

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 1186

INTRODUCER: Criminal Justice Committee and Senators Baxley and Perry

SUBJECT: Criminal Judgments

DATE: April 5, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Storch</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Cibula</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1186 gives judges the option of entering judgements in certain criminal cases in an electronic record and signing the judgments with an electronic signature. This option applies to a judgment of guilty or not guilty to petit theft or to a felony or to a judgment of guilty to certain offenses relating to prostitution. Current law requires that these judgments be in writing.

The bill requires that an electronic record of a judgment of guilty include electronically captured fingerprints of the defendant and certification by the judge that the fingerprints belong to the defendant. The bill further provides that the certification, in a written or electronic record, of a guilty judgment is admissible as prima facie evidence that the fingerprints on the judgment are those of the defendant.

The bill retains the requirement in existing law that the social security number of a defendant who is guilty of a felony be recorded in the written or *electronic* judgment.

The bill permits, but does not require, the courts to implement the use of electronic judgments and electronic fingerprinting. However, judicial circuits that wish to capture electronic fingerprints may incur costs to implement the new technology. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2019.

II. Present Situation:

Petit Theft and Felony Judgments

Current law requires that every criminal judgment adjudicating a person guilty or not guilty of petit theft¹ or a felony be in *writing*, signed by the judge, and recorded by the clerk of the circuit court.²

At the time the judgment of guilty is rendered, the fingerprints of the defendant must be taken and affixed beneath the judge's signature to the judgment. Beneath the fingerprints, the judge must certify and attest that the fingerprints belong to the defendant. The judgment, with the certification, is admissible as prima facie evidence that the fingerprints are those of the defendant.³

For a felony judgment of guilty, in addition to the defendant's fingerprints, the judge must also record the defendant's social security number and affix it to the written judgment. If the defendant is unable or unwilling to provide his or her social security number, the reason for its absence must be indicated on the written judgment.⁴

Criminal Judgments Under Ch. 796, F.S.

Chapter 796, F.S., governs prostitution and similar crimes. Every criminal judgment adjudicating a person guilty of a misdemeanor or felony offense governed by ch. 796, F.S., must be in *writing*, signed by the judge, and recorded by the clerk of the circuit court. Additionally, the fingerprints of the defendant must be taken and affixed beneath the judge's signature to the judgment. Beneath the fingerprints, the judge must certify and attest that the fingerprints belong to the defendant.⁵ The judgment, with the certification, is admissible as prima facie evidence that the fingerprints are those of the defendant.⁶

Electronic Fingerprinting

Capturing legible fingerprint images is paramount to the administrative process. Failure to capture legible fingerprint images can lead to an increase in administrative burdens and lengthy waiting periods. Increasing use of electronically captured fingerprints is one method that has been used in efforts to improve fingerprint image quality and reduce rejection rates. Electronic live scan fingerprinting technology allows for the capture of sharper, clearer images, which helps to ensure that the images captured are legible prior to submission to law enforcement databases.⁷

¹ A person commits petit theft if he or she steals property that is valued at \$100 but less than \$300. Petit theft is punishable as a first degree misdemeanor. Section 812.014(2)(e), F.S.

² Sections 812.014(3)(d)1. and 921.241(2), F.S.

³ Sections 812.014(3)(d)2. and 921.241(2) and (3), F.S.

⁴ Section 921.241(4), F.S.

⁵ Section 921.242(1), F.S.

⁶ Section 921.242(2), F.S.

⁷ Federal Bureau of Investigation, *The National Crime Prevention and Privacy Compact Council's Civil Fingerprint Image Quality Strategy Guide*, 2-3 (Nov. 2018), available at <https://www.fbi.gov/file-repository/civil-fingerprint-image-quality-strategy-guide.pdf>.

III. Effect of Proposed Changes:

Current law requires that a judgment of guilty or not guilty of petit theft or a felony or a judgment of guilty for a misdemeanor under ch. 796, F.S., be in *writing*. The bill expands this, allowing the judgments to be made in a written *or electronic* record.

The bill retains the requirement for the judgments to be signed by the judge and recorded by the clerk of the court. If an electronic record is made, the bill requires the record to contain the judge's electronic signature, which is defined in s. 933.40, F.S., as any letters, characters, symbols, or process manifested by electronic or similar means and attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.⁸

Current law requires that the fingerprints of the defendant be taken and affixed to a guilty judgment of petit theft, any felony, or a misdemeanor under ch. 796, F.S. For a written record, the bill retains the requirements of existing law that the fingerprints be manually taken and affixed beneath the judge's signature. For an electronic record, the bill requires the fingerprints of the defendant be electronically captured and included in the judgment.

The bill provides that digital fingerprint records will be associated with a transaction control number, which is defined as the unique identifier comprised of numbers, letters, or other symbols for a digital fingerprint record which is generated by the device used to electronically capture the fingerprints. For an electronic record, the bill requires the judge to provide certification with the following language: "I hereby certify that the digital fingerprints record associated with the Transaction Control Number _____ contains the fingerprints of the defendant, _____, which were electronically captured from the defendant in my presence, in open court, this the ___ day of ___, (year)."

Current law provides that the judge's certification of a written record of a judgment of guilty for petit theft, any felony, or a misdemeanor under ch. 796, F.S., is admissible as prima facie evidence that the fingerprints included in the judgment are those of the defendant. The bill provides that the judge's certification that the digital fingerprint record associated with the transaction control number that is included in an electronic record of the judgments will be regarded in the same manner.

The bill retains the requirement for the social security number of a defendant who is found guilty of a felony to be taken and included in the written or *electronic* record. If the defendant is unable or unwilling to provide his or her social security number, the bill requires that the reason for its absence be specified in the written or electronic record.

The bill reenacts s. 775.084, F.S., to make conforming changes for the purposes of incorporating amendments made by the bill.

The bill is effective July 1, 2019.

⁸ Section 933.40(1)(d), F.S.

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

Currently, certain judgments are required to be in a written record. The bill provides that the judgments may alternatively be created in an electronic record. With that, the bill provides discretion to the clerk in determining the form in which the record will be created. Additionally, because any such costs incurred by the circuit courts resulting from the bill directly relate to persons who have been arrested or convicted of criminal offenses, under Article VII, subsection 18(d) of the Florida Constitution, it appears there is no unfunded mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill permits, but does not require, the courts to implement an electronic fingerprinting and judgment process. Therefore, the bill does not require the expenditure of funds. Those circuits that wish to implement electronic recordkeeping will need to purchase electronic Live Scan fingerprinting technology, which will result in initial costs to implement the electronic system. However, the new technology may save money and reduce court workloads in the long run.⁹

⁹ Office of the State Courts Administrator, *2019 Judicial Impact Statement for SB 1186*, (Mar. 21, 2019) (on file with the Senate Criminal Justice Committee).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 812.014, 921.241, and 921.242.

This bill reenacts section 775.084 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on March 25, 2019:

The Committee Substitute clarifies that the judge's certification of a defendant's fingerprints included in a guilty judgment for petit theft and misdemeanor offenses under ch. 796, F.S., is admissible as prima facie evidence that the fingerprints belong to the defendant.

- B. **Amendments:**

None.