug_data_sheets/Kratom.pdf (last viewed on February 23, 2015).

Florida Statute 893 (Drug Abuse Prevention and Control). This means that all parts of the plant and its extracts are legal to cultivate, buy, possess, and distribute without a license or prescription. However, in June 2014, the U. S. Food and Drug Administration (FDA) issued an Import Alert regarding shipments of dietary supplements and bulk dietary ingredients that are, or contain *Mitragyna speciosa* or Kratom.¹⁰ The FDA has not approved Kratom for human consumption.¹¹ The substance is available on the Internet and in some instances is marketed as a legal psychoactive product with alleged medicinal benefits. Research by University of Mississippi, School of Pharmacy suggests that mitragynine may have a role in treating the withdrawal symptoms of opiate addiction.

Kratom has been described as producing both stimulant and sedative effects. At low doses it produces stimulant effects with users reporting increased alertness, physical energy, talkativeness and sociable behavior. At high doses, opiate effects are produced in addition to sedative and euphoric effects. Acute side effects include nausea, itching, sweating, dry mouth, constipation, increased urination and loss of appetite. Kratom consumption can lead to addiction (study of Thai Kratom addicts who chewed Kratom leaves daily from 3 to 30 years).¹²

Information on the illicit use of Kratom in the U.S. is anecdotal. In a notable study (Sweden) the primary chemical component found in Kratom (Mitragynine)¹³ was one of the components found to be present in nine (9) incidents of fatal intoxication involving a product sold on the internet called “Krypton”. In the reporting, “Krypton” consisted of powdered Kratom leaves together with a more potent substance (O-Desmethyltramadol). Two deaths in 2013 reference Kratom as a factor. A Colorado man died from what was reportedly apparent acute mitragynine toxicity; and in Washington, a woman who had reportedly ingested Kratom also died, but in that case, no determination could be made that Kratom was a key factor that led to the death because another potent substance was also present in the toxicology. In Palm Beach County (2014), the family of a man who committed suicide attributed his death to an addiction to Kratom. A few states have banned or restricted the sale, possession, and/or use of Kratom. Sarasota County is among a few counties in Florida that have enacted ordinances focused on the marketing,

¹⁰ As a result of this alert, specified products from firms listed in the alert can be detained without physical examination. Import Alert 54-15 (February 12, 2015), U.S. Food and Drug Administration, available at http://www.accessdata.fda.gov/cms_ia/importalert_1137.html (last viewed on February 23, 2015).

¹¹ There is also no approved medical use for kratom in the United States. Kratom (*Mitragyna speciosa korth*), Office of Diversion Control, Drug Enforcement Administration (January 2013), available at <http://www.dea.gov/diversion-control/drug-chem-info/kratom.pdf> (last viewed on February 21, 2015).

¹² An article by the Natural Standard Research Collaboration provides an extensive discussion of the scientific literature. Ulbricht C, Costa D, Dao J, Isaac R., LeBlanc YC, Rhoades J, Windsor RC. An evidence-based systematic review of kratom (*Mitragyna speciosa*) by the Natural Standard Research Collaboration. *Journal of Dietary Supplements*, 2013; 10:2: 152-170. (This article is on file with the Senate Committee on Criminal Justice). The National Standard Research Collaboration is “an international research collaboration that aggregates and synthesizes data on complementary and alternative therapies.” See <http://libguides.butler.edu/Pharmacy> (last viewed on February 23, 2015).

¹³ “Most of the opioid-like activity of kratom has been attributed to the presence of the indole alkaloids, mitragynine and 7-hydroxymitragynine. Both compounds have been shown to have analgesic and antinociceptive effects in animals, although 7-hydroxymitragynine is more potent.” Prozialeck WC, Jivan JK, Andurkar SV. Pharmacology of kratom: an emerging botanical agent with stimulant, analgesic and opioid-like effects. *J Am Osteopath Assoc*. 2012 Dec; 112(12):792-9, at p. 796 (footnotes omitted). This article is available at <http://www.jaoa.osteopathic.org/content/112/12/792.full.pdf> (last viewed on February 23, 2015).

packaging and sale of so called “designer drugs” by regulating retail establishments to attack the abuse of synthetic drugs rather than focusing on the chemical components of designer drugs which can be modified molecularly nearly as fast as the chemical components are scheduled. Kratom was included in the Sarasota County ordinance though Kratom itself is not a synthetic.¹⁴ To date, FDLE laboratory submissions from 2011 – 2014 have been low; 2011 (1); 2012 (0); 2013 (4), 2014 (2). Nine states responded to a request for information relative to the status of Kratom. One state (Indiana) responded that Kratom is illegal; Wisconsin reported that the compounds in Kratom are considered a Schedule I stimulant. Five (5) states indicated that Kratom was legal or legal for persons over 18. One state indicated that Kratom is not illegal, but indicated that it was illegal to possess something that is intended to be used as a drug unless it is approved as a drug by the U. S. Food and Drug Administration. One state responded that there were no reports of Kratom being used in that state.¹⁵

III. Effect of Proposed Changes:

The bill makes mitragynine and 7-hydroxymitragynine Schedule I controlled substances. These substances are “pharmacologically active constituents” of the plant kratom (*Mitragyna speciosa*).¹⁶ The bill also schedules in Schedule 1 isomers, esters, ethers, salts, and salts of isomers, esters, and ethers of these substances. An exception is created for FDA-approved drugs.

The bill also makes it a first degree misdemeanor¹⁷ to possess, purchase, sell, deliver, manufacture, or bring into this state these substances.

The bill takes effect on October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁴ Proposed Ordinance No. 2014-013, Sarasota County, Florida, available at <https://www.scgov.net/HumanServices/Documents/Designer%20Drugs%20Ordinance.pdf> (last viewed on February 23, 2015).

¹⁵ Analysis of SB 764 (February 11, 2015), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice). This analysis is further cited as “FDLE Analysis.”

¹⁶ See footnote 1.

¹⁷ A first degree misdemeanor is punishable by up to a year in jail, a fine of up to \$1,000, or both. Sections 775.082 and 775.083, F.S.

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

None.

B. Private Sector Impact:

Businesses in Florida could be subject to first degree misdemeanor penalties for selling any product containing mitragynine and 7-hydroxymitragynine.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation has not yet reviewed the bill. A preliminary estimate by the Legislature's Office of Economic and Demographic Research is that the bill will have a positive insignificant prison bed impact (the bill may increase the Department of Corrections' prison bed population by less than 10 inmates annually).

VI. Technical Deficiencies:

None.

VII. Related Issues:

Based on available information, legislative staff was able to confirm that the following states prohibit or impose restrictions on kratom or constituents of kratom:

- Illinois (prohibits minors from purchasing or possessing kratom and prohibits selling kratom to minors);¹⁸
- Indiana (schedules 7-hydroxymitragynine and mitragynine in Schedule I);¹⁹
- Louisiana (prohibits distribution of products containing *Mitragyna speciosa* to minors);²⁰
- Tennessee (prohibits possession, sale, etc., of mitragynine and hydroxymitragynine);²¹
- Vermont (7-hydroxymitragynine is listed as a regulated drug);²² and
- Wisconsin (places mitragynine and 7-hydroxymitragynine in Schedule I).²³

VIII. Statutes Affected:

This bill substantially amends sections 893.03 and 893.13 of the Florida Statutes.

¹⁸ 720 Ill. Comp. Stat. § 642/5.

¹⁹ Sec. 4.(d)(35) of IC 35-48-2-4, lists synthetic drugs as defined in IC 35-31.5-2-321 as Schedule I controlled substances. IC 35-31.5-2-321 (1)(LL) and (HHH) lists 7-hydroxymitragynine and mitragynine as synthetic drugs.

²⁰ La. Rev. Stat. Ann. § 40:989.3.

²¹ Tenn. Code Ann. § 39-17-452.

²² See http://healthvermont.gov/hc/med_board/2013/documents/Agenda_bmp_010213.pdf, http://healthvermont.gov/regs/documents/regulated_drugs_rule.pdf, and Vt. Stat. Ann. tit. 18, § 4205.

²³ Wis. Stat. § 961.14.

This bill also reenacts the following sections of the Florida Statutes to incorporate the amendment made to s. 893.03, F.S., in references to that statute: 39.01, 316.193, 322.2616, 327.35, 440.102, 458.3265, 459.0137, 782.04, 787.06, 817.563, 831.31, 856.015, 893.02, 893.035, 893.0356, 893.05, 893.12, 893.13, and 921.0022.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Criminal Justice on March 10, 2015:

- Makes mitragynine and 7-hydroxymitragynine Schedule I controlled substances.
- Makes isomers, esters, ethers, salts, and salts of isomers, esters, and ethers of these substances Schedule I controlled substances.
- Makes it a first degree misdemeanor to possess, purchase, sell, deliver, manufacture, or bring into this state these substances.

B. Amendments:

None.



608310

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/10/2015	.	
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The Committee on Criminal Justice (Clemens) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (d) is added to subsection (5) of
section 893.03, Florida Statutes, is amended to read:

893.03 Standards and schedules.—The substances enumerated
in this section are controlled by this chapter. The controlled
substances listed or to be listed in Schedules I, II, III, IV,
and V are included by whatever official, common, usual,



608310

11 chemical, or trade name designated. The provisions of this
12 section shall not be construed to include within any of the
13 schedules contained in this section any excluded drugs listed
14 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded
15 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical
16 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted
17 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt
18 Anabolic Steroid Products."

19 (5) SCHEDULE V.—A substance, compound, mixture, or
20 preparation of a substance in Schedule V has a low potential for
21 abuse relative to the substances in Schedule IV and has a
22 currently accepted medical use in treatment in the United
23 States, and abuse of such compound, mixture, or preparation may
24 lead to limited physical or psychological dependence relative to
25 the substances in Schedule IV.

26 (a) Substances controlled in Schedule V include any
27 compound, mixture, or preparation containing any of the
28 following limited quantities of controlled substances, which
29 shall include one or more active medicinal ingredients which are
30 not controlled substances in sufficient proportion to confer
31 upon the compound, mixture, or preparation valuable medicinal
32 qualities other than those possessed by the controlled substance
33 alone:

34 1. Not more than 200 milligrams of codeine per 100
35 milliliters or per 100 grams.

36 2. Not more than 100 milligrams of dihydrocodeine per 100
37 milliliters or per 100 grams.

38 3. Not more than 100 milligrams of ethylmorphine per 100
39 milliliters or per 100 grams.



608310

40 4. Not more than 2.5 milligrams of diphenoxylate and not
41 less than 25 micrograms of atropine sulfate per dosage unit.

42 5. Not more than 100 milligrams of opium per 100
43 milliliters or per 100 grams.

44 (b) Narcotic drugs. Unless specifically excepted or unless
45 listed in another schedule, any material, compound, mixture, or
46 preparation containing any of the following narcotic drugs and
47 their salts: Buprenorphine.

48 (c) Stimulants. Unless specifically excepted or unless
49 listed in another schedule, any material, compound, mixture, or
50 preparation which contains any quantity of the following
51 substances having a stimulant effect on the central nervous
52 system, including its salts, isomers, and salts of isomers:
53 Pyrovalerone.

54 (d) Kratom (Mitragyna speciosa).

55 Section 2. This act shall take effect October 1, 2015.

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

57 And the title is amended as follows:

58 Delete everything before the enacting clause
59 and insert:

60 A bill to be entitled

61 An act relating to controlled substances; amending s.
62 893.03, F.S.; including kratom as a Schedule V
63 controlled substances; providing an effective date.



109668

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/10/2015	.	
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The Committee on Criminal Justice (Clemens) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (d) is added to subsection (5) of
section 893.03, Florida Statutes, is amended to read:

893.03 Standards and schedules.—The substances enumerated
in this section are controlled by this chapter. The controlled
substances listed or to be listed in Schedules I, II, III, IV,
and V are included by whatever official, common, usual,



109668

11 chemical, or trade name designated. The provisions of this
12 section shall not be construed to include within any of the
13 schedules contained in this section any excluded drugs listed
14 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded
15 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical
16 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted
17 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt
18 Anabolic Steroid Products."

19 (5) SCHEDULE V.—A substance, compound, mixture, or
20 preparation of a substance in Schedule V has a low potential for
21 abuse relative to the substances in Schedule IV and has a
22 currently accepted medical use in treatment in the United
23 States, and abuse of such compound, mixture, or preparation may
24 lead to limited physical or psychological dependence relative to
25 the substances in Schedule IV.

26 (a) Substances controlled in Schedule V include any
27 compound, mixture, or preparation containing any of the
28 following limited quantities of controlled substances, which
29 shall include one or more active medicinal ingredients which are
30 not controlled substances in sufficient proportion to confer
31 upon the compound, mixture, or preparation valuable medicinal
32 qualities other than those possessed by the controlled substance
33 alone:

34 1. Not more than 200 milligrams of codeine per 100
35 milliliters or per 100 grams.

36 2. Not more than 100 milligrams of dihydrocodeine per 100
37 milliliters or per 100 grams.

38 3. Not more than 100 milligrams of ethylmorphine per 100
39 milliliters or per 100 grams.



109668

40 4. Not more than 2.5 milligrams of diphenoxylate and not
41 less than 25 micrograms of atropine sulfate per dosage unit.

42 5. Not more than 100 milligrams of opium per 100
43 milliliters or per 100 grams.

44 (b) Narcotic drugs. Unless specifically excepted or unless
45 listed in another schedule, any material, compound, mixture, or
46 preparation containing any of the following narcotic drugs and
47 their salts: Buprenorphine.

48 (c) Stimulants. Unless specifically excepted or unless
49 listed in another schedule, any material, compound, mixture, or
50 preparation which contains any quantity of the following
51 substances having a stimulant effect on the central nervous
52 system, including its salts, isomers, and salts of isomers:
53 Pyrovalerone.

54 (d) Kratom (Mitragyna speciosa).

55 Section 2. Subsection (11) is added to section 893.13,
56 Florida Statutes, to read:

57 893.13 Prohibited acts; penalties.—

58 (11) Notwithstanding any other provision of this section,
59 only a person younger than 21 years of age who possesses, sells,
60 manufactures, or delivers, or who possesses with intent to sell,
61 manufacture, or deliver, kratom, which is specified as a
62 Schedule V controlled substance in s. 893.03(5)(d), commits a
63 violation of this section.

64 Section 3. This act shall take effect October 1, 2015.

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

66 And the title is amended as follows:

67 Delete everything before the enacting clause
68 and insert:



109668

69 A bill to be entitled
70 An act relating to controlled substances; amending s.
71 893.03, F.S.; including kratom as a Schedule V
72 controlled substance; amending s. 893.13, F.S.;
73 prohibiting a person younger than 21 years of age from
74 possessing a specified Schedule V controlled
75 substance; providing an effective date.



461754

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/10/2015	.	
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The Committee on Criminal Justice (Clemens) recommended the following:

Senate Amendment (with title amendment)

Between lines 292 and 293

insert:

Section 2. Subsection (11) is added to section 893.13, Florida Statutes, to read:

893.13 Prohibited acts; penalties.—

(11) Notwithstanding any other provision of this section, only a person younger than 21 years of age who possesses, sells, manufactures, or delivers, or who possesses with intent to sell,



461754

11 manufacture, or deliver, kratom, which is specified as a
12 Schedule I controlled substance in s. 893.03(1)(c)176., commits
13 a violation of this section.

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

15 And the title is amended as follows:

16 Delete line 4

17 and insert:

18 controlled substances; amending s. 893.13, F.S.;

19 prohibiting only a person younger than 21 years of age

20 from possessing a specified Schedule I controlled

21 substance; reenacting ss. 39.01(30)(a) and



104854

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/10/2015	.	
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The Committee on Criminal Justice (Evers) recommended the following:

Senate Amendment (with title amendment)

Delete line 292

and insert:

176. Mitragynine or 7-Hydroxymitragynine, except for any drug product approved by the United States Food and Drug Administration which contains Mitragynine or 7-Hydroxymitragynine, including any of their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, if the existence of such isomers, esters, ethers, and salts is possible



104854

11 within the specific chemical designation.

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 3 - 4

16 and insert:

17 893.03, F.S.; scheduling Mitragynine and 7-
18 Hydroxymitragynine, constituents of Kratom, in a
19 schedule of controlled substances; scheduling isomers,
20 esters, ethers, salts, and salts of isomers, esters,
21 and ethers of Mitragynine and 7-Hydroxymitragynine in
22 a schedule of controlled substances; providing an
23 exception from scheduling for any drug product
24 approved by the United States Food and Drug
25 Administration which contains Mitragynine or 7-
26 Hydroxymitragynine; reenacting ss. 39.01(30)(a) and



358368

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/10/2015	.	
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The Committee on Criminal Justice (Clemens) recommended the following:

1 **Senate Substitute for Amendment (109668) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Paragraph (d) is added to subsection (5) of
7 section 893.03, Florida Statutes, to read:

8 893.03 Standards and schedules.—The substances enumerated
9 in this section are controlled by this chapter. The controlled
10 substances listed or to be listed in Schedules I, II, III, IV,



358368

11 and V are included by whatever official, common, usual,
12 chemical, or trade name designated. The provisions of this
13 section shall not be construed to include within any of the
14 schedules contained in this section any excluded drugs listed
15 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded
16 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical
17 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted
18 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt
19 Anabolic Steroid Products."

20 (5) SCHEDULE V.—A substance, compound, mixture, or
21 preparation of a substance in Schedule V has a low potential for
22 abuse relative to the substances in Schedule IV and has a
23 currently accepted medical use in treatment in the United
24 States, and abuse of such compound, mixture, or preparation may
25 lead to limited physical or psychological dependence relative to
26 the substances in Schedule IV.

27 (d) Mitragynine or 7-hydroxymitragynine, except for any
28 drug product approved by the United States Food and Drug
29 Administration which contains mitragynine or 7-
30 hydroxymitragynine, including any of their isomers, esters,
31 ethers, salts, and salts of isomers, esters, and ethers, if the
32 existence of such isomers, esters, ethers, and salts is possible
33 within the specific chemical designation.

34 Section 2. Subsection (11) is added to section 893.13,
35 Florida Statutes, to read:

36 893.13 Prohibited acts; penalties.—

37 (11) (a) Notwithstanding any other provision of this
38 section, only a person younger than 21 years of age who
39 possesses, sells, manufactures, or delivers, or who possesses



358368

40 with intent to sell, manufacture, or deliver, mitragynine or 7-
41 hydroxymitragynine, which is specified as a Schedule V
42 controlled substance in s. 893.03(5)(d), commits a violation of
43 this section.

44 (b) A person who sells or attempts to sell mitragynine or
45 7-hydroxymitragynine to a person under 21 years of age commits a
46 misdemeanor of the first degree, punishable as provided in s.
47 775.082 or s. 775.083.

48 Section 3. This act shall take effect October 1, 2015

49
50 ===== T I T L E A M E N D M E N T =====

51 And the title is amended as follows:

52 Delete everything before the enacting clause
53 and insert:

54 A bill to be entitled
55 An act relating to controlled substances; amending s.
56 893.03, F.S.; including a specified substance as a
57 Schedule V controlled substance; amending s. 893.13,
58 F.S.; prohibiting a person younger than 21 years of
59 age from possessing a specified Schedule V controlled
60 substance; providing a penalty for a person who sells
61 or attempts to sell a specified substance to a person
62 younger than 21 years of age; providing an effective
63 date.



321456

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/10/2015	.	
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The Committee on Criminal Justice (Clemens) recommended the following:

1 **Senate Substitute for Amendment (608310) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Paragraph (d) is added to subsection (5) of
7 section 893.03, Florida Statutes, to read:

8 893.03 Standards and schedules.—The substances enumerated
9 in this section are controlled by this chapter. The controlled
10 substances listed or to be listed in Schedules I, II, III, IV,



321456

11 and V are included by whatever official, common, usual,
12 chemical, or trade name designated. The provisions of this
13 section shall not be construed to include within any of the
14 schedules contained in this section any excluded drugs listed
15 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded
16 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical
17 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted
18 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt
19 Anabolic Steroid Products."

20 (5) SCHEDULE V.—A substance, compound, mixture, or
21 preparation of a substance in Schedule V has a low potential for
22 abuse relative to the substances in Schedule IV and has a
23 currently accepted medical use in treatment in the United
24 States, and abuse of such compound, mixture, or preparation may
25 lead to limited physical or psychological dependence relative to
26 the substances in Schedule IV.

27 (d) Mitragynine or 7-hydroxymitragynine, except for any
28 drug product approved by the United States Food and Drug
29 Administration which contains mitragynine or 7-
30 hydroxymitragynine, including any of their isomers, esters,
31 ethers, salts, and salts of isomers, esters, and ethers, if the
32 existence of such isomers, esters, ethers, and salts is possible
33 within the specific chemical designation.

34 Section 2. This act shall take effect October 1, 2015.

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

36 And the title is amended as follows:

37 Delete everything before the enacting clause
38 and insert:

39 A bill to be entitled



321456

40 An act relating to controlled substances; amending s.
41 893.03, F.S.; adding a specified substance as a
42 Schedule V controlled substance; providing an
43 effective date.



484890

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/10/2015	.	
	.	
	.	
	.	

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

1 **Senate Substitute for Amendment (461754) (with title**
2 **amendment)**

3
4 Between lines 292 and 293
5 insert:

6 Section 2. Subsection (11) is added to section 893.13,
7 Florida Statutes, to read:

8 893.13 Prohibited acts; penalties.—

9 (11) Notwithstanding any other provision of this section,
10 only a person younger than 21 years of age who possesses, sells,



484890

11 manufactures, or delivers, or who possesses with intent to sell,
12 manufacture, or deliver, mitragynine or 7-hydroxymitragynine,
13 except for any drug product approved by the United States Food
14 and Drug Administration which contains mitragynine or 7-
15 hydroxymitragynine, including any of their isomers, esters,
16 ethers, salts, and salts of isomers, esters, and ethers, if the
17 existence of such isomers, esters, ethers, and salts is possible
18 within the specific chemical designation, commits a violation of
19 this section.

20
21 ===== T I T L E A M E N D M E N T =====

22 And the title is amended as follows:

23 Delete line 4

24 and insert:

25 controlled substances; amending s. 893.13, F.S.;

26 prohibiting only a person younger than 21 years of age

27 from possessing a specified Schedule I controlled

28 substance or other specified substances; reenacting

29 ss. 39.01(30) (a) and



447022

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/10/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 292 and 293

insert:

Section 2. Subsection (11) is added to section 893.13, Florida Statutes, to read:

893.13 Prohibited acts; penalties.—

(11) Notwithstanding any other provision of this section, a person who possesses, purchases, sells, delivers, manufactures, or brings into this state a controlled substance described in s.



447022

11 893.03(1)(c)176. commits a misdemeanor of the first degree,
12 punishable as provided in s. 775.082 or s. 775.083.

13
14 ===== T I T L E A M E N D M E N T =====

15 And the title is amended as follows:

16 Delete line 4

17 and insert:

18 controlled substances; providing a criminal penalty;

19 reenacting ss. 39.01(30)(a) and

By Senator Evers

2-00616-15

2015764__

1 A bill to be entitled
 2 An act relating to controlled substances; amending s.
 3 893.03, F.S.; including kratom in a schedule of
 4 controlled substances; reenacting ss. 39.01(30) (a) and
 5 (g), 316.193(5), 322.2616(2) (c), 327.35(5),
 6 440.102(11) (b), 458.3265(1) (e), 459.0137(1) (e),
 7 782.04(1) (a) and (4), 787.06(2) (a), 817.563,
 8 831.31(1) (a) and (2), 856.015(1) (c), 893.02(4),
 9 893.035(2), (7) (a), and (8) (a), 893.0356(2) (a) and
 10 (5), 893.05(1), 893.12(2) (b), (c), and (d),
 11 893.13(1) (a), (c) through (f), and (h), (2) (a),
 12 (4) (b), (5) (b), and (7) (a), 921.0022(3) (b), (c), and
 13 (e), F.S., to incorporate the amendment made to s.
 14 893.03, F.S., in references thereto; providing an
 15 effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Paragraph (c) of subsection (1) of section
 20 893.03, Florida Statutes, is amended to read:

21 893.03 Standards and schedules.—The substances enumerated
 22 in this section are controlled by this chapter. The controlled
 23 substances listed or to be listed in Schedules I, II, III, IV,
 24 and V are included by whatever official, common, usual,
 25 chemical, or trade name designated. The provisions of this
 26 section shall not be construed to include within any of the
 27 schedules contained in this section any excluded drugs listed
 28 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded
 29 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical

Page 1 of 11

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2-00616-15

2015764__

30 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted
 31 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt
 32 Anabolic Steroid Products."

33 (1) SCHEDULE I.—A substance in Schedule I has a high
 34 potential for abuse and has no currently accepted medical use in
 35 treatment in the United States and in its use under medical
 36 supervision does not meet accepted safety standards. The
 37 following substances are controlled in Schedule I:

38 (c) Unless specifically excepted or unless listed in
 39 another schedule, any material, compound, mixture, or
 40 preparation that contains any quantity of the following
 41 hallucinogenic substances or that contains any of their salts,
 42 isomers, including optical, positional, or geometric isomers,
 43 and salts of isomers, if the existence of such salts, isomers,
 44 and salts of isomers is possible within the specific chemical
 45 designation:

- 46 1. Alpha-ethyltryptamine.
- 47 2. 2-Amino-4-methyl-5-phenyl-2-oxazoline (4-
 48 methylaminorex).
- 49 3. 2-Amino-5-phenyl-2-oxazoline (Aminorex).
- 50 4. 4-Bromo-2,5-dimethoxyamphetamine.
- 51 5. 4-Bromo-2,5-dimethoxyphenethylamine.
- 52 6. Bufotenine.
- 53 7. Cannabis.
- 54 8. Cathinone.
- 55 9. Diethyltryptamine.
- 56 10. 2,5-Dimethoxyamphetamine.
- 57 11. 2,5-Dimethoxy-4-ethylamphetamine (DOET).
- 58 12. Dimethyltryptamine.

Page 2 of 11

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2-00616-15 2015764__

59 13. N-Ethyl-1-phenylcyclohexylamine (PCE) (Ethylamine
 60 analog of phencyclidine).
 61 14. N-Ethyl-3-piperidyl benzilate.
 62 15. N-ethylamphetamine.
 63 16. Fenethylamine.
 64 17. N-Hydroxy-3,4-methylenedioxyamphetamine.
 65 18. Ibogaine.
 66 19. Lysergic acid diethylamide (LSD).
 67 20. Mescaline.
 68 21. Methcathinone.
 69 22. 5-Methoxy-3,4-methylenedioxyamphetamine.
 70 23. 4-methoxyamphetamine.
 71 24. 4-methoxymethamphetamine.
 72 25. 4-Methyl-2,5-dimethoxyamphetamine.
 73 26. 3,4-Methylenedioxy-N-ethylamphetamine.
 74 27. 3,4-Methylenedioxyamphetamine.
 75 28. N-Methyl-3-piperidyl benzilate.
 76 29. N,N-dimethylamphetamine.
 77 30. Parahexyl.
 78 31. Peyote.
 79 32. N-(1-Phenylcyclohexyl)-pyrrolidine (PCPY) (Pyrrolidine
 80 analog of phencyclidine).
 81 33. Psilocybin.
 82 34. Psilocyn.
 83 35. *Salvia divinorum*, except for any drug product approved
 84 by the United States Food and Drug Administration which contains
 85 *Salvia divinorum* or its isomers, esters, ethers, salts, and
 86 salts of isomers, esters, and ethers, if the existence of such
 87 isomers, esters, ethers, and salts is possible within the

2-00616-15 2015764__

88 specific chemical designation.
 89 36. Salvinorin A, except for any drug product approved by
 90 the United States Food and Drug Administration which contains
 91 Salvinorin A or its isomers, esters, ethers, salts, and salts of
 92 isomers, esters, and ethers, if the existence of such isomers,
 93 esters, ethers, and salts is possible within the specific
 94 chemical designation.
 95 37. Tetrahydrocannabinols.
 96 38. 1-[1-(2-Thienyl)-cyclohexyl]-piperidine (TCP)
 97 (Thiophene analog of phencyclidine).
 98 39. 3,4,5-Trimethoxyamphetamine.
 99 40. 3,4-Methylenedioxymethcathinone.
 100 41. 3,4-Methylenedioxypropylvalerone (MDPV).
 101 42. Methylmethcathinone.
 102 43. Methoxymethcathinone.
 103 44. Fluoromethcathinone.
 104 45. Methylethcathinone.
 105 46. 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-
 106 yl)phenol, also known as CP 47,497 and its dimethyloctyl (C8)
 107 homologue.
 108 47. (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-
 109 methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol,
 110 also known as HU-210.
 111 48. 1-Pentyl-3-(1-naphthoyl)indole, also known as JWH-018.
 112 49. 1-Butyl-3-(1-naphthoyl)indole, also known as JWH-073.
 113 50. 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl) indole, also
 114 known as JWH-200.
 115 51. BZP (Benzylpiperazine).
 116 52. Fluorophenylpiperazine.

2-00616-15

2015764__

117 53. Methylphenylpiperazine.
 118 54. Chlorophenylpiperazine.
 119 55. Methoxyphenylpiperazine.
 120 56. DBZP (1,4-dibenzylpiperazine).
 121 57. TFMPP (3-Trifluoromethylphenylpiperazine).
 122 58. MBDB (Methylbenzodioxolylbutanamine).
 123 59. 5-Hydroxy-alpha-methyltryptamine.
 124 60. 5-Hydroxy-N-methyltryptamine.
 125 61. 5-Methoxy-N-methyl-N-isopropyltryptamine.
 126 62. 5-Methoxy-alpha-methyltryptamine.
 127 63. Methyltryptamine.
 128 64. 5-Methoxy-N,N-dimethyltryptamine.
 129 65. 5-Methyl-N,N-dimethyltryptamine.
 130 66. Tyramine (4-Hydroxyphenethylamine).
 131 67. 5-Methoxy-N,N-Diisopropyltryptamine.
 132 68. DiPT (N,N-Diisopropyltryptamine).
 133 69. DPT (N,N-Dipropyltryptamine).
 134 70. 4-Hydroxy-N,N-diisopropyltryptamine.
 135 71. N,N-Diallyl-5-Methoxytryptamine.
 136 72. DOI (4-Iodo-2,5-dimethoxyamphetamine).
 137 73. DOC (4-Chloro-2,5-dimethoxyamphetamine).
 138 74. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
 139 75. 2C-T-4 (2,5-Dimethoxy-4-isopropylthiophenethylamine).
 140 76. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
 141 77. 2C-T (2,5-Dimethoxy-4-methylthiophenethylamine).
 142 78. 2C-T-2 (2,5-Dimethoxy-4-ethylthiophenethylamine).
 143 79. 2C-T-7 (2,5-Dimethoxy-4-(n)-propylthiophenethylamine).
 144 80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
 145 81. Butylone (beta-keto-N-methylbenzodioxolylpropylamine).

Page 5 of 11

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2-00616-15

2015764__

146 82. Ethcathinone.
 147 83. Ethylone (3,4-methylenedioxy-N-ethylcathinone).
 148 84. Naphyrone (naphthylpyrovalerone).
 149 85. N-N-Dimethyl-3,4-methylenedioxcathinone.
 150 86. N-N-Diethyl-3,4-methylenedioxcathinone.
 151 87. 3,4-methylenedioxy-propiofenone.
 152 88. 2-Bromo-3,4-Methylenedioxypropiofenone.
 153 89. 3,4-methylenedioxy-propiofenone-2-oxime.
 154 90. N-Acetyl-3,4-methylenedioxcathinone.
 155 91. N-Acetyl-N-Methyl-3,4-Methylenedioxcathinone.
 156 92. N-Acetyl-N-Ethyl-3,4-Methylenedioxcathinone.
 157 93. Bromomethcathinone.
 158 94. Buphedrone (alpha-methylamino-butyrophenone).
 159 95. Etylone (beta-Keto-Ethylbenzodioxolylbutanamine).
 160 96. Dimethylcathinone.
 161 97. Dimethylmethcathinone.
 162 98. Pentylone (beta-Keto-Methylbenzodioxolylpentanamine).
 163 99. (MDPPP) 3,4-Methylenedioxy-alpha-
 164 pyrrolidinopropiofenone.
 165 100. (MDPBP) 3,4-Methylenedioxy-alpha-
 166 pyrrolidinobutiophenone.
 167 101. Methoxy-alpha-pyrrolidinopropiofenone (MOPPP).
 168 102. Methyl-alpha-pyrrolidinohexiophenone (MPHP).
 169 103. Benocyclidine (BCP) or
 170 benzothiophenylcyclohexylpiperidine (BTCP).
 171 104. Fluoromethylaminobutyrophenone (F-MABP).
 172 105. Methoxypyrrolidinobutyrophenone (MeO-PBP).
 173 106. Ethyl-pyrrolidinobutyrophenone (Et-PBP).
 174 107. 3-Methyl-4-Methoxymethcathinone (3-Me-4-MeO-MCAT).

Page 6 of 11

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2-00616-15

2015764__

175 108. Methylethylaminobutyrophenone (Me-EABP).
 176 109. Methylamino-butyrophenone (MABP).
 177 110. Pyrrolidinopropiophenone (PPP).
 178 111. Pyrrolidinobutiophenone (PBP).
 179 112. Pyrrolidinovalerophenone (PVP).
 180 113. Methyl-alpha-pyrrolidinopropiophenone (MPPP).
 181 114. JWH-007 (1-pentyl-2-methyl-3-(1-naphthoyl)indole).
 182 115. JWH-015 (2-Methyl-1-propyl-1H-indol-3-yl)-1-
 183 naphthalenylmethanone).
 184 116. JWH-019 (Naphthalen-1-yl-(1-hexylindol-3-
 185 yl)methanone).
 186 117. JWH-020 (1-heptyl-3-(1-naphthoyl)indole).
 187 118. JWH-072 (Naphthalen-1-yl-(1-propyl-1H-indol-3-
 188 yl)methanone).
 189 119. JWH-081 (4-methoxynaphthalen-1-yl-(1-pentylindol-3-
 190 yl)methanone).
 191 120. JWH-122 (1-pentyl-3-(4-methyl-1-naphthoyl)indole).
 192 121. JWH-133 ((6aR,10aR)-3-(1,1-Dimethylbutyl)-6a,7,10,10a-
 193 tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran)).
 194 122. JWH-175 (3-(naphthalen-1-ylmethyl)-1-pentyl-1H-
 195 indole).
 196 123. JWH-201 (1-pentyl-3-(4-methoxyphenylacetyl)indole).
 197 124. JWH-203 (2-(2-chlorophenyl)-1-(1-pentylindol-3-
 198 yl)ethanone).
 199 125. JWH-210 (4-ethylnaphthalen-1-yl-(1-pentylindol-3-
 200 yl)methanone).
 201 126. JWH-250 (2-(2-methoxyphenyl)-1-(1-pentylindol-3-
 202 yl)ethanone).
 203 127. JWH-251 (2-(2-methylphenyl)-1-(1-pentyl-1H-indol-3-

Page 7 of 11

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2-00616-15

2015764__

204 yl)ethanone).
 205 128. JWH-302 (1-pentyl-3-(3-methoxyphenylacetyl)indole).
 206 129. JWH-398 (1-pentyl-3-(4-chloro-1-naphthoyl)indole).
 207 130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-
 208 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-
 209 ol).
 210 131. HU-308 ([(1R,2R,5R)-2-[2,6-dimethoxy-4-(2-methyloctan-
 211 2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl]
 212 methanol).
 213 132. HU-331 (3-hydroxy-2-[(1R,6R)-3-methyl-6-(1-
 214 methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-
 215 1,4-dione).
 216 133. CB-13 (Naphthalen-1-yl-(4-pentyloxynaphthalen-1-
 217 yl)methanone).
 218 134. CB-25 (N-cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-
 219 undecanamide).
 220 135. CB-52 (N-cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-
 221 undecanamide).
 222 136. CP 55,940 (2-[(1R,2R,5R)-5-hydroxy-2-(3-
 223 hydroxypropyl)cyclohexyl]-5-(2-methyloctan-2-yl)phenol).
 224 137. AM-694 (1-[(5-fluoropentyl)-1H-indol-3-yl]-2-
 225 iodophenyl)methanone).
 226 138. AM-2201 (1-[(5-fluoropentyl)-1H-indol-3-yl]-
 227 (naphthalen-1-yl)methanone).
 228 139. RCS-4 ((4-methoxyphenyl) (1-pentyl-1H-indol-3-
 229 yl)methanone).
 230 140. RCS-8 (1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-
 231 methoxyphenylethanone).
 232 141. WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-

Page 8 of 11

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2-00616-15 2015764__

233 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-

234 naphthalenylmethanone).

235 142. WIN55,212-3 ([(3S)-2,3-Dihydro-5-methyl-3-(4-

236 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-

237 naphthalenylmethanone).

238 143. Pentedrone (2-(methylamino)-1-phenyl-1-pentanone).

239 144. Fluoroamphetamine.

240 145. Fluoromethamphetamine.

241 146. Methoxetamine.

242 147. Methiopropamine.

243 148. 4-Methylbuphedrone (2-Methylamino-1-(4-

244 methylphenyl)butan-1-one).

245 149. APB ((2-aminopropyl)benzofuran).

246 150. APDB ((2-aminopropyl)-2,3-dihydrobenzofuran).

247 151. UR-144 ((1-pentyl-1H-indol-3-yl)(2,2,3,3-

248 tetramethylcyclopropyl)methanone).

249 152. XLR11 ((1-(5-fluoropentyl)-1H-indol-3-yl)(2,2,3,3-

250 tetramethylcyclopropyl)methanone).

251 153. (1-(5-chloropentyl)-1H-indol-3-yl)(2,2,3,3-

252 tetramethylcyclopropyl)methanone).

253 154. AKB48 (1-pentyl-N-tricyclo[3.3.1.1³,7]dec-1-yl-1H-

254 indazole-3-carboxamide).

255 155. AM-2233 ((2-iodophenyl)[1-[(1-methyl-2-

256 piperidinyl)methyl]-1H-indol-3-yl]-methanone).

257 156. STS-135 (1-(5-fluoropentyl)-N-tricyclo[3.3.1.1³,7]dec-

258 1-yl-1H-indole-3-carboxamide).

259 157. URB-597 ((3'-(aminocarbonyl)[1,1'-biphenyl]-3-yl)-

260 cyclohexylcarbamate).

261 158. URB-602 ([1,1'-biphenyl]-3-yl-carbamic acid,

2-00616-15 2015764__

262 cyclohexyl ester).

263 159. URB-754 (6-methyl-2-[(4-methylphenyl)amino]-1-

264 benzoxazin-4-one).

265 160. 2C-D (2-(2,5-Dimethoxy-4-methylphenyl)ethanamine).

266 161. 2C-H (2-(2,5-Dimethoxyphenyl)ethanamine).

267 162. 2C-N (2-(2,5-Dimethoxy-4-nitrophenyl)ethanamine).

268 163. 2C-P (2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine).

269 164. 25I-NBOMe (4-iodo-2,5-dimethoxy-N-[(2-

270 methoxyphenyl)methyl]-benzeneethanamine).

271 165. 3,4-Methylenedioxymethamphetamine (MDMA).

272 166. PB-22 (1-pentyl-8-quinolinyl ester-1H-indole-3-

273 carboxylic acid).

274 167. 5-Fluoro PB-22 (8-quinolinyl ester-1-(5-fluoropentyl)-

275 1H-indole-3-carboxylic acid).

276 168. BB-22 (1-(cyclohexylmethyl)-8-quinolinyl ester-1H-

277 indole-3-carboxylic acid).

278 169. 5-Fluoro AKB48 (N-((3s,5s,7s)-adamantan-1-yl)-1-(5-

279 fluoropentyl)-1H-indazole-3-carboxamide).

280 170. AB-PINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-

281 pentyl-1H-indazole-3-carboxamide).

282 171. AB-FUBINACA (N-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-

283 (4-fluorobenzyl)-1H-indazole-3-carboxamide).

284 172. ADB-PINACA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-

285 1-pentyl-1H-indazole-3-carboxamide).

286 173. Fluoro ADBICA (N-(1-Amino-3,3-dimethyl-1-oxobutan-2-

287 yl)-1-(fluoropentyl)-1H-indole-3-carboxamide).

288 174. 25B-NBOMe (4-bromo-2,5-dimethoxy-N-[(2-

289 methoxyphenyl)methyl]-benzeneethanamine).

290 175. 2C-C-NBOMe (4-chloro-2,5-dimethoxy-N-[(2-

2-00616-15

2015764__

291 methoxyphenyl)methyl]-benzeneethanamine).

292 176. Kratom (Mitragyna speciosa).

293 Section 2. Paragraphs (a) and (g) of subsection (30) of s.

294 39.01, subsection (5) of s. 316.193, paragraph (c) of subsection

295 (2) of s. 322.2616, subsection (5) of s. 327.35, paragraph (b)

296 of subsection (11) of s. 440.102, paragraph (e) of subsection

297 (1) of s. 458.3265, paragraph (e) of subsection (1) of s.

298 459.0137, paragraph (a) of subsection (1) and subsection (4) of

299 s. 782.04, paragraph (a) of subsection (2) of s. 787.06, s.

300 817.563, paragraph (a) of subsection (1) and subsection (2) of

301 s. 831.31, paragraph (c) of subsection (1) of s. 856.015,

302 subsection (4) of s. 893.02, subsection (2), paragraph (a) of

303 subsection (7), and paragraph (a) of subsection (8) of s.

304 893.035, paragraph (a) of subsection (2) and subsection (5) of

305 s. 893.0356, subsection (1) of s. 893.05, paragraphs (b), (c),

306 and (d) of subsection (2) of s. 893.12, paragraphs (a), (c)

307 through (f), and (h) of subsection (1), paragraph (a) of

308 subsection (2), paragraph (b) of subsection (4), paragraph (b)

309 of subsection (5), and paragraph (a) of subsection (7) of s.

310 893.13, and paragraphs (b), (c), and (e) of subsection (3) of s.

311 921.0022, Florida Statutes, are reenacted for the purpose of

312 incorporating the amendment made by this act to s. 893.03,

313 Florida Statutes, in references thereto.

314 Section 3. This act shall take effect October 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

MAR 10, 2015
Meeting Date

SB 764
Bill Number (if applicable)

Topic SB 764

Amendment Barcode (if applicable)

Name TOM HARRISON

Job Title SMALL BUSINESS OWNER

Address 521 CLEMATIS STREET

Phone (561) 847-6139

WPA FL 33405
City State Zip

Email Tobo4960@AOL.COM

Speaking: For Against Information

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

Representing TE MANA & KAVASUTRA KAVA BARS

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)

March 10, 2015

Meeting Date

SB 764

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Susan Ash

Job Title Executive Director

Address 1503 Powhattan Court

Phone 757-633-6222

Street

Norfolk

VA

23508

Email susandash@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing American Kratom 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)

03/10/2015

Meeting Date

SB 764

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Bill Wohlsifer, Esq.

Job Title Attorney at Law, Registered Executive Branch Lobbyist

Address 1100 East Park Ave Ste B

Phone 850-219-8888

Street

Tallahassee

FL

32301

Email william@wohlsifer.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

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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)

3-10-2015
Meeting Date

SB 764
Bill Number (if applicable)

Topic Prohibition is a bad idea.

Amendment Barcode (if applicable)

Name Ethel Rowland

Job Title Legislative Director ~~for FRCAN~~

Address 3248 River Drive
Street

Phone 772-618-3678

Ft. Pierce
City

FL
State

34981
Zip

Email ethelrowland@gmail.com

Speaking: For Against Information

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

Representing Florida Cannabis Action Network

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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APPEARANCE RECORD

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March 10, 2015

Meeting Date

SB 764

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Susan Ash

Job Title Executive Director

Address 1503 Powhattan Court

Phone 757-633-6222

Street

Norfolk

VA

23508

Email susandash@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing American Kratom Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE
APPEARANCE RECORD

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3/10/15

Meeting Date

SB 764

Bill Number (if applicable)

Topic Katons / Mitochondria

Amendment Barcode (if applicable)

Name David Scharf

Job Title Executive Director Broward Sheriff's Office

Address 2601 W. Broward Blvd

Phone 954-375-6180

Street

Ft. Lauderdale FL 33467

City

State

Zip

Email David.Scharf@sheriff.org

Speaking: For Against Information

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

Representing Broward Sheriff Scott Isgrig

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)

3/10/15

Meeting Date

764

Bill Number (if applicable)

Topic Kratom

Amendment Barcode (if applicable)

Name Chris Noland

Job Title _____

Address 1000 Riverside Ave

Phone 904-233-3051

Street

Jacksonville FL 32204

Email nolandlane@aol.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Public Health 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)

3/10/15
Meeting Date

SB 764
Bill Number (if applicable)

Topic RT Controlled Substances

Amendment Barcode (if applicable)

Name Bamey Bishop

Job Title President & CEO

Address 204 S. Monroe St.
Street

Phone _____

Tallahassee FL 32301
City State Zip

Email Bamey@bameybishop.com

Speaking: For Against Information

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

Representing The 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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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-10-15

Meeting Date

764

Bill Number (if applicable)

Topic Controlled Substances / Kratom

Amendment Barcode (if applicable)

Name Jill Gran

Job Title Legislative Affairs Director

Address 28603 Mahan Dr

Phone 878-2196

Street

Tallahassee

City

FL

State

32309

Zip

Email jill@fadaa.org

Speaking: For Against Information

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

Representing Florida Alcohol + Drug Abuse 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)

3-10-15

Meeting Date

764

Bill Number (if applicable)

Topic Substances/ Kratom

Amendment Barcode (if applicable)

Name Elizabeth Potts

Job Title Director of Admissions

Address 533 Northlake Blvd

Phone 561-531-2545

North Palm Beach FL 33408

Email epotts@bhpalmbeach.com

Speaking: For Against Information

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

Representing Behavioral Health of the Palm Beaches

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
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 1286

INTRODUCER: Criminal Justice Committee and Senator Simmons

SUBJECT: Electronic Monitoring Devices

DATE: March 10, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	Fav/CS
2.			ACJ	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1286 creates s. 843.23, F.S., which makes it a third degree felony for a person, to knowingly and without authority remove, destroy, or circumvent the operation of an electronic monitoring device. The device must be used for the purpose of monitoring a person who is complying with a home arrest program, wearing one as a condition of bond or pretrial release, or as a result of a court order for a protective injunction issued for domestic violence, repeat violence, sexual violence, dating violence, a stalking injunction, or on county probation. The bill also makes it a third degree felony to request or solicit a person to remove, destroy, or circumvent the operation of an electronic device. The bill defines electronic monitoring device as any device that is used to track the location of a person.

II. Present Situation:

Electronic Monitoring Devices

Section 948.11, F.S., provides that the Department of Corrections (department) may, at its discretion, electronically monitor an offender sentenced to community control. Any offender who violates the terms of community control and is restored to community control may be supervised by an electronic monitoring device.

Electronic monitoring may also be a condition of a court or commission order for probationers, community controllees, or conditional releasees who have current or prior convictions for violent

or sexual offenses. A system that actively monitors and identifies the offender's locations and timely reports or records the offender's presence near or within a crime scene or in a prohibited area or the offender's departure from specified geographic limitations must be used.¹

The department may contract with local law enforcement agencies to assist in the location and apprehension of offenders who are in noncompliance as reported by the electronic monitoring system.² Any person who intentionally alters, tampers with, damages, or destroys any electronic monitoring equipment pursuant to court or commission order, unless the person is the owner of the equipment or an agent of the owner performing ordinary maintenance and repairs, commits a third degree felony.³

Types of Department of Corrections' Supervision Using Electronic Monitoring Devices

Community Control

Community Control is a form of intensive supervised "house arrest" including weekends and holidays. Offenders are restricted to his or her residence with the exception of being allowed to work, attend treatment, visit the probation office, and limited other occasions that must be approved in advance by the Community Control Officer. Violations of community control may result in revocation by the court and imposition of any sentence it may have imposed before being placed on community control supervision.

Post Prison Release

Post prison release includes parole, conditional release, and addiction recovery. Parole is a type of supervision program where inmates have terms and conditions set by the Florida Commission on Offender Review. The period of parole cannot exceed the balance of the offender's original sentence. Parole supervision is provided by Correctional Probation Officers. Only offender's sentences for offenses committed prior to October 1, 1983, are eligible for parole.

Conditional Release is for inmates sentenced to murder/manslaughter, sexual offenses, robbery or other violent personal crimes and who have previous commitment to a state or federal institution or have been convicted as a Habitual Offender or Sexual Predator.

Addiction Recovery is a form of supervision for an offender released from a state correctional facility, convicted of a crime committed on or after July 1, 2001, when the offender has a history of substance abuse or addiction, participated in any drug treatment, no current or previous convictions for a violent offense, or current or previous convictions for drug trafficking, unlawful sale of a controlled substance, or property offense. The Florida Commission on Offender Review imposes the conditions of supervision on offenders released to Addiction Recovery Supervision. Supervision is provided by the department's Probation Officers. Violations of supervision are reported by Probation Officers to the Florida Commission on Offender Review to make a final determination whether to continue the supervision, modify, or revoke the conditions.

¹ Section 948.11(6), F.S.

² Section 948.11(4), F.S.

³ Section 948.11 (7), F.S.

Probation

Probation is a court-ordered term of community supervision under specified conditions for a specified period of time that cannot exceed the maximum sentence for the offense. It is the most common type of supervision. Failure to comply with any special conditions of supervision may result in a modification of the sentence or revocation by the court and an imposition of any sentence that it might have imposed when it originally placed the offender on probation.

Sex Offender Probation

Sex Offender Probation is an intensive form of supervision which emphasizes sex offender treatment and close monitoring in the field to ensure compliance with sex offender conditions of supervision and sex offender registration requirements.

Types of Electronic Monitoring Used by the Department

Global Positioning System (GPS) is an electronic monitoring system with cellular communication capability that works through the use of an ankle bracelet attached to the offender. It provides real time tracking of offender locations and reporting of offender alarm notifications through e-mail, fax pages, or text message.

Radio Frequency Monitoring (RF) utilizes a bracelet attached to the offender that is electronically tethered to a receiver with phone communication capability. RF provides offender monitoring during the hours of home confinement, and only monitors the offender’s presence or absence from the home.

According the department’s February 2015 Monthly Status Report on the Community Supervision Population, there were 4,119 offenders on electronic monitoring.⁴

Offenders Tracked by Electronic Monitoring February 2015			
Supervision Type	Sex Offenders**	Others	Total
Community Control	177	844	1,021
Post Prison	234	147	381
Probation	2,135	582	2,717
Total Active Global Positioning	2,546	1,573	4,119
* Includes Active and Active-Suspense offenders.			
**Based on primary offense.			

Electronic Monitoring Used by Local Criminal Justice Entities

Local criminal justice entities employ electronic monitoring for a variety of purposes such as tracking high-risk defendants out on bail or in domestic violence cases when a defendant’s release could pose a threat to the victim.

⁴⁴ <http://www.dc.state.fl.us/pub/spop/2015/01/index.html> (last visited March 6, 2015).

III. Effect of Proposed Changes:

The bill creates s. 843.23, F.S., which makes it a third degree felony for a person, to knowingly and without authority remove, destroy, or circumvent the operation of an electronic monitoring device. The device must be used for the purpose of monitoring a person who is complying with a home arrest program, wearing one as a condition of bond or pretrial release, or as a result of a court order for a protective injunction issued for domestic violence, repeat violence, sexual violence, dating violence, a stalking injunction, or on county probation. The bill also makes it a third degree felony to request or solicit a person to remove, destroy, or circumvent the operation of an electronic device. The bill defines electronic monitoring device as any device that is used to track the location of a person.

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 Criminal Justice Estimating Conference gave a preliminary estimate of positive insignificant impact because the bill is an expansion of s. 948.11, F.S., by the addition of “solicitation of another” to commit the offense. There were 14 offenders in FY 13-14 with six offenders receiving prison sentences for tampering with an electronic device.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 843.23 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 March 10, 2015:

The Committee Substitute includes persons on county probation to the list of persons who are prohibited from knowingly and without authority removing, destroying, or circumventing the operation of an electronic monitoring device.

- B. **Amendments:**

None.



843982

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/10/2015	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 26 - 31

and insert:

of bond or pretrial release;

3. Wearing an electronic device as a result of a court order for a protective injunction issued for domestic violence as defined by s. 741.30; repeat violence, sexual violence, or dating violence, as defined by s. 784.046; or a stalking injunction as defined by s. 784.048; or



843982

11

4. On county probation.

By Senator Simmons

10-01059-15

20151286__

1 A bill to be entitled
 2 An act relating to electronic monitoring devices;
 3 creating s. 843.23, F.S.; providing a definition;
 4 prohibiting the removal, destruction, or circumvention
 5 of the operation of an electronic monitoring device
 6 being used by a person for specified purposes;
 7 prohibiting requesting or soliciting a person to
 8 perform such an act; providing criminal penalties;
 9 providing an effective date.

10

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

12

13 Section 1. Section 843.23, Florida Statutes, is created to
 14 read:

15 843.23 Tampering with an electronic monitoring device.—

16 (1) For the purpose of this section, the term "electronic
 17 monitoring device" includes any device that is used to track the
 18 location of a person.

19 (2) It shall be unlawful for a person to knowingly and
 20 without authority:

21 (a) Remove, destroy, or circumvent the operation of an
 22 electronic monitoring device that is being used for the purpose
 23 of monitoring a person who is:

24 1. Complying with a home arrest program;

25 2. Wearing an electronic monitoring device as a condition
 26 of bond or pretrial release; or

27 3. Wearing an electronic device as a result of a court
 28 order for a protective injunction issued for domestic violence
 29 as defined by s. 741.30; repeat violence, sexual violence, or

Page 1 of 2

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

10-01059-15

20151286__

30 dating violence, as defined by s. 784.046; or a stalking
 31 injunction as defined by s. 784.048.

32 (b) Request or solicit any other person to remove, destroy,
 33 or circumvent the operation of an electronic monitoring device
 34 being used for a purpose described in paragraph (a).

35 (3) A person who violates this section commits a felony of
 36 the third degree, punishable as provided in s. 775.082, s.
 37 775.083, or s. 775.084.

38

Section 2. This act shall take effect October 1, 2015.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Greg Evers, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: March 3, 2015

I respectfully request that **Senate Bill 1286**, relating to Electronic Monitoring Devices, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons", written over a horizontal line.

Senator David Simmons
Florida Senate, District 10

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/10/15
Meeting Date

SB 1286
Bill Number (if applicable)

Topic R/T Electronic Monitoring Devices

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title President & CEO of Florida Smart Justice Alliance

Address 204 S. Monroe St.
Street

Phone _____

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 The Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

CourtSmart Tag Report

Room: LL 37

Case:

Type: C

Caption: Senate Criminal Justice Committee

Judge:

Started: 3/10/2015 10:04:56 AM

Ends: 3/10/2015 12:00:22 PM

Length: 01:55:27

10:05:25 AM Meeting called to order, Roll Call
10:07:19 AM Tab 2 CS/SB 342 by Judiciary / Senator Simmons—No Contact Orders
10:10:03 AM Amendment barcode 971428
10:11:27 AM Waiving in support,
10:11:33 AM Roll Call on SB 342
10:12:35 AM Tab 6 SB 1286 by Senator Simmons—Electronic Monitoring Devices
10:14:02 AM Barcode 843982
10:14:57 AM Waived in support.
10:15:33 AM Roll Call on SB 1286
10:16:04 AM Tab 3 SB 378 by Senator Garcia and Senator Gibson—Juvenile Justice
10:16:35 AM Tab 3 SB 378 tp'd
10:16:52 AM Tab 5 SB 764 by Senator Evers—Controlled Substances
10:17:38 AM Representative Jacobs explained SB 764
10:20:02 AM Senator Clemens explains filed amendments, then offers handwritten amendment
10:23:29 AM Senator Gibson comments on the amendment
10:25:01 AM Barcode 104854
10:25:55 AM Tom Harrison, Small Business Owner, TeMana and Kavasutra Kava Bars
10:33:01 AM Bill Wohlsifer, Esq. Attorney at Law, Tallahassee, FL
10:37:43 AM Ethel Rowland, Florida Cannabis Action Network
10:39:06 AM Barney Bishop, Waiving in support,
10:39:37 AM Chris Nuland, Waiving in support,
10:40:11 AM Jill Gran, Waiving in support,
10:40:12 AM Elizabeth Potts, Waiving in support,
10:40:18 AM David Scharf, Broward Sheriff Scott Israel
10:42:23 AM Senator Clemens speaks on the bill.
10:42:39 AM Senator Gibson speaks on the bill.
10:43:43 AM Senator Brandes speaks on the bill.
10:44:55 AM Rep. Jacobs closes on SB 764.
10:46:33 AM Roll Call on SB 764
10:47:47 AM Tab 3 SB 378 by Senator Garcia and Senator Gibson—Juvenile Justice
10:50:32 AM Amendment Barcode 720812, Senator Brandes
10:51:09 AM Senator Gibson explains her handwritten amendment.
10:55:16 AM Senator Senator Bradley speaks on amendment.
10:57:24 AM Donna Dugger explains a questions that Senator Gibson asked about arrests.
11:00:10 AM Senator Gibson amendment
11:00:19 AM Senator Bradley amendment
11:01:55 AM Sarah Carroll, Florida Sheriffs Association
11:02:19 AM Samatha Padgett, Florida Retail Federation
11:05:11 AM John Adler, Rev. Dr, Pastor, Lee Interfaith for Empowerment
11:07:07 AM SB 378 tp'd
11:07:47 AM Doug Glisson, Inspector Supervisor, FDOC, sworn in. Gave testimony
11:14:20 AM Sheriff Mike Harrison, Gulf County, sworn in. Gave testimony.
11:30:57 AM Aubrey Land, Inspector, FDOC, sworn in. Gave testimony.
11:37:07 AM Senator Gibson asks a question of Mr. Land.
11:41:10 AM Sgt. Andrea Shaw, sworn in. Gave testimony.
11:46:56 AM Officer Timothy Butler, Jefferson CI, sworn in. Gave testimony.
11:51:44 AM John Ulm, Senior Law Enforcement Inspector, FDOC, sworn in. Gave testimony.
11:59:22 AM Roll call for SB 376
12:00:04 PM Meeting adjourned