

THE FLORIDA SENATE
2018 SUMMARY OF LEGISLATION PASSED
Committee on Criminal Justice

CS/CS/CS/HB 165 — Written Threats to Conduct Mass Shootings or Acts of Terrorism

by Judiciary Committee; Justice Appropriations Subcommittee; Criminal Justice Subcommittee; and Rep. McClain and others (CS/CS/SB 310 by Appropriations Committee; Criminal Justice Committee; and Senators Steube and Baxley)

The bill amends s. 836.10, F.S., to prohibit a person from making, posting, or transmitting a threat in a writing or other record, including an electronic record, to conduct a mass shooting or an act of terrorism, in any manner that would allow another person to view the threat.

The bill also specifies that no liability is imposed upon a provider of an interactive computer service, communications services, as defined in s. 202.11, F.S., a commercial mobile service, or an information service if it provides service for use by another person who violates s. 836.10, F.S.

If approved by the Governor, these provisions take effect July 1, 2018.

Vote: Senate 37-0; House 94-7

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CS/HB 361 — Persons Authorized to Visit Juvenile Facilities

by Criminal Justice Subcommittee and Reps. Richardson, Stafford, and others (CS/SB 1004 by Criminal Justice Committee and Senator Brandes)

The bill authorizes the following persons to visit between the hours of 6 a.m. and 11 p.m. all facilities housing juveniles that are operated or overseen by the Department of Juvenile Justice (DJJ) or a county:

- The Governor;
- A Cabinet member;
- A member of the Legislature;
- A judge of a state court;
- A state attorney;
- A public defender; and
- A person authorized by the secretary of the DJJ.

The bill requires the DJJ to make rules for purposes of implementing the bill, including rules pertaining to visitation of a state facility housing juveniles between 11 p.m. and 6 a.m. by a person specified in the bill.

If approved by the Governor, these provisions take effect July 1, 2018.

Vote: Senate 37-0; House 113-0

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HB 491 — Theft

by Rep. Roth and others (CS/SB 776 by Criminal Justice Committee and Senator Grimsley)

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

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

If approved by the Governor, these provisions take effect October 1, 2018.

Vote: Senate 36-0; House 114-0

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HB 523 — Trespass on Airport Property

by Rep. Cortes, B. (SB 1094 by Senator Simmons)

The bill provides that it is a third degree felony to trespass with the intent to injure another person, damage property, or impede the operation or use of an aircraft, runway, taxiway, ramp, or apron area, and the property trespassed upon is the operational area of an airport that is legally posted and identified in substantially the manner described by the bill. The bill also defines the term “operational area of an airport.”

If approved by the Governor, these provisions take effect October 1, 2018.

Vote: Senate 36-1; House 113-0

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CS/HB 547 — Reports Concerning Seized or Forfeited Property

by Criminal Justice Subcommittee and Rep. Killebrew (CS/CS/SB 1678 by Judiciary Committee; Criminal Justice Committee; and Senator Stargel)

The bill changes the deadline for the annual submission of reports concerning seized or forfeited property by law enforcement agencies pursuant to the Florida Contraband Forfeiture Act from October 10 to December 1.

If approved by the Governor, these provisions take effect July 1, 2018.

Vote: Senate 36-0; House 114-0

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CS/HB 581 — Subpoenas in Investigations of Sexual Offenses

by Criminal Justice Subcommittee and Rep. Latvala and others (CS/CS/SB 618 by Judiciary Committee; Criminal Justice Committee; and Senators Baxley, Steube, Book, Rouson, and Mayfield)

The bill addresses use of a subpoena in an investigation involving allegations of sexual abuse of a child or the suspected commission of certain sex crimes.

The bill defines the terms “child,” “deliver,” “sexual abuse of a child,” “supervisory official,” and “adverse result.”

In an investigation involving allegations of sexual abuse of a child or the suspected commission of certain sex crimes, an investigative or law enforcement officer may use a subpoena to obtain records, documents, or other tangible objects, and testimony to authenticate such materials or objects. The bill specifies requirements for this subpoena. This subpoena does not apply to noncontent basic information regarding a subscriber or customer of a provider of an electronic communication service or remote computing service or to the contents of a wire or electronic communication that has been in electronic storage in an electronic communications system for more than 180 days.

In investigations involving sexual abuse of a child, an investigative or law enforcement officer may:

- Without notice to the subscriber or customer of a provider of an electronic communication service or remote computing service, use a subpoena to obtain noncontent basic subscriber or customer information; and
- With prior notice or delayed notice, use a subpoena to obtain contents of a wire or electronic communication that has been in electronic storage in an electronic communications system for more than 180 days.

An investigative or law enforcement officer may prohibit a subpoena recipient from disclosing to any person for 180 days the existence of the subpoena or delay required notification for 180 days, if the subpoena is accompanied by a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result. Limited disclosure is authorized. A court may grant extensions of the nondisclosure period or delay of notification if certain findings are made. The bill specifies requirements for providing notification to the customer or subscriber upon expiration of the delay of notification.

An investigative or law enforcement officer who uses a subpoena to obtain any record, document, or other tangible object may retain such items for use in any ongoing criminal investigation or a closed investigation with the intent that the investigation may later be reopened.

The bill also authorizes a petition to modify or set aside a subpoena or disclosure prohibition, specifies what subscriber or customer notification is required upon expiration of the delay of notification, specifies procedures for retention of records, provides for compensation of a subpoenaed witness and others, provides legal protections for subpoena compliance, and authorizes a court to compel compliance with a subpoena and to sanction refusal to comply.

If approved by the Governor, these provisions take effect October 1, 2018.

Vote: Senate 37-0; House 115-0

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CS/HB 1065 — Expunction of Criminal History Records

by Criminal Justice Subcommittee and Reps. Eagle, Jones, and others (CS/SB 298 by Criminal Justice Committee and Senator Bracy)

The bill enables a person to seek an expunction of a criminal history record if the charges related to the petition resulted in a judgment of acquittal or a not guilty verdict.

Additionally, the bill prohibits a person who was found guilty, or pled guilty or nolo contendere to one of the following offenses, or a person who, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, one of the following offenses, from being eligible to seek a sealing of his or her criminal history record:

- Sexual misconduct (ss. 393.135, 394.4593, and 916.1075, F.S.);
- Luring or enticing a child (s. 787.025, F.S.);
- Sexual battery (ch. 794, F.S.);
- Procuring person under age 18 for prostitution (former s. 796.03, F.S.);
- Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age (s. 800.04, F.S.);
- Voyeurism (s. 810.14, F.S.);
- Violations of the Florida Communications Fraud Act (s. 817.034, F.S.);
- Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person (s. 825.1025, F.S.);
- Sexual performance by a child (s. 827.071, F.S.);
- Offenses by public officers and employees (ch. 839, F.S.);
- Certain acts in connection with obscenity (s. 847.0133, F.S.);
- Computer pornography (s. 847.0135, F.S.);
- Selling or buying of minors (s. 847.0145, F.S.);
- Trafficking (s. 893.135, F.S.);
- A violation enumerated in s. 907.041, F.S.;
- Any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, F.S., without regard to whether that offense alone is sufficient to require such registration; or
- Registration as a sexual offender pursuant to s. 943.0435, F.S.

If approved by the Governor, these provisions take effect October 1, 2018.

Vote: Senate 37-0; House 114-0

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CS/HB 1177 — Joint Task Force on State Agency Law Enforcement Communications

by Oversight, Transparency and Administration Subcommittee and Rep. Ingoglia (CS/SB 1460 by Criminal Justice Committee and Senator Montford)

The bill adds a representative of the Florida Sheriffs Association to the Joint Task Force on State Agency Law Enforcement Communications. This representative must be appointed by the president of the Florida Sheriffs Association.

The per diem and travel expenses incurred by the member of the task force who represents the Florida Sheriffs Association in attending task force meetings and in attending to task force affairs shall be paid by the sheriff's office that employs the representative.

If approved by the Governor, these provisions take effect July 1, 2018.

Vote: Senate 36-0; House 114-0

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HB 1201 — Education for Prisoners

by Reps. Ahern, Lee, and others (CS/SB 1318 by Appropriations Committee and Senator Rouson)

The bill amends ss. 951.176 and 944.801, F.S., authorizing a county or the Department of Corrections to contract with a district school board, the Florida Virtual School, or a charter school to provide educational services in the Correctional Educational Program to its inmates. The educational services may include any educational, career, or vocational training.

The bill also amends s. 1011.80, F.S., allowing state funding for postsecondary workforce programs to be used for the education of inmates with less than 24 months of time remaining on his or her sentence.

If approved by the Governor, these provisions take effect July 1, 2018.

Vote: Senate 37-0; House 115-0

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CS/HB 1301 — Sexual Offenders and Predators

by Justice Appropriations Subcommittee and Rep. Fitzenhagen and others (CS/SB 1226 by Criminal Justice Committee and Senators Book and Hutson)

The bill modifies definitions of the terms “permanent residence,” “temporary residence,” and “transient residence,” which are relevant to reporting residence information under Florida laws requiring reporting of certain information by those persons required to register as a sexual predator or sexual offender. The bill decreases from 5 days to 3 days the time period in which a person must abide, lodge, or reside at a place in order to meet any of the definitions for reporting purposes.

The bill also requires a court to impose the following mandatory terms of community control with electronic monitoring for sexual predators and sexual offenders who commit a felony violation of the registry laws, if the court does not impose a prison sentence:

- For a first offense, a mandatory minimum term of 6 months;
- For a second offense, a mandatory minimum term of 1 year; and
- For a third or subsequent offense, a mandatory minimum term of 2 years.

The bill excludes mandatory community control with electronic monitoring for an offense relating to harboring a sexual predator or sexual offender who is in noncompliance with registration requirements.

If approved by the Governor, these provisions take effect July 1, 2018.

Vote: Senate 35-0; House 98-0

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CS/CS/SB 1392 — Criminal Justice

by Appropriations Committee; Criminal Justice Committee; and Senators Brandes, Perry, and Young

The bill creates a model of uniform criminal justice data collection. Specifically, the bill:

- Defines terms used in the bill as they relate to data collection;
- Requires the clerks of court, state attorneys, public defenders, county detention facility administrators, and the Department of Corrections to collect specified data on a biweekly basis and report it to the Florida Department of Law Enforcement (FDLE) on a monthly basis;
- Requires the FDLE to publish the data collected on the FDLE's website and make it searchable and accessible to the public;
- Provides that any clerk of the court or county detention facility that does not comply with the required data collection is ineligible to receive funding from the General Appropriations Act, any state grant program administered by the FDLE, or any other state agency for five years after the date of noncompliance;
- Requires additional information to be reported in the annual report for pretrial release programs;
- Digitizes the Criminal Punishment Code sentencing scoresheet; and
- Authorizes a pilot project in the Sixth Judicial Circuit for the purpose of improving criminal justice data transparency.

Additionally, the bill provides for the establishment of civil citation or similar prearrest diversion programs for adults and juveniles. The bill permits local communities and public or private educational institutions to adopt a model prearrest diversion program for adults and provides guidelines for the establishment of such programs. The bill requires a civil citation or similar prearrest diversion program for juveniles to be established in each judicial circuit in the state and outlines criteria that each civil citation or similar prearrest diversion program must specify in developing such program.

The bill requires the FDLE to adopt rules to provide for the expunction of a nonjudicial record of the arrest of a minor who has successfully completed a diversion program. The bill also requires each diversion program to submit data that identifies each minor participating in the diversion program to the Department of Juvenile Justice (DJJ). The DJJ must compile and semiannually publish the data on the department's website.

If approved by the Governor, these provisions take effect July 1, 2018.

Vote: Senate 36-1; House 116-0

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CS/SB 1552 — Juvenile Justice

by Appropriations Committee and Senator Bracy

The bill makes numerous changes relating to juvenile justice. Specifically, the bill:

- Removes the requirement that the proceeds from the “Invest in Children” license plate must be allocated based on each county’s proportionate share of the license plate annual use fee;
- Requires a prolific juvenile offender who violates conditions of his or her nonsecure detention to be held in secure detention until a detention hearing is held;
- Reenacts statutory authority (s. 985.672, F.S.) for the Department of Juvenile Justice (DJJ) to establish a direct-support organization (DSO) to provide assistance, funding, and support to assist the DJJ in furthering its goals; and
- Requires the secretary of DJJ to appoint members to the DSO’s board of directors according to the DSO’s bylaws.

The bill also makes the following changes, effective July 1, 2019:

- Revises the Detention Risk Assessment Instrument (DRAI) used to determine placement of a juvenile in detention care; and
- Replaces the term “nonsecure” with “supervised release” and makes conforming changes throughout ch. 985, F.S., to be consistent with terminology and operation of the revised DRAI.

If approved by the Governor, these provisions take effect July 1, 2018, except where otherwise provided.

Vote: Senate 37-0; House 77-37

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HB 6059 — Department of Corrections' Direct-Support Organization

by Rep. Plakon (SB 938 by Senator Bracy)

The bill removes the scheduled repeal date of the law authorizing the Department of Corrections (DOC) to establish a direct-support organization to provide assistance, funding, and promotional support for the DOC or staff within the correctional system in carrying out the core mission. The Corrections Foundation, Inc., is the direct-support organization designated by the DOC to provide assistance, funding, and support for the DOC and its staff.

If approved by the Governor, these provisions take effect July 1, 2018.

Vote: Senate 38-0; House 112-0

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HB 7029 — OGSR/Human Trafficking Expunction

by Oversight, Transparency and Administration Subcommittee and Rep. Edwards-Walpole and others (SB 7000 by Criminal Justice Committee)

The bill reenacts a current public records exception that protects from disclosure the court-ordered expunged criminal history records of human trafficking victims. Human trafficking is defined as the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploiting that person.

If approved by the Governor, these provisions take effect October 1, 2018.

Vote: Senate 37-0; House 113-0

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HB 7031 — OGSR/Criminal Justice Commission

by Oversight, Transparency and Administration Subcommittee and Rep. Burgess (SB 7002 by Criminal Justice Committee)

The bill reenacts a current public meetings exemption in s. 286.01141, F.S., which applies to those portions of a meeting of a duly constituted criminal justice commission at which members discuss active criminal intelligence information or active criminal investigative information that could foreseeably be considered, or is currently being considered by the commission. A “duly constituted criminal justice commission” is an advisory commission created by local ordinance whose membership is comprised of individuals from the private sector and the public sector and whose purpose is to examine local criminal justice issues.

Members of a duly constituted criminal justice commission must publicly disclose the fact that they discussed such information in a closed portion of a public meeting of the commission.

If approved by the Governor, these provisions take effect October 1, 2018.

Vote: Senate 37-0; House 113-0