

Tab 1	SB 128 by Bradley (CO-INTRODUCERS) Simpson, Bean, Baxley; (Identical to H 0245) Self-defense Immunity					
832456	A	S	RCS	JU, Bradley	Delete L.30 - 35:	01/24 05:20 PM
Tab 2	SB 118 by Steube; Expunction of Criminal History Records					
921458	D	S	RCS	JU, Steube	Delete everything after	01/24 05:20 PM
Tab 3	SB 120 by Hutson (CO-INTRODUCERS) Steube; (Similar to H 0083) Offenses by Aliens Unlawfully Present in the United States					
593696	A	S	RCS	JU, Hutson	Delete L.24 - 44:	01/24 05:20 PM
Tab 4	SB 206 by Passidomo; (Identical to H 0277) Electronic Wills					
867850	A	S	RCS	JU, Passidomo	Delete L.81 - 360:	01/24 05:20 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Steube, Chair
Senator Benacquisto, Vice Chair

MEETING DATE: Tuesday, January 24, 2017

TIME: 2:00—4:00 p.m.

PLACE: Toni Jennings Committee Room, 110 Senate Office Building

MEMBERS: Senator Steube, Chair; Senator Benacquisto, Vice Chair; Senators Bracy, Flores, Garcia, Gibson, Mayfield, Powell, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 128 Bradley (Identical H 245)	Self-defense Immunity; Requiring that the burden of proof in a criminal prosecution be on the party seeking to overcome the immunity claim under certain circumstances, etc. JU 01/10/2017 JU 01/24/2017 Fav/CS RC	Fav/CS Yeas 5 Nays 4
2	SB 118 Steube	Expunction of Criminal History Records; Revising the eligibility requirements for expunction of criminal history records to include instances in which a verdict of not guilty is rendered; authorizing a court to impose a civil penalty and award attorney fees and court costs; providing applicability; requiring a court to order the suspension of an Internet protocol (IP) address under certain circumstances, etc. JU 01/24/2017 Fav/CS CJ AP	Fav/CS Yeas 9 Nays 0
3	SB 120 Hutson (Similar H 83)	Offenses by Aliens Unlawfully Present in the United States; Requiring specified offenses to be reclassified if committed by such aliens; specifying the reclassification of these offenses; specifying the enhancement of the level of the ranking for purposes of sentencing and gain-time eligibility, etc. JU 01/24/2017 Fav/CS ACJ AP	Fav/CS Yeas 5 Nays 4
4	SB 206 Passidomo (Identical H 277)	Electronic Wills; Creating the "Florida Electronic Wills Act"; specifying requirements that must be satisfied in the preparation and execution of electronic wills; authorizing an electronic will that is properly executed in this or another state, or a certified paper original of such properly executed electronic will, to be offered for and admitted to probate in this state, etc. JU 01/24/2017 Fav/CS BI RC	Fav/CS Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, January 24, 2017, 2:00—4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 128

INTRODUCER: Judiciary Committee and Senator Bradley and others

SUBJECT: Self-defense Immunity

DATE: January 26, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Fav/CS
2.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 128 changes the burden of proof and who must bear it during pretrial hearings to evaluate a defendant's claim of immunity based on a justifiable use of force. Current law provides a defendant a right of immunity from criminal prosecution and civil action if he or she is justified in using force.

The procedures, however, to determine a person's immunity from prosecution are not set forth in current law. As a result, the majority of the Supreme Court in the 2015 opinion of *Bretherick v. State* set forth procedures to effectuate the grant of immunity which it believed was consistent with the intent of the Legislature. Under the majority opinion, a defendant claiming immunity must prove by a preponderance of the evidence the entitlement to the immunity at a pretrial hearing.

The dissenting opinion in *Bretherick*, however, interpreted the existing substantive right to assert immunity and concluded that the state has the burden of proof. Consistent with the *Bretherick* dissent, the bill places the burden of proof on the state at pretrial immunity hearings. Additionally, the bill provides that the state must prove its burden by the beyond a reasonable doubt standard.

II. Present Situation:

Stand Your Ground law

In 2005, the Legislature enacted into law chapter 2005-27, L.O.F., commonly known as the “Stand Your Ground” (SYG) law. The law expanded the common law Castle Doctrine and abrogated the common law duty to retreat on the part of the defender, provided that the defender is not committing a crime and is in a place where he or she has a right to be. These changes were incorporated into chapter 776, F.S., which governs the justifiable use of force.

The Castle Doctrine and Home Protection

The Castle Doctrine, a doctrine dating back to common law, provided that when faced with an intruder, a person had no duty to retreat from his or her home, the proverbial “castle.” Rather, the defender had the right to stay in the home and protect himself or herself with force, including deadly force.¹

The SYG law expanded the concept of the Castle Doctrine in two main ways. First, the law extended the concept of a person’s “castle” to include a dwelling, residence, or occupied vehicle.² Second, the law created a presumption that a person within a “castle” has a reasonable fear of imminent peril of death or great bodily harm if two conditions are met.³ First, the offender must have entered or be in the process of unlawfully and forcibly entering the dwelling, residence, or occupied vehicle or be attempting to forcibly remove a person. Second, the defender must know or had reason to believe that an unlawful and forcible entry had occurred or was occurring.⁴

As under the common law Castle Doctrine, the SYG law imposes no duty to retreat on a person who acts in self-defense in his or her castle. But the defender in a castle will generally receive a grant of immunity from arrest, criminal prosecution, and civil action.⁵

¹ *Recent Development: Florida Legislation; Florida Legislation—The Controversy over Florida’s New “Stand Your Ground” Law—Fla. Stat. S. 776.013(2005)*, 33 FLA. ST. U.L.REV. 351, 355 (Fall 2005).

² Section 776.013(5), F.S., defines a dwelling as a temporary or permanent building or conveyance of any kind, including an attached porch with or without a roof, mobile or immobile, including a tent, provided that it is designed for nighttime lodging. A residence is a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest. A vehicle is a conveyance of any kind, whether or not motorized provided that it is designed to transport people or property.

³ Conversely, s. 776.013(4), F.S., presumes that a person who unlawfully and by force enters or attempts to enter a person’s dwelling, residence, or occupied vehicle intends to commit an unlawful act involving force or violence.

⁴ Section 776.013(1) and (2), F.S. The presumption does not apply if the person against whom defensive force is used or threatened has the right to be in or is a lawful resident of the location and against whom there is no injunction for protection; the person sought to be removed is in the lawful custody or guardianship of the person against whom the defensive force is used or threatened; the person who uses or threatens to use defensive force is committing a crime or using the location to further a criminal act; or the person against whom defensive force is used or threatened is a law enforcement officer entering the premises pursuant to an official duty and who identifies him or herself as a law enforcement officer. Section 776.013(2), F.S.

⁵ Section 776.032(1), F.S.

Defense of Self or Others

The 2005 changes to the self-defense law generally eliminated the duty to retreat before using force outside of a person's dwelling, residence, or occupied vehicle. When acting in self-defense or in defense of others, a person does not have a duty to retreat and may use non-deadly force, if the person reasonably believes the force is necessary to defend himself or herself or another against an imminent use of unlawful force.⁶ The person may use deadly force, if the person reasonably believes the force is necessary to prevent imminent death or great bodily harm to himself or herself. However, the common law duty to retreat before using deadly force still applies to a person who is engaged in criminal activity or is not in a place where he or she has a right to be.⁷

Defense of Property

When acting in defense of property, a person does not have a duty to retreat and may use non-deadly force, if the person reasonably believes that the force is necessary to stop a trespasser's entry on personal or real property other than a dwelling.⁸ A person may use deadly force, if the person reasonably believes deadly force is needed to prevent a forcible felony.⁹ However, the common law duty to retreat before using deadly force still applies to a person who is engaged in criminal activity or is not in a place where he or she has a right to be.¹⁰

Immunity from Criminal Prosecution and Civil Action under Stand Your Ground

A person who uses force in self-defense as authorized under chapter 776, F.S., is justified for those actions and is immune from criminal prosecution and any civil action.¹¹ Immunity from criminal prosecution includes immunity from being arrested, detained in custody, and charged or prosecuted.¹² A defendant to a civil action based on a use of force is entitled to reasonable attorney's fees, court costs, lost income, and all expenses related to the defense of the action if the defendant prevails in a claim of immunity.¹³

Case Law

Although the SYG law created an express right to immunity, it did not specify procedures for evaluating a person's claim of a justifiable use of force and immunity. However, the courts have developed the procedures in case law.

⁶ Section 776.012(1), F.S.

⁷ Section 776.012(2), F.S.

⁸ Section 776.031(1), F.S.

⁹ A forcible felony is defined to include the following offenses: "treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual." Section 776.08, F.S.

¹⁰ Section 776.031(2), F.S.

¹¹ Section 776.032(1), F.S.

¹² Section 776.032(1), F.S.

¹³ Section 776.032(3), F.S.

Immunity Determination

In 2008, in *Peterson v. State*, the First District Court of Appeal reviewed a first-degree murder case involving a claim of immunity under the Stand Your Ground law.¹⁴ In upholding the trial court's use of a pretrial, adversarial hearing to determine immunity, the appellate court stated that "the Legislature makes clear that it intended to establish a true immunity and not merely an affirmative defense."¹⁵ However, should the court deny the immunity claim, the defendant is not foreclosed from introducing the basis of the claim as an affirmative defense at trial.¹⁶ The court also endorsed the trial court's review of the defendant's motion to dismiss under a showing of a preponderance of the evidence.¹⁷

In 2010, the Florida Supreme Court in *Dennis v. State* upheld the *Peterson* process of determining immunity through a pretrial evidentiary hearing.¹⁸ According to the Court:

section 776.032 contemplates that a defendant who establishes entitlement to the statutory immunity will not be subjected to trial. Section 776.032(1) expressly grants defendants a substantive right to not be arrested, detained, charged, or prosecuted as a result of the use of legally justified force. The statute does not merely provide that a defendant cannot be convicted as a result of legally justified force.¹⁹

The Court also recognized the availability of the claim of self-defense as an affirmative defense at trial.²⁰

Building on the *Dennis* court's validation of the use of pretrial evidentiary hearings in determining immunity, in 2015, the Court reviewed the burden of proof and the level of proof required in *Bretherick v. State*.²¹ The review was based on the defendant's assertion that the state should bear the burden of proof in immunity hearings and that the required showing is beyond a reasonable doubt.

The Court began its analysis of the issues by recognizing that the law is silent on how to procedurally effectuate the right to immunity.²² However, the Court concluded, "We now make explicit what was implicit in *Dennis* – the defendant bears the burden of proof by a preponderance of the evidence at the pretrial evidentiary hearing."²³

The Court further supported its conclusion with several policy arguments. One of these arguments is that placing the burden of proof on a state "has never previously been embraced by

¹⁴ *Peterson v. State*, 983 So. 2d 27 (Fla. 1st DCA 2008).

¹⁵ *Id.* at 29.

¹⁶ *Id.*

¹⁷ *Id.* at 28.

¹⁸ *Dennis v. State*, 51 So. 3d 456, 464 (Fla. 2010).

¹⁹ *Id.* at 462.

²⁰ *Id.* at 459.

²¹ *Bretherick v. State*, 170 So. 3d 766 (Fla. 2015).

²² *Id.* at 772.

²³ *Id.* at 768.

any state with an analogous immunity law and is actually inconsistent with the procedure for resolving motions to dismiss involving other types of statutory immunity.²⁴”

The Court also noted that no state court has required the prosecution at a pretrial hearing to disprove beyond a reasonable doubt that the use of force by a defendant was justified.²⁵ Otherwise, placing the burden of proof on the state, the Court reasoned, would require the state to satisfy the same degree of proof twice, resulting in basically two adversarial trials, one before the judge, and the other, the jury.²⁶

However, the dissenting opinion written by Justice Canady in which Justice Polston concurred, argued that the statutory right to claim immunity places the burden of proof on the state at pretrial immunity hearings. In support of his interpretation of the right to assert immunity, Justice Canady stated that:

By imposing the burden of proof on the defendant at the pretrial evidentiary hearing, the majority substantially curtails the benefit of the immunity from trial conferred by the Legislature under the Stand Your Ground law. There is no reason to believe that the Legislature intended for a defendant to be denied immunity and subjected to trial when that defendant would be entitled to acquittal at trial on the basis of a Stand Your ground defense. But the majority’s decision here guarantees that certain defendants who would be entitled to acquittal at trial will nonetheless be deprived of immunity from trial.²⁷

Similarly, Judge Schumann, one of the judges on the district court opinion in *Bretherick*, wrote in a concurring opinion that she felt bound by earlier Supreme Court precedent to place the burden of proof on the defendant.²⁸ Absent the precedent, she stated that she would have found that the trial court erred in placing the burden of proof on the defendant.²⁹ She explained that “[p]lacing the burden of proof on the State throughout each phase of criminal prosecution best fulfills the legislative intent to create a broad grant of immunity.”³⁰ She further noted that in close cases who bears the burden of proof might be dispositive.³¹

Task Force on Citizen Safety and Protection

Florida Governor Rick Scott convened a task force, the Task Force on Citizen Safety and Protection, to thoroughly review the state’s Stand Your Ground law. The task force held public hearings around the state, took testimony, and issued recommendations, detailed in a report dated February 21, 2013.³² The task force provided the report to the Governor, President of the Senate, and the Speaker of the House of Representatives.

²⁴ *Id.* at 769.

²⁵ *Id.* at 775.

²⁶ *Id.* at 777.

²⁷ *Id.* at 780.

²⁸ *Bretherick v. State*, 135 So. 3d 337, 341 (Fla. 5th DCA 2013)

²⁹ *Id.*

³⁰ *Id.* at 344.

³¹ *Id.*

³² Governor’s Task Force on Citizen Safety and Protection, Final Report (Feb. 21, 2013). The task force developed its mission as follows: “The Task Force on Citizen Safety and Protection will review ch. 776, F.S., and its implementation, listen

Members concurred in the belief that all persons who are conducting themselves in a lawful manner have the right to defend themselves and to stand their ground when attacked.³³

Additionally, the task force determined that the *Peterson* hearing is an adequate mechanism to resolve immunity claims.³⁴

Stand Your Ground Law in other States

At least 22 states have a version of the Stand Your Ground law. These laws provide that a defender does not have a duty to retreat from an attacker in any place in which the defender is lawfully present.³⁵ These states having SYG laws include Alabama, Arizona, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nevada, New Hampshire, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, and West Virginia.³⁶ Nine of these states have adopted laws with specific language providing that a person may stand his or her ground.³⁷

Persons who use self-defense may claim immunity from civil liability in certain circumstances in at least 22 states. These states include Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Illinois, Kentucky, Louisiana, Maryland, Michigan, Montana, New Hampshire, North Carolina, North Dakota, Oklahoma, Ohio, Pennsylvania, South Carolina, Tennessee, West Virginia, and Wisconsin.³⁸

At least 4 states, Alabama, Colorado, Georgia, and South Carolina specify the burden of proof required in a pretrial hearing on immunity. These states place the burden of proof on the defendant, either in statute or case law, to demonstrate a right to immunity by a preponderance of the evidence.³⁹

to the concerns and ideas from Floridians, and make recommendations to the Governor and Florida Legislature to ensure the rights of all Floridians and visitors, including the right to feel safe and secure in our state.”

³³ *Id.* at 5. “The Task Force concurs with the core belief that all persons ... have a right to feel safe and secure in our state. To that end, all persons who are conducting themselves in a lawful manner have a fundamental right to stand their ground and defend themselves from attack with proportionate force in every place they have a lawful right to be.”

³⁴ It is important to note that the Task Force drafted its report pre-*Bretherick*. The final report of the task force is available at: <http://www.flgov.com/citizensafety/>.

³⁵ *Self-defense and “Stand Your Ground,”* National Conference of State Legislatures (Aug. 30, 2013).

<http://www.ncsl.org/issues-research/justice/self-defense-and-stand-your-ground.aspx> (last visited Jan. 10, 2017).

³⁶ Alabama (s. 13A-3-20, 23); Arizona (s. 13-405); Florida (ch. 776, F.S.); Georgia (ss. 16-3-23, 16-3-23-1, 16-3-24); Indiana (s. 35-41-3-2); Kansas (ss. 21-5222, 21-5223, 21-5224, 21-5225, 21-5230); Kentucky (ss. 503.050, 503.055, 503.080); Louisiana (ss. 14:19, 14:20); Michigan (s. 780.972); Mississippi (s. 97-3-15); Montana (s. 45-3-110); Nevada (ss. 200.120, 200.160); New Hampshire (s. 627:4); North Carolina (ss. 14-51.2, 14-51.3); Oklahoma (s. 1289.25); Pennsylvania (title 18, s. 505); South Carolina (ss. 16-11-440, 16-11-450); South Dakota (s. 22-18-4); Tennessee (s. 39-11-614); Texas (ss. 9.31, 9.32, 9.41, 9.42, 9.43); Utah (ss. 76-2-402, 76-2-405, 76-2-407); West Virginia (s. 55-7-22).

³⁷ States including Stand Your Ground language in self-defense laws are: Alabama (s. 13A-3-23(b)), Florida (s. 776.013, F.S.), Georgia (s. 16-3-23.1), Kansas (s. 21-5320), Kentucky (s. 503.055), Louisiana (s. 14:19), Oklahoma (s. 1289.25), Pennsylvania (title 18, s. 505), and South Carolina (s. 16-11-440(C)).

³⁸ *Immunity, Burden of Proof, and Presumptions in State Self-defense Laws*, National Conference of State Legislatures (Jan. 5, 2017).

³⁹ These states are: Alabama (s. 13A-3-23(d)(2)), Colorado (*People v. Guenther*, 740 P.2d 971, 980 (Colo. 1987); *People v. Eckert*, 919 P.2d 962, 965 (Colo. App. 1996), Georgia (*Bunn v. State*, 284 Ga. 410, 413 (Ga. 2008), and South Carolina (*State v. Duncan*, 392 S.C. 404, 410-411 (S.Ca. 2011)).

III. Effect of Proposed Changes:

This bill shifts the burden of proof to the state in pretrial hearings to determine whether a defendant is immune from criminal prosecution based on claimed justifiable use of force. Additionally, the bill requires the state to prove its burden beyond a reasonable doubt. The burden of proof of beyond a reasonable doubt is the same burden of proof imposed on the state in the prosecution of criminal cases, including cases in which self-defense is raised at trial as an affirmative defense.

Under the bill, a defendant is entitled to an immunity hearing in which the state bears the burden of proof by filing a motion that clearly states the reasons the defendant is immune and alleges the facts on which the immunity claim is based. However, if the court does not grant the motion for immunity, the motion and its contents are inadmissible at trial.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to affect cities or counties and, as a result, does not appear to be a mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may reduce a defendant's legal costs in immunity hearings by shifting the burden of proof to the prosecution. Costs to the private sector may be further reduced if the bill results in fewer prosecutions or if more prosecutions are dismissed before trial.

C. Government Sector Impact:

By shifting the burden of proof to the prosecution in immunity hearings, and to the extent that prosecutors do not drop or plea bargain any of their weaker cases, additional costs may be incurred by public defenders, prosecutors, and the court. Because the burden shifts to the prosecution, more defendants may have an incentive to claim the right to

immunity. Additionally, some cases that would go to trial under the current procedures will be resolved at the immunity hearing or encourage plea bargains when the state prevails at the pretrial hearings.

The Office of the State Courts Administrator indicates that it cannot accurately determine the fiscal impact of the bill at this time due to unavailability of data.⁴⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 776.032, 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 Judiciary Committee on January 24, 2017:

This CS:

- Removes the burden on the defendant by requiring him or her to state a case in the motion for immunity, rather than requiring the defendant to make a prima facie case at the pretrial hearing;
- Provides that if the court does not grant the motion for immunity, the motion and its contents are inadmissible at trial; and
- Clarifies that the court must grant the motion unless the state meets its burden of proof.

- B. **Amendments:**

None.

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

⁴⁰ Office of the State Courts Administrator, *2017 Judicial Impact Statement* (Jan. 19, 2017).



832456

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/24/2017	.	
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	.	
	.	

The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 30 - 35
and insert:

(4) In a criminal prosecution, a defendant may file a pretrial motion claiming the right to the immunity from prosecution set forth in subsection (1). The motion must clearly state the reasons that the defendant is immune and allege the facts on which the claim of immunity is based. The court shall grant the motion after a pretrial hearing unless the state proves beyond a reasonable doubt that the defendant is not



832456

immune. If the motion is not granted, the motion and its
contents are inadmissible at trial.

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

And the title is amended as follows:

Delete lines 3 - 6

and insert:

776.032, F.S.; providing that the state has the burden
of proving that a defendant is not immune from
prosecution under certain circumstances; providing an
effective date.

By Senator Bradley

5-00200B-17

2017128__

A bill to be entitled

An act relating to self-defense immunity; amending s. 776.032, F.S.; requiring that the burden of proof in a criminal prosecution be on the party seeking to overcome the immunity claim under certain circumstances; providing an effective date.

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

Section 1. Subsection (1) of section 776.032, Florida Statutes, is republished, and subsection (4) is added to that section, to read:

776.032 Immunity from criminal prosecution and civil action for justifiable use or threatened use of force.—

(1) A person who uses or threatens to use force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in such conduct and is immune from criminal prosecution and civil action for the use or threatened use of such force by the person, personal representative, or heirs of the person against whom the force was used or threatened, unless the person against whom force was used or threatened is a law enforcement officer, as defined in s. 943.10(14), who was acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using or threatening to use force knew or reasonably should have known that the person was a law enforcement officer. As used in this subsection, the term "criminal prosecution" includes arresting, detaining in custody, and charging or prosecuting the defendant.

(4) In a criminal prosecution, once a prima facie claim of self-defense immunity from criminal prosecution has been raised by the defendant at a pretrial immunity hearing, the burden of

Page 1 of 2

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5-00200B-17

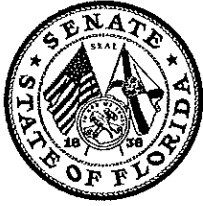
2017128__

proof beyond a reasonable doubt is on the party seeking to overcome the immunity from criminal prosecution provided in subsection (1).

Section 2. This act shall take effect upon becoming a law.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: December 20, 2016

I respectfully request that **Senate Bill # 128**, relating to Self-defense Immunity, be placed on the:

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

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

Senator Rob Bradley
Florida Senate, District 5

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/24/17
Meeting Date

SB 128
Bill Number (if applicable)

Topic Stand Your Ground

Amendment Barcode (if applicable)

Name Phil Archer

Job Title State Attorney - 18th Jud. Cir.

Address 2725 Judge Fran Jamieson Way
Street
Viera Fl. 32940
City State Zip

Phone (321) 637-5575

Email

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/24/17
Meeting Date

SB 128
Bill Number (if applicable)

Topic Stand your ground

Amendment Barcode (if applicable)

Name Debbie Harrison Rumberger

Job Title Legislative Liaison

Address 540 Buxley Court

Phone 850-224-2545

Street

Tallahassee, FL

State

32301

Zip

Email lawforadvocacy@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida League of Women Voters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/24/2017
Meeting Date

128
Bill Number (if applicable)

Topic Stand Your Ground

Amendment Barcode (if applicable)

Name Jorge Chalmizo

Job Title Attorney

Address 108 South Monroe Street

Phone (850) 681-0024

City Tallahassee, FL State FL Zip 32301

Email jorge@flapartners.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Families Against Mandatory Minimums

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-24-2017

Meeting Date

128

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTs

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

January 24, 2017

Meeting Date

SB 128

Bill Number (if applicable)

Topic Self Defense Immunity

Amendment Barcode (if applicable)

Name Luis Valdes

Job Title Law Enforcement

Address 3450 Woodhill Dr

Phone 305-206-9681

Street

Tallahassee

Florida

32303

Email LValdes001@gmail.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Private Citizen

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)

128

Meeting Date

Bill Number (if applicable)

Topic SB 128 Self Defense Immunity

Amendment Barcode (if applicable)

Name Roy F. Blondeau, Jr.

Job Title Attorney at Law

Address 6712 Buck Lake Road

Phone 850-877-9599

Street

Tallahassee Florida 32317

Email rfl07@gmail.com

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-24-17

Meeting Date

128

Bill Number (if applicable)

Topic

Stand Your Ground

Amendment Barcode (if applicable)

Name

Barbara DeVane

Job Title

Ms

Address

1625 E. Bernard ST

Phone

880-222-3969

Street

Tallahassee FL

32308

Email

barbadevane12@yahoo.com

City

State

Zip

Speaking:

☐

For

☒

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

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

Representing

FLNOR

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/24/17
Meeting Date

SB 128
Bill Number (if applicable)

Topic Bill SB 128

Amendment Barcode (if applicable)

Name Maria Rony

Job Title Property Manager

Address 2508 Windy Pine Way

Phone 850 566 7532

TALL FL 32305
City State Zip

Email Rebbie2321@gmail

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Mother that's getting tired of the senseless killing.

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)

SB 128 SYR
SB 120 Immigration
Bill Number (if applicable)

1/24/2017
Meeting Date

Topic SYG

Amendment Barcode (if applicable)

Name Linda Miklowitz

Job Title _____

Address 2542 Arthur's Court
Street

Phone 850.878.4320

Tallahassee FL 32301
City State Zip

Email LMiklowitz@aol.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing 8

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/24/17

Meeting Date

SB 128
Bill Number (if applicable)

Topic Stand your ground

Amendment Barcode (if applicable)

Name Lucy McBath

Job Title Faith Outreach Moms Demand Action

Address _____
Street

Phone _____

City _____ State _____ Zip _____

Email lmcbaath@everytowns.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Moms Demand Action For Our Sense

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)

January 24, 2017

Meeting Date

128

Bill Number (if applicable)

832456

Amendment Barcode (if applicable)

Topic Self Defense Immunity

Name Hon. Stacy Scott

Job Title Public Defender, 8th Judicial Circuit

Address 151 SW 2nd Ave.

Street

Gainesville

FL

32601

City

State

Zip

Phone 352-338-7370

Email scotts@pdo8.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida 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
APPEARANCE RECORD

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

1/24/17
Meeting Date

128
Bill Number (if applicable)

Topic Self-defense Immunity

Amendment Barcode (if applicable)

Name Leisa Wiseman

Job Title Director, Communications & Govt. Affairs

Address 425 Office Plaza Drive

Phone 850/425-2749

Street

Tallahassee FL 32301

City

State

Zip

Email wiseman.leise@fadv.org

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/24/17

Meeting Date

129

Bill Number (if applicable)

Topic Stand Your Ground

Amendment Barcode (if applicable)

Name Paul de Revere

Job Title _____

Address 2542 Arthurs Court

Street

Tallahassee

City

FL

State

32341

Zip

Phone _____

Email paulderev@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-24-17

Meeting Date

Both
128

Bill Number (if applicable)

832456

Amendment Barcode (if applicable)

Topic Self-Defense Immunity

Name Eric Friday

Job Title General Counsel, Florida Carry

Address 118 W Adams St. STE 320

Phone 904-722-3333

Street

Jacksonville

FL

32202

City

State

Zip

Email efriday@ericfriday.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Carry

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/24/17
Meeting Date

SB 128
Bill Number (if applicable)

Topic ~~Katie Browder~~ Stand Your Ground Amendment Barcode (if applicable)

Name Katie Browder - Gun violence survivor

Job Title _____

Address _____
Street

Phone _____

City _____ State _____ Zip _____

Email kbrowder@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Everytown Survivor 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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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

1-24-2017

Meeting Date

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

**BILL 4
AMENDMENT**

Topic BURDEN OF PROOF

Bill Number SB-128

Name MARION P. HAMMER

Amendment Barcode 832454
(if applicable)

Job Title _____

Address P.O. BOX 1387
Street

Phone 850-222-9518

TALLAHASSEE FL 32302
City State Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing NRA (NATIONAL RIFLE ASSOCIATION) UNITED SPORTSMEN OF FLORIDA

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/1)

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 Judiciary

BILL: CS/SB 118

INTRODUCER: Judiciary Committee and Senator Steube

SUBJECT: Criminal History Records

DATE: January 25, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Fav/CS
2.			CJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 118 expands the types of dispositions of criminal cases for which a defendant may later seek an expunction of the underlying criminal history record. Currently, records relating to charges disposed of by a trial are ineligible for expunction, regardless of the verdict in the case. Under the bill, a criminal record relating to a case resolved by a judgment of acquittal or a not guilty verdict is also eligible for expunction.

The bill also authorizes a cause of action against a person or entity who publishes arrest booking photographs and offers to remove them for a fee. Under the procedure in the bill, a person may file a civil action against the publisher of his or her arrest booking photograph if the publisher fails to remove the photograph within 10 days after a written request. As a remedy for failing to comply with a removal request, the bill authorizes a court to enjoin further publication of the photograph and impose a penalty of \$1,000 per day for injunction violations. The court also must award reasonable attorney fees and costs related to the issuance of the injunction.

The court also must award reasonable attorney fees and costs related to the issuance of the injunction. Additionally, the publisher will be subject to other penalties under the Florida Deceptive and Unfair Trade Practices Act.

II. Present Situation:

Sealing and Expunction of Criminal Records

A court may order a criminal record to be sealed or expunged. If the court orders a record to be sealed, the record is securely preserved and inaccessible unless a person has a legal right of access to the record.¹

In contrast, if a court orders a partial expunction or an expunction of an entire record, any criminal justice agency in custody of the record must physically destroy the record or part of the record. However, the Department of Law Enforcement is required to retain all records for the purpose of evaluating subsequent requests for sealing or expunction or to recreate a record if necessary.²

Expunction of Criminal Records

Eligibility for Expunction

The court may order expunction of a criminal record involving only one arrest or alleged incidence of criminal activity, unless additional arrests directly relate to the original arrest.³ Additionally, records of certain crimes are ineligible for expunction. Many of these are sex crimes, such as sexual battery, sex crimes against children, sexual misconduct in the workplace, sexual misconduct in institutions housing vulnerable persons, and voyeurism. Other ineligible records relate to violations of the Florida Communications Fraud Act, offenses by public officers and employees, human trafficking, dangerous crimes for which nonmonetary pretrial release is not available,⁴ or any violation requiring registration as a sexual predator.⁵

Applying for a Certificate of Eligibility

A person seeking to have a criminal record expunged must first obtain a valid certificate of eligibility from the Department of Law Enforcement. To do so, the person must provide to the department:

- A written, certified statement from the appropriate state attorney or statewide prosecutor that:
 - An indictment, information, or other charging document was not filed or issued in the case.
 - An indictment, information, or other charging document, if filed or issued in the case, was dismissed or dropped by the state attorney or the court, and that none of the charges resulted in a trial, without regard to whether the outcome of the trial was other than an adjudication of guilt.⁶

¹ Section 943.045(19), F.S.

² Section 943.045(16), F.S.

³ Section 943.0585, F.S.

⁴ Dangerous crimes include arson, aggravated assault or battery, child abuse, kidnapping, homicide, manslaughter, robbery, sexual battery, burglary, and terrorism. Section 907.041(4)(a), F.S.

⁵ Section 943.0585(2)(a)3., F.S.

⁶ Therefore, a case resolved by a judgment of acquittal is not eligible for an expunction. A judgment of acquittal may occur after the state concludes its case if the evidence in the light most favorable to the state is insufficient for conviction. BLACK'S LAW DICTIONARY, 6th ed.

- The applicant does not have a criminal history record containing certain delineated crimes.⁷
- A \$75 processing fee to the department for placement in the Department of Law Enforcement Operating Trust Fund, unless the fee is waived.
- A certified copy of the disposition of the charge.

The person must also:

- Have not, before the date the application for a certificate of eligibility is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3)(b).⁸
- Have not been adjudicated guilty or delinquent of committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to expunge pertains.
- Have not secured a prior sealing or expunction other than the required 10-year sealing for the offense sought to be expunged.
- Not be under court supervision for the arrest or crime to which the petition to expunge pertains.
- Have previously obtained a court order sealing the record for a minimum of 10 years. The requirement for the record to have been sealed for 10 years does not apply if a plea was not entered or all charges related to the arrest or offense to which the petition to expunge pertains were dismissed before trial.⁹

Filing a Petition with the Court

After receiving the certificate of eligibility, the person must file a petition with the court to expunge the record. The petitioner must also include a sworn statement attesting that he or she has never:

- Been adjudicated guilty of a crime or comparable ordinance violation, or adjudicated delinquent of a disqualifying crime that would have precluded receipt of the certificate of eligibility¹⁰;
- Been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest of alleged criminal activity to which the petition pertains; or
- Secured a prior sealing or expunction of a criminal history record unless expunction is sought of a criminal history record previously sealed for 10 years, provided the record is otherwise eligible for expunction.¹¹

Processing an Order to Expunge

If the court grants a petition to expunge, several entities are required to forward copies of the order to relevant persons or entities. The clerk of the court must provide the order to the state

⁷ These crimes of assault include battery, carrying a concealed weapon, unlawful use of destructive devices or bombs, neglect of a child, assault or battery on a law enforcement officer, firefighter, or certain other officers, open carry of a weapon, exposure of sexual organs, unlawful possession or discharge of a firearm or weapon, including at a school-sponsored event or school property, petit theft, cruelty to animals, and arson. Section 943.0585(2)(a)3., F.S.

⁸ *Id.* These are currently the same crimes identified in s. 943.0585(2)(a)3., F.S.

⁹ Section 943.0585(2), F.S.

¹⁰ Section 943.501(3)(b), F.S.

¹¹ Section 943.0585(1), F.S.

attorney or statewide prosecutor, the arresting agency, and any entity that previously received the criminal history record. The arresting agency must provide the order to any entity to which the agency previously disseminated the criminal history record information. Finally, the Department of Law Enforcement must provide the order to the Federal Bureau of Investigation.¹²

Effect of an Expunction of a Criminal History Record

Any criminal justice agency having custody of a record that is expunged must physically destroy or obliterate the record. The department, however, must maintain the record. The record itself, in the custody of the department, is protected as confidential and exempt from disclosure requirements under the public records laws.¹³

The person who has received the expunction may deny or fail to report the arrests expunged, unless the person:

- Is applying for a position as a guardian, a position with a criminal justice agency, or a position with an agency which is responsible for the protection of vulnerable persons, including children, disabled persons, and elderly persons;
- Is being criminally prosecuted;
- Is petitioning for an expunction of a human trafficking offense or a sealing of a criminal history record; or
- Is applying to The Florida Bar for licensure.¹⁴

The Posting of Booking Photos or Criminal History Information on Websites

State Law Bans

In recent years, an industry has emerged in which commercial website operators repost booking or arrest photographs (mugshots). The operators make a profit by charging the subject of the photos a fee for removing the image. Although some of the operators remove photos at no cost if the charge(s) were dropped or the person found not guilty, others charge a fee. Also, photos posted on one site may be reposted to other sites, causing continuing harm to the reputation of the individual.¹⁵

Thirteen states enacted legislation designed to prohibit commercial website operators from posting mugshot photos on a website and exacting a fee for removal of the photos from the website.¹⁶ Of these, 5 states require website operators to remove photos of persons criminally charged from websites if an expungement order is in effect. These states are Maryland, Oregon, South Carolina, Texas, and Wyoming, all of which provide only civil relief.

¹² Section 943.0585(3), F.S.

¹³ Section 943.0585(4), F.S.

¹⁴ Section 943.0585(4)(a), F.S.

¹⁵ National Conference of State Legislatures (NCSL), *Mug Shots and Booking Photo Websites, Overview* (Jan. 12, 2016).

¹⁶ These are California, Colorado, Georgia, Illinois, Kentucky, Maryland, Missouri, Oregon, South Carolina, Texas, Utah, Virginia, and Wyoming.

Case Law

Persons having a criminal history record have challenged the posting of their images and information by commercial entities based on various causes of action. These include claims for an invasion of privacy based on false light¹⁷, invasion of privacy based on unauthorized appropriation of name or likeness, defamation by slander, and unjust enrichment. Claimants have met with varying degrees of success.¹⁸

In Florida prevailing in a civil cause of action against a website that displays mugshot photos seems unlikely because of the lack of recognized causes of action. In 2008, the Florida Supreme Court indicated that Florida does not recognize tort claims based on false light, “Because we conclude that false light is largely duplicative of existing torts, but without the attendant protections of the First Amendment.”¹⁹ The Court specifically noted that the key elements of a false claim are nearly identical to the elements required in a defamation case.²⁰ The state does recognize defamation claims.²¹

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

History and Purpose of FDUTPA

The Legislature enacted the Florida Deceptive and Unfair Trade Practices Act in 1973 (FDUTPA).²² A consumer and business protection measure, FDUTPA prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or commerce.²³ FDUTPA, known as the “Little FTC Act,” is based on federal law.²⁴ Actions are brought by the State Attorney or the Department of Legal Affairs when it is in the public interest on behalf of consumers or governmental entities.²⁵ The Office of the State Attorney may enforce violations of FDUTPA if the violations take place under its jurisdiction. The Department of Legal Affairs, Office of the Attorney General, has enforcement authority if the violation is multi-jurisdictional, the state attorney defers in writing, or the state attorney fails to act within 90 days

¹⁷ A claim of false light is a type of a claim of invasion of privacy based in tort. By way of example, to prevail in a false light claim in Pennsylvania, a defendant must establish that a highly offensive false statement was publicized by a defendant with knowledge or in reckless disregard of its falsity. *Santillo v. Reedel*, 430 Pa. Super. 290, 295-296 (1983).

¹⁸ See, i.e., *Bilotta v. Citizens Info. Assocs., LLC.*, 2014 U.S. Dist. LEXIS 68495, 18 (2014), in which the court dismissed a plaintiff’s motion for certification as a class action based on the failure of the claimant to establish adequate bases of the claimants as a class; *Jamali v. Maricopa County*, 2013 U.S. Dist. LEXIS 75323, 10 (2013), in which the court dismissed the case as being improperly filed in federal court; and *Taha v. Bucks County*, 9 F.Supp. 3d 490, 11, 12 (2014), in which the court denied the defendant’s pretrial motion to dismiss a false-light claim. In this case, the plaintiff, who insisted he was innocent, entered into a deferred prosecution agreement, and after fulfilling all conditions, received an automatic expungement of his criminal charge. Under the facts presented to the court, “The bustedmugshots.com webpage on which Taha’s profile appears features the legend ‘BUSTED!’ in large bold letters over his mugshot . . . prominently placed in the center of the page, as are two clickable options to ‘Get Detailed Information About This Arrest.’” . . . Taha’s allegations, accepted as true, are sufficient to state a false-light claim “that is plausible on its face.” *Id.* at 10-11.

¹⁹ *Jews for Jesus v. Rapp*, 997 So. 2d 1098, 1100, 1115 (2008).

²⁰ *Id.* at 1105-1106.

²¹ *Id.* at 1111-1112.

²² Chapter 73-124, L.O.F.

²³ Section 501.202, F.S.

²⁴ David J. Federbush, *Damages under FDUTPA*, 78-MAY FLA. B.J. 20, 26 (2004); Douglas B. Brown, *Florida Legislature Broadens the Scope of the “Little FTC Act,”* 67-OCT FLA. B.J. 50 (1993).

²⁵ David J. Federbush, *FDUTPA for Civil Antitrust*, 76 FLA. B.J. 52, 57 (Dec. 2002).

after a written complaint is filed.²⁶ Although the Department of Legal Affairs is the primary enforcer and administrator of FDUTPA, ~~followed by state attorneys~~, consumers may file suit through private actions.

Remedies under FDUTPA

The Department of Legal Affairs and the State Attorney, as enforcing authorities, may seek the following remedies:

- Declaratory judgments;
- Injunctive relief;
- Actual damages;
- Cease and desist orders; and
- Civil penalties, in an amount of up to \$10,000 per violation for willful violations.²⁷

Enforcing authorities may also request attorney fees and costs of investigation or litigation.²⁸

Remedies for private parties are limited to a:

- Declaratory judgment and an injunction where a person is aggrieved by a FDUTPA violation; and
- Actual damages, attorney fees and court costs, where a person has suffered a loss due to an FDUTPA violation.²⁹

III. Effect of Proposed Changes:

New Bases for Expunction

This bill enables a person who has a criminal history record to seek expunction of the record if the alleged criminal activity resulted in a judgment of acquittal rendered by the court or a verdict of not guilty by a court or jury. Currently, charges disposed of by trial are ineligible for expunction, regardless of the verdict in the trial.

Ban on Publication of an Expunged Criminal History Record

The bill requires a publisher of arrest booking photographs to remove the photographs upon a written request by the person in the photographs, or his or her legal representative. Upon receipt of the request, the publisher must remove the photographs without charging a fee within 10 calendar days.

If the publisher does not comply with the removal requirement, in addition to issuing an injunction, a court may impose civil penalties of \$1,000 per day, reasonable attorney fees, and court costs. Additionally, the publisher will be subject to other penalties under the Florida Unfair or Deceptive Trade Practice Act.

²⁶ Section 501.203(2), F.S.

²⁷ Sections 501.207(1) and 501.2075, F.S.

²⁸ Section 501.2105, F.S.

²⁹ Section 501.211(1) and (2), F.S.

The bill takes effect July 1, 2017.

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:

Requiring private entities to remove booking arrest photos may result in a constitutional challenge based on the First Amendment to the extent that the bill regulates protected speech. However, the absence of a sufficiently analogous case on point makes the potential outcome of a First Amendment challenge speculative.³⁰

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may reduce costs for defendants who have had their criminal history record expunged. First, the bill now prohibits publishers of the information or images from charging fees for removing information and images relating to an expunged record. Also, the bill authorizes a civil cause of action, with an entitlement to attorney fees and costs, against those who fail to remove expunged records.

C. Government Sector Impact:

The Department of Law Enforcement indicates that although they will need to make a technological change, they expect a minimal fiscal impact.³¹

³⁰ For comparison, see *Fla. Star v. B.J.F.*, 491 U.S. 524, 525, 109 S.Ct. 2603, 105 L.Ed.2d 443 (1989) (holding that a newspaper was not liable for disclosing a victim's identity obtained from a police report released by law enforcement in violation of law, and further that the matter was of public concern and that imposing damages on the newspaper violated the First Amendment); *Bartnicki v. Vopper*, 532 U.S. 514, 535 (2001), holding that if a publisher lawfully obtains the information in question, the speech is protected by the First Amendment provided it is a matter of public concern, even if the source recorded it unlawfully.

³¹ Department of Law Enforcement, *2017 FDLE Legislative Bill Analysis for SB 118*, Dec. 19, 2016.

The Office of the State Courts Administrator expects an increase in judicial workload because more people will be eligible for expunction of their criminal history records. Also, creating a new injunction process and a new crime for the unlawful dissemination of expunged records will increase workload. However, the fiscal impact of these changes is indeterminate due to the unavailability of data needed to accurately establish the increase in judicial workload.³²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 943.0585, 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 Judiciary Committee on January 24, 2017:

The CS qualifies as eligible for expunction a case in which a judge renders a judgment of acquittal.

The CS also:

- Removes the expunction requirement for cases for which a person may get an arrest booking photograph removed from publication or dissemination by a private publisher;
- Reduces from 14, to 10, the number of calendar days in which a publisher has to remove the photographs before a person can seek an injunction;
- Removes criminal penalties but increases from \$500 to \$1,000, the civil fine that a court may impose on a publisher who fails to comply with removal of the photographs; and
- Subjects the publisher to additional penalties under the Florida Deceptive and Unfair Trade Practices Act, including a civil penalty of up to \$10,000 per willful violation.

B. Amendments:

None.

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

³² Office of the State Courts Administrator, *Bill Analysis and Fiscal Impact Statement*, Jan. 23, 2017.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/24/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Steube) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. (1) Any person or entity engaged in the business
of publishing or otherwise disseminating arrest booking
photographs of persons who have previously been arrested through
a publicly accessible print or electronic medium may not solicit
or accept a fee or other form of payment to remove, correct, or
modify such photographs.

(2) Upon receipt of a written request from a person whose



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booking photograph is published or otherwise disseminated, or his or her legal representative, the person or entity who published or otherwise disseminated the photograph shall remove the photograph without charge within 10 calendar days after receiving the request for removal.

(3) The person whose arrest booking photograph was published or otherwise disseminated in the publication or electronic medium may bring a civil action to enjoin the continued publication or dissemination of the photograph if the photograph is not removed within 10 calendar days after receipt of the written request for removal. In addition to the remedies set forth in this subsection, the court may impose a civil penalty of \$1,000 per day for noncompliance with an injunction and shall award reasonable attorney fees and court costs related to the issuance of the injunction.

(4) Refusal to remove an arrest booking photograph after written request has been made constitutes an unfair or deceptive trade practice in accordance with part II of chapter 501.

(5) This section does not apply to any person or entity that publishes or disseminates information relating to arrests unless the person or entity solicits or accepts payment to remove the information.

Section 2. Section 943.0585, Florida Statutes, is amended to read:

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent



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with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2) or subsection (5). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of



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records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity.

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

(1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each petition to a court to expunge a criminal history record is complete only when accompanied by:

(a) A valid certificate of eligibility for expunction issued by the department pursuant to subsection (2).

(b) The petitioner's sworn statement attesting that the petitioner:

1. Has never, prior to the date on which the petition is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3) (b).

2. Has not been adjudicated guilty of, or adjudicated



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delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition pertains.

3.a. Has never secured a prior sealing or expunction of a criminal history record under this section, s. 943.059, former s. 893.14, former s. 901.33, or former s. 943.058, unless expunction is sought of a criminal history record previously sealed for 10 years pursuant to paragraph (2)(h) and the record is otherwise eligible for expunction; or

b. Is seeking to expunge a criminal history record associated with a judgment of acquittal or a not guilty verdict.

4. Is eligible for such an expunction to the best of his or her knowledge or belief and does not have any other petition to expunge or any petition to seal pending before any court.

Any person who knowingly provides false information on such sworn statement to the court commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to petitioning the court to expunge a criminal history record, a person seeking to expunge a criminal history record shall apply to the department for a certificate of eligibility for expunction. The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for expunction. A certificate of eligibility for expunction is valid for 12 months after the date stamped on the certificate when issued by the department. After that time, the petitioner must reapply to



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the department for a new certificate of eligibility. Eligibility for a renewed certification of eligibility must be based on the status of the applicant and the law in effect at the time of the renewal application. The department shall issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person:

(a) Has obtained, and submitted to the department, a written, certified statement from the appropriate state attorney or statewide prosecutor which indicates:

1. That an indictment, information, or other charging document was not filed or issued in the case.

2. That an indictment, information, or other charging document, if filed or issued in the case, was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court of competent jurisdiction, that a judgment of acquittal was rendered by a judge, or that a verdict of not guilty was rendered by a judge or jury ~~and that none of the charges related to the arrest or alleged criminal activity to which the petition to expunge pertains resulted in a trial, without regard to whether the outcome of the trial was other than an adjudication of guilt.~~

3. That the criminal history record does not relate to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require



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such registration, or for registration as a sexual offender pursuant to s. 943.0435, where the defendant was found guilty of, or pled guilty or nolo contendere to any such offense, or that the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, such an offense as a delinquent act, without regard to whether adjudication was withheld.

(b) Remits a \$75 processing fee to the department for placement in the Department of Law Enforcement Operating Trust Fund, unless such fee is waived by the executive director.

(c) Has submitted to the department a certified copy of the disposition of the charge to which the petition to expunge pertains.

(d) Has never, prior to the date on which the application for a certificate of eligibility is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3)(b).

(e) Has not been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition to expunge pertains.

(f)1. Has never secured a prior sealing or expunction of a criminal history record under this section, s. 943.059, former s. 893.14, former s. 901.33, or former s. 943.058, unless expunction is sought of a criminal history record previously sealed for 10 years pursuant to paragraph (h) and the record is otherwise eligible for expunction; or

2. Is seeking to expunge a criminal history record



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186 associated with a judgment of acquittal or a not guilty verdict.

187 (g) Is no longer under court supervision applicable to the
188 disposition of the arrest or alleged criminal activity to which
189 the petition to expunge pertains.

190 (h) Has previously obtained a court order sealing the
191 record under this section, former s. 893.14, former s. 901.33,
192 or former s. 943.058 for a minimum of 10 years because
193 adjudication was withheld or because all charges related to the
194 arrest or alleged criminal activity to which the petition to
195 expunge pertains were not dismissed prior to trial, without
196 regard to whether the outcome of the trial was other than an
197 adjudication of guilt. The requirement for the record to have
198 previously been sealed for a minimum of 10 years does not apply
199 when a plea was not entered or all charges related to the arrest
200 or alleged criminal activity to which the petition to expunge
201 pertains were dismissed prior to trial.

202 (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.—

203 (a) In judicial proceedings under this section, a copy of
204 the completed petition to expunge shall be served upon the
205 appropriate state attorney or the statewide prosecutor and upon
206 the arresting agency; however, it is not necessary to make any
207 agency other than the state a party. The appropriate state
208 attorney or the statewide prosecutor and the arresting agency
209 may respond to the court regarding the completed petition to
210 expunge.

211 (b) If relief is granted by the court, the clerk of the
212 court shall certify copies of the order to the appropriate state
213 attorney or the statewide prosecutor and the arresting agency.
214 The arresting agency is responsible for forwarding the order to



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any other agency to which the arresting agency disseminated the criminal history record information to which the order pertains. The department shall forward the order to expunge to the Federal Bureau of Investigation. The clerk of the court shall certify a copy of the order to any other agency which the records of the court reflect has received the criminal history record from the court.

(c) For an order to expunge entered by a court prior to July 1, 1992, the department shall notify the appropriate state attorney or statewide prosecutor of an order to expunge which is contrary to law because the person who is the subject of the record has previously been convicted of a crime or comparable ordinance violation or has had a prior criminal history record sealed or expunged. Upon receipt of such notice, the appropriate state attorney or statewide prosecutor shall take action, within 60 days, to correct the record and petition the court to void the order to expunge. The department shall seal the record until such time as the order is voided by the court.

(d) On or after July 1, 1992, the department or any other criminal justice agency is not required to act on an order to expunge entered by a court when such order does not comply with the requirements of this section. Upon receipt of such an order, the department must notify the issuing court, the appropriate state attorney or statewide prosecutor, the petitioner or the petitioner's attorney, and the arresting agency of the reason for noncompliance. The appropriate state attorney or statewide prosecutor shall take action within 60 days to correct the record and petition the court to void the order. No cause of action, including contempt of court, shall arise against any



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criminal justice agency for failure to comply with an order to expunge when the petitioner for such order failed to obtain the certificate of eligibility as required by this section or such order does not otherwise comply with the requirements of this section.

(4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any criminal history record of a minor or an adult which is ordered expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

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

1. Is a candidate for employment with a criminal justice agency;
2. Is a defendant in a criminal prosecution;
3. Concurrently or subsequently petitions for relief under this section, s. 943.0583, or s. 943.059;



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4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities;

7. Is seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services; or

8. Is seeking to be appointed as a guardian pursuant to s. 744.3125.

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

(c) Information relating to the existence of an expunged criminal history record which is provided in accordance with



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paragraph (a) is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the existence of a criminal history record ordered expunged to the entities set forth in subparagraphs (a)1., 4., 5., 6., 7., and 8. for their respective licensing, access authorization, and employment purposes, and to criminal justice agencies for their respective criminal justice purposes. It is unlawful for any employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., subparagraph (a)7., or subparagraph (a)8. to disclose information relating to the existence of an expunged criminal history record of a person seeking employment, access authorization, or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions. Any person who violates this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) EXCEPTION FOR LAWFUL SELF-DEFENSE.—Notwithstanding the eligibility requirements prescribed in paragraph (1)(b) and subsection (2), the department shall issue a certificate of eligibility for expunction under this subsection to a person who is the subject of a criminal history record if that person:

(a) Has obtained, and submitted to the department, on a form provided by the department, a written, certified statement from the appropriate state attorney or statewide prosecutor which states whether an information, indictment, or other charging document was not filed or was dismissed by the state



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attorney, or dismissed by the court, because it was found that the person acted in lawful self-defense pursuant to the provisions related to justifiable use of force in chapter 776.

(b) Each petition to a court to expunge a criminal history record pursuant to this subsection is complete only when accompanied by:

1. A valid certificate of eligibility for expunction issued by the department pursuant to this subsection.

2. The petitioner's sworn statement attesting that the petitioner is eligible for such an expunction to the best of his or her knowledge or belief.

Any person who knowingly provides false information on such sworn statement to the court commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) This subsection does not confer any right to the expunction of a criminal history record, and any request for expunction of a criminal history record may be denied at the discretion of the court.

(d) Subsections (3) and (4) shall apply to expunction ordered under this subsection.

(e) The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for expunction under this subsection.

(6) STATUTORY REFERENCES.—Any reference to any other chapter, section, or subdivision of the Florida Statutes in this section constitutes a general reference under the doctrine of



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incorporation by reference.

Section 3. This act shall take effect July 1, 2017.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to criminal history records;
prohibiting a person or entity engaged in publishing
or disseminating arrest booking photographs from
soliciting or accepting a fee or other payment to
remove, correct, or modify such photograph; requiring
a person or entity, within a specified timeframe, to
remove an arrest booking photograph after receipt of a
written request; authorizing a person to bring a civil
action to enjoin such publishing of a photograph;
authorizing a court to impose a civil penalty and
award attorney fees and court costs; providing
applicability; amending s. 943.0585, F.S.; revising
the eligibility requirements for expunction of
criminal history records to include instances in which
a judgment of acquittal or a verdict of not guilty is
rendered; providing an effective date.

By Senator Steube

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A bill to be entitled

An act relating to expunction of criminal history records; amending s. 943.0585, F.S.; revising the eligibility requirements for expunction of criminal history records to include instances in which a verdict of not guilty is rendered; requiring a person or entity, within a specified timeframe, to remove an expunged criminal history record under certain circumstances; authorizing a civil action for injunction under certain circumstances; authorizing a court to impose a civil penalty and award attorney fees and court costs; providing applicability; providing criminal penalties; requiring a court to order the suspension of an Internet protocol (IP) address under certain circumstances; defining the term "conviction"; providing an effective date.

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

Section 1. Section 943.0585, Florida Statutes, is amended to read:

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person

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seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2) or subsection (5). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction

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of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each petition to a court to expunge a criminal history record is complete only when accompanied by:

(a) A valid certificate of eligibility for expunction issued by the department pursuant to subsection (2).

(b) The petitioner's sworn statement attesting that the petitioner:

1. Has never, prior to the date on which the petition is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3)(b).

2. Has not been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition pertains.

3.a. Has never secured a prior sealing or expunction of a criminal history record under this section, s. 943.059, former s. 893.14, former s. 901.33, or former s. 943.058, unless

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expunction is sought of a criminal history record previously sealed for 10 years pursuant to paragraph (2)(h) and the record is otherwise eligible for expunction; or

b. Is seeking to expunge a criminal history record associated with a not guilty verdict.

4. Is eligible for such an expunction to the best of his or her knowledge or belief and does not have any other petition to expunge or any petition to seal pending before any court.

Any person who knowingly provides false information on such sworn statement to the court commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to petitioning the court to expunge a criminal history record, a person seeking to expunge a criminal history record shall apply to the department for a certificate of eligibility for expunction. The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for expunction. A certificate of eligibility for expunction is valid for 12 months after the date stamped on the certificate when issued by the department. After that time, the petitioner must reapply to the department for a new certificate of eligibility. Eligibility for a renewed certification of eligibility must be based on the status of the applicant and the law in effect at the time of the renewal application. The department shall issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person:

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(a) Has obtained, and submitted to the department, a written, certified statement from the appropriate state attorney or statewide prosecutor which indicates:

1. That an indictment, information, or other charging document was not filed or issued in the case.

2. That an indictment, information, or other charging document, if filed or issued in the case, was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court of competent jurisdiction, or that a verdict of not guilty was rendered by a judge or jury and that none of the charges related to the arrest or alleged criminal activity to which the petition to expunge pertains resulted in a trial, without regard to whether the outcome of the trial was other than an adjudication of guilt.

3. That the criminal history record does not relate to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, where the defendant was found guilty of, or pled guilty or nolo contendere to any such offense, or that the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, such an offense as a delinquent act, without regard to whether adjudication was withheld.

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(b) Remits a \$75 processing fee to the department for placement in the Department of Law Enforcement Operating Trust Fund, unless such fee is waived by the executive director.

(c) Has submitted to the department a certified copy of the disposition of the charge to which the petition to expunge pertains.

(d) Has never, prior to the date on which the application for a certificate of eligibility is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3)(b).

(e) Has not been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition to expunge pertains.

(f) 1. Has never secured a prior sealing or expunction of a criminal history record under this section, s. 943.059, former s. 893.14, former s. 901.33, or former s. 943.058, unless expunction is sought of a criminal history record previously sealed for 10 years pursuant to paragraph (h) and the record is otherwise eligible for expunction; or

2. Is seeking to expunge a criminal history record associated with a not guilty verdict.

(g) Is no longer under court supervision applicable to the disposition of the arrest or alleged criminal activity to which the petition to expunge pertains.

(h) Has previously obtained a court order sealing the record under this section, former s. 893.14, former s. 901.33, or former s. 943.058 for a minimum of 10 years because

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178 adjudication was withheld or because all charges related to the
 179 arrest or alleged criminal activity to which the petition to
 180 expunge pertains were not dismissed prior to trial, without
 181 regard to whether the outcome of the trial was other than an
 182 adjudication of guilt. The requirement for the record to have
 183 previously been sealed for a minimum of 10 years does not apply
 184 when a plea was not entered or all charges related to the arrest
 185 or alleged criminal activity to which the petition to expunge
 186 pertains were dismissed prior to trial.

187 (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.—

188 (a) In judicial proceedings under this section, a copy of
 189 the completed petition to expunge shall be served upon the
 190 appropriate state attorney or the statewide prosecutor and upon
 191 the arresting agency; however, it is not necessary to make any
 192 agency other than the state a party. The appropriate state
 193 attorney or the statewide prosecutor and the arresting agency
 194 may respond to the court regarding the completed petition to
 195 expunge.

196 (b) If relief is granted by the court, the clerk of the
 197 court shall certify copies of the order to the appropriate state
 198 attorney or the statewide prosecutor and the arresting agency.
 199 The arresting agency is responsible for forwarding the order to
 200 any other agency to which the arresting agency disseminated the
 201 criminal history record information to which the order pertains.
 202 The department shall forward the order to expunge to the Federal
 203 Bureau of Investigation. The clerk of the court shall certify a
 204 copy of the order to any other agency which the records of the
 205 court reflect has received the criminal history record from the
 206 court.

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

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207 (c) For an order to expunge entered by a court prior to
 208 July 1, 1992, the department shall notify the appropriate state
 209 attorney or statewide prosecutor of an order to expunge which is
 210 contrary to law because the person who is the subject of the
 211 record has previously been convicted of a crime or comparable
 212 ordinance violation or has had a prior criminal history record
 213 sealed or expunged. Upon receipt of such notice, the appropriate
 214 state attorney or statewide prosecutor shall take action, within
 215 60 days, to correct the record and petition the court to void
 216 the order to expunge. The department shall seal the record until
 217 such time as the order is voided by the court.

218 (d) On or after July 1, 1992, the department or any other
 219 criminal justice agency is not required to act on an order to
 220 expunge entered by a court when such order does not comply with
 221 the requirements of this section. Upon receipt of such an order,
 222 the department must notify the issuing court, the appropriate
 223 state attorney or statewide prosecutor, the petitioner or the
 224 petitioner's attorney, and the arresting agency of the reason
 225 for noncompliance. The appropriate state attorney or statewide
 226 prosecutor shall take action within 60 days to correct the
 227 record and petition the court to void the order. No cause of
 228 action, including contempt of court, shall arise against any
 229 criminal justice agency for failure to comply with an order to
 230 expunge when the petitioner for such order failed to obtain the
 231 certificate of eligibility as required by this section or such
 232 order does not otherwise comply with the requirements of this
 233 section.

234 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
 235 criminal history record of a minor or an adult which is ordered

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

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expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

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

1. Is a candidate for employment with a criminal justice agency;
2. Is a defendant in a criminal prosecution;
3. Concurrently or subsequently petitions for relief under this section, s. 943.0583, or s. 943.059;
4. Is a candidate for admission to The Florida Bar;
5. Is seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile

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Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities;

7. Is seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services; or

8. Is seeking to be appointed as a guardian pursuant to s. 744.3125.

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

(c) Information relating to the existence of an expunged criminal history record which is provided in accordance with paragraph (a) is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the existence of a criminal history record ordered expunged to the entities set forth in subparagraphs (a)1., 4., 5., 6., 7., and 8. for their respective licensing, access authorization, and employment purposes, and to criminal justice agencies for their respective

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criminal justice purposes. It is unlawful for any employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., subparagraph (a)7., or subparagraph (a)8. to disclose information relating to the existence of an expunged criminal history record of a person seeking employment, access authorization, or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions. Any person who violates this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(d)1. Any person or entity who publishes, displays, or in any way disseminates information or an image of a person whose criminal history record has been expunged, upon receipt of a certified copy of an order granting a petition to expunge, shall remove such information or image without further notice or cost to the person who is the subject of the petition within 14 calendar days after receipt of the certified copy of the order of expunction. A person who has had his or her criminal history record expunged may bring a civil action to enjoin further publication, display, or dissemination if such criminal history record is not removed within 14 days after receipt of the certified copy of the order of expunction. A court may impose a civil penalty of \$500 per day for noncompliance with an order of injunction and shall award reasonable attorney fees and court costs related to the issuance of the order. This paragraph does not apply to a state, regional, county, or municipal governmental entity.

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2. Any person or entity who publishes, displays, or in any way disseminates information or an image of a person whose criminal history record has been expunged, upon receipt of a certified copy of an order granting a petition to expunge, who fails to remove such information or image within 14 calendar days after receipt of the certified copy of the order of expunction and who has previously been fined for noncompliance with an order of injunction pursuant to subparagraph 1. commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who commits a third or subsequent violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

3. If a person is convicted under subparagraph 2., a court shall order the suspension of any Internet protocol (IP) address carrying the publication for a period of no less than 1 year from the date of conviction. As used in this subparagraph, the term "conviction" means a finding of guilt or the acceptance of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

(5) EXCEPTION FOR LAWFUL SELF-DEFENSE.—Notwithstanding the eligibility requirements prescribed in paragraph (1)(b) and subsection (2), the department shall issue a certificate of eligibility for expunction under this subsection to a person who is the subject of a criminal history record if that person:

(a) Has obtained, and submitted to the department, on a form provided by the department, a written, certified statement from the appropriate state attorney or statewide prosecutor which states whether an information, indictment, or other charging document was not filed or was dismissed by the state

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352 attorney, or dismissed by the court, because it was found that
 353 the person acted in lawful self-defense pursuant to the
 354 provisions related to justifiable use of force in chapter 776.
 355 (b) Each petition to a court to expunge a criminal history
 356 record pursuant to this subsection is complete only when
 357 accompanied by:

- 358 1. A valid certificate of eligibility for expunction issued
 359 by the department pursuant to this subsection.
- 360 2. The petitioner's sworn statement attesting that the
 361 petitioner is eligible for such an expunction to the best of his
 362 or her knowledge or belief.

363
 364 Any person who knowingly provides false information on such
 365 sworn statement to the court commits a felony of the third
 366 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 367 775.084.

368 (c) This subsection does not confer any right to the
 369 expunction of a criminal history record, and any request for
 370 expunction of a criminal history record may be denied at the
 371 discretion of the court.

372 (d) Subsections (3) and (4) shall apply to expunction
 373 ordered under this subsection.

374 (e) The department shall, by rule adopted pursuant to
 375 chapter 120, establish procedures pertaining to the application
 376 for and issuance of certificates of eligibility for expunction
 377 under this subsection.

378 (6) STATUTORY REFERENCES.—Any reference to any other
 379 chapter, section, or subdivision of the Florida Statutes in this
 380 section constitutes a general reference under the doctrine of

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381 incorporation by reference.
 382 Section 2. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

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

Jan. 24, 2017

Meeting Date

118

Bill Number (if applicable)

921458

*Amendment Barcode (if applicable)*Topic Expunction of Criminal History RecordsName Sam MorleyJob Title Gen. CounselAddress 336 College Ave.*Street*Tallahassee*City*FL*State*32312*Zip*Phone 8502124395Email smorley@flpress.comSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing Florida Press AssociationAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Jan. 24, 2017

Meeting Date

118

Bill Number (if applicable)

921458

Amendment Barcode (if applicable)

Topic Expunction of Criminal History Records

Name Sam Morley

Job Title Gen. Counsel

Address 336 College Ave.

Street

Tallahassee

City

FL

State

32312

Zip

Phone 8502124395

Email smorley@flpress.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Press 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

January 24, 2017

Meeting Date

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

118

Bill Number (if applicable)

921458

Topic Expunction of Criminal History Records*Amendment Barcode (if applicable)*Name Hon. Stacy ScottJob Title Public Defender, 8th Judicial CircuitAddress 151 SW 2nd Ave.Phone 352-338-7370*Street*GainesvilleFL32601Email scotts@pdo8.org*City**State**Zip*Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing Florida Public Defender Association, Inc.Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

January 24, 2017

Meeting Date

118

Bill Number (if applicable)

921458

Amendment Barcode (if applicable)

Topic Expunction of Criminal History Records

Name Hon. Stacy Scott

Job Title Public Defender, 8th Judicial Circuit

Address 151 SW 2nd Ave.

Street

Gainesville

City

FL

State

32601

Zip

Phone 352-338-7370

Email scotts@pdo8.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida 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.

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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)

01-24-17
Meeting Date

118
Bill Number (if applicable)

Topic Expunction of Criminal History

Amendment Barcode (if applicable)

Name Colleen Mackin

Job Title Constituency Services

Address S Magnolia DR #4
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Tallahassee FL 3
City State Zip

Phone 727 244 1032

Email cmackin@IamforKids.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Children's Campaign

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-24-2017

Meeting Date

118

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Justice-2-Jesus

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)

Januart 24, 2017

Meeting Date

SB 118

Bill Number (if applicable)

Topic Expunction of Criminal History Records

Amendment Barcode (if applicable)

Name Luis Valdes

Job Title Law Enforcement

Address 3450 Woodhill Dr

Phone 305-206-9681

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Tallahassee

Florida

32303

Email LValdes001@gmail.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Private 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.

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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)

24 Jan 17

Meeting Date

118

Bill Number (if applicable)

Topic Expunction

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe St., Ste. 201

Street

Phone 850.510.9922

Tall

FL

32301

City

State

Zip

Email barney@smartjusticealliance.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

1/24/2017

Meeting Date

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

118

Bill Number (if applicable)

Topic Expunction

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Phone (850) 681-0024

City Tallahassee, FL State FL Zip 32301

Email jorge@flapartners.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FIA Association of Crim. 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
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 Judiciary

BILL: CS/SB 120

INTRODUCER: Judiciary Committee and Senator Hutson

SUBJECT: Offenses by Aliens Unlawfully Present in the United States

DATE: January 25, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 120 reclassifies five misdemeanor and felony offenses to the next higher degree and increases the severity ranking one level when the offense is committed by an alien who is unlawfully present in the United States.

The reclassification increases the maximum penalty that may be imposed for an offense as follows:

- A first degree misdemeanor, currently punishable by up to one year in jail, is reclassified as a third degree felony and the maximum penalty is 5 years in state prison;
- A third degree felony is reclassified as a second degree felony and the maximum penalty is 15 years in state prison;
- A second degree felony is reclassified as a first degree felony and the maximum penalty is 30 years in state prison; and
- A first degree felony is reclassified as a life felony and the maximum penalty is life imprisonment or a term of years not exceeding life imprisonment.

II. Present Situation:

“Alien”

An alien is defined in federal immigration law to mean any person who is not a citizen or national of the United States.¹ An alien is considered to be “unlawfully present” for purposes of future admissibility if he or she is present in the United States after the expiration of a period authorized by the Attorney General or is present without being admitted or paroled.²

Alien Inmates Currently Imprisoned in Florida

According to the Department of Corrections, on June 30, 2016, there were 4,754 confirmed alien inmates in Florida prisons.³ That figure represents 4.8 percent of the total inmate population.⁴ On June 30, 2015, one year earlier, the total was 5,061 and on June 30, 2014, the total was 5,221. Approximately 71.5 percent of confirmed alien inmates are serving sentences for which the primary offenses are violent crimes, 13 percent of primary offenses are property crimes, 12 percent of primary offenses are drug crimes, and the remaining 4 percent of primary offenses are classified as “other” offenses.⁵

As of June 30, 2016, Cubans represent the largest confirmed alien population with 1,655 inmates, or 34.8 percent of the population. Mexican aliens are second with 882 inmates, or 18 percent of the confirmed alien population.⁶

Constitutional Rights of Aliens

While it is clear that United States citizens enjoy all constitutional rights, the question often arises as to whether a non-citizen or alien is entitled to the same constitutional rights. The courts have held that once an alien enters this country the Fifth Amendment and Fourteenth Amendment protect them from being deprived of life, liberty, or property without due process of law. These protections extend to an alien “whose presence in this country is unlawful, involuntary, or transitory.”⁷

¹ 8 U.S.C. s. 1101(a)(3). A “national of the United States” means a citizen or person who, though not a citizen, owes permanent allegiance to the United States. 8 U.S.C. s. 1101(a) (21) and (22).

² 8 U.S.C. s. 1182 (a)(9)(B)(ii). “Admitted” is defined as “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. 1101(a)(13)(A). The Attorney General is authorized to parole an alien into the United States temporarily under specified conditions provided by federal statute. 8 U.S.C. 1182(d)(5)(A).

³ Email from Brock Terwilleger, Legislative Analyst, Florida Department of Corrections (Jan. 17, 2017) (on file with the Senate Committee on Judiciary). According to a Department of Corrections analysis, an alien inmate is someone who does not have U.S. citizenship. Additional inmates are suspected of being alien inmates, but their status is uncertain until Federal Immigration and Customs Enforcement agents can complete their investigations. Department of Corrections, Senate Bill 120 Policy Analysis (Jan. 12, 2017) (on file with the Senate Committee on Judiciary).

⁴ Email from Brock Terwilleger, Legislative Analyst, Florida Department of Corrections (Jan. 18, 2017) (on file with the Senate Committee on Judiciary).

⁵ *Supra* at 3.

⁶ *Id.*

⁷ *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). For a discussion of additional constitutional rights of aliens or foreign nationals, see David Cole, *Are Foreign Nationals Entitled To The Same Constitutional Rights As Citizens?*, 25 T. Jefferson L. Rev 367 (2003).

Reclassification Statutes and Ranking Levels for Sentencing and Gain-Time Eligibility

The Florida Statutes contain several provisions in which the misdemeanor or felony degree of an offense is increased to the next higher degree. As such, a first degree misdemeanor is reclassified as a third degree felony or a third degree felony is reclassified as a second degree felony. The reclassification of a misdemeanor or felony increases the maximum penalty that may be imposed for the offense. For example, the maximum penalty for a third degree felony is 5 years incarceration in state prison.⁸ The maximum penalty for a second degree felony is 15 years' incarceration in state prison.⁹ When a third degree felony is reclassified to a second degree felony, the maximum penalty that may be imposed increases from 5 to 15 years in state prison.

In some statutes, the enhancement is based upon the perpetrator's actions while in other statutes the enhancement is based upon the nature of the victim. For example, Florida's "hate crimes" statute, s. 775.085, F.S., reclassifies the degree of a misdemeanor or felony if the commission of the offense "evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status or advanced age of the victim." In contrast, under s. 784.07 F.S., dealing with assault or battery of a law enforcement officer or other specified officers, the offense is reclassified if the offense was committed upon the officer while he or she was engaged in the lawful performance of his or her duties.¹⁰

Several statutes that reclassify offenses also provide that, for sentencing purposes and determining gain time eligibility, the reclassified felony will be ranked one level above the ranking specified in the Criminal Punishment Code Offense Severity Ranking Chart.¹¹ This results in more points being assigned on the Offense Score of the Criminal Punishment Code Worksheet, which will likely result in the offender receiving a longer prison sentence.

Other States' Reclassification Statutes

At this time, no states are known to impose increased criminal penalties on crimes committed by a person who is unlawfully present in the United States. However, the Texas Legislature is considering a bill this session, SB 108, which increases the penalty for an offense if, at the time of the offense, the defendant was not a citizen or national of the United States and was not lawfully present in the country.

III. Effect of Proposed Changes:

Offenses

The bill increases criminal penalties for five violent crimes committed by aliens who are not lawfully present in the United States. The bill works by reclassifying the qualifying criminal

⁸ Section 775.082, F.S.

⁹ *Id.*

¹⁰ A few examples of additional enhancement statutes are s. 775.0845, F.S., wearing a mask while committing an offense; s. 775.0861, F.S., offenses against persons on the grounds of religious institutions; s. 775.0862, F.S., sexual offenses against students by authority figures; s. 775.0863, evidencing prejudice while committing an offense against a person with a mental or physical disability; s. 775.087, F.S., possession or use of a weapon or firearm; s. 775.0875, F.S., taking a law enforcement officer's firearm; and s. 794.023, F.S., sexual battery by multiple perpetrators.

¹¹ Sections 921.0022 and 921.0023, F.S.

offenses by one higher degree and increasing their severity ranking by one level. The classification degree and the severity rankings are used in existing statutory formulas to calculate minimum lengths of prison sentences.

The offenses qualifying for the enhanced penalty under the bill are:

- Sexual battery,
- Aggravated assault with a deadly weapon,
- Murder,
- The unlawful throwing, placing, or discharging of a destructive device or bomb, and
- Armed burglary.

Reclassification of Offenses

The bill provides that the misdemeanor or felony degree of the offense is reclassified as follows:

- A first degree misdemeanor is reclassified as a third degree felony;¹²
- A third degree felony is reclassified as a second degree felony;¹³
- A second degree felony is reclassified as a first degree felony;¹⁴ and
- A first degree felony is reclassified as a life felony.¹⁵

Sentencing and Gain-time Eligibility

For sentencing purposes and for determining incentive gain-time eligibility, a reclassified felony offense is ranked one level above the ranking specified in the Criminal Punishment Code.¹⁶ However, a first degree misdemeanor that is reclassified to a third degree felony is ranked in Level 2 of the offense severity ranking chart. Noncapital felonies are also ranked in the Criminal Punishment Code. The higher the offense ranking, the greater the number of sentence points that are assigned to calculate the lowest permissible sentence under the Criminal Punishment Code.

Effective Date

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹² A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

¹³ A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083.

¹⁴ A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

¹⁵ A life felony is generally punishable by life imprisonment or a term of years not exceeding life imprisonment and a fine of up to \$15,000. Sections 775.082 and 775.083, F.S.

¹⁶ Section 921.0022, F.S., contains the Criminal Punishment Code Offense Severity Ranking Chart and s. 921.0023, F.S., contains the default provisions for offenses that are not listed in s. 921.0022, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

While reclassification statutes have been upheld as constitutional by the courts, none of those statutes reclassified a criminal offense based upon the defendant's immigration status. The case law construing the most analogous statutes to the proposal in the bill are discussed below.

In *State v. O.C.*,¹⁷ the Florida Supreme Court determined that a penalty enhancement statute was unconstitutional and a violation of substantive due process. The statute subjected a defendant to an enhanced penalty based only upon the defendant's association with gang members. Because the statute punished gang membership without requiring a relationship or nexus between the criminal activity and gang membership, the statute, according to the Court, lacked a rational relationship to the legislative goal of reducing gang violence or activity. As a result, the Court determined that the statute failed to have a reasonable and substantial relation to a permissible legislative objective.

In a 2001 sentencing case, *Yemson v. United States*, the District of Columbia Court of Appeals noted that it would obviously be unconstitutional to treat a defendant more harshly than another defendant solely because of his or her nationality or alien status. But the court explained that its decision

does not mean . . . that a sentencing court, in deciding what sentence to impose, must close its eyes to the defendant's status as an illegal alien and his history of violating the law, including any law related to immigration. Indeed, "the sentencing court . . . must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed."¹⁸

In 2008, the Indiana Court of Appeals in *Sanchez v. State*, upheld a trial court's finding that a defendant's status as an illegal alien was a valid sentencing aggravator. The Court also upheld a related finding that the defendant's illegal alien status reflected a disregard for the law.¹⁹ Although the case is not controlling law in Florida, it may be viewed as persuasive precedent.

¹⁷ *State v. O.C.*, 748 So. 2d 945 (Fla. 1999).

¹⁸ *Yemson v. United States*, 764 A.2d 816, 819 (D.C. 2001) (quoting *Wasman v. United States*, 468 U.S. 559, 563-564 (1984) (citing *Williams v. New York*, 337 U.S. 241, 247 (1949))).

¹⁹ *Sanchez v. State*, 891 N.E.2d 174 (Ind. 2008).

The question also arises as to whether Congress has preempted the field of immigration law to the extent that a state is not permitted to criminalize any activity involving aliens. In *De Canas v. Bica*, a 1976 decision, the U.S. Supreme Court held that federal immigration law does not inherently preempt state court jurisdiction over all matters involving immigration issues. The Court noted that it has never held that every state statute “which in any way deals with aliens is a regulation of immigration and thus *per se* pre-empted by this constitutional power....”²⁰ This decision was rendered 10 years before Congress passed the Immigration Reform and Control Act of 1986 which was enacted for “combating the employment of illegal aliens.”²¹

In *Arizona v. United States*, a 2012 U.S. Supreme Court decision rendered after the Immigration Reform and Control Act, the Court noted that the current federal law was substantially different than it was when *De Canas* was decided. The Court said that “federal governance of immigration and alien status is extensive and complex.”²²

The *Arizona* Court also expounded on the federal preemption doctrine as it involves immigration law. Under the federal preemption doctrine, states are precluded from regulating conduct that Congress has determined must be regulated by federal law. Additionally, state statutes are preempted when they are in conflict with federal law. It is clear that the broad scope of federal immigration law significantly limits the power of states to regulate immigration. However, because of the absence of case law that addresses issues sufficiently similar to the issues raised by the bill, it is unclear whether this bill is preempted by federal law.

The Court noted that, “As a general rule, it is not a crime for a removable alien to remain present in the United States²³ and that removal proceedings are determined to be civil, not criminal, proceedings.”²⁴ Unlike the Arizona statute under review, the bill does not seek to detain aliens based upon a suspicion of their removability. Under this bill, aliens have been arrested and are being prosecuted for a state criminal offense.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

²⁰ *De Canas v. Bica*, 424 U.S. 351, 355 (1976).

²¹ *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 147 (2002).

²² *Arizona v. United States*, 132 S. Ct. 2492, 2499 (2012).

²³ *Id.* at 2505.

²⁴ *Id.* at 2499.

C. Government Sector Impact:

The Office of Economic and Demographic Research has completed a preliminary estimate on the impact of SB 120 and has concluded that the bill will increase costs by an indeterminate amount. The Criminal Justice Impact Conference, which provides the final, official impact estimate that legislation has on prison beds, has not met to discuss the impact of the bill at this time.²⁵

The Department of Corrections' agency analysis lists the number of confirmed and suspected alien admissions in the prison system who are admitted for crimes specified in the bill. The Department further categorizes these inmates into two populations: Cuban-born inmates and non-Cuban-born inmates. This distinction has been necessary because, until recently, under federal immigration policies, most Cubans could not be considered unlawfully present in this country. The Department projects that by Year 3, the inmate population including Cuban-born aliens would be 31 inmates at a cost of \$180,022. By Year 3, the population without Cuban-born aliens would be 22 inmates at a cost of \$127,757.²⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 921.0022, Florida Statutes.

This bill creates section 775.0854, 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 Judiciary on January 24, 2017:

The committee substitute reduces the large number of offenses listed in the original bill to five offenses. Additionally, the original bill reclassified a second degree misdemeanor to a first degree misdemeanor. This provision was removed because there are no second degree misdemeanors included within the five offenses listed in the amended bill.

²⁵ Email from Matthew B. Hasbrouck, Ph.D., Office of Economic and Demographic Research (Jan. 13, 2017) (on file with the Senate Committee on Judiciary).

²⁶Department of Corrections, *Senate Bill 120 Fiscal Analysis*, (Jan. 12, 2017) (on file with the Senate Committee on Judiciary).

B. Amendments:

None.

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



593696

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/24/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Hutson) recommended the following:

Senate Amendment

Delete lines 24 - 44
and insert:

(a) Section 794.011, relating to sexual battery.

(b) Section 784.021(1)(a), relating to aggravated assault
with a deadly weapon.

(c) Section 782.04, relating to murder.

(d) Section 790.1615, relating to unlawful throwing,
placing, or discharging of a destructive device or bomb.

(e) Section 810.02(2)(b), relating to armed burglary.



593696

12 (2) In the case of an offense identified in subsection (1):

13 (a) A misdemeanor of the first degree is reclassified to a
14 felony of the third degree. For purposes of sentencing under
15 chapter 921, such offense is ranked in level 2 of the offense
16 severity ranking chart.

17 (b) A felony of the third degree is reclassified to a
18 felony of the second degree.

19 (c) A felony of the second degree is reclassified to a
20 felony of the first degree.

21 (d) A felony of the first degree is reclassified to a life
22 felony.

By Senator Hutson

7-00144A-17

2017120__

A bill to be entitled

An act relating to offenses by aliens unlawfully present in the United States; creating s. 775.0864, F.S.; requiring specified offenses to be reclassified if committed by such aliens; specifying the reclassification of these offenses; specifying the enhancement of the level of the ranking for purposes of sentencing and gain-time eligibility; amending s. 921.0022, F.S.; revising references to offense reclassification provisions to conform to changes made by the act; providing an effective date.

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

Section 1. Section 775.0864, Florida Statutes, is created to read:

775.0864 Offenses against persons by unlawfully present aliens; reclassification.-

(1) A violation of any of the following provisions must be reclassified to the next higher degree, as provided in subsection (2), if the offense is committed against a person in this state by an alien, as defined in 8 U.S.C. s. 1101(a), who is unlawfully present in the United States:

(a) Section 784.011, relating to assault.

(b) Section 784.021, relating to aggravated assault.

(c) Section 784.03, relating to battery.

(d) Section 784.041, relating to felony battery.

(e) A statute defining any offense listed in s. 775.084(1)(b)1.

(f) A statute defining any offense that involves the use or threat of physical force or violence against another person.

(2) In the case of an offense identified in subsection (1):

Page 1 of 3

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

7-00144A-17

2017120__

(a) A misdemeanor of the second degree is reclassified to a misdemeanor of the first degree.

(b) A misdemeanor of the first degree is reclassified to a felony of the third degree. For purposes of sentencing under chapter 921, such offense is ranked in level 2 of the offense severity ranking chart.

(c) A felony of the third degree is reclassified to a felony of the second degree.

(d) A felony of the second degree is reclassified to a felony of the first degree.

(e) A felony of the first degree is reclassified to a life felony.

For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, a felony offense that is reclassified under this subsection is ranked one level above the ranking specified under s. 921.0022 or s. 921.0023 of the felony offense committed.

Section 2. Subsection (2) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.-

(2) The offense severity ranking chart has 10 offense levels, ranked from least severe, which are level 1 offenses, to most severe, which are level 10 offenses, and each felony offense is assigned to a level according to the severity of the offense. For purposes of determining which felony offenses are specifically listed in the offense severity ranking chart and which severity level has been assigned to each of these

Page 2 of 3

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

7-00144A-17

2017120__

62 offenses, the numerical statutory references in the left column
63 of the chart and the felony degree designations in the middle
64 column of the chart are controlling; the language in the right
65 column of the chart is provided solely for descriptive purposes.
66 Reclassification of the degree of the felony through the
67 application of s. 775.0845, s. 775.085, s. 775.0861, s.
68 775.0862, s. 775.0863, s. 775.0864, s. 775.087, s. 775.0875, s.
69 794.023, or any other law that provides an enhanced penalty for
70 a felony offense, to any offense listed in the offense severity
71 ranking chart in this section shall not cause the offense to
72 become unlisted and is not subject to the provisions of s.
73 921.0023.

74 Section 3. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 12, 2017

I respectfully request that **Senate Bill #120**, relating to Offenses by Aliens Unlawfully in the United States, be placed on the:

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

A handwritten signature in cursive script, reading "Travis J. Hutson".

Senator Travis Hutson
Florida Senate, District 7

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/24/17

Meeting Date

SB 120

Bill Number (if applicable)

Topic OFFENSES BY ALIENS

Amendment Barcode (if applicable)

Name GLEND ABBICAT

Job Title SERVICES TECHNICIAN

Address 4305 SW 98 AVE.

Phone 786-376-1181

Street

MIAMI,

City

FL.

State

33165

Zip

Email GLEND ABBICAT@GMAIL.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

1-24-17

Meeting Date

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

120

Bill Number (if applicable)

Topic SB 120

Amendment Barcode (if applicable)

Name James Ingle

Job Title Electrician

Address 3509 NW 22nd Dr
Street
Gainesville FL 32605
City State Zip

Phone 901-483-4800

Email JwewI@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-24

Meeting Date

120

Bill Number (if applicable)

Topic SB 120

Amendment Barcode (if applicable)

Name Richard A Starling

Job Title Electrician

Address 6881 NE CR 337

Phone (352) 318-5410

Street

Bronson

City

FL

State

32621

Zip

Email andystarling84@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

01/24/2017

Meeting Date

SB 120

Bill Number (if applicable)

Topic Enhanced Penalties of Undocumented Immigrants Amendment Barcode (if applicable)

Name Francesca Menes

Job Title Director of Policy and Advocacy

Address 2800 Biscayne Blvd., Suite 300
Street

Phone (305) 571-7254

Miami FL 33137

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Immigrant Coalition

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/24/17
Meeting Date

120
Bill Number (if applicable)

Topic Offenses by Aliens Unlawfully Present

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title _____

Address 104 S. Monroe Street
Tallahassee FL 32301
City State Zip

Phone 850-425-1344

Email TcgLobby@aol.com

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/24/17
Meeting Date

SB 0120
Bill Number (if applicable)

Topic Offenses by Aliens Unlawfully Present Amendment Barcode (if applicable)

Name Jonathan Howell

Job Title Electrician

Address 1918 Skyline Ip
Street
Ft White Fl 32038
City State Zip

Phone 386 292 2585

Email JonathanHowell

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-24-17

Meeting Date

SB120

Bill Number (if applicable)

Topic ~~1-24-17~~ - OFFENSES by Aliens Unlawfully present in the US Amendment Barcode (if applicable)

Name Christine Saint Louis

Job Title _____

Address 2319 Meadow oak cir

Street

Phone 407-756-0334

Kissimmee

City

FL

State

34746

Zip

Email byersgirl@hotmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-24-17

Meeting Date

120

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Richard A Stanling

Job Title Electrician

Address 6851 NE CR 337
Street

Phone 352-318-5410

Bronson
City

FL

State

32621
Zip

Email andystanling84@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-24-17

Meeting Date

120

Bill Number (if applicable)

Topic Immigration

Amendment Barcode (if applicable)

Name JAMES Eagle

Job Title Electrician

Address 3509 NW 22nd DR
Street

Phone 901-483-4800

Cannerville FL 32105
City State Zip

Email Jw@x.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

Jan 24, 2017
Meeting Date

SB 120
Bill Number (if applicable)

Topic OFFENSES BY ALIENS

Amendment Barcode (if applicable)

Name ORVILLE D. ELLIOTT

Job Title RET. POSTAL WORKER / DIR. OF RETIREES
FSALC

Address 101-78th AVE NE
Street
ST. PETE., FL. 33702
City State Zip

Phone 727-608-6027

Email odebr1477@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

JAN 24, 2017
Meeting Date

SB 120
Bill Number (if applicable)

Topic OFFENSES By Aliens

Amendment Barcode (if applicable)

Name FRANK A. MARINACCIO

Job Title LETTER CARRIER

Address 372 WINDSOR DRIVE

Phone 386-846-1625

Street

PORT ORANGE

City

FL

State

32129

Zip

Email POOFUN10@AOL.COM

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-24-17

Meeting Date

SB 120

Bill Number (if applicable)

Topic Offenses by Aliens

Amendment Barcode (if applicable)

Name Daisy Ulbin

Job Title NALC Activist

Address 704 Crestwood Wy
Street

Phone 407-619-2362

Winter Springs FL 32708
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/24/17
Meeting Date

SB 120
Bill Number (if applicable)

Topic SB 120 OFFERED by Aliens

Amendment Barcode (if applicable)

Name Shane Uiben

Job Title NALC Legislative Chairman

Address 704 Crestwood Way
Street

Phone 407 808 3628

Winter Springs FL 32708
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-24-17

Meeting Date

SB120

Bill Number (if applicable)

Topic Offenses by Aliens

Amendment Barcode (if applicable)

Name Joanne Cannon

Job Title Retired letter carrier

Address 3410-50th St W

Phone 941-812-7113

Street

Bradenton, FL 34209

City

State

Zip

Email jcannon24@aol.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/24/17

Meeting Date

SB120

Bill Number (if applicable)

Topic Offense by Aliens

Amendment Barcode (if applicable)

Name Joseph M George

Job Title Retired

Address 5557 Paulbett Drive

Phone 904-228-9761

Street

JACKSONVILLE FL

City

State

32277

Zip

Email MACGEOERGE@ATTN

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

1/24/2017
Meeting Date

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

SB 120
Bill Number (if applicable)

Topic OFFENSES BY ALIENS

Amendment Barcode (if applicable)

Name ROBERT HENNING

Job Title RETIRED

Address 3072 BRIDGEVIEW DR
Street
JACKSONVILLE FL 32216
City State Zip

Phone 904 400 2580

Email BOBLBA9@YAHOO.COM

Speaking: ☐ For ☒ Against ☐ Information

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

Representing MYSELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/24/17

Meeting Date

SB 0120

Bill Number (if applicable)

Topic Offenses by Aliens Unlawfully present

Amendment Barcode (if applicable)

Name Eugene Dahl

Job Title

Address 1856 High Prairie Ln

Phone 904-651-2491

Street

Middleburg

fl

State

32068

Zip

Email erd1114@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/24/17

Meeting Date

SB 120

Bill Number (if applicable)

Topic OFFENSES BY ALIENS

Amendment Barcode (if applicable)

Name KEVIN BYRNE

Job Title

Address 254 SE TODD AVENUE

Phone 772-979-5899

Street

PORT ST. LUCIE

FL

34983

City

State

Zip

Email Kevin.jbyrne54@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

1-24-17

Meeting Date

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

SB 120

Bill Number (if applicable)

Topic: Offenses by Aliens

Amendment Barcode (if applicable)

Name: Erik Mooney

Job Title: Letter Carrier

Address: 2842 Somerset Rd.
Street

Phone: (561) 602-0780
Cell

Lantana Fla. 33462
City State Zip

Email: Erik.mooney@Bellsouth.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing: Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/24/17

Meeting Date

SB 120

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Director

Address 579 E. Call St.

Phone 850-321-9386

Street

Tallahassee

FL

32301

City

State

Zip

Email fcfe@yahor.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Center for Fixaly Economic Policy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

APPEARANCE RECORD

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

1/24/2017

Meeting Date

SB 120

Bill Number (if applicable)

Topic Concerns with the constitutionality of SB 120

Amendment Barcode (if applicable)

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 334-224-4309

Street

Tallahassee

FL

32302

City

State

Zip

Email scott.mccoy@splcenter.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Southern Poverty Law Center

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-24-2017
Meeting Date

SB 120
Bill Number (if applicable)

Topic Offenses by Aliens Unlawfully Present

Amendment Barcode (if applicable)

Name Normand Audet

Job Title Bus Operator

Address 1108 S. Pearl St.
Street
De Land, Fla.
City State Zip

Phone 407-748-3364

Email naudet@cflrr.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

1/24/17
Meeting Date

SB 120
Bill Number (if applicable)

Topic Immigration - Criminal Offenses

Amendment Barcode (if applicable)

Name Rich Templin

Job Title _____

Address 135 S. Monroe
Street
Tallahassee FL 32301
City State Zip

Phone 850-224-6926

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida AFL-CIO

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/24/2017

Meeting Date

120

Bill Number (if applicable)

Topic Immigrants

Amendment Barcode (if applicable)

Name Linda Miklowitz

Job Title _____

Address 2512 Arthur's Court
Street

Phone 850.878.4320
3

Tallahassee FL 32301
City State Zip

Email LMiklowitz@aol.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing φ

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)

January 24, 2017

Meeting Date

SB 120

Bill Number (if applicable)

Topic Offenses by Aliens Unlawfully Present in the United States

Amendment Barcode (if applicable)

Name Luis Valdes

Job Title Law Enforcement

Address 3450 Woodhill Dr

Phone 305-206-9681

Street

Tallahassee

Florida

32303

Email LValdes001@gmail.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Private 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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/24/17
Meeting Date

120
Bill Number (if applicable)

593696
Amendment Barcode (if applicable)

Topic Unlawful presence

Name Michael Sheedy

Job Title Executive Director

Address 201 W. Park Ave.

Street

Tallahassee

City

FL

State

32317

Zip

Phone 850-222-3803

Email _____

Speaking: ☐ For ☐ Against ☒ Information

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

Representing FL 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.

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S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 206

INTRODUCER: Judiciary Committee and Senator Passidomo

SUBJECT: Electronic Wills

DATE: January 26, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	Fav/CS
2.			BI	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 206 creates the Florida Electronic Wills Act, which expressly permits the use of electronic wills. The Act regulates how electronic wills may be executed, stored, and admitted to probate. Under current law, electronic wills are not expressly allowed or clearly prohibited.

As described in the bill, an electronic will is a will that exists in an electronic record and, like a traditional will, disposes of a person's property after death. The use of an electronic record, electronic signatures of the testator, the role of witnesses or a notary public, and a designated qualified custodian are key features of the Act.

Under the Act, a qualified custodian must be capable of storing an electronic will, and must store electronic records of electronic wills, including documents related to the execution of a given electronic will. To assure such records are kept securely, it appears likely that many testators will use Internet-based service providers to create and store electronic wills. Many testators, however, may have security concerns with electronically storing their electronic wills until their deaths. The bill gives these testators the option to deposit their electronic wills with the clerk of courts before their deaths.

The bill grants the courts of this state jurisdiction over all electronic wills that are executed according to the Act, wherever they are executed. And the bill permits these wills to be executed by residents and nonresidents, even non-residents with virtually no connection to this state.

Moreover, the bill makes it much easier to execute an electronic will, traditional will, power of attorney or living will that is, as a matter of law, “deemed” executed in Florida.

Venue for probating an electronic will is proper anywhere current law permits for probating wills. Non-residents have additional venue options, including the county in which the “qualified custodian” of an electronic will is located. During probate proceedings, the bill expressly permits the admission to probate of the electronic will or its “true and correct copy.”

Under current law, traditional wills, living wills, and powers of attorney generally must be signed by the principal¹ to the instrument and by witnesses. The bill allows these individuals to fulfill their duties while in different locations through the use of technology. Specifically, these individuals may sign with an electronic signature. And they are deemed to be in the presence of each other if they are in communication with each other through a live video and audio conference.

II. Present Situation:

A will, very generally, is a legal document that a person (a “testator”) may use to determine who gets his or her property when he or she dies. As set forth in the Florida Probate Code, codified as chapters 731-735, F.S., the legal definition of a will is:

an instrument, including a codicil, executed by a person in the manner prescribed by this code, which disposes of the person’s property on or after his or her death and includes an instrument which merely appoints a personal representative or revokes or revises another will.²

Wills do not dispose of all of a testator’s property, but only his or her “estate”—i.e., those assets that are subject to probate administration.³ Probate is “a court-supervised process for identifying and gathering the assets of a deceased person (decedent), paying the decedent’s debts, and distributing the decedent’s assets to his or her beneficiaries.”⁴ Other assets are disposed of outside of probate.⁵

Without a will, a decedent’s estate will be distributed pursuant to the intestacy statutes, which devise a decedent’s estate according to what might be described as default rules. With a will, however, a testator may, as a general matter, devise his or her estate to whomever he or she likes. Also, with a will, a testator may designate a person known as a personal representative to carry out the terms of the will. Otherwise, a court will choose the personal representative.

¹ Principal here refers, in the case of a will, to a testator.

² Section 731.201(40), F.S.

³ See, s. 731.201(14), F.S.

⁴ The Florida Bar, *Probate in Florida*,

<http://www.floridabar.org/tfb/tfbconsum.nsf/48e76203493b82ad852567090070c9b9/92f75229484644c985256b2f006c5a7a?OpenDocument#Untitled%20Section> (last accessed January 16, 2017).

⁵ For example, the terms of a decedent’s bank account may include a beneficiary clause, giving the account to whomever the decedent names.

For the foregoing reasons and others, a will is an important tool for estate planning. A will is also by its nature a terribly sensitive document, as it speaks for someone who can no longer speak about distributing his or her estate. Moreover, the assets of an estate may be substantial, and the beneficiaries might not be cooperative or trusting of each other.

Accordingly, the laws pertaining to wills are designed to safeguard the integrity and reliability of each will. These laws do so by subjecting a will's creation, execution, preservation, revocation, filing, and other aspects to certain formalities, as discussed below.

Execution of a Will

A will must be "in writing" and signed at its end by either the testator or by someone else for the testator. If someone else signs for the testator, the person must do so in the testator's presence and at the testator's direction.⁶ At least two persons must witness the testator sign the will or must witness the testator's acknowledgement that he or she previously signed the will or that another person subscribed the testator's name to the will.⁷ These witnesses must sign the will in the presence of each other and the testator.⁸ For wills executed in other states, the requirements may be different.⁹ The consequence of failing to strictly comply with these requirements is that the will is not valid.¹⁰ A codicil (amendment) to a will must be executed in the same manner as a will.¹¹

Though s. 732.502(1), F.S., specifies that a will must be "in writing" and that certain persons must "sign" or attach their "signature," these terms are not defined in the statutes. Moreover, there is no explicit statement in the Florida Probate Code that an electronic will is invalid, that an electronic signature is invalid, or that a will must be executed on paper.

Some have asserted that an electronically-signed will is not valid in Florida, but s. 668.004, F.S., states that, "[u]nless otherwise provided by law, an electronic signature may be used to sign a writing and shall have the same force and effect as a written signature."¹² An electronic signature, as defined in s. 668.003(4), F.S., is

any letters, characters, or symbols, manifested by electronic or similar means,
executed or adopted by a party with an intent to authenticate a writing. A writing

⁶ Section 732.502(1)(a), F.S.

⁷ Section 732.502(1)(b), F.S.

⁸ Section 732.502(1)(c), F.S.

⁹ See, s. 732.502(2), F.S. A will executed in another state is valid in Florida if the will is executed in accordance with the laws of this state, the laws of the state in which it was executed, or both. This does not apply to nuncupative wills (oral wills) or holographic wills (wills written in the hand of the testator, but not properly executed as set forth in section 732.502(1), F.S.), which are not valid in Florida regardless of whether they were executed according to the laws of the state in which they were executed.

¹⁰ *Allen v. Dalk*, 826 So. 2d 245, 247 (Fla. 2002).

¹¹ Section 732.502(5), F.S.

¹² The Uniform Electronic Transaction Act is set forth in s. 668.50, F.S. It includes a statement that the "section" does not govern, among other things, a transaction that is governed by a law governing the creation and execution of wills. Section 668.004, which provides broad permission to electronically sign a document, is of course a different section. But even if it were not, or even if it did not exist, section 668.50, F.S., would not appear to *prohibit* electronically signing a will.

is electronically signed if an electronic signature is logically associated with such writing.

Storing a Will

The Florida Probate Code does not specify how a will must be stored.

Probate, and Proving a Will

To acquire a court order distributing the testator's estate assets in line with the terms of a will, the will must be probated.¹³ Recall that probate is a court-supervised process for identifying and gathering the assets of a decedent's estate, paying the decedent's debts, and distributing the decedent's assets to his or her beneficiaries.

The venue for a probate proceeding is set forth in s. 731.101(1), F.S., which states:

- (1) The venue for probate of wills and granting letters shall be:
 - (a) In the county in this state where the decedent was domiciled.
 - (b) If the decedent had no domicile in this state, then in any county where the decedent's property is located.
 - (c) If the decedent had no domicile in this state and possessed no property in this state, then in the county where any debtor of the decedent resides.

For a will to be admitted to probate in Florida, it must be "proved."¹⁴ No statute describes what it means for a will to be proved or what it is about the will or purported will that is being proved. However, it is apparent that proving a will means proving that the will is what it purports to be—i.e., the last will and testament of the testator—and that it was validly executed.

Proving a Will

A will may be proved by having one of the attesting witnesses swear or affirm an oath regarding the will before a circuit judge or any of the other persons set forth in s. 733.201(2), F.S. If it appears to the court that no attesting witness can be found, that no attesting witness still has capacity, or that the testimony of an attesting witness cannot be obtained within a reasonable time, the court must resort to another method of proving a will. The other method is through an oath of the personal representative nominated by the will or a different person who has no interest in the estate under the will. This oath must include a statement that "the person believes the writing exhibited to be the last will and testament of the decedent."¹⁵

Making a Will Self-Proved

In this state, a will may be made self-proved. A self-proved will may be admitted to probate without further proof, such as the testimony mentioned just above.¹⁶

¹³ See s. 733.103(1), F.S.

¹⁴ Section 733.201(1), F.S.

¹⁵ Section 733.201(3), F.S.

¹⁶ Section 733.201(1), F.S.

For a will to be self-proved in this state, the testator must acknowledge the will before an officer authorized to administer oaths (e.g., a notary public). Also, the attesting witnesses must make affidavits before the officer. Lastly, the officer must evidence the acknowledgement and affidavits by a certificate attached to or following the will.¹⁷

Even after a will is proved and admitted to probate, it may be contested.¹⁸ There are several grounds, such as fraud and undue influence, on which a self-proved will might be contested.

Custodian's Duty to File with Court

The custodian of a will must deposit the will with the court within 10 days after receiving information of the testator's death.¹⁹ If the custodian fails to do so without just or reasonable cause, he or she is be subject to liability:

Upon petition and notice, the custodian of any will may be compelled to produce and deposit the will. All costs, damages, and a reasonable attorney's fee shall be adjudged to petitioner against the delinquent custodian if the court finds that the custodian had no just or reasonable cause for failing to deposit the will.²⁰

Living Wills & Powers of Attorney

Many aging persons also choose to execute a power of attorney or a living will. A living will, despite its name, is fundamentally different than a will. A living will is a document setting forth a person's desires regarding "providing, withholding, or withdrawal of life-prolonging procedures in the event that such person has a terminal condition, has an end-stage condition, or is in a persistent vegetative state."²¹ A living will must be executed as follows, which differs from the requirement for executing a will:

A living will must be signed by the principal in the presence of two subscribing witnesses, one of whom is neither a spouse nor a blood relative of the principal. If the principal is physically unable to sign the living will, one of the witnesses must subscribe the principal's signature in the principal's presence and at the principal's direction.²²

A power of attorney is a "writing that grants authority to an agent to act in the place of the principal, whether or not the term is used in that writing."²³ A power of attorney, like other instruments, must be executed and witnessed according to statutory requirements. Under these

¹⁷ The officer's certificate must be substantially in the form set forth at s. 732.503, F.S. The form requires that the witnesses state that they witnessed the testator *sign* the will. However, the statutory requirements for executing a will do not require witnesses to witness the testator sign the will. Section 732.502, F.S., provides that the witnesses may either witness the testator sign, or witness the testator acknowledge his or her prior signature.

¹⁸ See, *Powell v. Eberhardt (in Re Estate of Hartman)*, 836 So. 2d 1038, 1039 (Fla. 2d DCA 2002).

¹⁹ Section 732.901(1), F.S.

²⁰ Section 732.901(2), F.S.

²¹ Section 765.302(1), F.S.

²² Section 765.302(1), F.S.

²³ Section 709.2102(9), F.S. A "durable" power of attorney is one which survives even if the principal becomes incapacitated. Section 709.2104, F.S.

requirements, a power of attorney generally must be signed by the principal and by two subscribing witnesses and be acknowledged by the principal before a notary public.²⁴ However, if “the principal is physically unable to sign the power of attorney, the notary public before whom the principal’s oath or acknowledgment is made may sign the principal’s name on the power of attorney.”²⁵

Other States’ Treatment of Electronic Wills

It appears that Nevada is the only state that, by statute, expressly permits the use of electronic wills.²⁶ This statute has been in effect since 2001.

Although Virginia’s statutes do not expressly permit the use of electronic wills, Virginia allows documents to be notarized through live video and audio technology.²⁷ In Tennessee, a court held that a testator validly signed his will when he typed his name in cursive font.²⁸ In Ohio, a court admitted a will to probate that was written and signed with a stylus on an electronic tablet.²⁹

III. Effect of Proposed Changes:

This bill creates the Florida Electronic Wills Act, which regulates and expressly permits the use of “electronic wills.” The bill also revises several aspects of current law relating to the execution of wills, living wills, and powers of attorney.

The Act defines an electronic will as:

an instrument, including a codicil, executed in accordance with s. 732.523 by a person in the manner prescribed by this act, which disposes of the person’s property on or after his or her death and includes an instrument that merely appoints a personal representative or revokes or revises another will or electronic will.³⁰

This definition is very similar to the definition of a traditional will, which is set forth in the Florida Probate Code.³¹

The bill makes it explicit that a testator may sign and store his or her will electronically. However, the bill does not prohibit traditional means of signing, witnessing, and storing wills.

Current law arguably already permits several of the key aspects of the bill, such as electronically signing and electronically storing a will. Other aspects of the bill are clearly not permitted under

²⁴ Section 709.2105(2), F.S.

²⁵ Section 709.2105(3), F.S.

²⁶ See Nev. Rev. Stat. §133.085.

²⁷ Va. Code Ann. §47.1.

²⁸ *Taylor v. Holt*, 134 S.W.3d 830, 833 (Tenn. Ct. App. 2003).

²⁹ *In re Estate of Javier Castro, Deceased*, 2013-ES-00140 (Ct. Comm. Pl. Lorain Cnty., Probate Div., Ohio, June 19, 2013) (James T. Walther, Judge)

³⁰ Section 732.522(3), F.S.

³¹ See s. 731.201(4), F.S., for a definition of will.

current law. For example, the bill allows a testator having no domicile, no property, and no debtor in this state to make a Florida will and probate the will in a Florida circuit court.

“Florida Electronic Wills Act”

In addition to amending several existing sections of the Florida Statutes, the bill creates several new sections within existing chapter 732, F.S. These new sections—ss. 732.521 through 732.527, F.S.—are given the short title, “Florida Electronic Wills Act” (the “Act”). The Act governs the execution, storing, proving, and several other vital aspects of electronic wills.

The Act does not replace the existing Florida Probate Code, either in whole or in part. Thus, the Act exists “within,” and must be read together with, the rest of the Florida Probate Code. Indeed, several provisions of the Act expressly apply to documents other than electronic wills, such as traditional wills and powers of attorney.

Execution of Wills, Electronic Wills, Powers of Attorney, and Living Wills

Execution of Wills

The bill changes several aspects of current law relating to the execution of wills. Also, some concepts that are not specified in the current statutory law are specified in the bill. New s. 732.525, F.S., sets forth these changes and definitions.

According to current law, a will must be “signed” at its end by either the testator, or by someone else on behalf of the testator and at the testator’s direction. No relevant provision of the current Florida Statutes appears to define or describe “signed,” “signature” or any similar word. Section 732.525(2), F.S., however, appears to permit a person to sign a traditional will using an electronic signature. An electronic signature is “an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.”³²

Under current law, at least two persons must witness the testator sign the will. Alternatively, at least two persons must witness the testator’s acknowledgement that he or she previously signed the will or that another person has subscribed the testator’s name to the will.³³ These witnesses must sign the will in the presence of each other and of the testator.³⁴ However, presence apparently is not defined in the current Florida Probate Code.

The bill provides two options for two or more people executing a traditional will to be in each other’s presence. One option is for them to be in the same physical location. The other option is for them to be in different physical locations, but still be able to communicate with each other by means of a live video and audio conference.³⁵ However, those exercising this remote presence

³² Section 732.522(3), F.S.

³³ Section 732.502(1)(b), F.S.

³⁴ Section 732.502(1)(c), F.S.

³⁵ Section 732.525(1), F.S.

option must record and store a “video transcript” of the execution ceremony in, or attach it to, or logically associate it with, the electronic record of the document.³⁶

Execution of Electronic Wills

The above-noted changes to the law regulating the execution of traditional wills are set forth in new s. 732.525, F.S. This section also appears to also apply to electronic wills. As a result, most of the above-noted aspects of execution of traditional wills under the bill also apply to electronic wills. However, there are several differences regarding the execution of electronic wills and traditional wills. Some of these differences are subtle, and yet may be important. Accordingly, the following paragraph compares and contrasts the execution of traditional wills and electronic wills in some detail.

One difference is that an electronic will must be signed by the testator personally,³⁷ though a traditional will may be signed either by the testator or by someone at the testator’s direction. A traditional will must be signed or acknowledged by the testator in the presence of two attesting witnesses, yet an electronic will must be signed in the presence of two attesting witnesses *or a notary public*.³⁸ With a traditional will, the attesting witnesses must sign the will in the testator’s presence. With an electronic will, the notary public *and* the witnesses must sign the will in the testator’s presence.³⁹ A traditional will must be signed at its end, yet the bill does not specify what part of an electronic will must be signed. Also, an electronic will must exist in an electronic record,⁴⁰ but a traditional will need not. Under case law, the failure to strictly adhere to statutory execution requirements invalidates a traditional will. The bill does not indicate the effect of failing to strictly adhere to these new requirements for electronic wills.

As noted above, electronic wills must be signed by the testator in the presence of two attesting witnesses or a notary public.⁴¹ However, provisions in the bill describing what it means to be in another person’s presence seem to be in conflict with each other. New s. 732.523(1)(b), F.S., states that the testator must be “in the same room” as the attesting witnesses or the notary public. But new s. 732.525, F.S., which appears to apply to electronic wills, states that two persons are deemed to be in each other’s presence if they “can communicate with each other by means of live video and audio conference.”

Execution of Powers of Attorney and Living Wills

New s. 732.525, F.S., which was mentioned above as pertaining to the execution of traditional and electronic wills, also pertains to durable powers of attorney and living wills.

Under current law, a living will or a power of attorney must be signed by the person executing the instrument and by witnesses. Current law expressly states that a living will must be signed by

³⁶ This provision, of course, is predicated on there being an electronic record (of a traditional will). The idea of an electronic record of a traditional will raises questions. For example, what does it mean to electronically sign a traditional will? Also, given that traditional wills are (or have always been assumed to be) on paper, could the *original* of such a will be stored in an electronic record without becoming a mere copy?

³⁷ Section 732.523(1)(b), F.S.

³⁸ Section 732.523(1)(b), F.S.

³⁹ Section 732.523(1)(c), F.S.

⁴⁰ Section 732.523(1)(a), F.S.

⁴¹ Section 732.523(1)(c), F.S.

the principal in the presence of two witnesses. Current statutory law may effectively provide the same with regard to execution of powers of attorney, though the applicable statute does not expressly state that the witnesses and principal must be in each other's presence.

The bill expressly states that the principal and the subscribing witnesses of these documents are deemed to be in the presence of each other if they are in the same physical location or if they can communicate with each other by means of live video and audio conference.⁴² The bill also provides that a power of attorney or a living will may be signed electronically.⁴³

Documents Deemed to be Executed in Florida

The bill includes a provision, in s. 732.525(3), F.S., which specifies when an electronically signed document is "deemed" to be executed in this state. An electronically signed document is deemed to be executed in this state if at least one of the following requirements is met:

- The person creating the document states that he or she intends to execute and understands that he or she is executing the document in, and according to, the laws of this state.⁴⁴
- The person creating the document, the attesting witnesses, or the notary public signing the document are physically in Florida when the document is executed.⁴⁵

If the document in question is an electronic will, a third option is available to have it deemed to be executed in Florida. This option is to have the electronic will designate a qualified custodian who is:

- Domiciled in, and a resident of, this state; or
- Organized or incorporated in this state.⁴⁶

The purpose of deeming a document to be executed in this state is not clear. One may suppose that the purpose is to allow residents of any state, irrespective of whether they have any real connection⁴⁷ to Florida, to create an electronic will that could be probated in Florida. However, that purpose seems to be fulfilled in new s. 732.526, F.S., which provides that an electronic will may be probated in this state regardless of whether it is executed here.

Perhaps the intent of the provision is to allow a person who has no real connection to this state to execute a valid Florida electronic will that is admissible to probate in his or her home state upon death. For example, assume a man is a resident of Mississippi and has no real or personal property in Florida and wishes to have an electronic will. But Mississippi law does not expressly permit Mississippi residents to create an electronic will under the laws of that state. However,

⁴² Again, if the principal and witnesses exercise the option to be in each other's presence only by means of live video and audio conference, then a video recording memorializing the signing ceremony must be made and kept in the electronic record of such documents.

⁴³ Section 732.525(2), F.S.

⁴⁴ Section 732.525(3)(a), F.S.

⁴⁵ Section 732.525(3)(b), F.S.

⁴⁶ Section 732.525(3)(c), F.S.

⁴⁷ By real connection, it is meant a connection to Florida that is certainly beyond the connection created by the bulleted list just above, such as having property here, or residing here.

perhaps Mississippi law recognizes a will executed out-of-state as valid as long as the will was executed according to the law of the state in which it was executed.⁴⁸ As a result, this man could create an electronic will “deemed to be executed in Florida” pursuant to s. 732.525(3), F.S., and the electronic will would be valid in, and could be admitted to probate in, Mississippi.⁴⁹ This process could allow a qualified custodian in Florida to make electronic wills available to a person in any state.

Qualified Custodians

Definition and Essential Duties

The bill defines a qualified custodian of an electronic will as a person who meets all of the following requirements:

- Is not an heir or devisee of the testator.
- Is domiciled in and a resident of Florida or is incorporated or organized in Florida.
- Consistently employs a system for ensuring the safekeeping of electronic records and stores electronic records containing electronic wills under the system.
- Furnishes for any court hearing involving an electronic will that is currently or was previously stored by the qualified custodian any information requested by the court pertaining to the qualified custodian’s policies and procedures.⁵⁰

The following are a few of the many observations that could be made about the definition of qualified custodian in the bill. By definition, a person who fails to perform any of the requirements of a qualified custodian above is no longer a qualified custodian of an electronic will, as opposed to a qualified custodian who has failed in some regard. Secondly, a qualified custodian need not be a natural person.

Also, as mentioned above, qualified custodians are required to “employ a system for ensuring the safekeeping of electronic records and store electronic records containing electronic wills under such system.” However, this does not require qualified custodians to store all of the electronic records of electronic wills that are in their care in such a system.

But even if the qualified custodians were required to use their “system” for all electronic records in their care, it is not clear what this would mean. The specific requirements and capabilities of the system are neither defined nor described in the bill. Similarly, the current Florida Probate Code does not appear to specify how a traditional will must be stored.

Current law requires the custodian of a will to deposit such will with the appropriate court within 10 days after receipt of information of the testator’s death. It is not clear that this requirement applies to qualified custodians of electronic wills. The bill includes no requirement that a qualified custodian deposit an electronic will with the court upon notice of the testator’s death.

⁴⁸ Florida law contains a provision much to this effect. Florida law currently provides that a *will of a non-resident* is valid in Florida whether or not the will was executed in the state, as long as it was executed pursuant to the laws of the state in which it was executed. *See*, section 732.502(2), F.S.

⁴⁹ It should be noted that if Mississippi’s laws, like this state’s, allow only nonresidents to have a will from another state, this maneuver would not appear to work.

⁵⁰ Sections 732.522(4) and 732.527(1), F.S.

The bill includes several provisions designed to hold qualified custodians accountable. These include liability for the negligent loss or destruction of an electronic record and the inability to limit liability for doing so,⁵¹ a prohibition on suspending or terminating a testator's access to electronic records,⁵² and a requirement to keep a testator's information confidential.⁵³ Also, a testator may force the qualified custodian to "immediately" hand over to the testator the electronic record of an electronic will, the electronic will itself, and a paper copy of the will at any time.⁵⁴ The requirement to hand over records does not, however, involve the qualified custodian stepping down or passing office to the testator.

Qualified Custodian's Taking Office, Passing Office, and Being Removed from Office

The bill provides that one may not serve as a qualified custodian unless the person agrees in writing to serve in this capacity.⁵⁵ A person who at any time serves as the qualified custodian of a given electronic record of an electronic will is free to choose to stop serving in this capacity, apparently for any or no reason.⁵⁶

One option available to a qualified custodian who wishes to step down is to give the "electronic will or the electronic record containing the electronic will to the testator or to the personal representative if the testator is deceased."⁵⁷ Another way a qualified custodian may step down is by "depositing the electronic will, including an acknowledgement of affidavits made in accordance with s. 732.503, with the clerk after complying with s. 732.901."⁵⁸ What exactly this means is unclear because the requirements of new s. 732.527, F.S., and existing s. 732.901, F.S., are at least somewhat contradictory.⁵⁹

A third option is available to qualified custodians who wish to pass the electronic record of an electronic will to a successor qualified custodian.⁶⁰ Here, the outgoing qualified custodian must provide the testator, or the nominated personal representative, if the testator is deceased, with information regarding the proposed successor qualified custodian. The outgoing qualified custodian must receive written approval from the testator or nominated personal representative before transferring the electronic record. If approval is received, the outgoing qualified custodian must deliver two items to the successor in order to pass office to that person. One of these items is the electronic record, which includes the electronic will.⁶¹ The other item is an affidavit including the four statements described in the bill.⁶²

⁵¹ Section 732.527(9), F.S.

⁵² Section 732.527(10), F.S.

⁵³ Section 732.527(11), F.S.

⁵⁴ Section 732.527(5), F.S.

⁵⁵ Section 732.527(6), F.S.

⁵⁶ Section 732.527(4), F.S.

⁵⁷ Section 732.527(4)(a), F.S.

⁵⁸ Section 732.527(4)(b), F.S.

⁵⁹ It is unclear how or why a qualified custodian would deposit a will with the clerk "*after complying with s. 732.901*," because s. 732.901, F.S., itself requires the deposit of a will with the clerk.

⁶⁰ Section 732.527(4)(c), F.S.

⁶¹ Section 732.527(4)(c)2., F.S.

⁶² Section 732.527(4)(c)3., F.S.

Even if a qualified custodian has not elected to step down, the person may be forced by a testator to pass the electronic record containing an electronic will to a successor.⁶³

A qualified custodian may elect to destroy an electronic record, including an electronic will, at any time after the fifth anniversary of the admission of the will of the testator to probate.⁶⁴

Probate of an Electronic Will in Florida

Venue

The bill provides that venue for probate of an electronic will may be anywhere that venue would be proper for a traditional will. The bill provides additional venue options for the probate of electronic will *of a non-resident*.

Currently, venue for probate of a will must be in:

- The county in this state where the decedent was domiciled.
- Any county where the decedent's property is located, if the decedent was not domiciled in this state.
- The county where any debtor of the decedent resides, if the decedent was not domiciled in this state and had no property in this state.⁶⁵

Venue for probating an electronic will is proper as for a traditional will, but venue for a *nonresident* electronic will is also proper in the county in which the qualified custodian or attorney for the petitioner or personal representative has his or her domicile or registered office.⁶⁶

Jurisdiction

The bill expressly grants the right to admit a will to original probate in this state if the will was “executed or deemed executed in another state in accordance with the laws of that state or of” Florida.⁶⁷ Florida courts are expressly granted jurisdiction over these electronic wills.⁶⁸

In contrast, the existing Florida Probate Code does not appear to contain a similar provision broadly granting Florida courts jurisdiction over validly executed wills of non-residents who do not have any property, creditors, or debtors in Florida. Moreover, the venue provision of current law discussed just above does not provide a venue option to probate the will of non-residents having no connection to this state. Together, the lack of a provision clearly granting jurisdiction, and the lack of a venue option, seem to indicate that the courts of this state currently have no jurisdiction to probate the will of a nonresident decedent with no domicile, no property, and no debtor in this state.

⁶³ Section 732.527(5), F.S. This provision strongly implies, but does not expressly state, that the qualified custodian is *passing office to* the qualified custodian to whom the electronic record and electronic will are given.

⁶⁴ Section 732.527(3), F.S.

⁶⁵ Section 731.101(1), F.S.

⁶⁶ Section 732.526, F.S.

⁶⁷ Section 732.526, F.S.

⁶⁸ Section 732.526, F.S. The way the bill is worded, it is unclear whether this jurisdiction applies to the type of electronic will in question even before such will is offered for and admitted to probate.

What May Be Admitted to Probate

The bill permits the admission to probate of an electronic will⁶⁹ or a “true and correct copy” of an electronic will.⁷⁰ Apparently, in either case the will would still need to be proved by appropriate testimony at the time of admission or by making the will self-proved at some prior point. The same is required of traditional wills under current law.

Proving a Will

An electronic will that is not self-proved may be admitted to probate on the oath of the two attesting witnesses to the electronic will. These oaths must be sworn or affirmed before a circuit judge or the other persons set forth in the bill.⁷¹ In contrast, only one attesting witness’s oath is required to prove a traditional will. Under the bill, if it appears to the court that the two attesting witnesses cannot be found, have lost capacity, or cannot testify within a reasonable time, two “disinterested” witnesses must swear or affirm an oath as to the list of statements set forth in the bill.⁷² However, the personal representative can swear or affirm an oath to prove a traditional will when the attesting witnesses are not available.

Making an Electronic Will Self-Proved

Recall that under current law, a will may be made self-proved. A self-proved will may be admitted to probate without further proof that it is what it purports to be or that it was executed properly.⁷³

The bill provides that an attested electronic will is self-proved, pursuant to new s. 732.524, F.S., if all of the following requirements are met:

- The will is executed in conformity with the Florida Electronic Wills Act.
- The acknowledgement of the electronic will by the testator and the affidavits of the witnesses are made in accordance with s. 732.503, F.S.
- The same acknowledgement and affidavits are made a part of, or are attached to or logically associated with, the electronic record.
- The electronic will either:
 - Is deposited with the clerk before the death of the testator in accordance with s. 732.901, F.S., with a certification the meets the requirements in the bill; or
 - Designates a qualified custodian who executes a certification that meets the requirements set forth in the bill.

The bill does not expressly permit the admission of a self-proved electronic will to probate *without further proof*.

⁶⁹ Section 732.526, F.S.

⁷⁰ Section 733.201(5), F.S.

⁷¹ Section 733.201(4), F.S.

⁷² Section 733.201(4)(a)-(f), F.S.

⁷³ Recall also that a self-proved will may still be contested after admission to probate.

Prospective Effect of the Bill as it Relates to Electronic Wills

The bill expressly states that it applies to electronic wills executed on or after July 1, 2017. The bill does not, however, state that it applies (only) to those traditional wills, powers of attorney, or living wills created on or after July 1, 2017.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The bill may facilitate the creation and storage of wills using an Internet-based service. The associated costs are unknown. Further, if an electronic will can be easily created, many people who do not have a will may decide to execute one. However, some may use the services of an Internet-based service instead of, or in addition to, the services of an attorney.

C. Government Sector Impact:

The bill apparently allows non-Floridians with no property, no creditors, and no debtors in the state to execute a valid Florida electronic will. And Florida courts are given jurisdiction over these electronic wills. Whether or the extent to which the bill will result in an increase in probate cases and associated costs to the judicial branch is unknown.

VI. Technical Deficiencies:

The bill states that an electronic will must be signed by the testator in the presence of two attesting witnesses or a notary public.⁷⁴ However, the bill appears to create inconsistent

⁷⁴ Section 732.523(1)(c), F.S.

requirements for what constitutes presence in new s. 732.523(1)(b), F.S., and new s. 732.525, F.S. As such, the Legislature may wish to resolve the inconsistency.

New s. 732.525(3), F.S., states that in order for a document (such as a will) to be deemed executed in this state, several requirements must be met. The first requirement is that the person creating the document “states that he or she intends to execute and understands that he or she is executing the document in and pursuant to the laws of this state.” The Legislature may wish to revise the provision to require that the statement be documented in some way.

New s. 732.524, F.S., states that an electronic will may be made self-proved. However, neither this provision nor any other expressly states that a self-proved electronic will may be admitted to probate without further proof. This is in contrast to a traditional will, which s. 733.201(1), F.S., expressly states may be admitted to probate without further proof. Accordingly, the Legislature may wish to consider whether self-proved electronic wills should be admissible to probate without further proof.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 731.201, 732.506, and 733.201.

This bill creates the following sections of the Florida Statutes: 732.521, 732.522, 732.523, 732.524, 732.525, 732.526, and 732.527.

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 Judiciary on January 23, 2017:

The committee substitute includes several changes that appear to be designed to increase the integrity of the execution of electronic wills and other documents that are signed electronically. One such change requires the testator or the attesting witnesses to be “in the same room” as the testator when the testator signs an electronic will. In the underlying bill, none of these people need to be in the same room.

Another change requires the signature of two attesting witnesses and a notary public on an electronic will. In the underlying bill, only the notary public or the two witnesses need to sign. Relating to traditional wills, livings wills, and powers of attorney, the committee substitute still provides that the persons signing these documents are, as a matter of law, in each other’s “presence” if they can communicate via live video and audio conference. However, the committee substitute requires these signing ceremonies to be memorialized by a video recording kept in the documents’ electronic record.

The committee substitute makes it easier to execute a will, electronic will, living will, or power of attorney that is deemed to be executed in Florida. This is achieved by no longer requiring that such documents state that they are governed by the laws of this state.

In many ways, the committee substitute adds consumer protections to the relationship between a testator and his or her qualified custodian. For example, the committee substitute expressly states that a qualified custodian will be liable for the negligent loss or destruction of the electronic record. Also, a qualified custodian must allow the testator access to his or her electronic will at all times. Moreover, a qualified custodian must ensure the confidentiality of all information given to the custodian by the testator. However, under the committee substitute, a qualified custodian is no longer required to store several items, including identification of the testator and witnesses, in the electronic record of an electronic will.

The committee substitute does away with the concept of a “certified paper original,” a defined term that was fairly pervasive in the underlying bill. Nonetheless, the committee substitute permits admission of “true and correct” paper copies of electronic wills to probate. Moreover, the committee substitute provides that the copy constitutes an original of the electronic will.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/24/2017	.	
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	.	
	.	

The Committee on Judiciary (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete lines 81 - 360

and insert:

732.521 Short title.—Sections 732.521-732.527 may be cited as the “Florida Electronic Wills Act.”

Section 4. Section 732.522, Florida Statutes, is created to read:

732.522 Definitions.—As used in ss. 732.521-732.527, the term:



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11 (1) "Electronic record" means a record created, generated,
12 sent, communicated, received, or stored by electronic means.

13 (2) "Electronic signature" means an electronic sound,
14 symbol, or process attached to or logically associated with a
15 record and executed or adopted by a person with the intent to
16 sign the record.

17 (3) "Electronic will" means a will, including a codicil,
18 executed in accordance with s. 732.523 by a person in the manner
19 prescribed by this act, which disposes of the person's property
20 on or after his or her death and includes an instrument that
21 appoints a personal representative or revokes or revises another
22 will or electronic will.

23 (4) "Qualified custodian" means a person who meets the
24 requirements of s. 732.527(1).

25 Section 5. Section 732.523, Florida Statutes, is created to
26 read:

27 732.523 Electronic wills.—Notwithstanding s. 732.502:

28 (1) An electronic will must:

29 (a) Exist in an electronic record.

30 (b) Be electronically signed by the testator in the
31 presence of a notary public who is, or at least two attesting
32 witnesses who are, in the same room as the testator.

33 (c) Be electronically signed by the notary public and the
34 two attesting witnesses in the presence of the testator and, in
35 the case of the witnesses, in the presence of each other. The
36 notary public's signature must be accompanied by a notary public
37 seal that meets the requirements of s. 117.021(3).

38 (2) Except as otherwise provided in this act, all questions
39 as to the force, effect, validity, and interpretation of an



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electronic will that complies with this section must be
determined in the same manner as in the case of a will executed
in accordance with s. 732.502.

Section 6. Section 732.524, Florida Statutes, is created to
read:

732.524 Self-proof of electronic will.—An electronic will
is self-proved if all of the following requirements are met:

(1) The electronic will is executed in conformity with this
act.

(2) The acknowledgment of the electronic will by the
testator and the affidavits of the witnesses are made in
accordance with s. 732.503 and are part of the electronic record
containing the electronic will, or are attached to, or are
logically associated with, the electronic will.

(3) (a) The electronic will is deposited with the clerk
before the death of the testator in accordance with s. 732.901
with a certification signed by the testator confirming that the
electronic will is a valid will of the testator; or

(b) 1. The electronic will designates a qualified custodian;
and

2. The qualified custodian certifies under oath that to its
best knowledge the electronic will was at all times under the
control of a qualified custodian before being offered to the
court and that the electronic will has not be altered in any way
since the date of its execution.

Section 7. Section 732.525, Florida Statutes, is created to
read:

732.525 Method and place of execution.—For purposes of this
act, the execution and filing of a document with the court as



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provided in this act or the Florida Probate Rules, the execution
of a durable power of attorney under s. 709.2105, and the
execution of a living will under s. 765.302:

(1) An individual is deemed to be in the presence of
another individual if the individuals are either:

(a) In the same physical location; or

(b) In different physical locations, but can communicate
with each other by means of live video and audio conference,
provided that a video transcript of the execution of the
document is recorded and stored in, or attached to or logically
associated with, the electronic record of the document.

(2) Any requirement that a document be signed may be
satisfied by an electronic signature.

(3) A document that is signed electronically is deemed to
be executed in this state if any one of the following
requirements is met:

(a) The person creating the document states that he or she
intends to execute and understands that he or she is executing
the document in, and pursuant to the laws of, this state.

(b) The person creating the document is, or the attesting
witnesses or Florida notary public whose electronic signatures
are obtained in the execution of the document are, physically
located within this state at the time the document is executed.

(c) In the case of a self-proved electronic will, the
electronic will designates a qualified custodian who is
domiciled in and a resident of this state or incorporated or
organized in this state.

Section 8. Section 732.526, Florida Statutes, is created to
read:



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732.526 Probate.—An electronic will that is executed or deemed executed in another state in accordance with the laws of that state or of this state may be offered for and admitted to original probate in this state and is subject to the jurisdiction of the courts of this state. The venue for the probate of electronic wills is as provided in s. 733.101(1) or, in the case of the electronic will of a nonresident, may be the county in which the qualified custodian or attorney for the petitioner or personal representative has his or her domicile or registered office.

Section 9. Section 732.527, Florida Statutes, is created to read:

732.527 Qualified custodians.—

(1) To serve as a qualified custodian of an electronic will, a person must:

(a) Not be an heir or devisee, as defined in s. 731.201, of the testator;

(b) Be domiciled in and a resident of this state or be incorporated or organized in this state;

(c) Consistently employ a system for ensuring the safekeeping of electronic records and store electronic records containing electronic wills under such system; and

(d) Furnish for any court hearing involving an electronic will that is currently or was previously stored by the qualified custodian any information requested by the court pertaining to the qualified custodian's qualifications, policies, and practices related to the creation, sending, communication, receipt, maintenance, storage, and production of electronic wills.



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(2) The qualified custodian of an electronic will shall provide access to or information concerning the electronic will, or the electronic will and the electronic record containing the electronic will, only to the testator and such other persons as directed by the written instructions of the testator. A qualified custodian may also deposit the electronic will with the clerk by complying and in accordance with s. 732.901.

(3) The qualified custodian of the electronic record of an electronic will may elect to destroy such record, including any of the documentation required to be created and stored under paragraph (1)(d), at any time after the 5th anniversary of the admission of the will of the testator to probate.

(4) A qualified custodian who at any time controls the electronic record of an electronic will may elect to cease serving in such capacity by:

(a) Delivering the electronic will or the electronic record containing the electronic will to the testator, if then living, or, after the death of the testator, to the personal representative;

(b) Depositing the electronic will, including an acknowledgement of affidavits made in accordance with s. 732.503, with the clerk after complying with s. 732.901; or

(c)1. If the outgoing qualified custodian intends to designate a successor qualified custodian, providing written notice to the testator or, after the testator's death, the testator's nominated personal representative of the name, address, and qualifications of the proposed successor qualified custodian. The testator or a testator's nominated personal representative must provide written consent before the



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electronic record, including the electronic will, is delivered to a successor qualified custodian;

2. Delivering the electronic record containing the electronic will, to the successor qualified custodian; and

3. Delivering to the successor qualified custodian an affidavit of the outgoing qualified custodian stating that:

a. The outgoing qualified custodian is eligible to act as a qualified custodian in this state;

b. The outgoing qualified custodian is the qualified custodian designated by the testator in the electronic will or appointed to act in such capacity under paragraph (4) (c);

c. The electronic will has been in the control of one or more qualified custodians since the time the electronic record was created, and identifying such qualified custodians; and

d. To the best of the qualified custodian's knowledge, the electronic will has not been altered since the time it was created.

For purposes of making this affidavit, the outgoing qualified custodian may rely conclusively on any affidavits delivered by a predecessor qualified custodian in connection with its designation or appointment as qualified custodian; however, all such affidavits must be delivered to the successor qualified custodian.

(5) Upon the written request of the testator, a qualified custodian who at any time controls the electronic record of the testator's electronic will must cease serving in such capacity and must deliver to a successor qualified custodian designated in writing by the testator the electronic will and the affidavit



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required in this subparagraph (4)(c)3.

(6) A qualified custodian may not succeed to office as a qualified custodian of an electronic will unless he or she agrees in writing to serve in such capacity.

(7) If a qualified custodian is an entity, an affidavit of a duly authorized officer or agent of such entity shall constitute the affidavit of the qualified custodian.

(8) A qualified custodian must provide a paper copy of an electronic will and the electronic record, including the electronic will, to the testator immediately upon request. For the first such request in any 365-day period, the testator may not be charged a fee for being provided with these documents.

(9) The qualified custodian shall be liable for any damages caused by the negligent loss or destruction of the electronic record, including the electronic will, while it is in the possession of the qualified custodian. A qualified custodian may not limit liability for such damages.

(10) A qualified custodian may not terminate or suspend access to the electronic will by the testator.

(11) Except as provided herein, a qualified custodian must at all times keep information provided by the testator confidential and may not disclose such information to any third party.

Section 10. Section 733.201, Florida Statutes is amended to read:

733.201 Proof of wills.—

(1) Self-proved wills executed in accordance with this code may be admitted to probate without further proof.

(2) A will, other than an electronic will, may be admitted



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to probate upon the oath of any attesting witness taken before any circuit judge, commissioner appointed by the court, or clerk.

(3) If it appears to the court that the attesting witnesses cannot be found or that they have become incapacitated after the execution of the will or their testimony cannot be obtained within a reasonable time, a will, other than an electronic will, may be admitted to probate upon the oath of the personal representative nominated by the will as provided in subsection (2), whether or not the nominated personal representative is interested in the estate, or upon the oath of any person having no interest in the estate under the will stating that the person believes the writing exhibited to be the true last will of the decedent.

(4) If an electronic will is not self-proved, an electronic will may be admitted to probate upon the oath of the two attesting witnesses for the electronic will taken before any circuit judge, commissioner appointed by the court, or the clerk. If it appears to the court that the attesting witnesses cannot be found, that they have become incapacitated after the execution of the electronic will, or that their testimony cannot be obtained within a reasonable time, an electronic will may be admitted to probate upon the oath of two disinterested witnesses providing all of the following information:

(a) The date on which the electronic will was created, if the date is not indicated in the electronic will itself.

(b) When and how the electronic will was discovered, and by whom.

(c) All of the people who had access to the electronic



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will.

(d) The method by which the electronic will was stored and the safeguards that were in place to prevent alterations to the electronic will.

(e) A statement as to whether the electronic will has been altered since its creation.

(f) A statement that the electronic will is a true, correct, and complete tangible manifestation of the testator's will.

(5) A paper copy of an electronic will which is a true and correct copy of the electronic will may be offered for and admitted to probate and shall constitute an "original" of the electronic will.

Section 11. This act applies to electronic wills executed on or after July 1, 2017.

Section 12. This act shall take effect July 1, 2017.

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:

Delete lines 8 - 53
and insert:
defining terms; creating s. 732.523, F.S.; specifying requirements that must be satisfied in the execution of electronic wills; creating s. 732.524, F.S.; providing that electronic wills may be made self-proved at the time of execution; providing requirements for self-proof of electronic wills; creating s. 732.525, F.S.; specifying the circumstances under which a person is deemed to be in



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the presence of another; providing that an electronic signature satisfies the requirement that a document be signed; providing requirements for certain documents to be deemed executed in this state; creating s. 732.526, F.S.; authorizing an electronic will that is properly executed in this or another state to be offered for and admitted to probate in this state; providing the venue for the probate of such electronic will; creating s. 732.527, F.S.; specifying requirements for service as a qualified custodian; requiring qualified custodians to provide access to or information concerning the electronic will or the electronic record containing the electronic will, only to specified persons; authorizing the qualified custodian to deposit an electronic will with the clerk of court; authorizing a qualified custodian to destroy the electronic record of an electronic will after a certain date; providing for cessation of service of a qualified custodian; requiring that a qualified custodian who elects to cease serving in such capacity provide written notice to the testator under certain circumstances; requiring a qualified custodian to deliver certain documents to specified persons when he or she ceases to serve in such capacity; requiring a qualified custodian to cease serving in such capacity under certain circumstances; requiring that a successor qualified custodian agree in writing to serve in that capacity for an electronic will before succeeding to office; specifying what constitutes an



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affidavit of the qualified custodian; requiring a
qualified custodian to deliver certain documents upon
request from a testator; providing that a qualified is
liable for certain damages under certain
circumstances; requiring a qualified custodian to keep
certain information confidential; amending s. 733.201,
F.S.; providing for the proof of electronic wills;
providing requirements for admitting an electronic
will that is not self-proved into probate; providing
that a paper copy of an electronic will constitutes an
"original" of the electronic will subject to certain
conditions; providing applicability; providing an
effective date.

By Senator Passidomo

28-00132A-17

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1 A bill to be entitled
 2 An act relating to electronic wills; amending s.
 3 731.201, F.S.; revising the definition of the term
 4 "will" to include electronic wills; amending s.
 5 732.506, F.S.; excepting electronic wills from
 6 revocation provisions; creating s. 732.521, F.S.;
 7 providing a short title; creating s. 732.522, F.S.;
 8 defining terms; creating s. 732.523, F.S.; providing a
 9 statement of legislative intent and purpose; creating
 10 s. 732.524, F.S.; specifying requirements that must be
 11 satisfied in the preparation and execution of
 12 electronic wills; providing the extent to which
 13 electronic wills are subject to other statutory
 14 requirements relating to execution of a will; creating
 15 s. 732.525, F.S.; providing that electronic wills may
 16 be made self-proved at the time of execution;
 17 providing requirements for self-proof of electronic
 18 wills; requiring a qualified custodian to store an
 19 electronic will in an electronic record; creating s.
 20 732.526, F.S.; specifying the circumstances under
 21 which a person is deemed to be in the presence of
 22 another; providing requirements for certain documents
 23 to be deemed executed in this state; creating s.
 24 732.527, F.S.; authorizing an electronic will that is
 25 properly executed in this or another state, or a
 26 certified paper original of such properly executed
 27 electronic will, to be offered for and admitted to
 28 probate in this state; providing the venue for the
 29 probate of such electronic wills or certified paper
 30 originals; providing that a certified paper original
 31 of a self-proved electronic will is presumed to be
 32 valid; creating s. 732.528, F.S.; specifying

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

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33 requirements for service as a qualified custodian;
 34 requiring qualified custodians to provide access to,
 35 information concerning, or the certified paper
 36 original of the electronic will only to specified
 37 persons; authorizing a qualified custodian to destroy
 38 an electronic record subject to specified conditions;
 39 providing for cessation of service of a qualified
 40 custodian; requiring that a qualified custodian who
 41 elects to cease serving in such capacity provide
 42 written notice to the testator; requiring a qualified
 43 custodian to deliver certain documents to specified
 44 persons when he or she ceases to serve in such
 45 capacity; requiring that a successor qualified
 46 custodian agree in writing to serve in that capacity
 47 for an electronic will before succeeding to office;
 48 creating s. 732.529, F.S.; providing that a certified
 49 paper original must be delivered to specified persons
 50 with an affidavit of the qualified custodian or the
 51 persons who discovered the electronic will and reduced
 52 it to paper; providing requirements for such
 53 affidavits; providing an effective date.

54
 55 Be It Enacted by the Legislature of the State of Florida:

56
 57 Section 1. Subsection (40) of section 731.201, Florida
 58 Statutes, is amended to read:

59 731.201 General definitions.—Subject to additional
 60 definitions in subsequent chapters that are applicable to
 61 specific chapters or parts, and unless the context otherwise

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

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requires, in this code, in s. 409.9101, and in chapters 736, 738, 739, and 744, the term:

(40) "Will" means an instrument, including a codicil, executed by a person in the manner prescribed by this code, which disposes of the person's property on or after his or her death and includes an instrument which merely appoints a personal representative or revokes or revises another will. The term "will" includes an electronic will as defined in s. 732.522.

Section 2. Section 732.506, Florida Statutes, is amended to read:

732.506 Revocation by act.—A will or codicil, other than an electronic will, is revoked by the testator, or some other person in the testator's presence and at the testator's direction, by burning, tearing, canceling, defacing, obliterating, or destroying it with the intent, and for the purpose, of revocation.

Section 3. Section 732.521, Florida Statutes, is created to read:

732.521 Short title.—Sections 732.521-732.529 may be cited as the "Florida Electronic Wills Act."

Section 4. Section 732.522, Florida Statutes, is created to read:

732.522 Definitions.—As used in ss. 732.521-732.529, the term:

(1) "Certified paper original" means a tangible document that contains the text of an electronic will, including a self-proving affidavit concerning that will if applicable.

(2) "Electronic record" means a record created, generated,

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sent, communicated, received, or stored by electronic means.

(3) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(4) "Electronic will" means an instrument, including a codicil, executed by a person in the manner prescribed by this act which disposes of the person's property on or after his or her death and includes an instrument that merely appoints a personal representative or revokes or revises another will or electronic will.

(5) "Qualified custodian" means a person who meets the requirements of s. 732.528(1).

Section 5. Section 732.523, Florida Statutes, is created to read:

732.523 Statement of legislative intent and purpose.—The Legislature intends that this act be liberally construed and applied to promote the following purposes and policies:

(1) To facilitate and expand access to individuals' right to testamentary freedom of disposition.

(2) To facilitate end-of-life planning for individuals and families, particularly members of vulnerable or marginalized groups and those for whom end-of-life planning services are often unaffordable, unavailable, or otherwise inaccessible.

(3) To facilitate the use and enforcement of established and widely used technology in memorializing and accomplishing the intent and wishes of a decedent with regard to the distribution of his or her real and personal property.

(4) To simplify and clarify the law concerning the affairs

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of decedents.

(5) To discover and make effective the intent of a decedent with respect to the distribution of his or her real and personal property.

(6) To promote a speedy and efficient system for the settlement and distribution of estates.

(7) To harmonize the law of wills with other laws that recognize the legal and functional equivalence of electronic and paper signatures and transactions.

Section 6. Section 732.524, Florida Statutes, is created to read:

732.524 Electronic wills.—Notwithstanding s. 732.502:

(1) An electronic will must:

(a) Exist in an electronic record.

(b) Be electronically signed by the testator in the presence of either a notary public or at least two attesting witnesses.

(c) Be electronically signed by the notary public or both of the attesting witnesses in the presence of the testator and, in the case of the witnesses, in the presence of each other. If it is electronically signed by a notary public, the signature must be accompanied by a notary public seal that meets the requirements of s. 117.021(3).

(2) Except as otherwise provided in this act, all questions as to the force, effect, validity, and interpretation of an electronic will that complies with this section must be determined in the same manner as in the case of a will formally executed in accordance with s. 732.502.

Section 7. Section 732.525, Florida Statutes, is created to

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read:

732.525 Self-proof of electronic will.—An attested electronic will is self-proved if all of the following requirements are met:

(1) The acknowledgment of the electronic will by the testator and the affidavits of the witnesses must be made in accordance with s. 732.503 and included in the electronic record.

(2) The electronic will must designate a qualified custodian to control the electronic record of the electronic will.

(3) The electronic will at all times must have been under the control of a qualified custodian before being reduced to the certified paper original that is sought to be probated.

Section 8. Section 732.526, Florida Statutes, is created to read:

732.526 Method and place of execution.—For purposes of this act, the execution and filing of a document with the court as provided in this act or the Florida Probate Rules, and the execution of a durable power of attorney under s. 709.2105 and a living will under s. 765.302:

(1) An individual is deemed to be in the presence of another individual if the individuals are either:

(a) In the same physical location; or

(b) In different physical locations, but can communicate with each other by means of live video and audio conference.

(2) Any requirement that a document be signed may be satisfied by an electronic signature.

(3) A document is deemed to be executed in this state if

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all of the following requirements are met:

(a) The document states that the person creating the document intends to execute and understands that he or she is executing the document in, and pursuant to the laws of, this state.

(b) The document provides that its validity, interpretation, and effect are governed by the laws of this state.

(c) The attesting witnesses or Florida notary public whose electronic signatures are obtained in the execution of the document are physically located within this state at the time the document is executed.

(d) In the case of an electronic will, the electronic will designates a qualified custodian.

Section 9. Section 732.527, Florida Statutes, is created to read:

732.527 Probate.—

(1) An electronic will that is executed or deemed executed in another state in accordance with the laws of that state or of this state may be offered for and admitted to original probate in this state and is subject to the jurisdiction of the courts of this state. The venue for the probate of electronic wills is as provided in s. 733.101(1) or, in the case of the electronic will of a nonresident, may be the county in which the qualified custodian or attorney for the petitioner or personal representative has his or her domicile or registered office.

(2) A certified paper original of the electronic will may be offered for and admitted to probate.

(3) A certified paper original of a self-proved electronic

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will is presumed to be valid.

Section 10. Section 732.528, Florida Statutes, is created to read:

732.528 Qualified custodians.—

(1) To serve as a qualified custodian of an electronic will, a person must:

(a) Not be an heir or devisee, as defined in s. 731.201, of the testator.

(b) Be domiciled in and a resident of this state or be incorporated or organized in this state.

(c) Consistently employ a system for ensuring the safekeeping of electronic records.

(d) Create and store in the electronic record of any given electronic will all of the following concerning such electronic will:

1. A photograph or other visual record of the testator and the attesting witnesses, if any, taken by the qualified custodian at the time the electronic will is executed.

2. A photocopy, photograph, facsimile, or other visual record of a document provided to the qualified custodian at the time the electronic will is executed which establishes the testator's identity, including without limitation any of the forms of identification set forth in s. 117.05(5)(b)2.a.-i.

3. If there are attesting witnesses to the electronic will, a photocopy, photograph, facsimile, or other visual record of a document provided by the qualified custodian at the time the electronic will is executed which provides reasonable proof of each attesting witness' identity, including any of the forms of identification specified in s. 117.05(5)(b)2.a.-i.

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4. An audio and video recording of the testator and the attesting witnesses or notary public electronically signing the electronic will as provided in s. 732.524(1)(c).

(e) Furnish for any court hearing involving an electronic will that is currently or was previously stored by the qualified custodian any information requested by the court pertaining to the qualified custodian's qualifications, policies, and practices related to the creation, sending, communication, receipt, maintenance, storage, and production of electronic wills.

(2) The qualified custodian of an electronic will shall provide access to, information concerning, or the certified paper original of the electronic will only to the testator and such other persons as directed by the written instructions of the testator, and, after the testator's death, any interested person, upon request.

(3) The qualified custodian of the electronic record of an electronic will may elect to destroy such record, including any of the documentation required to be created and stored under paragraph (1)(d), at any time after:

(a) The 5th anniversary of the admission of the will of the testator to probate.

(b) The 10th anniversary of the testator's death.

(c) The 100th anniversary of the execution of the electronic will.

(4) A qualified custodian who at any time controls the electronic record of an electronic will may elect to cease serving in such capacity by:

(a)1. If the outgoing qualified custodian is not

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designating a successor qualified custodian, providing 30 days' written notice to the testator, if then living, or, after the death of the testator, to the testator's duly appointed personal representative or an interested person that he or she has elected to cease serving as a qualified custodian; and

2. Delivering the certified paper original of, and all records concerning, the electronic will to the testator, if then living, or, after the death of the testator, to the personal representative or such interested person; or

(b)1. If the outgoing qualified custodian is designating a successor qualified custodian, providing 30 days' written notice to the testator's duly appointed personal representative and to a successor qualified custodian designated by the outgoing qualified custodian that the outgoing qualified custodian of the electronic will has elected to cease serving in such capacity to the testator, if then living, or, after the death of the testator;

2. Delivering the electronic record of the electronic will to the successor qualified custodian; and

3. Delivering to the successor qualified custodian an affidavit of the outgoing qualified custodian stating that:

a. The outgoing qualified custodian is eligible to act as a qualified custodian in this state;

b. The outgoing qualified custodian is the qualified custodian designated by the testator in the electronic will or appointed to act in such capacity under paragraph (4)(b);

c. An electronic record was created at the time the testator made the electronic will;

d. The electronic record has been in the control of one or

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more qualified custodians since the time the electronic record was created, and identifying such qualified custodians; and

e. To the best of his, her, or its knowledge, the electronic record has not been altered since the time it was created.

For purposes of making this affidavit, the outgoing qualified custodian may rely conclusively on any affidavits delivered by a predecessor qualified custodian in connection with his or her designation or appointment as qualified custodian; however, all such affidavits must be delivered to the successor qualified custodian.

(5) Upon the written request of the testator, a qualified custodian who at any time controls the electronic record of the testator's electronic will must cease serving in such capacity and must deliver to a successor qualified custodian designated in writing by the testator the electronic record and the affidavit required in subparagraph (4)(b)3.

(6) A qualified custodian may not succeed to office as a qualified custodian of an electronic will unless he or she agrees in writing to serve in such capacity.

(7) If a qualified custodian is an entity, an affidavit of a duly authorized officer or agent of such entity shall constitute the affidavit of the qualified custodian.

Section 11. Section 732.529, Florida Statutes, is created to read:

732.529 Affidavit for certified paper original.—A certified paper original delivered under s. 732.527(2) must be accompanied by an affidavit that satisfies the following requirements:

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(1) If the electronic will has always been under the control of a qualified custodian, the qualified custodian shall state in an affidavit that:

(a) The qualified custodian is eligible to act as a qualified custodian in this state;

(b) The qualified custodian is the qualified custodian designated by the testator in the electronic will or appointed to act in such capacity under s. 732.528(4)(b);

(c) An electronic record was created at the time the testator made the electronic will;

(d) The electronic record has been in the control of one or more qualified custodians since its creation, and the identity of such qualified custodians;

(e) To the best of his, her, or its knowledge, the electronic record has not been altered since its creation;

(f) The certified paper original is a true, correct, and complete tangible manifestation of the electronic will; and

(g) The qualified custodian has in its custody the records required under s. 732.528(1)(d).

(2) If the electronic will has not always been under the control of a qualified custodian, the person who discovered the electronic will and the person who reduced the electronic will to paper shall each state in an affidavit to the best of their knowledge:

(a) When the electronic will was created, if not indicated in the electronic will itself;

(b) When and how the electronic will was discovered, and by whom;

(c) All of the people who had access to the electronic

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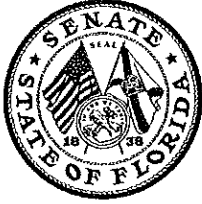
will;

(d) The method in which the electronic will was stored and what safeguards were in place to prevent alterations to the electronic will;

(e) Whether the electronic will has been altered since its creation; and

(f) That the certified paper original is a true, correct, and complete tangible manifestation of the electronic will.

Section 12. This act shall take effect July 1, 2017.



**SENATOR KATHLEEN
PASSIDOMO**
28th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Ethics and Elections, *Chair*
Healthy Policy, *Vice Chair*
Appropriations Subcommittee on Health
and
Human Services
Appropriations Subcommittee on
Transportation,
Tourism, and Economic Development
Commerce and Tourism

SELECT COMMITTEE:

Joint Select Committee on Collective
Bargaining

JOINT COMMITTEE:

Joint Legislative Auditing Committee

January 12, 2017

The Honorable Greg Steube, Chair
Committee on Judiciary
Florida Senate
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Steube:

Senate Bill 206, Electronic Wills, has been referred to the Committee on Judiciary. I would appreciate the placing of this bill on the committee agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Passidomo", followed by a horizontal line.

Kathleen C. Passidomo

Cc: Tom Cibula, Staff Director
Joyce Butler, Committee Assistant

REPLY TO:

- ☐ 3299 East Tamiami Trail, Suite 203, Naples, Florida 34112 (239) 417-6205
- ☐ 318 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5028

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-24-2017

Meeting Date

206

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

January 24, 2017
Meeting Date

SB 206
Bill Number (if applicable)

Topic Electronic Wills

Amendment Barcode (if applicable)

Name Luis Valdes

Job Title Law Enforcement

Address 3450 Woodhill Dr

Phone 305-206-9681

Street

Tallahassee

Florida

32303

Email LValdes001@gmail.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Private 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.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/24/2017
Meeting Date

SB 206
Bill Number (if applicable)

Topic Electronic Wills

Amendment Barcode (if applicable)

Name Zayne Smith

Job Title Associate State Director

Address 200 W. College Ave.
Street

Phone 850 228-4243

Tally FL 32307
City State Zip

Email zsmith@aarfp.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing AARP Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

206
Bill Number (if applicable) _____

Topic _____

Amendment Barcode (if applicable) _____

Name Pete Dunbar

Job Title _____

Address 215 S. Monroe

Phone 999-4100

Street

Tallahassee

City

State

Zip

Email pdunbar@dcaymedia.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Real Property, Probate & Trust 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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/24/17
Meeting Date

206
Bill Number (if applicable)

Topic Electronic Bills

867850
Amendment Barcode (if applicable)

Name Met Forrest

Job Title _____

Address 403 E. Park Ave.
Street

Phone 850-577-0444

Tolly
City State Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Begorist, 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)

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Judiciary Committee Judge:

Started: 1/24/2017 2:01:01 PM

Ends: 1/24/2017 4:09:25 PM Length: 02:08:25

2:01:00 PM Meeting called to order by Chair Steube
2:01:06 PM Roll called by Administrative Assistant Joyce Butler
2:01:19 PM Quorum present
2:01:24 PM Comments from Chair Steube
2:01:46 PM Introduction of SB 206 by Chair Steube
2:01:55 PM Explanation of SB 206 by Senator Passidomo
2:02:23 PM Introduction of Amendment Barcode No. 867850 by Chair Steube
2:02:38 PM Explanation of Amendment Barcode No. 867850 by Passidomo
2:03:11 PM Amendment Barcode No. 867850 adopted
2:03:34 PM Speaker Brian Pitts, Justice-2-Jesus
2:07:44 PM Speaker Luis Valdes
2:08:46 PM Zayne Smith, AARP waives in support
2:09:02 PM Speaker Pete Dunbar, Real Property, Probate, and Trust Law Section
2:09:37 PM Question from Senator Thurston
2:09:55 PM Response from Mr. Dunbar
2:11:05 PM Follow-up question from Senator Thurston
2:11:27 PM Response by Mr. Dunbar
2:12:03 PM Question from Senator Gibson
2:12:15 PM Response by Mr. Dunbar
2:13:17 PM Follow-up question from Senator Gibson
2:13:25 PM Response by Mr. Dunbar
2:13:45 PM Additional question from Senator Gibson
2:13:53 PM Response by Mr. Dunbar
2:14:56 PM Speaker Mat Forrest, Bequest, Inc.
2:16:08 PM Question from Senator Garcia
2:16:18 PM Response by Mr. Forrest
2:17:33 PM Debate by Senator Flores
2:18:32 PM Debate by Senator Thurston
2:19:34 PM Closure by Senator Passidomo
2:20:04 PM Roll called on CS/SB 206 by Administrative Assistant Joyce Butler
2:20:18 PM CS/SB 206 reported favorably
2:20:32 PM SB 128 Introduced by Chair Steube
2:20:40 PM Explanation of SB 128 and Amendment Barcode No. 832456 by Chair Bradley
2:21:44 PM Amendment Barcode No. 83222456 adopted
2:25:11 PM Question from Senator Gibson
2:25:40 PM Response by Senator Bradley
2:26:34 PM Follow-up question from Senator Gibson
2:26:53 PM Response by Senator Bradley
2:27:34 PM Follow-up question from Senator Gibson
2:28:09 PM Response by Senator Bradley
2:28:30 PM Follow-up question from Senator Gibson
2:28:45 PM Response by Senator Bradley

2:29:28 PM Follow-up question from Senator Gibson
2:30:01 PM Response by Senator Bradley
2:30:43 PM Question from Senator Thurston
2:31:00 PM Response by Senator Bradley
2:31:30 PM Follow-up question from Senator Thurston
2:31:48 PM Response by Senator Bradley
2:32:26 PM Follow-up question from Senator Thurston
2:32:37 PM Response by Senator Bradley
2:33:29 PM Follow-up question from Senator Thurston
2:33:57 PM Response by Senator Bradley
2:35:15 PM Question from Senator Bracy
2:35:19 PM Response by Senator Bradley
2:36:21 PM Follow-up question from Senator Bracy
2:36:30 PM Response by Senator Bradley
2:37:16 PM Question from Senator Powell
2:37:21 PM Response by Senator Bradley
2:38:05 PM Follow-up question from Senator Powell
2:38:16 PM Response by Senator Bradley
2:39:03 PM Follow-up question from Senator Powell
2:39:11 PM Response by Senator Bradley
2:39:57 PM Question from Senator Bracy
2:40:04 PM Response by Senator Bradley
2:42:54 PM Comments by Chair Steube
2:43:07 PM Speaker Phil Archer, Florida Prosecuting Attorney's Assoc. (Against)
2:47:24 PM Speaker Debbie Harrison-Rumberger, Florida League of Women Voters
2:48:53 PM Jorge Chamizo waives in support
2:49:15 PM Speaker Brian Pitts, Justice-2-Jesus
2:51:58 PM Speaker Luis Valdes
2:54:27 PM Speaker Roy Blondeau Jr.
2:57:19 PM Barbara DeVane waives in opposition
2:57:33 PM Speaker Maria Rory (Against)
2:59:28 PM Speaker Linda Miklowitz (Against)
3:00:39 PM Speaker Lucy McBeth (Against)
3:04:37 PM Honorable Stacy Scott, Florida Public Defender Association (For)
3:07:24 PM Question from Senator Gibson
3:08:25 PM Response from Honorable Scott
3:08:57 PM Follow-up question from Senator Gibson
3:09:40 PM Response from Honorable Scott
3:11:00 PM Question from Senator Gibson
3:11:06 PM Response from Honorable Scott
3:11:59 PM Question from Senator Garcia
3:12:16 PM Response from Honorable Scott
3:13:12 PM Leisa Wiseman, Florida Coalition Against Domestic Violence waives in opposition
3:13:43 PM Speaker Paul De Revere (Against)
3:14:27 PM Speaker Eric Friday, Florida Carry (For)
3:16:40 PM Speaker Katie Browder, Everytown Survivor Network (Against)
3:20:07 PM Question from Senator Bracy
3:21:22 PM Response by Ms. Browder
3:21:37 PM Speaker Marion Hammer, National Rifle Association (For)
3:24:25 PM Comments from Chair Steube
3:24:32 PM Debate by Senator Gibson
3:27:25 PM Debate by Senator Thurston

3:34:46 PM Closure by Senator Bradley
3:35:36 PM Roll called by Administrative Assistant Joyce Butler
3:36:37 PM CS/SB 128 reported favorably
3:37:10 PM Introduction of SB 120 by Chair Steube
3:37:17 PM Explanation of SB 120 and Amendment Barcode No. 593696 by Senator Hutson
3:38:13 PM Comments by Chair Steube
3:38:18 PM Amendment Barcode No. 593696 adopted
3:38:27 PM Question from Senator Gibson
3:39:05 PM Response by Senator Hutson
3:39:37 PM Follow-up question from Senator Gibson
3:39:57 PM Response by Senator Hutson
3:40:06 PM Follow-up question from Senator Gibson
3:40:26 PM Response by Senator Hutson
3:41:15 PM Question from Senator Thurston
3:41:21 PM Response by Senator Hutson
3:42:34 PM Glenda Abicat (Against)
3:42:54 PM James Ingles (Against)
3:42:55 PM James Ingles (Against)
3:42:56 PM Francesca Memes, Florida Immigrant Coalition (Against)
3:42:59 PM Jonathon Howell (Against)
3:43:01 PM Christine Saint Louis (Against)
3:43:03 PM Richard Starling (Against)
3:43:05 PM Pamela Burch Fort (Against)
3:43:07 PM Orville Elliott (Against)
3:43:10 PM Frank Marinacca (Against)
3:43:14 PM Daisy Ulbin (Against)
3:43:16 PM Shane Ulbin (Against)
3:43:18 PM Joanne Cannon (Against)
3:43:20 PM Joseph George (Against)
3:43:23 PM Robert Henning (Against)
3:43:25 PM Eugene Dahl (Against)
3:43:27 PM Kevin Byrne (Against)
3:43:29 PM Erik Mooney (Against)
3:43:31 PM Karen Woodall, Florida Center for Fiscal & Economic Policy (Against)
3:43:34 PM Speaker Scott McCoy, Southern Poverty Law
3:46:07 PM Normand Audet waives in opposition
3:46:19 PM Rich Templin waives in opposition
3:46:29 PM Linda Miklowitz waives in opposition with explanation
3:46:43 PM Luis Valdes waives in support
3:46:55 PM Speaker Michael Sheedy, Florida Conference of Catholic Bishops
3:48:28 PM Comments from Chair Steube
3:48:40 PM Comments from Senator Gibson
3:49:18 PM Comments from Chair Steube
3:49:30 PM Closure by Senator Hutson
3:50:00 PM Roll call on CS/SB 120 by Administrative Assistant
3:50:23 PM CS/SB 120 reported favorably
3:50:33 PM Gavel passed to Senator Benacquisto
3:50:44 PM Explanation of SB 118 and Amendment Barcode No. 921458 by Senator Steube
3:51:06 PM Amendment Barcode No. 921458 introduced by Chair Benacquisto
3:51:21 PM Honorable Stacy Scott, Florida Public Defender Association waives in support
3:51:34 PM Comments by Chair Benacquisto
3:51:44 PM Amendment Barcode No. 921458 adopted

3:51:54 PM Question from Senator Gibson
3:52:06 PM Response by Senator Steube
3:52:31 PM Jorge Chamizo, Florida Association of Criminal Defense Lawyers waives in support
3:52:42 PM Barney Bishop, Florida Smart Justice Alliance waives in support
3:52:50 PM Luis Valdes waives in support
3:52:56 PM Speaker Brian Pitts, Justice-2-Jesus
3:54:15 PM Colleen Mackin waives in support
3:54:24 PM Closure waived by Senator Steube
3:54:31 PM Roll call on CS/SB 118 by Administrative Assistant, Joyce Butler
3:54:52 PM CS/SB 118 reported favorably
3:55:04 PM Comments from Chair Steube
3:55:14 PM Senator Benacquisto moves to adjourn without objection