

Tab 1	SB 504 by Rodriguez (CO-INTRODUCERS) Perry; (Similar to CS/H 00605) Expunction of Criminal History Records					
546484	A	S	RCS	CJ, Rodriguez	Delete L.27 - 28:	03/20 05:56 PM
Tab 2	SB 528 by Davis (CO-INTRODUCERS) Book; (Compare to CS/H 00537) Gain-time for Attempted Sexual Offenses					
852262	D	S		CJ, Davis	Delete everything after	03/17 03:06 PM
Tab 3	SB 618 by Yarborough; (Similar to H 00095) Rights of Law Enforcement Officers and Correctional Officers					
186046	D	S	RCS	CJ, Yarborough	Delete everything after	03/20 05:56 PM
653756	AA	S	RCS	CJ, Yarborough	Delete L.53 - 120:	03/20 05:56 PM
Tab 4	SB 764 by Simon; (Similar to CS/H 00319) Interference with Sporting or Entertainment Events					
922662	D	S	RCS	CJ, Simon	Delete everything after	03/20 05:56 PM
Tab 5	SB 1226 by Burgess; (Similar to CS/H 01359) Controlled Substances					
569834	D	S	RCS	CJ, Burgess	Delete everything after	03/20 05:56 PM
Tab 6	SB 1332 by Martin; (Similar to CS/H 01039) Missing Persons					
616726	A	S	RCS	CJ, Martin	btw L.56 - 57:	03/20 05:56 PM
Tab 7	SB 1334 by Martin; (Similar to CS/H 01375) Battery by Strangulation					
702232	A	S	RCS	CJ, Martin	Delete L.13 - 22:	03/20 05:56 PM
Tab 8	SB 1342 by Martin (CO-INTRODUCERS) Book; (Similar to H 01297) Capital Sexual Battery					
667084	A	S	RCS	CJ, Martin	Delete L.131 - 182:	03/20 05:56 PM
Tab 9	SB 1556 by Perry; (Similar to CS/H 01081) Contraband Forfeiture					

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Martin, Chair
Senator Bradley, Vice Chair

MEETING DATE: Monday, March 20, 2023

TIME: 3:30—6:00 p.m.

PLACE: Mallory Horne Committee Room, 37 Senate Building

MEMBERS: Senator Martin, Chair; Senator Bradley, Vice Chair; Senators Ingoglia, Perry, Pizzo, Polsky, Powell, and Yarborough

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 504 Rodriguez (Similar CS/H 605, Compare H 1273)	Expunction of Criminal History Records; Revising an eligibility criterion under which a person is eligible to petition a court to expunge a criminal history record if an indictment, information, or other charging document was dismissed by a court; expanding an exception to an eligibility requirement for expunction of a criminal history record to allow a prior expunction of a criminal history record granted for an offense committed when the person was a minor, etc. CJ 03/20/2023 Fav/CS ACJ FP	Fav/CS Yeas 8 Nays 0
2	SB 528 Davis (Compare CS/H 537)	Gain-time for Attempted Sexual Offenses; Eliminating the possibility of gain-time for persons convicted of attempting specified offenses, etc. CJ 03/20/2023 Temporarily Postponed ACJ FP	Temporarily Postponed
3	SB 618 Yarborough (Similar H 95)	Rights of Law Enforcement Officers and Correctional Officers; Providing rights of law enforcement officers and correctional officers relating to Brady Giglio lists; prohibiting a law enforcement officer or correctional officer from being discharged, suspended, demoted, or otherwise disciplined for certain reasons; requiring a prosecuting agency to adopt written policies for the maintenance of a Brady Giglio list; requiring a prosecuting agency to remove or retain the name and information of a law enforcement officer or correctional officer on a Brady Giglio list under certain circumstances, etc. CJ 03/20/2023 Fav/CS ACJ FP	Fav/CS Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Monday, March 20, 2023, 3:30—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 764 Simon (Similar CS/H 319)	Interference with Sporting or Entertainment Events; Prohibiting certain actions during covered sporting and entertainment events; providing criminal penalties; prohibiting a person from profiting or benefitting from violations; providing for forfeiture and distribution of profits from a violation, etc. CJ 03/20/2023 Fav/CS CM RC	Fav/CS Yeas 8 Nays 0
5	SB 1226 Burgess (Similar CS/H 1359)	Controlled Substances; Providing criminal penalties and a mandatory minimum term of imprisonment if a person sells, manufactures, or delivers, or possesses with intent to sell, manufacture, or deliver, specified substances or mixtures, and such substance or mixture has at least one specified attribute; providing enhanced criminal penalties and a mandatory minimum term of imprisonment if a person commits specified prohibited acts relating to controlled substances, and such substance or mixture has at least one specified attribute, etc. CJ 03/20/2023 Fav/CS ACJ FP	Fav/CS Yeas 5 Nays 3
6	SB 1332 Martin (Similar CS/H 1039)	Missing Persons; Adding the National Missing and Unidentified Persons System as a database for reports of missing children and missing adults, etc. CJ 03/20/2023 Fav/CS RC	Fav/CS Yeas 8 Nays 0
7	SB 1334 Martin (Similar CS/H 1375)	Battery by Strangulation; Prohibiting battery by strangulation; providing applicability, etc. CJ 03/20/2023 Fav/CS JU RC	Fav/CS Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Monday, March 20, 2023, 3:30—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 1342 Martin (Similar H 1297)	<p>Capital Sexual Battery; Revising how certain capital felonies are punished; requiring a court to conduct a separate sentencing proceeding to determine whether a defendant should be sentenced to death or life imprisonment without the possibility of parole upon the defendant's conviction or adjudication of guilt for a capital felony; requiring a recommendation to the court of a sentence of death if at least eight jurors determine that the defendant should be sentenced to death; requiring a recommendation to the court of a sentence of life imprisonment without the possibility of parole if fewer than eight jurors determine that the defendant should be sentenced to death, etc.</p> <p>CJ 03/20/2023 Fav/CS JU RC</p>	Fav/CS Yeas 8 Nays 0
9	SB 1556 Perry (Identical H 1081)	<p>Contraband Forfeiture; Authorizing a stay of proceedings subsequent to a finding of probable cause for forfeiture; revising a statement of policy relating to forfeiture proceedings; requiring a stay of forfeiture actions until final disposition of associated criminal charges; prohibiting specified agencies from referring, transferring, or otherwise relinquishing possession of property seized under state law to a federal agency for a specified purpose, etc.</p> <p>CJ 03/20/2023 Temporarily Postponed FP</p>	Temporarily Postponed
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 504

INTRODUCER: Criminal Justice Committee and Senator Rodriguez and others

SUBJECT: Expunction of Criminal History Records

DATE: March 20, 2023

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 504 amends s. 943.0585, F.S., to permit a person who has had a prior expunction granted for an offense that was committed when he or she was a minor to have another eligible record expunged. If the prior expunction was for an offense in which the minor was charged as an adult, the person is not eligible for a subsequent expunction. This bill also provides that the record is exempt from the 10 year sealing requirement.

Additionally, this bill specifies that a person is not eligible for expunction if the indictment, information, or other charging document in the case giving rise to the criminal history record was dismissed pursuant to s. 916.145 F.S.

Section 916.145, F.S., provides statutory guidelines for the dismissal of charges when a defendant is adjudicated incompetent to proceed due to mental illness.

This bill may have a negative indeterminate impact on the Florida Department of Law Enforcement (FDLE) and the courts. See Section V. Fiscal Impact Statement.

This bill is effective July 1, 2023.

II. Present Situation:

There are multiple types of relief that may be sought in order to seal or expunge a criminal history record. The public will not have access to a criminal history record that has been sealed or expunged. Certain government or related entities have access to records even after they are sealed. Most of the entities who have access to sealed records also have access to see whether a person has had an expunction. However, those entities do not have access to the expunged criminal history record without a court order.¹

Sealing and Expunction of Criminal History Records

A criminal history record includes any non-judicial record maintained by a criminal justice agency² that contains criminal history information.³ Criminal history information is information collected by criminal justice agencies and consists of identifiable descriptions of individuals and notations of arrests, detentions, indictments, informations, other formal criminal charges, and criminal dispositions.⁴

Expunction of a Criminal History Record

A person may have his or her criminal history record expunged under certain circumstances.⁵ When a record is expunged, the criminal justice agencies possessing such record must physically destroy or obliterate it. The FDLE maintains a copy of the record to evaluate subsequent requests for sealing or expunction, and to recreate the record in the event a court vacates the order to expunge.⁶ The criminal history record retained by the FDLE is confidential and exempt.⁷ Once the record is expunged, a person may lawfully deny or fail to acknowledge the arrests covered by the expunged record, subject to exceptions.⁸

Certificate of Eligibility

Before petitioning a court to expunge a criminal history record, a person must apply to the FDLE for a certificate of eligibility for expunction. The FDLE must issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person:

- Is eligible for expunction, as described above;

¹ *Florida Department of Law Enforcement Frequently Asked Questions*, Florida Department of Law Enforcement, available at http://www.fdle.state.fl.us/Seal-and-Expunge-Process/Frequently-Asked-Questions#Sealed_vs_Expunged (last visited March 13, 2023).

² Section 943.045(11), F.S., provides that criminal justice agencies include a court, the Florida Department of Law Enforcement (FDLE), the Department of Juvenile Justice, components of the Department of Children and Families, other governmental agencies that administrate criminal justice, and the investigations component of the Department of Financial Services.

³ Section 943.045(6), F.S.

⁴ Section 943.045(5), F.S.

⁵ Sections 943.0581, 943.0582, 943.0583, and 943.0585, F.S.

⁶ Section 943.045(16), F.S.

⁷ Section 943.0585(6)(a), F.S.

⁸ Section 943.0585(6), F.S.

- Has submitted to the FDLE a written certified statement from the appropriate state attorney or statewide prosecutor which confirms the criminal history record complies with specified criteria;⁹
- Has submitted to the FDLE a certified copy of the disposition of the charge to which the petition pertains; and
- Pays a \$75 processing fee to the FDLE.¹⁰

A certificate of eligibility for expunction is valid for 12 months after the date stamped on the certificate when issued by the FDLE.¹¹

Court Ordered Expunction

A court, in its discretion, may order the expunction of a person's criminal history record if the FDLE issues the person a certificate of eligibility for expunction.¹² The FDLE must issue a certificate of eligibility for court-ordered expunction to a person meeting all criteria.¹³ Generally, a person is eligible for expunction if:

- An indictment, information, or other charging document was not filed or issued in the case giving rise to the criminal history record.
- An indictment, information, or other charging document was filed or issued in the case giving rise to the criminal history record, but was dismissed or nolle prosequi by the State, was dismissed by the court, a judgment of acquittal was rendered, or a verdict of not guilty was rendered.
- The person is not seeking to expunge a criminal history record relating to a violation of certain enumerated offenses.
- The person has never, prior to filing the application for a certificate of eligibility, been either:
 - Adjudicated guilty of any criminal offense or comparable ordinance violation; or
 - Adjudicated delinquent of any felony or certain enumerated misdemeanors as a juvenile.
- The person has not been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to expunge pertains.
- The person has never secured a prior sealing or expunction, unless:
 - Expunction is sought of a criminal history record previously sealed for at least 10 years; and
 - The record was sealed because adjudication was withheld, or because a judgment of acquittal or verdict of not guilty was rendered.¹⁴

⁹ Section 943.0585(2)(a)2., F.S., Specified criteria include: An indictment, information, or other charging document was not filed or issued in the case giving rise to the criminal history record; An indictment, information, or other charging document was filed or issued in the case giving rise to the criminal history record, was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court or a judgment of acquittal was rendered, or a verdict of not guilty was rendered; The person has never been adjudicated guilty or delinquent for committing any felony or specified misdemeanors.

¹⁰ Section 943.0585(2)(a)1.-4., F.S.

¹¹ Section 943.0585(2), F.S.

¹² Section 943.0585(4), F.S.

¹³ Section 943.0585(2), F.S.

¹⁴ Section 943.0585(1), F.S.

A criminal history record is not eligible for court-ordered sealing or expunction if it relates to:

- Sexual misconduct (Sections 393.135, 394.4593, and 916.1075, F.S.).
- Illegal use of explosives (Chapter 552, F.S.).
- Terrorism (Section 775.30, F.S.).
- Murder (Sections 782.04, 782.065, and 782.09, F.S.).
- Manslaughter or homicide (Sections 782.07, 782.071, and 782.072, F.S.).
- Assault or battery of one family or household member by another family or household member¹⁵ (Sections 784.011 and 784.03, F.S.).
- Aggravated assault (Section 784.021, F.S.).
- Felony battery, domestic battery by strangulation, or aggravated battery (Sections 784.03, 784.041, and 784.045, F.S.).
- Stalking or aggravated stalking (Section 784.048, F.S.).
- Luring or enticing a child (Section 787.025, F.S.).
- Human trafficking (Section 787.06, F.S.).
- Kidnapping or false imprisonment (Sections 787.01 and 787.02, F.S.).
- Sexual battery, unlawful sexual activity with a minor, or female genital mutilation (Chapter 794, F.S.).
- Procuring a person under the age of 18 for prostitution (Section 796.03, F.S. (2013) (repealed by ch. 2014-160, s. 10, L.O.F.)).
- Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age (Section 800.04, F.S.).
- Arson (Section 806.01, F.S.).
- Burglary of a dwelling (Section 810.02, F.S.).
- Voyeurism or video voyeurism (Sections 810.14 and 810.145, F.S.).
- Robbery or robbery by sudden snatching (Sections 812.13 and 812.131, F.S.).
- Carjacking (Section 812.133, F.S.).
- Home invasion robbery (Section 812.135, F.S.).
- A violation of the Florida Communications Fraud Act (Section 817.034, F.S.).
- Abuse of an elderly person or disabled adult or aggravated abuse of an elderly person or disabled adult (Section 825.102, F.S.).
- Lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person (Section 825.1025, F.S.).
- Child abuse or aggravated child abuse (Section 827.03, F.S.).
- Sexual performance by a child (Section 827.071, F.S.).
- Offenses by public officers and employees (Chapter 839, F.S.).
- Certain acts in connection with obscenity (Section 847.0133, F.S.).
- A violation of the Computer Pornography and Child Exploitation Prevention Act (Section 893.0135, F.S.).
- Selling or buying of minors (Section 847.0145, F.S.).
- Aircraft piracy (Section 860.16, F.S.).

¹⁵ Section 741.28(3), F.S., defines family or household member as spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

- Manufacturing a controlled substance (Chapter 893, F.S.).
- Drug trafficking (Section 893.135, F.S.).
- Any violation specified as a predicate offense for registration as a sexual predator or sexual offender. (Sections 775.21 and 943.0535, F.S.).¹⁶

Other types of expunction include: lawful self-defense expunction;¹⁷ human trafficking victim expunction;¹⁸ automatic Juvenile expunction;¹⁹ early juvenile expunction;²⁰ administrative Expunction;²¹ and juvenile diversion program expunction.²²

Sealing of a Criminal History Record

When a criminal history record is sealed, it is preserved so that it is secure and inaccessible to any person who does not have a legal right to access the record or the information contained within the record.²³ A court may order a criminal history record sealed,²⁴ rendering it confidential and exempt from Florida's public records laws.²⁵ Only the following entities may access a sealed criminal history record:

- The subject of the record;
- His or her attorney;
- Criminal justice agencies for criminal justice purposes;
- Judges in the state courts system for assisting in their case-related decision-making responsibilities; and
- Certain enumerated entities²⁶ for licensing, access authorization, and employment purposes.²⁷

Certificate of Eligibility

To seal a record, a person must first apply to the Florida Department of Law Enforcement (FDLE) for a certificate of eligibility, which the FDLE must issue to a person who:

- Has submitted a certified copy of the charge disposition he or she seeks to seal;
- Is not seeking to seal a criminal history record relating to a violation of certain enumerated offenses;
- Has never, prior to filing the application for a certificate of eligibility, been either:

¹⁶ Section 943.0584, F.S.

¹⁷ Section 943.0578, F.S.

¹⁸ Section 943.0583, F.S.

¹⁹ Section 943.0515(1)(b)1., F.S.

²⁰ Section 943.0515(1)(b)2., F.S.

²¹ Section 943.0581, F.S.

²² Section 943.0582, F.S.

²³ Section 943.045(19), F.S.

²⁴ Section 943.059, F.S.

²⁵ Sections 943.059(6) and 119.07(1), F.S.; Art. I, s. 24(a), Fla. Const.

²⁶ Section 943.059(6)(b), F.S., provides that enumerated entities include criminal justice agencies, The Florida Bar, 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, the Department of Juvenile Justice, the Department of Education, a district school board, a university laboratory school, a charter school, a private or parochial school, a local governmental entity that licenses child care facilities, the Division of Insurance Agent and Agency Services within the Department of Financial Services, and the Bureau of License Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services.

²⁷ Sections 943.059(6)(a), F.S.

- Adjudicated guilty of any criminal offense or comparable ordinance violation; or
- Adjudicated delinquent of any felony or certain enumerated misdemeanors as a juvenile.
- Has not been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains;
- Has never secured a prior sealing or expunction;
- Is no longer under court supervision related to the disposition of the arrest or alleged criminal activity to which the petition to seal pertains; and
- Pay a \$75 processing fee to the FDLE.²⁸

Court Ordered Sealing

Upon receiving a certificate of eligibility from the FDLE, a person must petition the court to seal the record.²⁹ A complete petition contains both a valid certificate of eligibility, issued within the previous 12 months, and a sworn statement from the petitioner attesting to his or her eligibility.³⁰ It is solely within the court's discretion to grant or deny a petition to seal.³¹

Upon sealing of a criminal history record, the subject of the record may lawfully deny or fail to acknowledge the arrests covered by the sealed record, with exceptions for certain state employment positions, professional licensing purposes, purchasing a firearm, applying for a concealed weapons permit, seeking expunction, or if the subject is a defendant in a criminal prosecution.³²

Dismissal Incompetence to Proceed Due to Mental Illness

Section 916.145, F.S., provides that the charges against a defendant who has been adjudicated incompetent to proceed due to mental illness must be dismissed without prejudice to the state if the defendant remains incompetent to proceed for 5 continuous, uninterrupted years after such determination, unless the court in its order specifies:

- Its reason for believing that the defendant will become competent to proceed within the foreseeable future; and
- The time within which the defendant is expected to become competent to proceed.

The court may dismiss charges against a defendant who has been adjudicated incompetent to proceed due to mental illness 3 years after such determination, unless the charge is for a specified offense.³³

²⁸ Section 943.059(2), F.S.

²⁹ Section 943.059(3), F.S.

³⁰ Section 943.059(2)(b), F.S.

³¹ Section 943.059, F.S.

³² Sections 943.059(6)(b), F.S.

³³ Section 916.145(1)(a)-(u), F.S.; Specified offenses include: arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault with a deadly weapon; murder; manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, projecting, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; aggravated stalking; a forcible felony as defined in s. 776.08, F.S.; an offense where an element of the offense requires the possession, use, or discharge of a firearm; an attempt to commit any offense listed herein; an offense allegedly committed by a defendant who has had a forcible or violent felony conviction within the 5 years immediately preceding the date of arrest for the nonviolent felony sought to be dismissed; an offense allegedly committed by a defendant who, after having been found incompetent and placed under court supervision in a community-based program, is formally charged by a state attorney or the

The state may refile any charge that was dismissed pursuant to s. 916.145, F.S.

III. Effect of Proposed Changes:

The bill amends s. 943.0585, F.S., to permit a person who has had a prior expunction granted for an offense that was committed when he or she was a minor to have another eligible record expunged. If the prior expunction was for an offense in which the minor was charged as an adult, the person is not eligible for a subsequent expunction. This bill also provides that the record is exempt from the 10 year sealing requirement.

Additionally, this bill specifies that a person is not eligible for expunction if the indictment, information, or other charging document in the case giving rise to the criminal history record was dismissed pursuant to s. 916.145 F.S.

This bill is effective July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

The bill may have a negative indeterminate fiscal impact on the FDLE due to an increase in the number of criminal history records that are eligible for expunction. The cost may be offset by the \$75 processing fee that must be paid to the FDLE when a person applies for a certificate of eligibility.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 943.0585 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 20, 2023:

The CS specifies that a person is not eligible for expunction if the indictment, information, or other charging document in the case giving rise to the criminal history record was dismissed pursuant to s. 916.145 F.S.

B. Amendments:

None.



546484

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2023	.	
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	.	
	.	

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

Senate Amendment

Delete lines 27 - 28
and insert:
attorney or statewide prosecutor, or was dismissed by a court of
competent jurisdiction, unless the dismissal was pursuant to s.
916.145 or a judgment of acquittal was rendered

By Senator Rodriguez

40-01281A-23

2023504__

A bill to be entitled

An act relating to expunction of criminal history records; reenacting and amending s. 943.0585, F.S.; revising an eligibility criterion under which a person is eligible to petition a court to expunge a criminal history record if an indictment, information, or other charging document was dismissed by a court; expanding an exception to an eligibility requirement for expunction of a criminal history record to allow a prior expunction of a criminal history record granted for an offense committed when the person was a minor; providing applicability; providing an effective date.

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

Section 1. Paragraphs (b) and (g) of subsection (1) of section 943.0585, Florida Statutes, are amended, and paragraph (a) of subsection (2) and subsection (3) of that section are reenacted, to read:

943.0585 Court-ordered expunction of criminal history records.—

(1) ELIGIBILITY.—A person is eligible to petition a court to expunge a criminal history record if:

(b) An indictment, information, or other charging document was filed or issued in the case giving rise to the criminal history record, was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or ~~was dismissed by a court of competent jurisdiction or~~ a judgment of acquittal was rendered by a judge, or a verdict of not guilty was rendered by a judge

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or jury.

(g) The person 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:

1. 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. The prior expunction was granted for a criminal history record for an offense that was committed when he or she was a minor and the record is otherwise eligible for expunction. This subparagraph does not apply if the prior expunction was for an offense in which the minor was charged as an adult. The requirement for the record to have previously been sealed for a minimum of 10 years under paragraph (h) does not apply to this subparagraph.

(2) CERTIFICATE OF ELIGIBILITY.—Before petitioning a court to expunge a criminal history record, a person seeking to expunge a criminal history record must apply to the department for a certificate of eligibility for expunction. The department shall adopt rules to establish procedures for applying for and issuing a certificate of eligibility for expunction.

(a) 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:

1. Satisfies the eligibility criteria in paragraphs (1) (a)-(h) and is not ineligible under s. 943.0584.

2. Has submitted to the department a written certified statement from the appropriate state attorney or statewide

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prosecutor which confirms the criminal history record complies with the criteria in paragraph (1) (a) or paragraphs (1) (b) and (c).

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

4. Remits a \$75 processing fee to the department for placement in the Department of Law Enforcement Operating Trust Fund, unless the executive director waives such fee.

(3) PETITION.—Each petition to expunge a criminal history record must be accompanied by:

(a) A valid certificate of eligibility issued by the department.

(b) The petitioner's sworn statement that he or she:

1. Satisfies the eligibility requirements for expunction in subsection (1).

2. Is eligible for expunction to the best of his or her knowledge and does not have any other petition to seal or expunge a criminal history record pending before any court.

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

Section 2. This act shall take effect July 1, 2023.



The Florida Senate

Committee Agenda Request

To: Senator Jonathan Martin, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: February 17, 2023

I respectfully request that **Senate Bill #504**, relating to Expunction of Criminal History Records, be placed on the:

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

A handwritten signature in black ink, appearing to read "Ana Maria Rodriguez".

Senator Ana Maria Rodriguez
Florida Senate, District 40

3/20/23

Meeting Date

Criminal Justice

Committee

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

SB504

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Mary Smith-Santana

Phone

561-914-4803

Address

645 George Street

Email

msmithsantana@yahoo.com

Street

City

Tarpon Springs FL 34688

State

Zip

Speaking:



For



Against



Information

OR

Waive Speaking:



In Support



Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

3/20/23

Meeting Date

SENATE CRIMINAL JUSTICE

Committee

Deliver both copies of this form to
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SB 504

Bill Number or Topic

Amendment Barcode (if applicable)

Name CHRISTIAN MINOR

Phone (321) 223-4232

Address 2850 PABLO AVE.

Street

Email CMINOR@FJJA.ORG

TALLAHASSEE

City

FL

State

32308

Zip

Speaking: ☒ For ☐ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

FLORIDA JUVENILE JUSTICE ASSOCIATION

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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SB 504

Bill Number or Topic

2/20/23

Meeting Date

SCJ

Committee

Name

Katie Bohnett

Phone

850.339.9599

Address

1173 Seminole Dr

Email

kbohnnett@stateandjust.org

Street

TLH FL 32307

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

Alliancy for Safety & Justice

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1, [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Meeting Date

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Phone

Address

Street

Email

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

Broward County Commission

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

3/20/23

The Florida Senate
APPEARANCE RECORD

504

Meeting Date

Bill Number or Topic

SENATE CRIM JUSTICE

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Committee

Amendment Barcode (if applicable)

Name

AARON WAYT

FL ASSN OF CRIMINAL
DEFENSE LAWYERS

Phone

(407) 435-3194

Address

553 E TENN ST

Email

AARON@DONPUMP HREY.COM
~~ATTYWAYT@~~

Street

TLH

City

FL

State

32308

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

3-20-2023

Meeting Date

504

Bill Number or Topic

Criminal Justice

Committee

Deliver both copies of this form to
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Amendment Barcode (if applicable)

Name

Nice Millar

Phone

850-508-2971

Address

1385 Hogback mt Road

Street

Email

njm@amkids.org

Tryon NC

City

State

28782

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

AMkids

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

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S-001 (08/10/2021)

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3/20/23

Meeting Date

SB 504

Bill Number or Topic

Criminal Justice

Committee

Amendment Barcode (if applicable)

Name Laurette Philipson / Florida Cares

Phone 561-855-0833

Address 3048 Ponce De Leon Ave
Street

Email laurette@floridacarescharity.org

West Palm Beach, FL 33407
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

3/20/23

Meeting Date

SENATE CRIMINAL JUSTICE

Committee

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SB 504

Bill Number or Topic

Amendment Barcode (if applicable)

Name CHELSEA MURPHY Phone (954) 557-0016

Address 605 MIDDLEBROOKS CIRCLE Email CMURPHY@RIGHTONCRIME.COM
Street

TALLAHASSEE FL 32312
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

RIGHT ON CRIME

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

SB 504

Bill Number or Topic

3/20/2023

Meeting Date

CRIMINAL JUSTICE

Committee

Deliver both copies of this form to
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Amendment Barcode (if applicable)

Name

CHRISTIAN CANARA

Phone

(305) 608-4300

Address

PO Box 122

Email

Street

TALLAHASSEE, FL 32302

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

INSTITUTE FOR JUSTICE

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

March 20, 2023

Meeting Date

Criminal Justice

Committee

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
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504

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Barney Bishop III** Phone **850-510-9922**

Address **1454 Vieux Carre Drive** Email **Barney@BarneyBishop.com**
Street

Tallahassee **FL** **32308**
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Fla. Smart Justice
...

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 528

INTRODUCER: Senator Davis

SUBJECT: Gain-time for Attempted Sexual Offenses

DATE: March 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Parker	Stokes	CJ	Pre-meeting
2.			ACJ	
3.			FP	

I. Summary:

SB 528 amends s. 944.275, F.S., eliminating the possibility of gain-time for persons convicted of attempting specified offenses on or after July 1, 2023.

The bill provides an effective date of July 1, 2023.

II. Present Situation:

Gain-Time

Section 944.275, F.S., allows the Department of Corrections (DOC) to grant deductions from sentences in the form of gain-time in order to encourage satisfactory prisoner behavior, to provide incentive for prisoners to participate in productive activities, and to reward prisoners who perform outstanding deeds or services. There are currently three types of gain-time prisoners may earn: basic, incentive, and meritorious.¹

Currently, inmates serving sentences for specified convictions committed on or after October 1, 2014 are ineligible to earn incentive gain-time, including inmates serving sentences for attempt to commit, solicitation to commit or conspiracy to commit one of these underlying offenses. There are currently 791 inmates in DOC custody who are serving a sentence that includes an attempt, conspiracy or solicitation to commit one of the underlying offenses outlined in s. 944.275(4)(e), F.S., (777 inmates for attempt, 5 inmates for conspiracy and 9 inmates for solicitation).²

¹ Section 944.275, F.S.

² Department of Corrections, *2023 Agency Legislative Bill Analysis for HB 537*, at 2 (March 13, 2023) (on file with the Senate Committee on Criminal Justice).

As discussed below, the types of gain-time that a prisoner may earn, as well as the amount of gain-time a prisoner may earn, varies according to the offense date. Gain-time earned by a prisoner may also be forfeited for violations of state law or department rules.³

Incentive Gain-Time

The DOC may grant incentive gain-time for each month during which a prisoner works diligently, participates in training, uses time constructively, or otherwise engages in positive activities. The rate of incentive gain-time in effect on the date the prisoner committed the offense that resulted in his or her incarceration is the prisoner's rate of eligibility to earn incentive gain-time throughout the period of incarceration and cannot be altered by a subsequent change in the severity level of the offense for which the prisoner was sentenced. Section 944.275(4)(b), F.S., specifies that:

- For sentences imposed for offenses committed prior to January 1, 1994, up to 20 days per month of incentive gain-time may be granted;
- For sentences imposed for offenses committed on or after January 1, 1994, and before October 1, 1995:
 - Up to 25 days per month of incentive gain-time may be granted for offenses ranked in offense severity levels 1 through 7;
 - Up to 20 days per month of incentive gain-time may be granted for offenses ranked in offense severity levels 8, 9, and 10; and
- For sentences imposed for offenses committed after October 1, 1995, up to 10 days per month of incentive gain-time may be granted.

The DOC may grant, upon a recommendation of the education program manager, a one-time award of 60 additional days of incentive gain-time to a prisoner who is otherwise eligible and who successfully completes requirements for and is awarded a high school equivalency diploma or vocational certificate. A prisoner may not receive more than 60 days for educational attainment.⁴ The DOC may grant an additional six days of incentive gain-time if a prisoner attends and actively participates in 150 hours of adult basic education to attain basic and functional literacy.⁵

The DOC may not grant incentive gain-time for sentences imposed for the following offenses committed on or after October 1, 2014:

- Homicide occurring in the perpetration of or attempted perpetration of a sexual battery;
- Kidnapping of a child under the age of 13, and in the course of committing the offense, commits sexual battery against the child or lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition;
- False imprisonment of a child under the age of 13, and in the course of committing the offense commits sexual battery against the child or lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition;
- Sexual battery;
- Lewd or lascivious offenses upon or in the presence of persons less than 16 years of age;

³ Section 944.275, F.S.

⁴ Section 944.275(4)(d), F.S.

⁵ Section 944.801(3)(i)5., F.S. "Active participation" means at a minimum, that the inmate is attentive, responsive, cooperative, and completes assigned work.

- Lewd or lascivious offenses upon or in the presence of an elderly person or disabled person; or
- Transmission of certain images over a computer to a person who is less than 16 years of age.⁶

Basic Gain-Time

The DOC grants basic gain-time at the rate of 10 days for each month of each sentence imposed on a prisoner to encourage satisfactory behavior, subject to the following:

- Portions of any sentences to be served concurrently are treated as a single sentence when determining basic gain-time;
- Basic gain-time for a partial month is prorated on the basis of a 30-day month; and
- When a prisoner receives a new maximum sentence expiration date because of additional sentences imposed, basic gain-time is granted for the amount of time the maximum sentence expiration date was extended.⁷

Basic gain-time is awarded as a lump sum upon receipt into the custody of the DOC. Basic gain-time only applies to sentences imposed or offenses committed on or after July 1, 1978, and before January 1, 1994.⁸

The DOC may not grant basic gain-time to prisoners who are convicted of committing a sexual battery on or after October 1, 1992.⁹

Meritorious Gain-Time

The DOC may grant meritorious gain-time to a prisoner who performs some outstanding deed, such as saving a life or assisting in recapturing an escaped prisoner, or who in some manner performs an outstanding service that would merit the granting of additional deductions from the term of his or her sentence. The grant of meritorious gain-time may be from 1 to 60 days.¹⁰

Limitations on Earning Gain-Time

For sentences imposed for offenses committed on or after October 1, 1995, a prisoner may not earn any type of gain-time in an amount that would cause a sentence to expire, end, or terminate, or that would result in a prisoner's release, prior to serving a minimum of 85 percent of the sentence imposed.¹¹ Credits awarded by the court for time physically incarcerated are credited toward satisfaction of 85 percent of the sentence imposed. Except as provided by s. 944.275, F.S., a prisoner may not accumulate further gain-time awards at any point when the tentative release date is the same as that date at which the prisoner will have served 85 percent of the sentence imposed. If a prisoner is found to have violated state law or department rules, gain-time may be forfeited according to law.¹²

⁶ Section 944.275(4)(e), F.S.

⁷ Section 944.275(4)(a), F.S.

⁸ Section 944.275(6), F.S.

⁹ Section 794.011(7), F.S.

¹⁰ Section 944.275(4)(c), F.S.

¹¹ Section 944.275(4)(f), F.S.

¹² Sections 944.275(5) and 944.28, F.S.

State prisoners sentenced to life imprisonment must be incarcerated for the rest of their natural lives, unless granted pardon or clemency.¹³ Certain offenders are statutorily prohibited from earning gain-time:

- Prison releasee reoffenders must serve 100 percent of the court-imposed sentence and may not earn gain-time to shorten the length of incarceration.¹⁴
- Certain prisoners convicted of offenses involving the fleeing or attempting to elude a law enforcement officer are ineligible for statutory gain-time.¹⁵
- Prisoners convicted of committing or attempting to commit certain felonies while possessing or using a firearm or destructive device.¹⁶
- Prisoners convicted of committing or attempting to commit certain felonies while possessing or using a semiautomatic firearm and its high-capacity box magazine or a machine gun.¹⁷
- Prisoners convicted of battery on a law enforcement officer, firefighter, emergency medical providers, public transit employees or agents, or other specified officers while possessing a firearm or semiautomatic firearm and its high-capacity box magazine.¹⁸
- Prisoners convicted under the dangerous sexual felony offender statute.¹⁹

Forfeiture of Gain-Time

Florida law allows gain-time to be forfeited or withheld if a prisoner is found guilty of an infraction of state law or department rules.²⁰ A prisoner shall, without prior notice or hearing, forfeit all earned gain-time upon:

- Conviction for an escape committed before October 1, 2013;

¹³ *Id.*

¹⁴ Under s. 775.082(9), F.S., a defendant may be designated a “prison releasee offender” if within three years of being released from incarceration commits or attempts to commit: treason, murder, manslaughter, sexual battery, carjacking, home-invasion robbery, robbery, arson, kidnaping, aggravated assault with a deadly weapon, aggravated battery, aggravated stalking, aircraft piracy, unlawful throwing, placing, or discharging of a destructive device or bomb, any felony that involves the use or threat of physical force or violence against an individual, armed burglary, burglary of a dwelling, or burglary of an occupied structure, or any felony violation of ss. 790.07, 800.04, 827.03, 827.071, or 847.0135(5), F.S. A “prison releasee offender” also means any defendant who commits or attempts to commit one of the aforementioned offenses while serving a prison sentence or on escape status from a correctional facility.

¹⁵ Section 316.1935(6), F.S.

¹⁶ Section 775.087(2), F.S.

¹⁷ Section 775.087(3), F.S.

¹⁸ Section 784.07(3), F.S.

¹⁹ Section 794.0115, F.S.

²⁰ Section 944.275(5), F.S.

- Revocation of parole,²¹ conditional release,²² control release,²³ or clemency;²⁴
- Revocation of conditional medical release,²⁵ if the revocation was for any reason other than improvement in medical condition; or
- Revocation of provisional release supervision,²⁶ or the revocation of probation²⁷ or community control²⁸ if such supervision was imposed for a crime committed on or after October 1, 1989.²⁹

To declare a forfeiture, a written charge must be prepared, which specifies each instance of misconduct and the approximate date of each instance.³⁰ The prisoner must be given a copy of the charge, along with a notice of hearing before a disciplinary committee. The prisoner must be present at the hearing.³¹ During the hearing, the prisoner:

- Will be read the charge, asked if he or she understands the charge, and explained the range of penalties that could be imposed if there is a finding of guilt;
- Will be asked if staff assistance is required or desired for the hearing;
- For minor violations, will be advised that he or she may request the charge be referred to the disciplinary team; and

²¹ Parole is the release of a prisoner, prior to the expiration of the prisoner's court-imposed sentence with a period of supervision to be successfully completed by compliance with the conditions and terms of the release agreement ordered by the Florida Commission on Offender Review. Parole is only available to prisoners whose crimes were committed prior to October 1, 1983, with exceptions. *See* Florida Commission on Offender Review, *Release Types: Parole*, available at <https://www.fcor.state.fl.us/release-types.shtml> (last visited March 14, 2023).

²² Section 947.1405, F.S., requires certain violent prisoners who have also served a prior felony commitment at a federal or state correctional institution or who are habitual offenders, violent habitual offenders, violent career criminals, or court-designated sexual offenders to be released under supervision subject to specified terms and conditions upon reaching the tentative release date or provisional release date, as established by the DOC. *See also* Florida Commission on Offender Review, *Release Types: Post Release*, available at <https://www.fcor.state.fl.us/postrelease.shtml#conditionalRelease> (last visited March 14, 2023).

²³ Control release is an administrative function to manage the state's prison population within total capacity. The program, administered by the Florida Commission on Offender Review, through the Control Release Authority, maintains the prison population between 99 and 100 percent of its total capacity. Section 947.146, F.S.

²⁴ Article IV, Section 8 of the Florida Constitution authorizes a process to provide the means through which convicted individuals may be considered for relief from punishment and seek restoration of their civil rights. The clemency function is an act of mercy that absolves an individual from all, or any part, of the punishment that the law imposes. The power to grant clemency is vested in the Governor with the agreement of two cabinet members. The Governor also has the sole power to deny clemency. Florida Commission on Offender Review, *Clemency*, available at <https://www.fcor.state.fl.us/clemencyOverview.shtml> (last visited March 14, 2023).

²⁵ Section 947.149, F.S., authorizes the Florida Commission on Offender Review to grant a conditional medical release of a prisoner if, because of an existing medical or physical condition, the prisoner is determined by the department to be permanently incapacitated or terminally ill and the prisoner does not constitute a danger to herself or himself or others.

²⁶ Under the former s. 944.277, F.S., which was repealed by ch. 93-406, s. 32, L.O.F., the Secretary of Corrections was authorized to grant certain inmates with provisional credits when the population of the correctional system reached 98 percent of lawful capacity, which advanced the release date for such inmates.

²⁷ Section 948.001(8), F.S., defines "probation" as a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03, F.S.

²⁸ Section 948.001(3), F.S., defines "community control" as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or non-institutional residential placement and specific sanctions are imposed and enforced.

²⁹ Rule 33-601.104, F.A.C.

³⁰ Section 944.28(2)(c), F.S.

³¹ Rule 33-601.307(1)(b), F.A.C., provides instances in which the prisoner does not have to attend the hearing and procedures if the prisoner refuses to attend the hearing or is disruptive.

- Will be read the statement of facts and be asked to plea.³²

If the prisoner pleads guilty, no further action is needed. If the prisoner pleads not guilty, evidence, including witness statements, is to be presented. The prisoner may make only an oral closing statement concerning the infraction under consideration at the hearing. If a prisoner refuses to enter a plea, it is treated as a “not guilty” plea.³³

A prisoner may forfeit all or part of gain-time earned if after the hearing, the prisoner is found to have:

- Violated a penal law of this state, or any rule of the DOC or institution;
- Threatened or knowingly endangered the life or physical well-being of another;
- Refused in any way to carry out or obey lawful instructions;
- Neglected to perform the work, duties, and tasks assigned in a faithful, diligent, industrious, orderly, and peaceful manner; or
- Escaped on or after October 1, 2013.³⁴

The DOC has the discretion to restore all or part of any gain-time that was forfeited due to disciplinary action if the prisoner has performed positively over a period of time, and it appears that the prisoner will continue to perform positively without further violation of the DOC’s rules or state laws.³⁵

Sentence Expiration and Release Dates

The DOC must establish a maximum sentence expiration date for each prisoner who is committed to the DOC to serve a term of years. The maximum sentence expiration date is the date on which the sentence(s) imposed on the prisoner will expire. The DOC must reduce the total time to be served by any time lawfully credited.³⁶

The DOC must also establish a tentative release date for each prisoner sentenced to a term of years. The tentative release date is the date on which the prisoner is projected to be released from custody based on the amount of gain-time earned or forfeited. The initial tentative release date is established by deducting basic gain-time from the maximum sentence expiration date.³⁷ Other gain-time is applied when earned or restored, to make the tentative release date earlier and forfeited gain-time is applied to make the tentative release date later.³⁸

A prisoner who has served his or her time, as reduced by gain-time deductions, must be released and placed under further supervision and control of the DOC.³⁹

³² Rule 33-601.307(1)(c)-(f), F.A.C.

³³ Rule 33-601.307(g), F.A.C.

³⁴ *Supra* note 29.

³⁵ Rule 33-601.105, F.A.C.

³⁶ Section 944.275(2), F.S.

³⁷ Basic gain-time only applies to prisoners serving sentences imposed or for offenses committed on or after July 1, 1978, and before January 1, 1994.

³⁸ Section 944.275(3), F.S.

³⁹ Section 944.291, F.S. Prisoners serving sentences imposed for offenses committed on or after October 1, 1995, must serve at minimum 85 percent of the imposed sentence.

Fla. Dept. of Corrections v. Gould

An inmate convicted of attempted sexual battery on a child under the age of 12 filed a writ of mandamus seeking to compel the DOC, to exercise its discretion and consider him as eligible for incentive gain-time, retrospectively and for the remainder of his sentence. Gould alleged that a conviction for criminal attempt was not excluded from the award of gain-time by statute because a conviction for a criminal attempt is a separate and distinct crime than the underlying offense.⁴⁰

The First District Court of Appeal (DCA), receded from previous decisions which held that a conviction for an attempted crime was a conviction for the underlying offense modified by the attempt statute in s. 777.04, F.S., and ruled that a conviction for an attempt was a separate and distinct offense.⁴¹ Thus, a person convicted of attempting to commit a crime that would otherwise be ineligible for the award of incentive gain-time is eligible for the award of gain-time.⁴² The DOC appealed the decision of the DCA, and that matter is pending before the Florida Supreme Court in Supreme Court Case No. SC22-1207.

III. Effect of Proposed Changes:

The bill amends s. 944.275, F.S., eliminating the possibility of gain-time for persons convicted of attempting specified offenses on or after July 1, 2023. For sentences imposed for offenses committed on or after July 1, 2023, the department may not grant incentive gain-time if the offense is a violation of an attempted violation of:

- Section 782.05(1)(a)2.c. F.S., Attempted felony murder occurring when a person perpetrates or attempts to perpetrate any felony enumerated in s. 782.04(3), F.S., and who commits, aids, or abets an intentional act that is not an essential element of the felony and that could, but does not, cause the death of another.
- Section 787.01(3)(a)2. Or 3., F.S., Kidnapping of a child under the age of 13, and in the course of committing the offense, commits sexual battery against the child or lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition.
- Section 787.02(3)(a)2. or 3., F.S., False imprisonment of a child under the age of 13, and in the course of committing the offense commits sexual battery against the child or lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition.
- Section 794.011, F.S., excluding s. 794.011(10), F.S., Sexual battery.
- Section 800.04, F.S., Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age occurring when a person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator, commits lewd or lascivious molestation.
- Section 825.1025, F.S., Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person occurring when a person intentionally touches in a lewd or

⁴⁰ *Fla. Dept. of Corrections v. Gould*, 344 So.3d 496 (Fla. 1st DCA 2022).

⁴¹ *Id.*

⁴² *Id.*

lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of an elderly person or disabled person when the person knows or reasonably should know that the elderly person or disabled person either lacks the capacity to consent or fails to give consent.

- Section 847.0135(5), F.S., Transmission of certain images over a computer to a person who is less than 16 years of age.

Under this bill, the DOC would continue to be prohibited from awarding incentive gain-time to a person who is convicted of committing an offense that is currently ineligible for the award of gain-time.

The bill provides an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

There will be no impact on the DOC's inmate and supervision population. However, the Office of Information Technology anticipates minimal technology impact, with the amount being indeterminate.⁴³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 944.275 of the Florida Statute.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

⁴³ Department of Corrections, *2023 Agency Legislative Bill Analysis for HB 537*, at 2 (March 13, 2023) (on file with the Senate Committee on Criminal Justice).



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LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (7) of section 794.011, Florida
Statutes, is amended to read:

794.011 Sexual battery.—

(7) (a) A person who is convicted of committing a sexual
battery on or after October 1, 1992, is not eligible for basic
gain-time under s. 944.275.



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(b) Notwithstanding paragraph (a), for sentences imposed for offenses committed on or after July 1, 2023, a person who is convicted of committing or attempting, soliciting, or conspiring to commit a sexual battery in violation of this section is not eligible for basic gain-time under s. 944.275.

(c) This subsection may be cited as the "Junny Rios-Martinez, Jr. Act of 1992."

Section 2. Paragraph (e) of subsection (4) of section 944.275, Florida Statutes, is amended, and paragraph (b) of that subsection is republished, to read:

944.275 Gain-time.—

(4)

(b) For each month in which an inmate works diligently, participates in training, uses time constructively, or otherwise engages in positive activities, the department may grant incentive gain-time in accordance with this paragraph. The rate of incentive gain-time in effect on the date the inmate committed the offense which resulted in his or her incarceration shall be the inmate's rate of eligibility to earn incentive gain-time throughout the period of incarceration and shall not be altered by a subsequent change in the severity level of the offense for which the inmate was sentenced.

1. For sentences imposed for offenses committed prior to January 1, 1994, up to 20 days of incentive gain-time may be granted. If granted, such gain-time shall be credited and applied monthly.

2. For sentences imposed for offenses committed on or after January 1, 1994, and before October 1, 1995:

a. For offenses ranked in offense severity levels 1 through



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7, under former s. 921.0012 or former s. 921.0013, up to 25 days of incentive gain-time may be granted. If granted, such gain-time shall be credited and applied monthly.

b. For offenses ranked in offense severity levels 8, 9, and 10, under former s. 921.0012 or former s. 921.0013, up to 20 days of incentive gain-time may be granted. If granted, such gain-time shall be credited and applied monthly.

3. For sentences imposed for offenses committed on or after October 1, 1995, the department may grant up to 10 days per month of incentive gain-time.

(e) 1. Notwithstanding subparagraph (b)3., for sentences imposed for offenses committed on or after October 1, 2014, and before July 1, 2023, the department may not grant incentive gain-time if the offense is a violation of s. 782.04(1)(a)2.c.; s. 787.01(3)(a)2. or 3.; s. 787.02(3)(a)2. or 3.; s. 794.011, excluding s. 794.011(10); s. 800.04; s. 825.1025; or s. 847.0135(5).

2. Notwithstanding subparagraph (b)3., for sentences imposed for offenses committed on or after July 1, 2023, the department may not grant incentive gain-time if the offense is for committing or attempting, soliciting, or conspiring to commit a violation of s. 782.04(1)(a)2.c.; s. 787.01(3)(a)2. or 3.; s. 787.02(3)(a)2. or 3.; s. 794.011, excluding s. 794.011(10); s. 800.04; s. 825.1025; or s. 847.0135(5).

Section 3. Paragraph (e) of subsection (2) of section 948.05, Florida Statutes, is amended, and paragraph (f) is added to that subsection, to read:

948.05 Court to admonish or commend probationer or offender in community control; graduated incentives.—



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(2) The department shall implement a system of graduated incentives to promote compliance with the terms of supervision, encourage educational achievement and stable employment, and prioritize the highest levels of supervision for probationers or offenders presenting the greatest risk of recidivism.

(e) A probationer or offender in community control who commits a subsequent violation of probation may forfeit any previously earned probation incentive, as determined appropriate by his or her probation officer.

(f) A probationer or offender in community control who is placed under supervision for committing or attempting, soliciting, or conspiring to commit a violation of any felony offense described in s. 775.21(4)(a)1.a. or b. or s. 943.0435(1)(h)1.a., or who qualifies as a violent felony offender of special concern under s. 948.06(8)(b) is not eligible for any reduction of his or her term of supervision under this section.

Section 4. Section 948.30, Florida Statutes, is amended to read:

948.30 Additional terms and conditions of probation or community control for certain sex offenses.—Conditions imposed pursuant to this section do not require oral pronouncement at the time of sentencing and shall be considered standard conditions of probation or community control for offenders specified in this section.

(1) Effective for probationers or community controllees whose crime was committed on or after October 1, 1995, and who are placed under supervision for a violation of chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, or whose



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crime was committed on or after July 1, 2021, and who are placed under supervision for a violation of s. 787.06(3)(b), (d), (f), or (g), or whose crime was committed on or after July 1, 2023, and who are placed under supervision for attempting, soliciting, or conspiring to commit a violation of s. 787.06(3)(b), (d), (f), or (g); chapter 794; s. 800.04; s. 827.071; s. 847.0135(5); or s. 847.0145, the court must impose the following conditions in addition to all other standard and special conditions imposed:

(a) A mandatory curfew from 10 p.m. to 6 a.m. The court may designate another 8-hour period if the offender's employment precludes the above specified time, and the alternative is recommended by the Department of Corrections. If the court determines that imposing a curfew would endanger the victim, the court may consider alternative sanctions.

(b) If the victim was under the age of 18, a prohibition on living within 1,000 feet of a school, child care facility, park, playground, or other place where children regularly congregate, as prescribed by the court. The 1,000-foot distance shall be measured in a straight line from the offender's place of residence to the nearest boundary line of the school, child care facility, park, playground, or other place where children congregate. The distance may not be measured by a pedestrian route or automobile route. A probationer or community controllee who is subject to this paragraph may not be forced to relocate and does not violate his or her probation or community control if he or she is living in a residence that meets the requirements of this paragraph and a school, child care facility, park, playground, or other place where children



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regularly congregate is subsequently established within 1,000 feet of his or her residence.

(c) Active participation in and successful completion of a sex offender treatment program with qualified practitioners specifically trained to treat sex offenders, at the probationer's or community controllee's own expense. If a qualified practitioner is not available within a 50-mile radius of the probationer's or community controllee's residence, the offender shall participate in other appropriate therapy.

(d) A prohibition on any contact with the victim, directly or indirectly, including through a third person, unless approved by the victim, a qualified practitioner in the sexual offender treatment program, and the sentencing court.

(e) If the victim was under the age of 18, a prohibition on contact with a child under the age of 18 except as provided in this paragraph. The court may approve supervised contact with a child under the age of 18 if the approval is based upon a recommendation for contact issued by a qualified practitioner who is basing the recommendation on a risk assessment. Further, the sex offender must be currently enrolled in or have successfully completed a sex offender therapy program. The court may not grant supervised contact with a child if the contact is not recommended by a qualified practitioner and may deny supervised contact with a child at any time. When considering whether to approve supervised contact with a child, the court must review and consider the following:

1. A risk assessment completed by a qualified practitioner. The qualified practitioner must prepare a written report that must include the findings of the assessment and address each of



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the following components:

- a. The sex offender's current legal status;
- b. The sex offender's history of adult charges with apparent sexual motivation;
- c. The sex offender's history of adult charges without apparent sexual motivation;
- d. The sex offender's history of juvenile charges, whenever available;
- e. The sex offender's offender treatment history, including consultations with the sex offender's treating, or most recent treating, therapist;
- f. The sex offender's current mental status;
- g. The sex offender's mental health and substance abuse treatment history as provided by the Department of Corrections;
- h. The sex offender's personal, social, educational, and work history;
- i. The results of current psychological testing of the sex offender if determined necessary by the qualified practitioner;
- j. A description of the proposed contact, including the location, frequency, duration, and supervisory arrangement;
- k. The child's preference and relative comfort level with the proposed contact, when age appropriate;
- l. The parent's or legal guardian's preference regarding the proposed contact; and
- m. The qualified practitioner's opinion, along with the basis for that opinion, as to whether the proposed contact would likely pose significant risk of emotional or physical harm to the child.



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The written report of the assessment must be given to the court;

2. A recommendation made as a part of the risk assessment report as to whether supervised contact with the child should be approved;

3. A written consent signed by the child's parent or legal guardian, if the parent or legal guardian is not the sex offender, agreeing to the sex offender having supervised contact with the child after receiving full disclosure of the sex offender's present legal status, past criminal history, and the results of the risk assessment. The court may not approve contact with the child if the parent or legal guardian refuses to give written consent for supervised contact;

4. A safety plan prepared by the qualified practitioner, who provides treatment to the offender, in collaboration with the sex offender, the child's parent or legal guardian, if the parent or legal guardian is not the sex offender, and the child, when age appropriate, which details the acceptable conditions of contact between the sex offender and the child. The safety plan must be reviewed and approved by the court; and

5. Evidence that the child's parent or legal guardian understands the need for and agrees to the safety plan and has agreed to provide, or to designate another adult to provide, constant supervision any time the child is in contact with the offender.

The court may not appoint a person to conduct a risk assessment and may not accept a risk assessment from a person who has not demonstrated to the court that he or she has met the requirements of a qualified practitioner as defined in this



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section.

(f) If the victim was under age 18, a prohibition on working for pay or as a volunteer at any place where children regularly congregate, including, but not limited to, schools, child care facilities, parks, playgrounds, pet stores, libraries, zoos, theme parks, and malls.

(g) Unless otherwise indicated in the treatment plan provided by a qualified practitioner in the sexual offender treatment program, a prohibition on viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material, including telephone, electronic media, computer programs, or computer services that are relevant to the offender's deviant behavior pattern.

(h) Effective for probationers and community controllees whose crime is committed on or after July 1, 2005, a prohibition on accessing the Internet or other computer services until a qualified practitioner in the offender's sex offender treatment program, after a risk assessment is completed, approves and implements a safety plan for the offender's accessing or using the Internet or other computer services.

(i) A requirement that the probationer or community controllee must submit a specimen of blood or other approved biological specimen to the Department of Law Enforcement to be registered with the DNA data bank.

(j) A requirement that the probationer or community controllee make restitution to the victim, as ordered by the court under s. 775.089, for all necessary medical and related professional services relating to physical, psychiatric, and psychological care.



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(k) Submission to a warrantless search by the community control or probation officer of the probationer's or community controllee's person, residence, or vehicle.

(2) Effective for a probationer or community controllee whose crime was committed on or after October 1, 1997, and who is placed on community control or sex offender probation for a violation of chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, or whose crime was committed on or after July 1, 2021, and who is placed on community control or sex offender probation for a violation of s. 787.06(3)(b), (d), (f), or (g), or whose crime was committed on or after July 1, 2023, and who is placed on community control or sex offender probation for attempting, soliciting, or conspiring to commit a violation of s. 787.06(3)(b), (d), (f), or (g); chapter 794; s. 800.04; s. 827.071; s. 847.0135(5); or s. 847.0145, in addition to any other provision of this section, the court must impose the following conditions of probation or community control:

(a) As part of a treatment program, participation at least annually in polygraph examinations to obtain information necessary for risk management and treatment and to reduce the sex offender's denial mechanisms. A polygraph examination must be conducted by a polygrapher who is a member of a national or state polygraph association and who is certified as a postconviction sex offender polygrapher, where available, and shall be paid for by the probationer or community controllee. The results of the polygraph examination shall be provided to the probationer's or community controllee's probation officer and qualified practitioner and shall not be used as evidence in court to prove that a violation of community supervision has



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occurred.

(b) Maintenance of a driving log and a prohibition against driving a motor vehicle alone without the prior approval of the supervising officer.

(c) A prohibition against obtaining or using a post office box without the prior approval of the supervising officer.

(d) If there was sexual contact, a submission to, at the probationer's or community controllee's expense, an HIV test with the results to be released to the victim or the victim's parent or guardian.

(e) Electronic monitoring when deemed necessary by the community control or probation officer and his or her supervisor, and ordered by the court at the recommendation of the Department of Corrections.

(3) Effective for a probationer or community controllee whose crime was committed on or after September 1, 2005, and who:

(a) Is placed on probation or community control for a violation of chapter 794; s. 800.04(4), (5), or (6); s. 827.071; or s. 847.0145, or is placed on probation or community control on or after July 1, 2023, for attempting, soliciting, or conspiring to commit a violation of chapter 794; s. 800.04(4), (5), or (6); s. 827.071; or s. 847.0145, and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older;

(b) Is designated a sexual predator pursuant to s. 775.21; or

(c) Has previously been convicted of a violation of chapter 794; s. 800.04(4), (5), or (6); s. 827.071; or s. 847.0145



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and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older, the court must order, in addition to any other provision of this section, mandatory electronic monitoring as a condition of the probation or community control supervision.

(4) In addition to all other conditions imposed, for a probationer or community controllee who is subject to supervision for a crime that was committed on or after May 26, 2010, and who has been convicted at any time of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses listed in s. 943.0435(1)(h)1.a.(I), or a similar offense in another jurisdiction, against a victim who was under the age of 18 at the time of the offense; if the offender has not received a pardon for any felony or similar law of another jurisdiction necessary for the operation of this subsection, if a conviction of a felony or similar law of another jurisdiction necessary for the operation of this subsection has not been set aside in any postconviction proceeding, or if the offender has not been removed from the requirement to register as a sexual offender or sexual predator pursuant to s. 943.04354, the court must impose the following conditions:

(a) A prohibition on visiting schools, child care facilities, parks, and playgrounds, without prior approval from the offender's supervising officer. The court may also designate additional locations to protect a victim. The prohibition ordered under this paragraph does not prohibit the offender from visiting a school, child care facility, park, or playground for



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the sole purpose of attending a religious service as defined in s. 775.0861 or picking up or dropping off the offender's children or grandchildren at a child care facility or school.

(b) A prohibition on distributing candy or other items to children on Halloween; wearing a Santa Claus costume, or other costume to appeal to children, on or preceding Christmas; wearing an Easter Bunny costume, or other costume to appeal to children, on or preceding Easter; entertaining at children's parties; or wearing a clown costume; without prior approval from the court.

(5) Effective for a probationer or community controllee whose crime was committed on or after October 1, 2014, and who is placed on probation or community control for a violation of chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, or whose crime was committed on or after July 1, 2023, and who is placed on probation or community control for attempting, soliciting, or conspiring to commit a violation of chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, in addition to all other conditions imposed, the court must impose a condition prohibiting the probationer or community controllee from viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material unless otherwise indicated in the treatment plan provided by a qualified practitioner in the sexual offender treatment program. Visual or auditory material includes, but is not limited to, telephone, electronic media, computer programs, and computer services.

Section 5. This act shall take effect July 1, 2023.



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===== 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 custody and supervision of
specified offenders; amending s. 794.011, F.S.;
excluding certain offenders from eligibility to
receive basic gain-time; amending s. 944.275, F.S.;
excluding certain offenders from eligibility to
receive incentive gain-time; amending s. 948.05, F.S.;
excluding certain offenders from eligibility for
specified reductions to a term of supervision;
amending s. 948.30, F.S.; requiring a court to impose
additional conditions of supervision on specified
offenders; providing an effective date.

By Senator Davis

5-01068-23

2023528__

A bill to be entitled

An act relating to gain-time for attempted sexual offenses; amending s. 944.275, F.S.; eliminating the possibility of gain-time for persons convicted of attempting specified offenses; providing an effective date.

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

Section 1. Paragraph (e) of subsection (4) of section 944.275, Florida Statutes, is amended to read:

944.275 Gain-time.—

(4)

(e) Notwithstanding subparagraph (b)3.,

1. For sentences imposed for offenses committed on or after October 1, 2014, and before July 1, 2023, the department may not grant incentive gain-time if the offense is a violation of s. 782.04(1)(a)2.c.; s. 787.01(3)(a)2. or 3.; s. 787.02(3)(a)2. or 3.; s. 794.011, excluding s. 794.011(10); s. 800.04; s. 825.1025; or s. 847.0135(5).

2. For sentences imposed for offenses committed on or after July 1, 2023, the department may not grant incentive gain-time if the offense is a violation or an attempted violation of s. 782.04(1)(a)2.c.; s. 787.01(3)(a)2. or 3.; s. 787.02(3)(a)2. or 3.; s. 794.011, excluding s. 794.011(10); s. 800.04; s. 825.1025; or s. 847.0135(5).

Section 2. This act shall take effect July 1, 2023.



2023 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Corrections

<u>BILL INFORMATION</u>	
BILL NUMBER:	HB 537
BILL TITLE:	Gain-time for Attempted Sexual Offenses
BILL SPONSOR:	Representative Silvers
EFFECTIVE DATE:	July 1, 2023

<u>COMMITTEES OF REFERENCE</u>
1) Criminal Justice Subcommittee
2) Justice Appropriations Subcommittee
3) Judiciary Committee
4)
5)

<u>CURRENT COMMITTEE</u>

<u>SIMILAR BILLS</u>	
BILL NUMBER:	
SPONSOR:	

<u>PREVIOUS LEGISLATION</u>	
BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	SB 528
SPONSOR:	Senator Davis

Is this bill part of an agency package?
No.

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	March 13, 2023
LEAD AGENCY ANALYST:	Michelle Palmer
ADDITIONAL ANALYST(S):	Mary Le
LEGAL ANALYST:	Ryan Orbe
FISCAL ANALYST:	Tommy Milito

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill amends section 944.275, Florida Statutes, to eliminate the possibility of incentive gain-time for persons convicted of committing or attempting to commit specified offenses with an offense date on or after July 1, 2023; provides an effective date.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

In 2014, the Legislature made significant changes to the gain-time law for sex offenders by amending, s. 944.275 F.S. to eliminate incentive gain-time for certain sex related offenses. Effective October 1, 2014, s. 944.275(4)(e), F.S., was added, providing for a gain-time prohibition for persons convicted of committing offenses which are violations of: s. 782.04(1)(a)2.c., F.S., (Murder committed during perpetration of Sexual Battery) 787.01(3)(a) 2. or 3., (Kidnapping of a Child under 13 years old with Sexual Battery or Lewd & Lascivious Offenses), s. 787.02 (3)(a) 2. or 3., (False Imprisonment of a Child under 13 years old with Sexual Battery or Lewd & Lascivious Offenses), s. 794.011, F.S., excluding s. 794.011(10), F.S., (Sexual Battery, excluding Falsely Accusing Certain Government Employees of Sexual Battery), s. 800.04, F.S., (Lewd or Lascivious Offenses Committed Upon or in the Presence of Persons Less than 16 years old), s. 825.1025, F.S., (Lewd or Lascivious Offenses Committed Upon or in the Presence of an Elderly or Disabled Person), and s. 847.0135(5), F.S., (Lewd or Lascivious Exhibition via Computer With a Victim Under 16 years old).

Currently, inmates serving sentences for those convictions enumerated in s. 944.275(4)(e), F.S., committed on or after October 1, 2014 are ineligible to earn incentive gain-time, including inmates serving sentences for attempt to commit, solicitation to commit or conspiracy to commit one of these underlying offenses. There are currently 791 inmates in Department custody who are serving a sentence that includes an attempt, conspiracy or solicitation to commit one of the underlying offenses outlined in s. 944.275(4)(e), F.S., (777 inmates for attempt, 5 inmates for conspiracy and 9 inmates for solicitation).

It should be noted there is litigation pending in the Florida Supreme Court, relating to gain-time eligibility (Florida Department of Corrections v. Gould, 344 So.3d 496, 47 Fla. L. Weekly [D1273a](#) & [D1708b](#) (Fla. 1DCA 2022). Supreme Court Case No. SC22-1207 (Florida Department of Corrections v. Gould). This case specifically deals with attempted sexual battery but may have a broader impact on the current application of this statute.

2. EFFECT OF THE BILL:

The bill adds s. 944.275(4)(e)(2), F.S., to specifically prohibit incentive gain-time for violations or attempted violations of the offenses specified under this subsection. This new language would ensure that those persons convicted for attempted violations of the enumerated offenses would not be eligible for incentive gain-time. The bill does not address persons convicted of conspiracy or solicitation.

As previously noted in the present situation, there is litigation pending in the Florida Supreme Court. If the Florida Supreme Court rules in the Department's favor, the bill will have no impact as any inmates received with offense dates on or after July 1, 2023 will not receive incentive gain-time based on the current language of the statute. Should the Florida Supreme Court rule that attempted violations of the enumerated offenses are in fact eligible, the language in this bill would explicitly prohibit incentive gain-time eligibility for attempted enumerated offenses committed on or after July 1, 2023.

As the Department currently does not award incentive gain-time for persons convicted of attempts to commit an enumerated offenses under s. 944.275(4)(e), F.S., this bill would have no impact on the Department.

The bill provides an effective date of July 1, 2023.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y ☐ N ☒

If yes, explain:

Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	
Opponents and summary of position:	

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?Y ☐ N ☒

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?Y ☐ N ☒

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?Y ☒ N ☐

Revenues:	Unknown.
Expenditures:	Unknown
Does the legislation increase local taxes or fees? If yes, explain.	No.
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?Y ☒ N ☐

Revenues:	Unknown.
Expenditures:	There will be no impact on the Department's inmate and supervision population. However, the Office of Information Technology anticipates minimal technology impact, with the amount being indeterminate.
Does the legislation contain a State Government appropriation?	No.
If yes, was this appropriated last year?	

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?Y ☒ N ☐

Revenues:	Unknown.
Expenditures:	Unknown.
Other:	

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?Y ☐ N ☒

If yes, explain impact.	
Bill Section Number:	

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y ☒ N ☐

If yes, describe the anticipated impact to the agency including any fiscal impact.	There will be minimal technology impact, however, the impact is indeterminate.
--	--

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y ☐ N ☒

If yes, describe the anticipated impact including any fiscal impact.	
--	--

ADDITIONAL COMMENTS

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	HB 537 will deny gain-time for attempted enumerated offenses committed on or after July 1, 2023. However, not for all the inchoate crimes of the criminal statutes specified in s. 944.275(4)(e), F.S, are covered. This legislation does not provide clarity to Courts throughout the state concerning the gain-time qualifications for an inmate convicted of solicitation or conspiracy to commit sexual battery. This issue will continue to be unresolved until final ruling by the Florida Supreme Court. Further the Supreme Court may interpret this legislative action as being the legislative intent of exactly what specific crimes qualify for gain time and which don't, which would be a negative inference for the Department's position in the <i>Gould</i> case.
---------------------------	--



The Florida Senate

Committee Agenda Request

To: Senator Jonathan Martin, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: February 17, 2023

I respectfully request that **Senate Bill #528**, relating to gain-time for attempted sexual offenses, be placed on the:

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

This bill amends the law addressing what crimes are eligible for prison gain-time. Specifically, individuals convicted of attempted sex offenses would no longer be eligible for gain time.



Senator Tracie Davis
Florida Senate, District 5

The Florida Senate

APPEARANCE RECORD

March 20, 2023

Meeting Date

Criminal Justice

Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

SB 528

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Ann Salomone

Phone

561-866-0930

Address

4228 NW 68 TER

Email

ASalomone@aol.com

Street

Gainesville

City

FL

State

32606

Zip

Speaking:

☐ For



Against

☐

Information

OR

Waive Speaking:

☐

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

March 20, 2023

Meeting Date

Criminal Justice

Committee

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

528

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Barney Bishop III**

Phone **850-510-9922**

Address **1454 Vieux Carre Drive**

Email **Barney@BarneyBishop.com**

Street

Tallahassee

FL

32308

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Fla. Smart Justice

...

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

SB 528

Bill Number or Topic

3/20/23

Meeting Date

Criminal Justice

Committee

Name Laurette Philipson / Florida Cares

Phone 561-855-0833

Address 2018 Ponce de Leon Ave

Street

Email laurette@floridacarescharity.org

West Palm Beach FL 33411

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Transportation, *Vice Chair*
Appropriations
Appropriations Committee on Education
Appropriations Committee on Health
and Human Services
Governmental Oversight and Accountability
Health Policy
Regulated Industries

SELECT COMMITTEE:

Select Committee on Resiliency

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR TRACIE DAVIS

5th District

March 20, 2023

Senator Jonathan Martin, Chair
Committee on Criminal Justice
510 Knott Building
404 South Monroe Street,
Tallahassee, FL 32399

Dear Chair Martin,

I hereby request, **SB 528: Gain-time for Attempted Sexual Offenses** be temporarily postponed from today's committee meeting.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tracie Davis", with a long horizontal flourish extending to the right.

Tracie Davis
State Senator
District 05

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 618

INTRODUCER: Criminal Justice Committee and Senator Yarborough

SUBJECT: Rights of Law Enforcement Officers and Correctional Officers

DATE: March 21, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Stokes	CJ	Fav/CS
2. _____	_____	ACJ	_____
3. _____	_____	FP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 618 addresses a Brady identification system, which the bill defines as a list or identification, in whatever form, of the name or names of law enforcement or correctional officers (“officers”) about whom a prosecuting agency is in possession of impeachment evidence as defined by decision, statute, or rule. This system is intended to address *Brady v Maryland*¹, which involves disclosure to the defense of exculpatory evidence, and cases after *Brady*.

The bill prohibits the officer’s employing agency from discharging or taking any disciplinary action against the officer solely as a result of a prosecuting agency determining that the officer’s name and identification should be included in a Brady identification system. However, the employing agency may discharge or take any disciplinary action against the officer based on the underlying actions of the officer which resulted in the officer’s inclusion in a Brady identification system. If a collective bargaining agreement applies, the actions taken by the officer’s employing agency must conform to the rules and procedures adopted by the collective bargaining agreement.

A prosecuting agency is not required to maintain a Brady identification system. A prosecuting agency may determine that its obligations under *Brady* are better discharged through such procedures as that agency chooses to use. However, if the agency does maintain a Brady identification system, the agency must adopt written policies that require, with exceptions, the

¹ 373 U.S. 83 (1963).

right of the officer to receive written notice before inclusion in the system and to also request reconsideration of the officer's inclusion in the system, and submit documents. The bill contains other notice requirements and authorizes the officer to petition the court for a writ of mandamus to compel the prosecuting agency to comply with these requirements if it fails to do so. There are also requirements for conducting the mandamus hearing.

Finally, the bill specifies that these rights and requirements do not:

- Require a prosecuting agency to give notice to or provide an opportunity for review and input from the officer if the information in a Brady identification system is a criminal conviction or sustained and finalized internal affairs complaint relevant to witness credibility;
- Limit the duty of a prosecuting agency to produce *Brady* evidence in all cases as required by law;
- Limit or restrict a prosecuting agency's ability to remove the name and information of an officer from the system if inclusion is no longer proper; or
- Create a private cause of action against a prosecuting agency or any employee of a prosecuting agency, other than the described writ of mandamus.

The bill may have an indeterminate impact on prosecutors. See Section V. Fiscal Impact Statement.

II. Present Situation:

Brady Giglio List

In *Brady v. Maryland*, the U.S. Supreme Court held that “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.”²

In a subsequent case, *Giglio v. United States*, the U.S. Supreme Court held that “[s]uppression of material evidence justifies a new trial irrespective of the good faith or bad faith of the prosecution. When the reliability of a given witness may well be determinative of guilt or innocence, nondisclosure of evidence affecting credibility falls within this general rule.”³ A new trial is required “if the false testimony could in any reasonable likelihood have affected the judgment of the jury.”⁴

Brady Giglio lists⁵ “arose from U.S. Supreme Court cases that held prosecutors must disclose to the defense any exculpatory evidence – including evidence that could be used to impeach a prosecution witness. Impeachment evidence can include dishonesty, bias, or any other

² *Brady v. Maryland*, 373 U.S. 83 (1963), LexisNexis, available at <https://www.lexisnexis.com/community/casebrief/p/casebrief-brady-v-maryland> (last visited on March 14, 2023). See also *Brady v. Maryland*, 373 U.S. 83, 87-92 (1963).

³ *Giglio v. United States*, 405 U.S. 150 (1972), Lexis Nexis, available at <https://www.lexisnexis.com/community/casebrief/p/casebrief-giglio-v-united-states> (last visited on March 14, 2023). See also *Giglio v. United States*, 405 U.S. 150, 153-155 (1972).

⁴ *Id.*

⁵ Some of the other names used for the list include “Brady list,” “Giglio list,” and “Brady/Giglio list.”

misconduct relevant to the facts of the case. To meet their *Brady* obligations, prosecuting agencies began keeping lists of officers for whom there was such evidence.”⁶

While recognizing prosecutors’ obligations under *Brady* and *Giglio*, some commentators have noted or been critical of prosecutors who place officers on Brady Giglio lists without any procedural protections for the officers, such as affording the officers the opportunity to seek reconsideration of the decision and removal from the list.⁷ One commentator noted that “[b]eing Brady-listed can be career ending.”⁸ Regardless of any due process issues,⁹ a state may elect to create procedural requirements to accomplish state policy goals.¹⁰

Staff was unable to find any document or other source material that reliably indicates the number of state attorney offices that use a Brady Giglio list.¹¹

III. Effect of Proposed Changes:

The bill amends ss. 112.531 and 112.532, F.S., to address a Brady identification system, which the bill defines as a list or identification, in whatever form, of the name or names of law enforcement or correctional officers about whom a prosecuting agency¹² is in possession of impeachment evidence as defined by decision, statute, or rule.

The bill prohibits the officer’s employing agency from discharging or taking any disciplinary action against the officer solely as a result of a prosecuting agency determining that the officer’s name and identification should be included in a Brady identification system. However, the employing agency may discharge or take any disciplinary action against the officer based on the underlying actions of the officer which resulted in the officer’s inclusion in a Brady identification system. If a collective bargaining agreement applies, the actions taken by the

⁶ Val Van Brocklin, *Officer scores a victory for Brady list due process – other states and prosecutors should follow suit* (Aug. 30, 2022), Police1, available at <https://www.police1.com/patrol-issues/articles/officer-scores-a-victory-for-brady-list-due-process-other-states-and-prosecutors-should-follow-suit-h6oPMXL26aZVsfjs/> (last visited on March 14, 2023).

⁷ See e.g., Jonathan Abel, *Brady’s Blind Spot: Impeachment Evidence in Police Personnel Files and the Battle Splitting the Prosecution Team*, 67 Stanford L. Rev. 743, 746, and 779-782 (2015); Jeffrey Warren, *The Scarlet Letter: North Carolina, Giglio, and the Injury in Search of a Remedy*, 12 Wake Forest L. Rev. Online 24 (2022); Val Van Brocklin, *Do Brady and Giglio trump officers’ due process rights?* (Jan. 25, 2022), Police1, available at <https://www.police1.com/patrol-issues/articles/do-brady-and-giglio-trump-officers-due-process-rights-g585QOS4UeSOSF5u/#:~:text=But%20Brady%20and%20Giglio%20do,also%20entitled%20to%20its%20protections.> (Last visited on March 14, 2023); and Mary Sugden, *Brady-Giglio reform bill headed to governor’s desk for signature* (May 24, 2022), weareiowa.com, available at <https://www.weareiowa.com/video/news/politics/local-5-politics/brady-giglio-bill-governor-kim-reynolds-police-reform/524-7af344f8-74ba-4296-8542-2dee673e1695> (last visited on March 14, 2023).

⁸ *Supra*, at n. 5.

⁹ There does not appear to be any controlling case law in Florida that indicates that due process is violated by the absence of such procedures.

¹⁰ See e.g., HF 2496, Iowa legislation which was signed into law in 2022 and which contains procedural requirements for placing an officer’s name on a Brady Giglio list. This legislation is available at <https://www.legis.iowa.gov/legislation/BillBook?ga=89&ba=HF2496> (last visited on March 14, 2023). This legislation is similar to SB 618.

¹¹ Staff contacted the Florida Prosecuting Attorneys Association. The association did not have any data or other information to the number of state attorney offices with Brady Giglio lists.

¹² The bill defines a prosecuting agency as the Attorney General or an assistant attorney general, the statewide prosecutor or an assistant statewide prosecutor, a state attorney or an assistant state attorney, a city or county attorney, a special prosecutor, or any other person or entity charged with the prosecution of a criminal case.

officer's employing agency must conform to the rules and procedures adopted by the collective bargaining agreement.

The bill creates s. 112.536, F.S., which provides that a prosecuting agency is not required to maintain a Brady identification system. A prosecuting agency may determine that its obligations under *Brady v. Maryland, supra*, are better discharged through such procedures as that agency chooses to use. However, if the agency does maintain a Brady identification system, the agency must adopt written policies that, at a minimum, require all of the following:

- The right of an officer to receive written notice through the current or last known employing agency of the officer, before or contemporaneously with a prosecuting agency including the name and information of the officer in a Brady identification system, unless a pending case requires immediate disclosure or providing notice would jeopardize a pending investigation.
- The right of an officer to receive written notice before a prosecuting agency includes the name and information of the officer in a Brady identification system.
- The right of an officer to request reconsideration of the prosecuting agency's decision to include the name and information of the officer in a Brady identification system and his or her right to submit documents and evidence in support of the request for reconsideration.

If, after the policy is followed, it is determined that the officer should not be included in a Brady identification system, the prosecuting agency must send notice to the officer and his or her employing agency that he or she has been removed from the system.

If, after the policy is followed, it is determined that the officer should not be included in a Brady identification system, but his or her name was disclosed in a pending case, the prosecuting agency must take the necessary steps to notify the parties involved in the pending case of the officer's removal from the system.

If a prosecuting agency fails to comply with this section, an officer may petition the court for a writ of mandamus to compel the prosecuting agency to act in accordance with this section. The scope of the hearing may not include a judicial review of the evidence or merits of an officer's inclusion in a Brady identification system, but instead must be limited to whether the prosecuting agency acted in accordance with the procedural requirements of this section. This section does not preclude the officer from pursuing whatever administrative or judicial remedies are otherwise available to him or her in relation to any other action or remedy outside of this section.

Finally, this section does not:

- Require a prosecuting agency to give notice to or provide an opportunity for review and input from the officer if the information in a Brady identification system is:
 - A criminal conviction relevant to s. 90.610, F.S.; or
 - A sustained and finalized internal affairs complaint relevant to s. 90.608, F.S., s. 90.609, F.S., or s. 90.610, F.S.
- Limit the duty of a prosecuting agency to produce *Brady* evidence in all cases as required by the United States Constitution, the State Constitution, and the Florida Rules of Criminal Procedure and relevant case law;
- Limit or restrict a prosecuting agency's ability to remove the name and information of an officer from a Brady identification system if, at any time, the prosecuting agency determines that the name and information of the officer are no longer proper for identification; or

- Create a private cause of action against a prosecuting agency or any employee of a prosecuting agency, other than the described writ of mandamus.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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 may have an indeterminate impact on prosecutors. The Florida Prosecuting Attorneys Association commented that “initial thoughts are that [the bill] ... is indeterminate due to the added time and work needed to create/revise policies, tracking, and review cases....”¹³

VI. Technical Deficiencies:

None.

¹³ E-mail from Garrett Berman, Executive Director, Florida Prosecuting Attorneys Association, dated March 14, 2023 (on file with the Senate Committee on Criminal Justice).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 112.531 and 112.532.

This bill creates section 112.536 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 20, 2023:

The committee substitute:

- Removes references to a “Brady Giglio list” and substitutes “Brady identification system” which the bill defines.
- Provides that a prosecuting agency is not required to maintain a Brady identification system.
- Revises procedural requirements regarding written notice and reconsideration of removal from the Brady identification system.
- Authorizes a petition for writ of mandamus if the prosecuting agency fails to comply with procedural requirements and specifies hearing requirements.
- Specifies that the bill does not preclude an officer from pursuing available administrative or judicial remedies.

B. Amendments:

None.



186046

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2023	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present subsections (1) and (2) of section
112.531, Florida Statutes, are redesignated as subsections (2)
and (3), respectively, and a new subsection (1) and subsection
(4) are added to that section, to read:

112.531 Definitions.—As used in this part, the term:

(1) "Brady identification system" means a list or



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11 identification, in whatever form, of the name or names of law
12 enforcement or correctional officers about whom a prosecuting
13 agency is in possession of impeachment evidence as defined by
14 decision, statute, or rule.

15 (4) "Prosecuting agency" means the Attorney General or an
16 assistant attorney general, the statewide prosecutor or an
17 assistant statewide prosecutor, a state attorney or an assistant
18 state attorney, a city or county attorney, a special prosecutor,
19 or any other person or entity charged with the prosecution of a
20 criminal case.

21 Section 2. Subsection (7) is added to section 112.532,
22 Florida Statutes, to read:

23 112.532 Law enforcement officers' and correctional
24 officers' rights.—All law enforcement officers and correctional
25 officers employed by or appointed to a law enforcement agency or
26 a correctional agency shall have the following rights and
27 privileges:

28 (7) RIGHTS OF LAW ENFORCEMENT OFFICERS AND CORRECTIONAL
29 OFFICERS RELATING TO A BRADY IDENTIFICATION SYSTEM.—

30 (a) A law enforcement officer or correctional officer has
31 all of the rights specified in s. 112.536 relating to the
32 inclusion of the name and information of the officer in a Brady
33 identification system.

34 (b) A law enforcement officer or correctional officer may
35 not be discharged, suspended, demoted, or otherwise disciplined,
36 or threatened with discharge, suspension, demotion, or other
37 discipline, by his or her employing agency solely as a result of
38 a prosecuting agency determining that the officer's name and
39 information should be included in a Brady identification system.



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This paragraph does not prohibit an officer's employing agency from discharging, suspending, demoting, or taking other disciplinary action against a law enforcement officer or correctional officer based on the underlying actions of the officer which resulted in his or her inclusion in a Brady identification system. If a collective bargaining agreement applies, the actions taken by the officer's employing agency must conform to the rules and procedures adopted by the collective bargaining agreement.

Section 3. Section 112.536, Florida Statutes, is created to read:

112.536 Requirements for maintaining a Brady identification system.—

(1) A prosecuting agency is not required to maintain a Brady identification system. A prosecuting agency may determine that its obligations under the Brady decision are better discharged through such procedures as that agency chooses to use.

(2) A prosecuting agency that maintains a Brady identification system shall adopt written policies that, at a minimum, require all of the following:

(a) The right of a law enforcement officer or a correctional officer to receive written notice through United States mail or e-mail to the current or last known employing agency of the officer, before or contemporaneously with a prosecuting agency including the name and information of the officer in a Brady identification system, unless a pending case requires immediate disclosure or providing notice would jeopardize a pending investigation.



186046

(b) The right of a law enforcement officer or correctional officer to receive written notice before a prosecuting agency includes the name and information of the officer in a Brady identification system.

(c) The right of a law enforcement officer or correctional officer to request reconsideration of the prosecuting agency's decision to include the name and information of the officer in a Brady identification system and his or her right to submit documents and evidence in support of the request for reconsideration.

(3) If, after the policy provided in subsection (2) is followed, it is determined that the law enforcement officer or correctional officer in question should not be included in a Brady identification system, the prosecuting agency must send notice to the law enforcement officer or correctional officer and his or her employing agency that he or she has been removed from the Brady identification system.

(4) If, after the policy provided in subsection (2) is followed, it is determined that the law enforcement officer or correctional officer in question should not be included in a Brady identification system, but his or her name was disclosed in a pending case, the prosecuting agency must take the necessary steps to notify the parties involved in the pending case of the law enforcement officer's or correctional officer's removal from the Brady identification system.

(5) If a prosecuting agency fails to comply with this section, a law enforcement officer or a correctional officer may petition the court for a writ of mandamus to compel the prosecuting agency to act in accordance with this section. The



186046

scope of such a hearing may not include a judicial review of the evidence or merits of an officer's inclusion in a Brady identification system, but instead must be limited to whether the prosecuting agency acted in accordance with the procedural requirements of this section. This section does not preclude the law enforcement officer or correctional officer from pursuing whatever administrative or judicial remedies are otherwise available to him or her in relation to any other action or remedy outside of this section.

(6) This section does not:

(a) Limit the duty of a prosecuting agency to produce Brady evidence in all cases as required by the United States Constitution, the State Constitution, and the Florida Rules of Criminal Procedure and relevant case law;

(b) Limit or restrict a prosecuting agency's ability to remove the name and information of a law enforcement officer or correctional officer from a Brady identification system if, at any time, the prosecuting agency determines that the name and information of the officer are no longer proper for identification; or

(c) Create a private cause of action against a prosecuting agency or any employee of a prosecuting agency, other than the writ described in subsection (5).

Section 4. This act shall take effect July 1, 2023.

===== 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:



186046

A bill to be entitled

An act relating to rights of law enforcement officers and correctional officers; amending s. 112.531, F.S.; defining terms; amending s. 112.532, F.S.; providing rights of law enforcement officers and correctional officers relating to a Brady identification system; prohibiting a law enforcement officer or correctional officer from being discharged, suspended, demoted, or otherwise disciplined for certain reasons; providing construction; requiring the employing agency of a law enforcement officer or correctional officer to conform to certain rules and procedures; creating s. 112.536, F.S.; providing that a prosecuting agency is not required to maintain a Brady identification system; authorizing a prosecuting agency to choose different procedures to discharge its obligations under the Brady decision; requiring a prosecuting agency that maintains a Brady identification system to adopt written policies; providing minimum requirements for such policies; requiring a prosecuting agency to provide certain notices to certain law enforcement officers or correctional officers and their employing agency under certain conditions; requiring the prosecuting agency to notify specified parties in a pending case of the removal of the name of a law enforcement officer or a correctional officer from the Brady identification system under certain conditions; authorizing a law enforcement officer or a correctional officer to petition for a writ of



186046

156 mandamus under certain circumstances; providing the
157 scope of the judicial review; providing construction;
158 providing an effective date.



653756

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2023	.	
	.	
	.	
	.	

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

Senate Amendment to Amendment (186046) (with title amendment)

Delete lines 53 - 120
and insert:

(1) (a) A prosecuting agency is not required to maintain a Brady identification system. A prosecuting agency may determine that its obligations under the Brady decision are better discharged through such procedures as that agency chooses to use.



653756

(b) A law enforcement officer or correctional officer's employing agency shall forward all sustained and finalized internal affairs complaints, relevant to s. 90.608, s. 90.609, or s. 90.610, to the prosecuting agency in the circuit in which the law enforcement agency is located to assist the prosecuting agency in compliance with its obligations under the Brady v. Maryland, 373 U.S. 83 (1963) decision. The employing agency must notify the law enforcement officer or correctional officer of any sustained and finalized internal affairs investigations they send to the prosecuting agency as required by this section. If the law enforcement officer or correctional officer is no longer employed, the agency must mail notification to the officer's last known address on file at the agency.

(2) A prosecuting agency that maintains a Brady identification system shall adopt written policies that, at a minimum, require all of the following:

(a) The right of a law enforcement officer or a correctional officer to receive written notice through United States mail or e-mail to the current or last known employing agency of the officer, before or contemporaneously with a prosecuting agency including the name and information of the officer in a Brady identification system, unless a pending case requires immediate disclosure or providing notice would jeopardize a pending investigation.

(b) The right of a law enforcement officer or correctional officer to receive written notice before a prosecuting agency includes the name and information of the officer in a Brady identification system.

(c) The right of a law enforcement officer or correctional



653756

officer to request reconsideration of the prosecuting agency's decision to include the name and information of the officer in a Brady identification system and his or her right to submit documents and evidence in support of the request for reconsideration.

(3) If, after the policy provided in subsection (2) is followed, it is determined that the law enforcement officer or correctional officer in question should not be included in a Brady identification system, the prosecuting agency must send notice to the law enforcement officer or correctional officer and his or her employing agency that he or she has been removed from the Brady identification system.

(4) If, after the policy provided in subsection (2) is followed, it is determined that the law enforcement officer or correctional officer in question should not be included in a Brady identification system, but his or her name was disclosed in a pending case, the prosecuting agency must take the necessary steps to notify the parties involved in the pending case of the law enforcement officer's or correctional officer's removal from the Brady identification system.

(5) If a prosecuting agency fails to comply with this section, a law enforcement officer or a correctional officer may petition the court for a writ of mandamus to compel the prosecuting agency to act in accordance with this section. The scope of such a hearing may not include a judicial review of the evidence or merits of an officer's inclusion in a Brady identification system, but instead must be limited to whether the prosecuting agency acted in accordance with the procedural requirements of this section. This section does not preclude the



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law enforcement officer or correctional officer from pursuing
whatever administrative or judicial remedies are otherwise
available to him or her in relation to any other action or
remedy outside of this section.

(6) This section does not:

(a) Require a prosecuting agency to give notice to or
provide an opportunity for review and input from the law
enforcement officer or correctional officer if the information
in a Brady identification system is the following:

1. A criminal conviction relevant to s. 90.610; or

2. A sustained and finalized internal affairs complaint
relevant to s. 90.608, s. 90.609, or s. 90.610.

(b) Limit the duty of a prosecuting agency to produce Brady
evidence in all cases as required by the United States
Constitution, the State Constitution, and the Florida Rules of
Criminal Procedure and relevant case law;

(c) Limit or restrict a prosecuting agency's ability to
remove the name and information of a law enforcement officer or
correctional officer from a Brady identification system if, at
any time, the prosecuting agency determines that the name and
information of the officer are no longer proper for
identification; or

(d) Create a private cause of action against a prosecuting
agency or any employee of a prosecuting agency, other than the
writ described in subsection (5).

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

And the title is amended as follows:

Delete line 143



653756

and insert:

Brady decision; imposing requirements on the current
or former employing agency of the law enforcement
officer or correctional officer; requiring a
prosecuting agency that

By Senator Yarborough

4-01117-23

2023618__

A bill to be entitled

An act relating to rights of law enforcement officers and correctional officers; amending s. 112.531, F.S.; defining terms; amending s. 112.532, F.S.; providing rights of law enforcement officers and correctional officers relating to Brady Giglio lists; prohibiting a law enforcement officer or correctional officer from being discharged, suspended, demoted, or otherwise disciplined for certain reasons; providing construction; requiring the employing agency of a law enforcement officer or correctional officer to conform to certain rules and procedures; creating s. 112.536, F.S.; requiring a prosecuting agency to adopt written policies for the maintenance of a Brady Giglio list; providing minimum requirements for such policies; requiring a prosecuting agency to consult with certain agencies when creating the written policies; requiring the written policies to be reviewed at a specified interval; requiring a prosecuting agency to provide certain notices to the current or last known employing agency of certain law enforcement officers or correctional officers; requiring employing agencies to provide such notices to law enforcement officers or correctional officers; providing requirements for such notices; requiring a prosecuting agency to remove or retain the name and information of a law enforcement officer or correctional officer on a Brady Giglio list under certain circumstances; providing specified rights to certain law enforcement officers and

Page 1 of 8

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

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correctional officers; authorizing a law enforcement officer or correctional officer to petition for a writ of mandamus under certain circumstances; providing construction; providing an effective date.

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

Section 1. Present subsections (1) and (2) of section 112.531, Florida Statutes, are redesignated as subsections (2) and (3), respectively, and a new subsection (1) and subsection (4) are added to that section, to read:

112.531 Definitions.—As used in this part, the term:

(1) "Brady Giglio list" means a list or database compiled by a prosecuting agency that contains the names and personal identifying information of law enforcement officers or correctional officers who have:

- (a) Sustained incidents of untruthfulness;
- (b) Issues with candor;
- (c) Been convicted of a criminal offense; or
- (d) Any other issue that places the credibility of the officer into question.

(4) "Prosecuting agency" means the Attorney General or an assistant attorney general, the statewide prosecutor or an assistant statewide prosecutor, a state attorney or an assistant state attorney, a city or county attorney, a special prosecutor, or any other person or entity charged with the prosecution of a criminal case.

Section 2. Subsection (7) is added to section 112.532, Florida Statutes, to read:

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

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112.532 Law enforcement officers' and correctional officers' rights.—All law enforcement officers and correctional officers employed by or appointed to a law enforcement agency or a correctional agency shall have the following rights and privileges:

(7) RIGHTS OF LAW ENFORCEMENT OFFICERS AND CORRECTIONAL OFFICERS RELATING TO BRADY GIGLIO LISTS.—

(a) A law enforcement officer or correctional officer has all of the rights specified in s. 112.536 relating to the inclusion of the name and information of the officer on a Brady Giglio list.

(b) A law enforcement officer or correctional officer may not be discharged, suspended, demoted, or otherwise disciplined, or threatened with discharge, suspension, demotion, or other discipline, by his or her employing agency solely as a result of a prosecuting agency determining that the officer withheld exculpatory evidence or because his or her name and information was included on a Brady Giglio list. This paragraph does not prohibit an officer's employing agency from discharging, suspending, demoting, or taking other disciplinary action against a law enforcement officer or correctional officer based on the underlying actions of the officer which resulted in the exculpatory evidence for a defendant. If a collective bargaining agreement applies, the actions taken by the officer's employing agency must conform to the rules and procedures adopted by the collective bargaining agreement.

Section 3. Section 112.536, Florida Statutes, is created to read:

112.536 Requirements for maintaining a Brady Giglio list.—

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(1) (a) A prosecuting agency that maintains a Brady Giglio list shall adopt written policies that, at a minimum, require all of the following:

1. The criteria used to determine whether to include the name and information of a law enforcement officer or correctional officer on a Brady Giglio list.

2. The right of a law enforcement officer or correctional officer to receive written notice before a prosecuting agency includes the name and information of the officer on a Brady Giglio list.

3. The right of a law enforcement officer or correctional officer to review the findings of the prosecuting agency and provide input to the prosecuting agency before the name and information of the officer is placed on a Brady Giglio list.

4. Written notice to a law enforcement officer or correctional officer and the officer's employing agency regarding the placement of the officer's name and information on a Brady Giglio list.

5. The right of a law enforcement officer or correctional officer to request reconsideration of the prosecuting agency's decision to include the name and information of the officer on a Brady Giglio list and his or her right to submit documents and evidence in support of the request for reconsideration.

6. The criteria used to determine whether the prosecuting agency will accept or deny a request for reconsideration.

7. The applicable timeframes and procedural requirements for notifying a law enforcement officer or correctional officer of the prosecuting agency's final determination regarding a request for reconsideration.

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(b) The written policies must be developed by the prosecuting agency in consultation with other agencies that represent law enforcement officers or correctional officers or that will be impacted by the policies.

(c) The written policies must be reviewed every 2 years by the prosecuting agency and the other agencies involved in the development of the policies to determine if modifications are needed.

(2) Before a prosecuting agency includes the name and information of a law enforcement officer or correctional officer on a Brady Giglio list, the prosecuting agency must send written notice by United States mail or e-mail to the current or last known employing agency of the officer. Upon receipt of the notice, the law enforcement agency or correctional agency must provide the written notice to the law enforcement officer or correctional officer. The written notice must include, at a minimum, all of the following:

(a) Notice that the name and information of the law enforcement officer or correctional officer may be included on a Brady Giglio list.

(b) A statement that the law enforcement officer or correctional officer has the right to request the documents, records, or other evidence in the possession of the prosecuting agency which will be considered in determining whether inclusion of the name and information of the officer on a Brady Giglio list is proper.

(c) A statement that the law enforcement officer or correctional officer has the right to review the findings of the prosecuting agency and provide input to the prosecuting agency

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before the name and information of the officer is placed on a Brady Giglio list.

(d) The procedural requirements that a law enforcement officer or correctional officer must follow to provide input, documents, or evidence to the prosecuting agency before the name and information of the officer is placed on a Brady Giglio list.

(3) If a prosecuting agency determines by clear and convincing evidence that the name and information of a law enforcement officer or correctional officer should be included on a Brady Giglio list, the prosecuting agency must send written notice of such decision by United States mail or e-mail to the current or last known employing agency of the officer. Upon receipt of the notice, the law enforcement agency or correctional agency must provide the written notice to the law enforcement officer or correctional officer. The written notice must include, at a minimum, all of the following:

(a) A statement that the law enforcement officer or correctional officer has the right to request that the prosecuting agency reconsider the determination to include the name and information of the officer on a Brady Giglio list.

(b) The applicable timeframes and procedural requirements a law enforcement officer or correctional officer must follow to submit a request for reconsideration to the prosecuting agency.

(c) A list of evidentiary materials the law enforcement officer or correctional officer may submit to the prosecuting agency which may be considered during the reconsideration.

(d) A statement that if a law enforcement officer or correctional officer does not submit a request for reconsideration or does not comply with the procedural

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requirements for submitting a request for reconsideration, the name and information of the officer may remain on a Brady Giglio list.

(4) (a) If a law enforcement officer or correctional officer submits a request for reconsideration, the name and information of the officer must be removed from a Brady Giglio list pending the reconsideration. Upon reconsideration of the allegations, documents, and evidence, if the prosecuting agency determines by clear and convincing evidence that inclusion of the name and information of the officer on a list is proper, then his or her name and information must be included on the list.

(b) 1. If the prosecuting agency denies a request for reconsideration, the prosecuting agency must send written notice of such decision by United States mail or e-mail to the current or last known employing agency of the officer explaining the reason for such denial. Upon receipt of the notice, the law enforcement agency or correctional agency must provide the written notice to the law enforcement officer or correctional officer.

2. If the prosecuting agency denies a request for reconsideration, the name and information of a law enforcement officer or correctional officer may remain on a Brady Giglio list.

(5) A law enforcement officer or correctional officer whose name and information were included on a Brady Giglio list before July 1, 2023, has all of the following rights:

(a) The right to receive written notification from a prosecuting agency that his or her name and information is included on a Brady Giglio list, in addition to the required

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information under subsection (3), by October 1, 2023.

(b) The right to submit a request for reconsideration within 10 days after the officer receives the written notice under paragraph (a).

(6) If a prosecuting agency fails to comply with the requirements of this section, a law enforcement officer or correctional officer may petition the court for a writ of mandamus to compel the prosecuting agency to act in accordance with this section.

(7) This section does not:

(a) Limit the duty of a prosecuting agency to produce Brady Giglio evidence in all cases as required by the United States Constitution, the State Constitution, and the Florida Rules of Criminal Procedure;

(b) Limit or restrict a prosecuting agency's ability to remove the name and information of a law enforcement officer or correctional officer from a Brady Giglio list if, at any time, the prosecuting agency determines that the name and information of the officer are no longer proper for inclusion on the list;

(c) Create a private cause of action against a prosecuting agency or any employee of a prosecuting agency.

Section 4. This act shall take effect July 1, 2023.

From: [Erickson, Mike](#)
To: [Arnold, Sue](#)
Subject: FW: Time-sensitive Request, re: SB 618
Date: Wednesday, March 15, 2023 8:40:13 AM

For the packet.

From: Garrett Berman <gberman@yourfpaa.org>
Sent: Tuesday, March 14, 2023 2:47 PM
To: Erickson, Mike <ERICKSON.MIKE@flsenate.gov>
Subject: RE: Time-sensitive Request, re: SB 618

Hi again Mike:

So for now, our initial thoughts are that it is indeterminate due to the added time and work needed to create/revise policies, tracking, and review cases, but we will be able to give you a more definitive answer after Friday's meeting that you can supplement.

--GB

Garrett M. Berman

Executive Director

Florida Prosecuting Attorneys Association

107 West Gaines Street, Suite L-047

Tallahassee, FL 32399-1050

E-mail: gberman@yourfpaa.org

Office: (850) 488-3070

Please note that Florida has a broad public records law, and that all correspondence sent to me via email may be subject to disclosure.

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From: Erickson, Mike <ERICKSON.MIKE@flsenate.gov>
Sent: Tuesday, March 14, 2023 2:40 PM
To: Garrett Berman <gberman@yourfpaa.org>
Subject: RE: Time-sensitive Request, re: SB 618

Garrett,

Thanks for the response. I'm afraid that would be too late for purposes of my analysis but if that is the earliest you can provide it I will take that information when received and hopefully another committee will be able to supplement the analysis later on.

Thank you for your help.

Mike

From: Garrett Berman <gberman@yourfpaa.org>
Sent: Tuesday, March 14, 2023 2:37 PM
To: Erickson, Mike <ERICKSON.MIKE@flsenate.gov>; aijacobs@comcast.net
Subject: RE: Time-sensitive Request, re: SB 618

Hi Mike:

Our Board is meeting on Friday morning and I will add this to our agenda. Would it be okay if we give you an answer on this late Friday morning or Friday afternoon?

--GB

Garett M. Berman

Executive Director

Florida Prosecuting Attorneys Association

107 West Gaines Street, Suite L-047

Tallahassee, FL 32399-1050

E-mail: gberman@yourfpaa.org

Office: (850) 488-3070

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From: Erickson, Mike <ERICKSON.MIKE@flsenate.gov>
Sent: Tuesday, March 14, 2023 12:11 PM
To: Garrett Berman <gberman@yourfpaa.org>; aijacobs@comcast.net
Subject: Time-sensitive Request, re: SB 618

Importance: High

SB 618 bill may be heard in our committee next week. It involves Brady Giglio lists. Please respond by tomorrow if you think this bill will have a fiscal impact on state attorney offices. If you think the impact is indeterminate, insignificant, or that costs, if any, will be absorbed within existing resources, please indicate so.

Thank you for your assistance.

Regards,

Mike Erickson
Chief Legislative Analyst
Senate Committee on Criminal Justice
(850) 487-5192



The Florida Senate

Committee Agenda Request


To: Senator Jonathan Martin, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: February 23, 2023

I respectfully request that **Senate Bill #618**, relating to Rights of Law Enforcement Officers and Correctional Officers, be placed on the:

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



Senator Clay Yarborough
Florida Senate, District 4

The Florida Senate

APPEARANCE RECORD

03-20-2023

Meeting Date

618

Bill Number or Topic

Criminal Justice

Committee

186046

Amendment Barcode (if applicable)

Name

Steve Zona

Phone

904-398-7010

Address

5530 Beach Blvd

Email

S.Zona@FloridaTop.com

Street

Jax

City

FL

State

32207

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:



☒ I am appearing without compensation or sponsorship.



☐ I am a registered lobbyist, representing:



☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
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Meeting Date
Criminal Justice
Committee

6/8
Bill Number or Topic
186046
Amendment Barcode (if applicable)

Name Lisa Henning Phone 850-766-8808
Address 242 Office Plaza Dr Email legislative@aol.com
Tallahassee, FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1, [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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3/21/23

Meeting Date

SB 618

Bill Number or Topic

Criminal Justice

Committee

Amendment Barcode (if applicable)

Name

State Attorney Jack Campbell

Phone

850 606-6012

Address

301 S. Monroe St

Street

Email

Campbell5@doj.state.fl

Tallahassee FL

City

State

Zip

Speaking:



For



Against



Information

OR

Waive Speaking:



In Support



Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

March 20, 2023

Meeting Date

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618 as amended

Bill Number or Topic

Criminal Justice

Committee

Amendment Barcode (if applicable)

Name

Jennifer Cook Pruitt

Phone

850 510 7249

Address

2636 Mitcham Drive

Email

jpruitt@fpca.com

Street

Tall

FL

32308

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Florida Police Chiefs Association

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

03-20-2023

Meeting Date

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618

Bill Number or Topic

Criminal Justice

Committee

Amendment Barcode (if applicable)

Name Steve Zona

Phone 904-398-7010

Address 5530 Beach Blvd.

Email S.Zona@FOP530.com

Street

Jax

FL

32207

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate
APPEARANCE RECORD

Meeting Date

Criminal Justice
Committee

Deliver both copies of this form to
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618
Bill Number or Topic

Amendment Barcode (if applicable)

Name

Lisa Henning

Phone

850-766-8808

Address

242 Office Plaza Dr
Street

Email

lphlegislative@aol.com

Tallahassee
City

FL
State

32301
Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

March 20, 2023

Meeting Date

Criminal Justice

Committee

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
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618

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Barney Bishop III**

Phone **850-510-9922**

Address **1454 Vieux Carre Drive**

Email **Barney@BarneyBishop.com**

Street

Tallahassee

FL

32308

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Fla. Smart Justice

...

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 764

INTRODUCER: Criminal Justice Committee and Senator Simon

SUBJECT: Interference with Sporting or Entertainment Events

DATE: March 22, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Parker	Stokes	CJ	Fav/CS
2.			CM	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 764 creates s. 871.05, F.S., to prohibit certain conduct at a sporting or entertainment event. Specifically, a person may not:

- Intentionally touch or strike a covered participant during a covered event against the will of the covered participant, or intentionally cause bodily harm to a covered participant during a covered event; or
- Willfully enter or remain in a restricted area during a covered event without being authorized, licensed, or invited to enter or remain in such a restricted area.

A person who violates the provisions commits a first degree misdemeanor.¹

The bill prohibits a person from soliciting another person to violate this section by offering money or any other thing of value to another to engage in specific conduct that constitutes such a violation. A person who solicits another person to violate this section commits a third degree felony.

A person convicted of a violation of this section may not realize any profit or benefit, directly or indirectly, from committing such a violation. Any profit or benefit payable to or accruing to a person convicted of a violation of this section is subject to seizure and forfeiture as provided in the Florida Contraband Forfeiture Act.

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

The bill may have a positive indeterminate fiscal impact. See Section V Fiscal Impact Statement.

The bill provides an effective date of October 1, 2023.

II. Present Situation:

In 2022, during the fourth quarter of Super Bowl LV at Raymond James Stadium in Tampa, a person jumped out of the stands and began running across the playing field.² The person was arrested and charged with trespassing on property other than a structure or conveyance, a first-degree misdemeanor.³ The person entered a plea of no contest and was sentenced to probation for 12 months and to perform 100 hours of community service.⁴

A person commits trespass on a property other than a structure or conveyance if he or she, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance:

- As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011, F.S.; or
- If the property is the unenclosed curtilage of a dwelling and the offender enters or remains on such property with the intent to commit an offense thereon, other than the offense of trespass.⁵

Under current law, there is not an enhanced penalty when such a trespass is committed at an athletic competition or entertainment event.

If a spectator at an athletic competition or entertainment event makes physical contact with a participant, official, performer, or security guard, the person commits the crime of battery, a first-degree misdemeanor. A person commits battery if he or she:

- Actually and intentionally touches or strikes another person against the will of the other; or
- Intentionally causes bodily harm to another person.⁶

Under current law, there is generally not an enhanced penalty when a battery is committed at an athletic competition or entertainment event. However, s. 784.081, F.S., does provide enhanced penalties if a person commits an assault, aggravated assault, battery, or aggravated battery against a sports official⁷ during or immediately following an athletic contest as follows:

² Tom Schad, Florida man who ran on the field at Super Bowl 55 faces trespassing charge, USA Today (Feb. 8, 2021) <https://www.usatoday.com/story/sports/nfl/super-bowl/2021/02/08/super-bowl-streaker-man-ran-field-charged-trespassing/4434479001/> (last visited March 13, 2023).

³ A first-degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

⁴ Anita Chabria, The untold tale of the San Diego surfer who enabled last year's Super Bowl streaker, L.A. Times (Feb. 11, 2022), <https://www.latimes.com/california/story/2022-02-11/super-bowl-streaker-decoy-doug-yuri-andrade-where-they-are-now> (last visited March 13, 2023).

⁵ Section 810.09(1)(a), F.S.

⁶ Section 784.03(1)(a), F.S.

⁷ Section 784.081(1), F.S., A "sports official" is defined as any person who serves as a referee, an umpire, or a linesman, and any person who serves in a similar capacity as a sports official who may be known by another title, which sports official is duly registered by or is a member of a local, state, regional, or national organization that is engaged in part in providing education and training to sports officials.

- An aggravated battery is reclassified from a second-degree felony⁸ to a first-degree felony.⁹
- An aggravated assault is reclassified from a third-degree felony¹⁰ to a second-degree felony.
- A battery is reclassified from a first-degree misdemeanor to a third-degree felony.
- An assault is reclassified from a second-degree misdemeanor¹¹ to a first-degree misdemeanor.

Florida Lien Law

There is no law that prohibits a person who commits the misdemeanor crimes of trespass or battery at an athletic competition or entertainment event from profiting off such behavior, either by being compensated by a third party to commit such offenses or benefitting from the notoriety gained from committing such offenses.

Florida has enacted laws to prevent a convicted felon from profiting off of his or her crime. Section 944.512, F.S., provides that a lien prior in dignity to all others shall exist in favor of the state upon royalties, commissions, proceeds of sale, or any other thing of value payable to or accruing to a *convicted felon* or a person on her or his behalf, including any person to whom the proceeds may be transferred or assigned by gift or otherwise, from any literary, cinematic, or other account of the crime for which she or he was convicted.¹²

The lien attaches at the time of the conviction in county or circuit court. In the event of an appeal, the funds will be held in the Revolving Escrow Trust Fund of the Department of Legal Affairs until the appeal is resolved.

Florida Contraband Forfeiture Act

The Florida Contraband Forfeiture Act, (FCFA), prescribes procedures and guidelines for law enforcement agencies to follow when seizing, forfeiting, and disposing of property that is authorized to be seized and forfeited under the FCFA. Under s. 932.703, F.S., any contraband article,¹³ vessel, motor vehicle, aircraft, other personal property, or real property used in violation of the FCFA, or in, upon, or by means of which any violation of the act has taken or is taking place, may be seized and forfeited subject to the provisions of the FCFA.¹⁴

⁸ A second-degree felony is punishable by up to fifteen years imprisonment and a \$10,000 fine, as provided in ss. 775.082, 775.083, or 775.084, F.S.

⁹ A first-degree felony is punishable by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment, as provided in s. 775.082, s. 775.083, or s. 775.083, F.S.

¹⁰ A third-degree felony is punishable by a term of imprisonment not to exceed five years and a \$5,000 fine, as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

¹¹ A second-degree misdemeanor is punishable by up to 60 days in jail and a \$500 fine, as provided in s. 775.082 and s. 775.083, F.S.

¹² Section 944.512(1), F.S., provides that a conviction is defined as a guilty verdict by a jury or judge, or a guilty or nolo contendere plea by the defendant regardless of adjudication of guilt.

¹³ Section 932.701(2)(a)5. and 6., F.S., states that “Contraband article” means, in part, any real property or personal property which was used or attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of the act.

¹⁴ Section 932.703(1), F.S.

Under s. 932.7055, F.S., if a final judgment of forfeiture is entered, a seizing agency may do any of the following:

- Retain the property for the seizing agency's use;
- Sell the property at a public auction or by sealed bid to the highest bidder; or
- Salvage, trade, or transfer the property to any public or nonprofit organization.¹⁵

If a seizing agency is a county or municipal law enforcement agency, the proceeds which remain after all liens and debts against the forfeited property are paid are deposited into a special law enforcement trust fund and may be used to fund school resource officers, crime prevention, safe neighborhood, drug abuse education, and prevention programs, or other law enforcement purposes, including defraying the cost of protracted or complex investigations, providing additional equipment or expertise, purchasing automated external defibrillators for law enforcement vehicles, and providing matching funds to obtain federal grants.¹⁶ Proceeds from a forfeiture may not be used to meet normal operating expenses of a law enforcement agency.¹⁷

Generally, if the seizing agency is a state agency, the remaining proceeds from a forfeiture are deposited into the General Revenue Fund.¹⁸ However, some agencies have a trust fund specifically designated to receive the proceeds from a forfeiture, including the Florida Department of Law Enforcement, a state attorney's office, a school board security agency that employs law enforcement officers, and the State University System police departments.¹⁹

III. Effect of Proposed Changes:

The bill creates s. 871.05, F.S., to prohibit certain conduct at a sporting or entertainment event. Specifically, a person may not:

- Intentionally touch or strike a covered participant during a covered event against the will of the covered participant, or intentionally cause bodily harm to a covered participant during a covered event; or
- Willfully enter or remain in a restricted area during a covered event without being authorized, licensed, or invited to enter or remain in such a restricted area.

A person who violates the provisions commits a first-degree misdemeanor.

The bill provides multiple definitions. Specifically, in this bill:

- "Covered event" is defined to mean an athletic competition or practice, including one conducted in a public venue or a live artistic, theatrical, or other entertainment performance event. The duration of such event includes the period from the time when a venue is held open to the public for such an event until the end of the athletic competition or performance event.
- "Covered participant" means an umpire, officiating crewmember, player, coach, manager, groundskeeper, or any artistic, theatrical, or other performer or sanctioned participant in the

¹⁵ Section 932.7055(1), F.S.

¹⁶ Section 932.7055(5)(a), F.S.

¹⁷ Section 932.7055(5), F.S.

¹⁸ Section 932.7055(6), F.S.

¹⁹ *Id.*

covered event. The term includes event operations and security employees working at a covered event.

- The bill defines “Restricted area” to mean any area designated for use by players, coaches, officials, performers, or other personnel administering a covered event that is one, or adjacent to, the area or performance.

The bill prohibits a person from soliciting another person to violate this section by offering money or any other thing of value to another to engage in specific conduct that constitutes such a violation. A person who solicits another person to violate this section commits a third degree felony.

A person convicted of a violation of this section may not realize any profit or benefit, directly or indirectly, from committing such a violation. Any profit or benefit payable to or accruing to a person convicted of a violation of this section is subject to seizure and forfeiture as provided in the Florida Contraband Forfeiture Act.

The bill provides an effective date of October 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

Under current law, the conduct prohibited by the bill would likely be prosecuted as a battery or trespass, which are both crimes punishable as a first degree misdemeanor with a maximum fine of \$1,000. The bill creates a new crime with a maximum fine of \$2,500. Thus, offenders who are convicted of interfering with a sporting or entertainment event may be fined a greater amount than is authorized under current law resulting in a positive indeterminate fiscal impact.

Under the bill, any profit or benefit a person receives from interfering with a sporting or entertainment event is subject to seizure and forfeiture under the FCFA. In most cases, proceeds from a forfeiture under the FCFA are retained by the seizing agency. To the extent that persons convicted of interfering with a sporting or entertainment event are profiting from committing the offense and such profits are forfeited under the FCFA, there may be a positive fiscal impact to a seizing agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 871.05 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 20, 2023:

The committee substitute:

- Changes the term “covered area” to “restricted area.”
- Limits the duration of a “covered event” to the time when a venue is held open to the public.
- Revises prohibited conduct by referencing the elements of battery and trespass as provided in current law. Specifically, by providing that a person is prohibited from:
 - Intentionally touching or striking a covered participant during a covered event against the will of the covered participant, or intentionally causing bodily harm to a covered participant during a covered event.
 - Willfully entering or remaining in a restricted area during a covered event without being authorized, licensed, or invited to enter or remain in such a restricted area.
- Creates a third degree felony if a person solicits another person to engage in prohibited conduct by offering money or any other thing of value.

- Makes any profit or benefit payable to or accruing to a person who violates the provisions of the bill subject to seizure and forfeiture as provided in the Florida Contraband Forfeiture Act.

B. Amendments:

None.

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



922662

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2023	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 871.05, Florida Statutes, is created to
read:

871.05 Interference with a sporting or entertainment
event.—

(1) As used in this section, the term:

(a) "Covered event" means an athletic competition or



922662

practice, including one conducted in a public venue or a live artistic, theatrical, or other entertainment performance event. The duration of such event includes the period from the time when a venue is held open to the public for such an event until the end of the athletic competition or performance event.

(b) "Covered participant" means an umpire, officiating crew member, player, coach, manager, groundskeeper, or any artistic, theatrical, or other performer or sanctioned participant in a covered event. The term includes event operations and security employees working at a covered event.

(c) "Restricted area" means any area designated for use by players, coaches, officials, performers, or other personnel administering a covered event that is on, or adjacent to, the area of play or performance.

(2) A person may not:

(a) Intentionally touch or strike a covered participant during a covered event against the will of the covered participant, or intentionally cause bodily harm to a covered participant during a covered event; or

(b) Willfully enter or remain in a restricted area during a covered event without being authorized, licensed, or invited to enter or remain in such a restricted area.

(3) A person who:

(a) Violates subsection (2) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or by a fine of not more than \$2,500.

(b) Solicits another person to violate subsection (2) by offering money or any other thing of value to another to engage in specific conduct that constitutes such a violation commits a



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felony of the third degree, punishable as provided in s.
775.082, s. 775.083, or s. 775.084.

(4) A person convicted of a violation of this section may
not realize any profit or benefit, directly or indirectly, from
committing such a violation. Any profit or benefit payable to or
accruing to a person convicted of a violation of this section is
subject to seizure and forfeiture as provided in the Florida
Contraband Forfeiture Act.

Section 2. This act shall take effect October 1, 2023.

===== 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 interference with sporting or
entertainment events; creating s. 871.05, F.S.;
providing definitions; prohibiting certain actions
during covered sporting and entertainment events;
providing criminal penalties; prohibiting profiting
from violations; providing for seizure and forfeiture
of specified assets; providing an effective date.

By Senator Simon

3-01563-23

2023764

A bill to be entitled

An act relating to interference with sporting or entertainment events; creating s. 871.05, F.S.; defining terms; prohibiting certain actions during covered sporting and entertainment events; providing criminal penalties; prohibiting a person from profiting or benefitting from violations; providing for forfeiture and distribution of profits from a violation; providing an effective date.

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

Section 1. Section 871.05, Florida Statutes, is created to read:

871.05 Interference with a sporting or entertainment event.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Covered area" means any area designated for use by players, coaches, officials, performers, or personnel administering a covered event that is on, or adjacent to, the area of performance or play during the period from the opening of the venue's gates to the public to the closing of the gates after the event.

(b) "Covered event" means an athletic competition or practice, including one conducted in a public venue or a live artistic, theatrical, or other entertainment performance event. The duration of such event includes the period from the opening of the venue's gates to the public to the closing of the gates after the event.

Page 1 of 3

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

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(c) "Covered participant" means an umpire, officiating crew member, player, coach, manager, groundskeeper, or any other sanctioned participant in a covered event or any artistic or theatrical performer. The term includes event operations and security employees working at a covered event.

(d) "Dangerous instrument" means any object, article, or substance that, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or other serious physical injury.

(e) "Substance" includes, but is not limited to, any liquid or saliva.

(2) PROHIBITED CONDUCT.—

(a) A person, other than a covered participant, may not:

1. Knowingly enter or remain unlawfully upon the covered area of a sporting or entertainment event.

2. Recklessly, intentionally, negligently, or knowingly subject a covered participant to contact by means of any substance, object, or dangerous instrument during a covered event, or attempt to do so.

3. Recklessly, intentionally, negligently, or knowingly place, drop, toss, or hurl any substance, object, or dangerous instrument onto the covered area of an event, or attempt to do so.

4. Recklessly, intentionally, negligently, or knowingly strike, slap, kick, or otherwise subject a covered participant to physical contact during a covered event, or to attempt to do so.

(b) A person may not attempt, aid, abet, or conspire with an individual to commit a violation of paragraph (a).

Page 2 of 3

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

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(3) VIOLATIONS.—A person who violates subsection (2):

(a) Commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or by a fine of not more than \$2,500.

(b)1. May not realize any profit or benefit, directly or indirectly, from the violation, from the actions found to be in violation, or from notoriety or other circumstances arising from the violation. Additionally, no person shall collude with the violator of this section with the intention of benefitting or profiting from the violation or attempted violation.

2. Any profit or benefit, financial or otherwise, realized from the violation shall be forfeited and distributed in the manner provided in s. 944.512 as if the violator or person colluding with the violator was a convicted felon for purposes of that section.

Section 2. This act shall take effect October 1, 2023.

March 20, 2023

Meeting Date
Criminal Justice

Committee

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

764

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Barney Bishop III**

Phone **850-510-9922**

Address **1454 Vieux Carre Drive**

Email **Barney@BarneyBishop.com**

Street

Tallahassee

FL

32308

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Fla. Smart Justice

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)



The Florida Senate

Committee Agenda Request

To: Senator Jonathan Martin, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: March 1, 2023

I respectfully request that **Senate Bill #764**, relating to Interference with Sporting or Entertainment Events, be placed on the:

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Corey Simon

Senator Corey Simon
Florida Senate, District 3



The Florida Senate

Committee Agenda Request

To: Senator Jonathan Martin, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: March 8, 2023

I respectfully request that **Senate Bill # 764**, relating to Interference with Sporting or Entertainment Events, be placed on the:

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

Corey Simon

Senator Corey Simon
Florida Senate, District 3

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1226

INTRODUCER: Criminal Justice Committee and Senator Burgess

SUBJECT: Controlled Substances

DATE: March 21, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Stokes	CJ	Fav/CS
2. _____	_____	ACJ	_____
3. _____	_____	FP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1226 punishes selling, trafficking, and other acts involving fentanyl and fentanyl-related substances or mixtures that are sold, etc., in a form that resembles or is combined with a product and the product or packaging contains any specified attribute. For example, one specified attribute is that the product or packaging resembles cereal, candy, a vitamin, a gummy, or a chewable product, such as a gum or gelatin-based product.

The bill amends s. 893.13, F.S. (sale and other acts), to provide the new offense is punishable as a first degree felony with a 3-year mandatory minimum term. The bill amends s. 893.135, F.S., the trafficking statute, which only applies if a 4 gram threshold is reached, to provide the new offense is a first degree felony with a mandatory minimum term of imprisonment of life imprisonment and a mandatory fine of \$1 million.

The bill would address the problem of “rainbow” fentanyl, which is a descriptive term that is generally used to apply to a pill, powder, or block that contains fentanyl or fentanyl-related substances or mixtures and that are produced or packaged in a variety of bright colors, shapes, and sizes in order to attract young people.

The Legislature’s Office of Economic and Demographic Research preliminary estimates that the bill will have a “positive indeterminate” prison bed impact (an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2023.

II. Present Situation:

“Rainbow” Fentanyl

The U.S. Drug Enforcement Administration (DEA) provided the following information regarding “rainbow” fentanyl:

The Drug Enforcement Administration is advising the public of an alarming emerging trend of colorful fentanyl available across the United States. Since August 2022, DEA and our law enforcement partners seized brightly-colored fentanyl and fentanyl pills in 26 states. Dubbed “rainbow fentanyl” in the media, this trend appears to be a new method used by drug cartels to sell highly addictive and potentially deadly fentanyl made to look like candy to children and young people.

“Rainbow fentanyl—fentanyl pills and powder that come in a variety of bright colors, shapes, and sizes—is a deliberate effort by drug traffickers to drive addiction amongst kids and young adults,” said DEA Administrator Anne Milgram. “The men and women of the DEA are relentlessly working to stop the trafficking of rainbow fentanyl and defeat the Mexican drug cartels that are responsible for the vast majority of the fentanyl that is being trafficked in the United States.”

Brightly-colored fentanyl is being seized in multiple forms, including pills, powder, and blocks that resembles sidewalk chalk. Despite claims that certain colors may be more potent than others, there is no indication through DEA’s laboratory testing that this is the case. Every color, shape, and size of fentanyl should be considered extremely dangerous.¹

Scheduling of Fentanyl as a Controlled Substance

Section 893.03, F.S., classifies controlled substances into five categories or classifications, known as schedules. The schedules regulate the manufacture, distribution, preparation, and dispensing of substances listed in the schedules. The most important factors in determining which schedule may apply to a substance are the “potential for abuse”² of the substance and whether there is a currently accepted medical use for the substance. The controlled substance schedules are described as follows:

- Schedule I substances (s. 893.03(1), F.S.) have a high potential for abuse and no currently accepted medical use in treatment in the United States. Use of these substances under medical supervision does not meet accepted safety standards.

¹ *DEA Warns of Brightly-Colored Fentanyl Used to Target Young Americans* (August 30, 2023), U.S. Drug Enforcement Administration, available at <https://www.dea.gov/press-releases/2022/08/30/dea-warns-brightly-colored-fentanyl-used-target-young-americans> (last visited on March 10, 2023).

² Section 893.035(3)(a), F.S., defines “potential for abuse” as a substance that has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: used in amounts that create a hazard to the user’s health or the safety of the community; diverted from legal channels and distributed through illegal channels; or taken on the user’s own initiative rather than on the basis of professional medical advice.

- Schedule II substances (s. 893.03(2), F.S.) have a high potential for abuse and a currently accepted but severely restricted medical use in treatment in the United States. Abuse of these substances may lead to severe psychological or physical dependence.
- Schedule III substances (s. 893.03(3), F.S.) have a potential for abuse less than the Schedule I and Schedule II substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to moderate or low physical dependence or high psychological dependence. Abuse of anabolic steroids may lead to physical damage.
- Schedule IV substances (s. 893.03(4), F.S.) have a low potential for abuse relative to Schedule III substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule III substances.
- Schedule V substances (s. 893.03(5), F.S.) have a low potential for abuse relative to Schedule IV substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule IV substances.

“Fentanyl is a powerful synthetic opioid that is similar to morphine but is 50 to 100 times more potent. It is a prescription drug that is also used and made illegally.”³ “Synthetic opioids, including fentanyl, are now the most common drugs involved in drug overdose deaths in the United States.”⁴ According to Florida’s Statewide Drug Policy Advisory Council, the majority of overdose deaths in Florida in 2021 were related to opioids, and “[t]he most significant increases [in overdose deaths relative to the previous year] were deaths involving fentanyl which increased by 11 percent, and deaths caused by fentanyl increased by 9 percent.”⁵

Fentanyl and fentanyl-related substances (e.g., alfentanil, carfentanil, and sufentanil) are Schedule (2)(b) controlled substances.⁶

Controlled Substance Analog

A “controlled substance analog” is a substance which, due to its chemical structure and potential for abuse, meets the following criteria:

- The substance is substantially similar to that of a controlled substance listed in Schedule I or Schedule II of s. 893.03, F.S.; and
- The substance has a stimulant, depressant, or hallucinogenic effect on the central nervous system or is represented or intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than that of a controlled substance listed in Schedule I or Schedule II of s. 893.03, F.S.⁷

³ *Fentanyl DrugFacts*, National Institute on Drug Abuse (footnotes omitted), available at <https://nida.nih.gov/publications/drugfacts/fentanyl> (last visited on March 10, 2023). As a medicine, fentanyl is “typically used to treat patients with severe pain, especially after surgery[.]” and “is also sometimes used to treat patients with chronic pain who are physically tolerant to other opioids.” *Id.*

⁴ *Id.*

⁵ *2020 Annual Report* (Dec. 1, 2022), p. 8, Statewide Drug Policy Advisory Council, available at https://www.floridahealth.gov/provider-and-partner-resources/dpac/documents/2022_DPAC_Annual_Report.pdf (last visited on March 10, 2023).

⁶ Section 893.03(2)(b)1., 6., 9., and 30., F.S.

⁷ Section 893.0356(2)(a), F.S.

Punishment for Acts Involving Fentanyl and Fentanyl-related Substances

Section 893.13, F.S., punishes various unlawful acts involving Schedule (2)(b) controlled substances:

- Selling, manufacturing, or delivering the substance, or possessing the substance with intent to sell, manufacture, or deliver⁸ it are generally second degree felonies;⁹
- Purchasing or possessing the substance with intent to purchase it are generally second degree felonies;¹⁰
- Bringing the substance into this state (importing) is generally a second degree felony;¹¹
- Possessing 10 grams of more of the substance is generally a first degree felony¹² but possessing a lesser amount is generally a third degree felony;¹³ and
- Distributing¹⁴ the substance, except through an authorized order form, is generally a first degree misdemeanor.¹⁵

Section 893.135, F.S., punishes drug trafficking, which consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state (importing), or knowingly being in actual or constructive possession of, certain Schedule I or Schedule II controlled substances, in a statutorily-specified quantity. The statute only applies to a limited number of such controlled substances, including fentanyl and fentanyl-related substances. The controlled substance involved in the trafficking must meet a specified weight or quantity threshold. Most drug trafficking offenses are first degree felonies and are subject to a mandatory minimum term of imprisonment and a mandatory fine, which is determined by the weight or quantity range applicable to the weight or quantity of the substance involved in the trafficking.

Trafficking in 4 grams or more of the following is a first degree felony:

- Alfentanil;
- Carfentanil;
- Fentanyl;
- Sufentanil;

⁸ “Deliver” means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship. Section 893.02(6), F.S.

⁹ Section 893.13(1)(a)1., F.S. A second degree felony is punishable by not more than 15 years in state prison and a fine not exceeding \$10,000. Section 775.082 and 775.083, F.S.

¹⁰ Section 893.13(2)(a)1., F.S.

¹¹ Section 893.13(5)(a)1., F.S.

¹² Section 893.13(6)(c), F.S. A first degree felony is generally punishable by not more than 30 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

¹³ Section 893.13(6)(a), F.S. A third degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S. *But see* ss. 775.082(10) and 921.00241, F.S. (prison diversion).

¹⁴ “Distribute” means to deliver, other than by administering or dispensing, a controlled substance. Section 893.02(8), F.S.

“Dispense” means the transfer of possession of one or more doses of a medicinal drug by a pharmacist or other licensed practitioner to the ultimate consumer thereof or to one who represents that it is his or her intention not to consume or use the same but to transfer the same to the ultimate consumer or user for consumption by the ultimate consumer or user. Section 893.02(7), F.S. “Administer” means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a person or animal. Section 893.02(1), F.S.

¹⁵ Section 893.13(7)(a)4., F.S.

- A fentanyl derivative;¹⁶
- A controlled substance analog¹⁷ of any previously-described substance or a fentanyl derivative; or
- A mixture containing any previously-described substance or a fentanyl derivative or analog.¹⁸

If the quantity involved in the drug trafficking violation is:

- 4 grams or more, but less than 14 grams, the person must be sentenced to a mandatory minimum term of imprisonment of 7 years, and must be ordered to pay a fine of \$50,000;
- 14 grams or more, but less than 28 grams, the person must be sentenced to a mandatory minimum term of imprisonment of 20 years, and must be ordered to pay a fine of \$100,000; or
- 28 grams or more, the person must be sentenced to a mandatory minimum term of imprisonment of 25 years, and must be ordered to pay a fine of \$500,000.¹⁹

III. Effect of Proposed Changes:

The bill amends s. 893.13, F.S., to provide that it is a first degree felony²⁰ with a 3-year mandatory minimum term to:

- Sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, any of the following:
 - Alfentanil, as described in s. 893.03(2)(b)1., F.S.
 - Carfentanil, as described in s. 893.03(2)(b)6., F.S.
 - Fentanyl, as described in s. 893.03(2)(b)9., F.S.
 - Sufentanil, as described in s. 893.03(2)(b)30., F.S.
 - A fentanyl derivative, as described in s. 893.03(1)(a)62., F.S.;
 - A controlled substance analog, as described in s. 893.0356, F.S., of any substance previously described; or
 - A mixture containing any substance previously described or an analog of the substance;
- AND
- The substance or mixture previously described is in a form that resembles, or is mixed, granulated, absorbed, spray dried, or aerosolized as or onto, coated on, in whole or in part, or solubilized with or into, a product, when such product or its packaging further has at least one of the following attributes:
 - A bright color or coloring scheme
 - Resembles the trade dress of a consumer food product, branded food product, or logo food product;
 - Incorporates an actual or fake registered trademark, service mark, or copyright;
 - Resembles cereal, candy, a vitamin, a gummy, or a chewable product, such as a gum or gelatin-based product; or
 - Contains a cartoon character imprint.

¹⁶ See s. 893.03(1)(a)62., F.S.

¹⁷ See s. 893.0356(2)(a), F.S.

¹⁸ Section 893.135(1)(c)4.a.(I)-(VII), F.S.

¹⁹ Section 893.135(1)(c)4.b.(I)-(III), F.S.

²⁰ The first degree felony is not ranked in s. 921.0022, F.S., the Criminal Punishment Code (Code) offense severity level ranking, so it defaults to a level 7 ranking pursuant to s. 921.0023, F.S. The mandatory minimum term may supersede the minimum prison sentence scored under the Code.

The bill also amends s. 893.135, F.S., the trafficking statute, to provide that it is a first degree felony with a mandatory minimum term of imprisonment of life imprisonment²¹ and a mandatory fine of \$1 million to:

- Knowingly sell, purchase, manufacture, deliver, or bring into this state, or knowingly be in actual or constructive possession of, 4 grams or more of any fentanyl or any other fentanyl-related substance or mixture as previously described (see description of changes to s. 893.13, F.S.); **AND**
- The substance or mixture previously described is in a form that resembles, or is mixed, granulated, absorbed, spray dried, or aerosolized as or onto, coated on, in whole or in part, or solubilized with or into, a product, when such product or its packaging further has at least one of the attributes previously described (see description of changes to s. 893.13, F.S.).

As previously noted, the bill would address the problem of “rainbow” fentanyl, which is a descriptive term that is generally used to apply to a pill, powder, or block that contains fentanyl or fentanyl-related substances or mixtures and that are produced or packaged in a variety of bright colors, shapes, and sizes in order attract young people.

The bill takes effect October 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

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.

²¹ The trafficking provisions of the bill relating to trafficking do not impact the ranking of trafficking in fentanyl in the Code offense severity level ranking chart (level 7, 8, or 9, depending on the quantity trafficked). See s. 921.0022(3)(g), (h), and (i), F.S. The trafficking provisions of the bill are only relevant to the applicable mandatory minimum term and fine.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminary estimates that the bill will have a "indeterminate" prison bed impact (an unquantifiable increase in prison beds).²² The EDR provides the following additional information regarding its estimate:

Per [Department of Corrections], in FY 18-19, there were 766 new commitments to prison for sale/manufacture/delivery drug violations, of which fentanyl offenses represent an unknown share of that total. In FY 19-20, there were 443 new commitments, and there were 426 new commitments in FY 20-21. There were 520 new commitments in FY 21- 22. There were 19 new commitments to prison for fentanyl trafficking violations in FY 18-19, and there were 35 new commitments in FY 19-20. There were 63 new commitments in FY 20-21, and there were 169 new commitments in FY 21-22. It is not known how many of these offenders would fit the newly added language in this bill.²³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 893.13 and 893.135.

²² *SB 1226 – Controlled Substances*, Office of Economic and Demographic Research (on file with the Senate Committee on Criminal Justice).

²³ *Id.*

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 20, 2023:

The committee substitute:

- Revises attributes of product or packaging containing fentanyl or fentanyl-related substance or mixture to include a bright color or coloring scheme.
- Provides that the new fentanyl trafficking offense is punishable by a mandatory minimum term of imprisonment of life imprisonment and a mandatory fine of \$1 million.

- B. **Amendments:**

None.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2023	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (i) is added to subsection (1) of
section 893.13, Florida Statutes, to read:

893.13 Prohibited acts; penalties.—

(1)

(i) Except as authorized by this chapter, a person commits
a felony of the first degree, punishable as provided in s.



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775.082, s. 775.083, or s. 775.084, and must be sentenced to a mandatory minimum term of imprisonment of 3 years, if:

1. The person sells, manufactures, or delivers, or possesses with intent to sell, manufacture, or deliver, any of the following:

a. Alfentanil, as described in s. 893.03(2)(b)1.;

b. Carfentanil, as described in s. 893.03(2)(b)6.;

c. Fentanyl, as described in s. 893.03(2)(b)9.;

d. Sufentanil, as described in s. 893.03(2)(b)30.;

e. A fentanyl derivative, as described in s. 893.03(1)(a)62.;

f. A controlled substance analog, as described in s. 893.0356, of any substance described in sub-subparagraphs a.-e.; or

g. A mixture containing any substance described in sub-subparagraphs a.-f.; and

2. The substance or mixture listed in subparagraph 1. is in a form that resembles, or is mixed, granulated, absorbed, spray-dried, or aerosolized as or onto, coated on, in whole or in part, or solubilized with or into, a product, when such product or its packaging further has at least one of the following attributes:

a. A bright color or coloring scheme;

b. Resembles the trade dress of a branded food product, consumer food product, or logo food product;

c. Incorporates an actual or fake registered copyright, service mark, or trademark;

d. Resembles candy, cereal, a gummy, a vitamin, or a chewable product, such as a gum or gelatin-based product; or



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e. Contains a cartoon character imprint.

Section 2. Paragraph (c) of subsection (1) of section 893.135, Florida Statutes, is amended to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(c)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as "trafficking in illegal drugs," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of \$50,000.

b. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of \$100,000.

c. Is 28 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of \$500,000.



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2. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of hydrocodone, as described in s. 893.03(2)(a)1.k., codeine, as described in s. 893.03(2)(a)1.g., or any salt thereof, or 28 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in hydrocodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 28 grams or more, but less than 50 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of \$50,000.

b. Is 50 grams or more, but less than 100 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of \$100,000.

c. Is 100 grams or more, but less than 300 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of \$500,000.

d. Is 300 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of \$750,000.

3. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 7 grams or more of oxycodone, as described in s. 893.03(2)(a)1.q., or any salt thereof, or 7 grams or more of any mixture containing any such



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substance, commits a felony of the first degree, which felony shall be known as "trafficking in oxycodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 7 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of \$50,000.

b. Is 14 grams or more, but less than 25 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of \$100,000.

c. Is 25 grams or more, but less than 100 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of \$500,000.

d. Is 100 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of \$750,000.

4.a. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of:

(I) Alfentanil, as described in s. 893.03(2)(b)1.;

(II) Carfentanil, as described in s. 893.03(2)(b)6.;

(III) Fentanyl, as described in s. 893.03(2)(b)9.;

(IV) Sufentanil, as described in s. 893.03(2)(b)30.;

(V) A fentanyl derivative, as described in s. 893.03(1)(a)62.;

(VI) A controlled substance analog, as described in s. 893.0356, of any substance described in sub-sub-subparagraphs



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(I)-(V); or

(VII) A mixture containing any substance described in sub-subparagraphs (I)-(VI),

commits a felony of the first degree, which felony shall be known as "trafficking in dangerous fentanyl or fentanyl analogues," punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. If the quantity involved under sub-subparagraph a.:

(I) Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and shall be ordered to pay a fine of \$50,000.

(II) Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 20 years, and shall be ordered to pay a fine of \$100,000.

(III) Is 28 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years, and shall be ordered to pay a fine of \$500,000.

c. A person who violates sub-subparagraph a. shall be sentenced to a mandatory minimum term of life imprisonment, and shall be ordered to pay a fine of \$1 million if the substance or mixture listed in sub-subparagraph a. is in a form that resembles, or is mixed, granulated, absorbed, spray-dried, or aerosolized as or onto, coated on, in whole or in part, or solubilized with or into, a product, when such product or its packaging further has at least one of the following attributes:

(I) A bright color or coloring scheme;

(II) Resembles the trade dress of a branded food product,



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consumer food product, or logo food product;

(III) Incorporates an actual or fake registered copyright,
service mark, or trademark;

(IV) Resembles candy, cereal, a gummy, a vitamin, or a
chewable product, such as a gum or gelatin-based product; or

(V) Contains a cartoon character imprint.

5. A person who knowingly sells, purchases, manufactures,
delivers, or brings into this state, or who is knowingly in
actual or constructive possession of, 30 kilograms or more of
any morphine, opium, oxycodone, hydrocodone, codeine,
hydromorphone, or any salt, derivative, isomer, or salt of an
isomer thereof, including heroin, as described in s.
893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or
more of any mixture containing any such substance, commits the
first degree felony of trafficking in illegal drugs. A person
who has been convicted of the first degree felony of trafficking
in illegal drugs under this subparagraph shall be punished by
life imprisonment and is ineligible for any form of
discretionary early release except pardon or executive clemency
or conditional medical release under s. 947.149. However, if the
court determines that, in addition to committing any act
specified in this paragraph:

a. The person intentionally killed an individual or
counseled, commanded, induced, procured, or caused the
intentional killing of an individual and such killing was the
result; or

b. The person's conduct in committing that act led to a
natural, though not inevitable, lethal result,



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such person commits the capital felony of trafficking in illegal drugs, punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

6. A person who knowingly brings into this state 60 kilograms or more of any morphine, opium, oxycodone, hydrocodone, codeine, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or more of any mixture containing any such substance, and who knows that the probable result of such importation would be the death of a person, commits capital importation of illegal drugs, a capital felony punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

Section 3. This act shall take effect October 1, 2023.

===== 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 controlled substances; amending s.
893.13, F.S.; providing criminal penalties; providing
for a mandatory minimum term of imprisonment if a
person sells, manufactures, or delivers or possesses
with intent to sell, manufacture, or deliver specified



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214 substances or mixtures, and such substance or mixture
215 has at least one specified attribute; amending s.
216 893.135, F.S.; providing enhanced criminal penalties;
217 providing for a mandatory minimum term of imprisonment
218 if a person commits specified prohibited acts relating
219 to controlled substances, and such substance or
220 mixture has at least one specified attribute;
221 providing an effective date.

By Senator Burgess

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1 A bill to be entitled
 2 An act relating to controlled substances; amending s.
 3 893.13, F.S.; providing criminal penalties and a
 4 mandatory minimum term of imprisonment if a person
 5 sells, manufactures, or delivers, or possesses with
 6 intent to sell, manufacture, or deliver, specified
 7 substances or mixtures, and such substance or mixture
 8 has at least one specified attribute; amending s.
 9 893.135, F.S.; providing enhanced criminal penalties
 10 and a mandatory minimum term of imprisonment if a
 11 person commits specified prohibited acts relating to
 12 controlled substances, and such substance or mixture
 13 has at least one specified attribute; providing an
 14 effective date.
 15
 16 Be It Enacted by the Legislature of the State of Florida:
 17
 18 Section 1. Paragraph (i) is added to subsection (1) of
 19 section 893.13, Florida Statutes, to read:
 20 893.13 Prohibited acts; penalties.—
 21 (1)
 22 (i) Except as authorized by this chapter, a person commits
 23 a felony of the first degree, punishable as provided in s.
 24 775.082, s. 775.083, or s. 775.084, with a mandatory minimum
 25 term of imprisonment of 3 years, if the person:
 26 1. Sells, manufactures, or delivers, or possesses with
 27 intent to sell, manufacture, or deliver, any of the following:
 28 a. Alfentanil, as described in s. 893.03(2)(b)1.;
 29 b. Carfentanil, as described in s. 893.03(2)(b)6.;

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

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30 c. Fentanyl, as described in s. 893.03(2)(b)9.;
 31 d. Sufentanil, as described in s. 893.03(2)(b)30.;
 32 e. A fentanyl derivative, as described in s.
 33 893.03(1)(a)62.;
 34 f. A controlled substance analog, as described in s.
 35 893.0356, of any substance described in sub-subparagraphs a.-e.;
 36 or
 37 g. A mixture containing any substance described in sub-
 38 paragraphs a.-f.; and
 39 2. The substance or mixture listed in subparagraph 1. is in
 40 a form that resembles, or is mixed, granulated, absorbed, spray-
 41 dried, or aerosolized as or onto, coated on, in whole or in
 42 part, or solubilized with or into, a product, when such product
 43 or its packaging further has at least one of the following
 44 attributes:
 45 a. Resembles the trade dress of a consumer food product,
 46 branded food product, or logo food product;
 47 b. Incorporates an actual or fake registered trademark,
 48 service mark, or copyright;
 49 c. Resembles cereal, candy, a vitamin, a gummy, or a
 50 chewable product, such as a gum or gelatin-based product; or
 51 d. Contains a cartoon character imprint.
 52 Section 2. Paragraph (c) of subsection (1) of section
 53 893.135, Florida Statutes, is amended to read:
 54 893.135 Trafficking; mandatory sentences; suspension or
 55 reduction of sentences; conspiracy to engage in trafficking.—
 56 (1) Except as authorized in this chapter or in chapter 499
 57 and notwithstanding the provisions of s. 893.13:
 58 (c)1. A person who knowingly sells, purchases,

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manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 4 grams or more of any morphine, opium, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more of any mixture containing any such substance, but less than 30 kilograms of such substance or mixture, commits a felony of the first degree, which felony shall be known as "trafficking in illegal drugs," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 4 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of \$50,000.

b. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of \$100,000.

c. Is 28 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of \$500,000.

2. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of hydrocodone, as described in s. 893.03(2)(a)1.k., codeine, as described in s. 893.03(2)(a)1.g., or any salt thereof, or 28 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in hydrocodone," punishable as provided in

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s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 28 grams or more, but less than 50 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of \$50,000.

b. Is 50 grams or more, but less than 100 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and shall be ordered to pay a fine of \$100,000.

c. Is 100 grams or more, but less than 300 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of \$500,000.

d. Is 300 grams or more, but less than 30 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 25 years and shall be ordered to pay a fine of \$750,000.

3. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 7 grams or more of oxycodone, as described in s. 893.03(2)(a)1.q., or any salt thereof, or 7 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in oxycodone," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 7 grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and shall be ordered to pay a fine of \$50,000.

b. Is 14 grams or more, but less than 25 grams, such person

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117 shall be sentenced to a mandatory minimum term of imprisonment
 118 of 7 years and shall be ordered to pay a fine of \$100,000.
 119 c. Is 25 grams or more, but less than 100 grams, such
 120 person shall be sentenced to a mandatory minimum term of
 121 imprisonment of 15 years and shall be ordered to pay a fine of
 122 \$500,000.
 123 d. Is 100 grams or more, but less than 30 kilograms, such
 124 person shall be sentenced to a mandatory minimum term of
 125 imprisonment of 25 years and shall be ordered to pay a fine of
 126 \$750,000.
 127 4.a. A person who knowingly sells, purchases, manufactures,
 128 delivers, or brings into this state, or who is knowingly in
 129 actual or constructive possession of, 4 grams or more of:
 130 (I) Alfentanil, as described in s. 893.03(2)(b)1.;
 131 (II) Carfentanil, as described in s. 893.03(2)(b)6.;
 132 (III) Fentanyl, as described in s. 893.03(2)(b)9.;
 133 (IV) Sufentanil, as described in s. 893.03(2)(b)30.;
 134 (V) A fentanyl derivative, as described in s.
 135 893.03(1)(a)62.;
 136 (VI) A controlled substance analog, as described in s.
 137 893.0356, of any substance described in sub-sub-subparagraphs
 138 (I)-(V); or
 139 (VII) A mixture containing any substance described in sub-
 140 sub-subparagraphs (I)-(VI),
 141
 142 commits a felony of the first degree, which felony shall be
 143 known as "trafficking in dangerous fentanyl or fentanyl
 144 analogues," punishable as provided in s. 775.082, s. 775.083, or
 145 s. 775.084.

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146 b. If the quantity involved under sub-subparagraph a.:
 147 (I) Is 4 grams or more, but less than 14 grams, such person
 148 shall be sentenced to a mandatory minimum term of imprisonment
 149 of 7 years, and shall be ordered to pay a fine of \$50,000.
 150 (II) Is 14 grams or more, but less than 28 grams, such
 151 person shall be sentenced to a mandatory minimum term of
 152 imprisonment of 20 years, and shall be ordered to pay a fine of
 153 \$100,000.
 154 (III) Is 28 grams or more, such person shall be sentenced
 155 to a mandatory minimum term of imprisonment of 25 years, and
 156 shall be ordered to pay a fine of \$500,000.
 157 c. A person who violates sub-subparagraph a. shall be
 158 sentenced to a mandatory minimum term of imprisonment of not
 159 less than 25 years and not exceeding life imprisonment and shall
 160 be ordered to pay a fine of \$750,000 if the substance or mixture
 161 listed in sub-subparagraph a. is in a form that resembles, or is
 162 mixed, granulated, absorbed, spray-dried, or aerosolized as or
 163 onto, coated on, in whole or in part, or solubilized with or
 164 into, a product, when such product or its packaging further has
 165 at least one of the following attributes:
 166 (I) Resembles the trade dress of a consumer food product,
 167 branded food product, or logo food product;
 168 (II) Incorporates an actual or fake registered trademark,
 169 service mark, or copyright;
 170 (III) Resembles cereal, candy, a vitamin, a gummy, or a
 171 chewable product, such as a gum or gelatin-based product; or
 172 (IV) Contains a cartoon character imprint.
 173 5. A person who knowingly sells, purchases, manufactures,
 174 delivers, or brings into this state, or who is knowingly in

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actual or constructive possession of, 30 kilograms or more of any morphine, opium, oxycodone, hydrocodone, codeine, hydromorphone, or any salt, derivative, isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or more of any mixture containing any such substance, commits the first degree felony of trafficking in illegal drugs. A person who has been convicted of the first degree felony of trafficking in illegal drugs under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149. However, if the court determines that, in addition to committing any act specified in this paragraph:

a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or

b. The person's conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in illegal drugs, punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

6. A person who knowingly brings into this state 60 kilograms or more of any morphine, opium, oxycodone, hydrocodone, codeine, hydromorphone, or any salt, derivative,

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isomer, or salt of an isomer thereof, including heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or more of any mixture containing any such substance, and who knows that the probable result of such importation would be the death of a person, commits capital importation of illegal drugs, a capital felony punishable as provided in ss. 775.082 and 921.142. A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

Section 3. This act shall take effect October 1, 2023.

SB 1226 – Controlled Substances

This bill amends s. 893.13, F.S., adding an unranked, 1st degree felony (Level 7 by default) and a mandatory minimum term of imprisonment of 3 years for a person who “sells, manufactures, or delivers, or possesses with intent to sell, manufacture, or deliver” fentanyl or fentanyl analogs in “a product, when such product or its packaging further has at least one of the following attributes...resembles the trade dress of a consumer food product, branded food product, or logo food product...incorporates an actual or fake registered trademark, service mark, or copyright...resembles cereal, candy, a vitamin, a gummy, or a chewable product, such as a gum or gelatin-based product...or...contains a cartoon character imprint.”

This bill also amends s. 893.135, F.S., stating that a person “shall be sentenced to a mandatory minimum term of imprisonment of not less than 25 years and not exceeding life imprisonment” if that person commits “trafficking in dangerous fentanyl or fentanyl analogues” and this act involves “a product, when such product or its packaging further has at least one of the following attributes...resembles the trade dress of a consumer food product, branded food product, or logo food product...incorporates an actual or fake registered trademark, service mark, or copyright...resembles cereal, candy, a vitamin, a gummy, or a chewable product, such as a gum or gelatin-based product...or...contains a cartoon character imprint.”

Per DOC, in FY 18-19, there were 766 new commitments to prison for sale/manufacture/delivery drug violations, of which fentanyl offenses represent an unknown share of that total. In FY 19-20, there were 443 new commitments, and there were 426 new commitments in FY 20-21. There were 520 new commitments in FY 21-22. There were 19 new commitments to prison for fentanyl trafficking violations in FY 18-19, and there were 35 new commitments in FY 19-20. There were 63 new commitments in FY 20-21, and there were 169 new commitments in FY 21-22. It is not known how many of these offenders would fit the newly added language in this bill.

EDR PROPOSED ESTIMATE: Positive Indeterminate

Requested by: Senate



The Florida Senate

Committee Agenda Request

To: Senator Jonathan Martin, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: March 6, 2023

I respectfully request that **Senate Bill #1226**, relating to Controlled Substances, be placed on the:

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

A handwritten signature in blue ink, appearing to read "Danny", is written over a horizontal line.

Senator Danny Burgess
Florida Senate, District 23

March 20, 2023

Meeting Date

Criminal Justice

Committee

Name Jonathan Webber

Address 400 Washington Ave

Street

Montgomery

City

AL

State

36104

Zip

Phone 954-593-4449

Email jonathan.webber@splcactionfund.org

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

SB 1226 Controlled Substances

Bill Number or Topic

Amendment Barcode (if applicable)

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

SPLC Action Fund

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

APPEARANCE RECORD

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Senate professional staff conducting the meeting

3/20/23

Meeting Date

Crim Justice

Committee

SB 1226

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Kara Gross

Phone

786-363-4436

Address

4343 W. Flagler St

Street

Email

kgross@aclufl.org

Miami

City

FL

State

33134

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☒

Against

PLEASE CHECK ONE OF THE FOLLOWING:☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

ACLU of FLORIDA

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB 1226

Bill Number or Topic

3/20/23

Meeting Date

Criminal Justice

Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Laurette Philpott / Florida Cares

Phone 301-855-0833

Address 2048 Ponce De Leon Ave

Street

Email laurette@floridacarescharity.org

West Palm Beach FL 33407

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

March 20, 2023

Meeting Date

Criminal Justice

Committee

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1226

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Barney Bishop III**

Phone **850-510-9922**

Address **1454 Vieux Carre Drive**

Email **Barney@BarneyBishop.com**

Street

Tallahassee

FL

32308

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Fla. Smart Justice
...

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1332

INTRODUCER: Criminal Justice Committee and Senator Martin

SUBJECT: Missing Persons

DATE: March 21, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Stokes	CJ	Fav/CS
2.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1332 addresses missing person reporting and investigations by requiring law enforcement agencies in the state to adopt policies related to standards for maintaining and clearing computer data of information concerning a missing child or missing adult which is stored in the National Missing and Unidentified Persons System (NamUs), a national information clearinghouse and resource center for missing, unidentified, and unclaimed person cases across the United States. The standards must require, at a minimum, a monthly review of each case and a determination of whether the case should be maintained in NamUs. The bill prohibits the removal of a missing child or missing adult entry on the NamUs database based solely on the age of the missing child or missing adult.

The bill also requires a law enforcement agency receiving a report of a missing child to immediately inform all on-duty law enforcement officers of the missing child report, communicate the report to every other law enforcement agency having jurisdiction in the county, and within 2 hours after receipt of the report, transmit the report for inclusion in the NamUs database.

The bill also requires a law enforcement agency to transmit to NamUs a credible police report that an adult is missing. The agency must transmit this report within 2 hours after its receipt.

Finally, the bill requires a law enforcement agency having jurisdiction over a case to purge case information from NamUs and notify the Missing Endangered Persons Clearinghouse.

The bill may impact local law enforcement agencies but that impact is indeterminate. There is no information available at present to indicate that this impact cannot be absorbed within existing resources. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2023.

II. Present Situation:

Florida Crime Information Center

The Florida Crime Information Center (FCIC) is a statewide information system provided by the Florida Department of Law Enforcement (FDLE) that allows users over 18 years of age who are members of an agency with statutory access to criminal justice information the ability to search information relating to missing and stolen property, missing persons, unidentified persons, people that are wanted as a result of ongoing criminal investigations, protection orders, persons on supervised release, and other criminal history information.¹ The FCIC deals exclusively with records, persons, and missing items from Florida,² and is tied to the National Crime Information Center of the Federal Bureau of Investigation (FBI) in Washington D.C.³

National Crime Information Center

The National Crime Information Center (NCIC) is an electronic criminal records database that allows criminal justice agencies to enter or search for information related to stolen property, missing or wanted persons, domestic violence protection orders, and criminal histories, and provides access to the National Sex Offender Registry.⁴ The NCIC allows federal, state, local, and tribal criminal justice users and law enforcement agencies to enter records into the NCIC, which can then be searched by other criminal justice and law enforcement agencies. Agencies must enter, modify, and remove their own records. Additionally, NCIC policy requires, among other things, that agencies regularly validate their records and conduct periodic audits to ensure data quality and adherence to all security rules.⁵

The NCIC contains seven property files containing records of stolen articles, boats, guns, license plates, parts, securities, and vehicles, and 15 persons files related to supervised release, the National Sex Offender Registry, foreign fugitives, immigration violators, missing persons, protection orders, extreme risk protection orders, unidentified persons, protective interests, gangs, known or suspected terrorists, wanted persons, identity theft, violent persons, and the

¹ *FCIC/NCIC FAQ*, Florida Department of Law Enforcement, available at <https://www.fdle.state.fl.us/Limited-Access/FAQ> (last visited on March 14, 2023).

² *Florida Arrests*, Florida Crime Information Center, Florida Department of Law Enforcement, available at <https://www.flarrests.org/Florida-Crime-Information-Center.html> (last visited on March 14, 2023); *The Florida Crime Information Center, Public Access System (PAS)*, Florida Department of Law Enforcement, available at <http://pas.fdle.state.fl.us/pas/restricted/PAS/home/home.jsf> (last visited on March 14, 2023).

³ *Florida Crime Information Center*, Office of Justice Programs, U.S. Department of Justice, available at <https://www.ojp.gov/ncjrs/virtual-library/abstracts/florida-crime-information-center> (last visited on March 14, 2023).

⁴ *National Crime Information Systems*, U.S. Department of Justice, available at <https://www.justice.gov/tribal/national-crime-information-systems> (last visited on March 14, 2023).

⁵ *National Crime Information Center (NCIC)*, Federal Bureau of Investigation, available at <https://le.fbi.gov/informational-tools/ncic> (last visited on March 14, 2023).

National Instant Criminal Background Check System. There are more than 17 million active records within NCIC.⁶

The NCIC also contains images that can be matched with NCIC records to help identify people and property items.⁷ As of December 31, 2022, there were 97,127 active missing person entries in the NCIC. Children under the age of 18 account for 30,522, or 31 percent, of the records.⁸

Missing Child and Missing Adult Reports

Section 937.021, F.S., requires law enforcement agencies in the state to adopt written policies that specify the procedures to be used to investigate reports of missing children⁹ and missing adults.¹⁰ The policies must ensure that cases are investigated promptly using appropriate resources and must include:

- Requirements for accepting missing child and missing adult reports;
- Procedures for initiating, maintaining, closing, or referring a missing child or missing adult investigation; and
- Standards for maintaining and clearing computer data of information concerning a missing child or missing adult which is stored in the FCIC and the NCIC. The standards must require, at a minimum, a monthly review of each case and a determination of whether the case should be maintained in the database.¹¹

Entries concerning a missing child or missing adult may not be removed based solely on the age of the missing person.¹² A report that a child or adult is missing must be accepted by and filed with the law enforcement agency having jurisdiction in the county or municipality in which the child or adult was last seen.¹³ When a parent or guardian, the Department of Children and Families (DCF), a community-based care provider, or a sheriff's office providing investigative services for the DCF files a police report that a child is missing, the law enforcement agency receiving the report must:

- Immediately inform all on-duty law enforcement officers of the missing child report;
- Communicate the report to every other law enforcement agency having jurisdiction in the county; and
- Transmit the report for inclusion in the FCIC and the NCIC databases within two hours of receiving the report.¹⁴

⁶ *Id.*

⁷ *Id.*

⁸ 2022 NCIC Missing Person and Unidentified Person Statistics, Federal Bureau of Investigation, available at <https://www.fbi.gov/file-repository/2022-ncic-missing-person-and-unidentified-person-statistics.pdf/view> (last visited March 15, 2023).

⁹ “Missing child” means a person younger than 18 years of age whose temporary or permanent residence is in, or is believed to be in, this state, whose location has not been determined, and who has been reported as missing to a law enforcement agency. Section 937.0201(3), F.S.

¹⁰ “Missing adult” means a person 18 years of age or older whose temporary or permanent residence is in, or is believed to be in, this state, whose location has not been determined, and who has been reported as missing to a law enforcement agency. Section 937.0201(2), F.S.

¹¹ Section 937.021(1), F.S.

¹² Section 937.021(2), F.S.

¹³ Section 937.021(3), F.S. This section does not preclude a law enforcement agency from accepting a missing child or missing adult report when agency jurisdiction cannot be determined.

¹⁴ Section 937.021(4)(a), F.S.

When a credible police report is filed regarding a missing adult, the law enforcement agency receiving the report must transmit the report for inclusion in the FCIC and the NCIC databases within two hours of receiving the report.¹⁵

If a missing child or missing adult is not located within 90 days after the report is filed, the law enforcement agency that accepted the report must attempt to obtain a biological specimen for DNA analysis from the missing child or missing adult or appropriate family member.¹⁶

Missing Endangered Persons Clearinghouse

Pursuant to s. 937.022, F.S., the FDLE maintains the Missing Endangered Persons Clearinghouse (Clearinghouse), which is designed to provide a centralized repository of information on missing endangered persons¹⁷ and implement intrastate communication and exchange of information relating to missing persons. The Clearinghouse is required to collect, process, maintain, and disseminate accurate and complete information on missing endangered persons.¹⁸ Every state, county, and municipal law enforcement agency is required to submit information concerning missing endangered persons to the Clearinghouse.¹⁹

Any person with knowledge concerning a child or adult younger than 26 years of age whose whereabouts are known may submit a missing endangered person report²⁰ to the Clearinghouse. This information, however, should first be reported to the appropriate law enforcement agency within the county in which the child or adult went missing, which the law enforcement agency will enter into the FCIC and the NCIC. If the missing child or adult has been located the individual who submitted the original report must notify law enforcement and the Clearinghouse.²¹

Only a law enforcement agency having jurisdiction over the case:

- May submit a missing endangered person report to the Clearinghouse involving a missing adult 26 years of age or older who is suspected by law enforcement of being endangered or the victim of criminal activity; or

¹⁵ Section 937.021(4)(b), F.S.

¹⁶ Section 937.021(6), F.S. This section does not prevent a law enforcement agency from attempting to obtain a biological specimen for DNA analysis prior to the expiration of the 90-day period. However, this section is contingent on the availability of federal funding for the submission and processing of DNA samples for analysis.

¹⁷ “Missing endangered person” means any of the following: 1) a missing child; 2) a missing adult younger than 26 years of age; 3) a missing adult 26 years of age or older who is suspected by a law enforcement agency of being endangered or the victim of criminal activity; 4) a missing adult who meets the criteria for activation of the Silver Alert Plan; and 5) a missing adult who meets the criteria for activation of a Purple Alert, pursuant to s. 937.0205, F.S. Section 937.0201(4), F.S.

¹⁸ Section 937.022(3)(c), F.S.

¹⁹ Section 937.022(1-2) and (3)(a-b), F.S.

²⁰ A “missing endangered person report” means a report prepared on a form prescribed by the FDLE by rule for use by the public and law enforcement agencies in reporting information to the Missing Endangered Persons Information Clearinghouse about a missing endangered person. Section 937.0201(5), F.S.

²¹ Section 937.022(4), F.S.

- Make a request to the Clearinghouse to activate a Silver Alert²² or Purple Alert²³ involving a missing adult.²⁴

If a missing endangered person is located, the law enforcement agency having jurisdiction over the case must immediately purge information about the case from the FCIC and the NCIC databases and notify the Clearinghouse.²⁵

National Missing and Unidentified Persons System

In 2005, the U.S. Deputy Attorney General created the National Missing Persons Task Force, which identified the need to improve access to information that would help solve missing and unidentified person cases. The National Missing and Unidentified Persons System (NamUs) was created to improve access to information to help solve missing and unidentified person cases.²⁶ The Unidentified Persons System (UP) database was launched in 2007 and the Missing Persons database (MP) was launched in 2008 as products of the National Missing Persons Task Force's recommendations. The databases were combined in 2009 to expand the ability of the NamUs to make associations between missing and unidentified persons cases. The NamUs acts as a nationwide information clearinghouse, allowing for the search and entry of missing, unidentified, and unclaimed person cases in the U.S. and provides free-of-charge forensic services, investigative support, and training and outreach.²⁷

Florida law enforcement agencies are not currently required to enter or maintain records of missing persons in the NamUs database.

III. Effect of Proposed Changes:

The bill amends s. 937.021, F.S., to require law enforcement agencies in the state to adopt policies related to standards for maintaining and clearing computer data of information concerning a missing child or missing adult which is stored in the National Missing and Unidentified Persons System (NamUs), a national information clearinghouse and resource center for missing, unidentified, and unclaimed person cases across the United States. The standards must require, at a minimum, a monthly review of each case and a determination of whether the case should be maintained in NamUs. The bill prohibits the removal of a missing child or

²² The Silver Alert Plan is used to locate missing persons suffering from an irreversible deterioration of intellectual faculties, such as Alzheimer's disease or dementia that has been verified by law enforcement. Additional recommended criteria for activation of the plan include: 1) the person is 60 years of age or older; or 2) the person is 18-59 and law enforcement has determined the missing person lacks the capacity to consent and that a local Silver Alert may be the only possible way to recuse the missing person. FDLE, *Silver Activation Steps*, Florida Department of Law Enforcement, available at <https://www.fdle.state.fl.us/Silver-Alert-Plan/Activation-Steps.aspx> (last visited on March 14, 2023).

²³ A Purple Alert concerns a missing adult: 1) who has a mental or cognitive disability that is not Alzheimer's disease or a dementia-related disorder, an intellectual disability or a developmental disability, as those terms are defined in s. 393.063, F.S., a brain injury, another physical, mental, or emotional disability that is not related to substance abuse, or any combination of these; 2) whose disappearance indicates a credible threat of immediate danger or serious bodily harm to himself or herself, as determined by the local law enforcement agency; 3) who cannot be returned to safety without law enforcement intervention; or 4) who does not meet the criteria for activation of a local Silver Alert Plan. Section 937.0205(4)(a), F.S.

²⁴ Section 937.022(3)(b)3.-4., F.S.

²⁵ Section 937.022(5), F.S.

²⁶ *National Missing and Unidentified Persons System*, Office of Justice Programs, U.S. Department of Justice, available at <https://namus.nij.gov/about> (last visited on March 14, 2023).

²⁷ *Id.*

missing adult entry on the NamUs database based solely on the age of the missing child or missing adult.

The bill also requires a law enforcement agency receiving a report of a missing child from a parent or guardian, the DCF, a community-based care provider, or a sheriff's office providing investigative services for the DCF, or receiving a credible report of a missing adult, to immediately inform all on-duty law enforcement officers of the missing child report, communicate the report to every other law enforcement agency having jurisdiction in the county, and within 2 hours after receipt of the report, transmit the report for inclusion in the NamUs database.²⁸

The bill also requires a law enforcement agency to transmit to NamUs a credible police report that an adult is missing. The agency must transmit this report within 2 hours after its receipt.

Finally, the bill amends s. 937.022, F.S., to require a law enforcement agency having jurisdiction over a case to purge case information from NamUs and notify the Missing Endangered Persons Clearinghouse.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

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.

²⁸ The 2-hour transmittal requirement may not be needed for transmittal of a police report to the NamUs database. *See* e-mail from Jennifer Pritt, Executive Director, Florida Police Chiefs Association, dated March 15, 2023 (on file with the Senate Committee on Criminal Justice).

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have an indeterminate impact on local law enforcement agencies, but there is no information available at present to indicate that this impact cannot be absorbed within existing resources. Staff contacted the Florida Sheriffs Association (FSA) and Florida Police Chiefs Association (FPCA) for any input they may have regarding the fiscal impact of the bill. The FSA indicated they had reviewed the bill and did not oppose it, but did not review the bill for fiscal impact.²⁹ The FPCA also reviewed the bill but did not provide any comments specific to the fiscal impact of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes. 937.021 and 937.022.

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 20, 2023:

The committee substitute requires a law enforcement agency having jurisdiction over a case to purge case information from NamUs and notify the Missing Endangered Persons Clearinghouse.

²⁹ E-mail from Matt Dunagan, Deputy Executive Director of Operations, Florida Sheriffs Association, dated March 14, 2023 (on file with the Senate Committee on Criminal Justice).

B. Amendments:

None.

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



616726

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2023	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 56 and 57
insert:

Section 2. Paragraph (b) of subsection (3) and subsection
(5) of section 937.022, Florida Statutes, is amended to read:

937.022 Missing Endangered Persons Information
Clearinghouse.—

(3) The clearinghouse shall:

(b) Provide a centralized file for the exchange of



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information on missing endangered persons.

1. Every state, county, or municipal law enforcement agency shall submit to the clearinghouse information concerning missing endangered persons.

2. Any person having knowledge may submit a missing endangered person report to the clearinghouse concerning a child or adult younger than 26 years of age whose whereabouts is unknown, regardless of the circumstances, subsequent to reporting such child or adult missing to the appropriate law enforcement agency within the county in which the child or adult became missing, and subsequent to entry by the law enforcement agency of the child or person into the Florida Crime Information Center, ~~and~~ the National Crime Information Center, and the National Missing and Unidentified Persons System databases. The missing endangered person report shall be included in the clearinghouse database.

3. Only the law enforcement agency having jurisdiction over the case may submit a missing endangered person report to the clearinghouse involving a missing adult age 26 years or older who is suspected by a law enforcement agency of being endangered or the victim of criminal activity.

4. Only the law enforcement agency having jurisdiction over the case may make a request to the clearinghouse for the activation of a state Silver Alert or a Purple Alert involving a missing adult if circumstances regarding the disappearance have met the criteria for activation of the Silver Alert Plan or the Purple Alert.

(5) The law enforcement agency having jurisdiction over a case involving a missing endangered person shall, upon locating



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the child or adult, immediately purge information about the case from the Florida Crime Information Center, ~~or~~ the National Crime Information Center, and the National Missing and Unidentified Persons System databases and notify the clearinghouse.

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

And the title is amended as follows:

Delete lines 2 - 6

and insert:

An act relating to missing persons; amending ss. 937.021 and 937.022, F.S.; revising provisions concerning missing children and adults to include references to the National Missing and Unidentified Persons System; providing an effective date.

By Senator Martin

33-00986A-23

20231332__

A bill to be entitled

An act relating to missing persons; amending s. 937.021, F.S.; adding the National Missing and Unidentified Persons System as a database for reports of missing children and missing adults; providing an effective date.

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

Section 1. Subsections (1), (2), and (4) of section 937.021, Florida Statutes, are amended to read:

937.021 Missing child and missing adult reports.—

(1) Law enforcement agencies in this state shall adopt written policies that specify the procedures to be used to investigate reports of missing children and missing adults. The policies must ensure that cases involving missing children and adults are investigated promptly using appropriate resources. The policies must include:

(a) Requirements for accepting missing child and missing adult reports;

(b) Procedures for initiating, maintaining, closing, or referring a missing child or missing adult investigation; and

(c) Standards for maintaining and clearing computer data of information concerning a missing child or missing adult which is stored in the Florida Crime Information Center, ~~and~~ the National Crime Information Center, and the National Missing and Unidentified Persons System. The standards must require, at a minimum, a monthly review of each case and a determination of whether the case should be maintained in the database.

Page 1 of 2

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

33-00986A-23

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(2) An entry concerning a missing child or missing adult may not be removed from the Florida Crime Information Center, ~~or~~ the National Crime Information Center, or the National Missing and Unidentified Persons System databases based solely on the age of the missing child or missing adult.

(4) (a) Upon the filing of a police report that a child is missing by the parent or guardian, the Department of Children and Families, a community-based care provider, or a sheriff's office providing investigative services for the department, the law enforcement agency receiving the report shall immediately inform all on-duty law enforcement officers of the missing child report, communicate the report to every other law enforcement agency having jurisdiction in the county, and within 2 hours after receipt of the report, transmit the report for inclusion within the Florida Crime Information Center, ~~and~~ the National Crime Information Center, and the National Missing and Unidentified Persons System databases. A law enforcement agency may not require a reporter to present an order that a child be taken into custody or any other such order before accepting a report that a child is missing.

(b) Upon the filing of a credible police report that an adult is missing, the law enforcement agency receiving the report shall, within 2 hours after receipt of the report, transmit the report for inclusion within the Florida Crime Information Center, ~~and~~ the National Crime Information Center, and the National Missing and Unidentified Persons System databases.

Section 2. This act shall take effect July 1, 2023.

Page 2 of 2

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

From: [Erickson, Mike](#)
To: [Arnold, Sue](#)
Subject: FW: Time-Sensitive Request, re: SB 1332
Date: Wednesday, March 15, 2023 3:01:46 PM

For packet. Cited in analysis of SB 1332

From: Jennifer Pritt <jpritt@fpca.com>
Sent: Wednesday, March 15, 2023 7:59 AM
To: Erickson, Mike <ERICKSON.MIKE@flsenate.gov>
Subject: Re: Time-Sensitive Request, re: SB 1332

Mike

Good morning. The only comment of substance I've received thus far is about the time period for entry.

"The obligation to enter within 2 hrs is not necessary for a database that law enforcement doesn't use in the early periods of a missing person. Most will need to be removed if mandated entry in 2 hrs. I would not have so much issue if the 2 hr requirement didn't apply. Maybe if not located in a longer period of time, like the time requirement to validate and enter dental records."

Other chiefs comment that the focus of the early investigation should be on getting information into those systems that can be used to try to locate and recover a living person - the first 2 hours is not about matching a missing person to unidentified remains.

I'll let you know if I get anything else reference impact.

Sent from my iPhone

On Mar 15, 2023, at 7:22 AM, Erickson, Mike <ERICKSON.MIKE@flsenate.gov> wrote:

OK, thank you. We just wanted you all to have the opportunity to comment, if needed.

From: Jennifer Pritt <jpritt@fpca.com>
Sent: Tuesday, March 14, 2023 3:38 PM
To: Erickson, Mike <ERICKSON.MIKE@flsenate.gov>
Subject: RE: Time-Sensitive Request, re: SB 1332

Hi Mike,

I've put this out as an urgent request to my Legislative committee. I'll let you know if I hear back anything significant.

Thank you –
Cookie

From: Erickson, Mike <ERICKSON.MIKE@flsenate.gov>
Sent: Tuesday, March 14, 2023 9:52 AM
To: Jennifer Pritt <jpritt@fpca.com>
Subject: Time-Sensitive Request, re: SB 1332
Importance: High

Hi, Cookie-

We are likely going to hear SB 1332 next week. This bill deals with missing person reporting. It appears this bill will have some impact on local law enforcement but that impact is indeterminate. Can you please contact me by tomorrow to tell me if the police chiefs have any opinion on the impact of this bill. Does the Association anticipate the bill will have an insignificant impact or believe that the impact can be absorbed within existing resources? Thanks.

-Mike Erickson

From: [Erickson, Mike](#)
To: [Arnold, Sue](#)
Subject: FW: Time-Sensitive Request, re: SB 1332
Date: Wednesday, March 15, 2023 3:00:24 PM

For packet. Cited in analysis of SB 1332.

From: Matt Dunagan <mdunagan@flsheriffs.org>
Sent: Tuesday, March 14, 2023 2:44 PM
To: Erickson, Mike <ERICKSON.MIKE@flsenate.gov>
Cc: Allie McNair <amcnair@flsheriffs.org>
Subject: RE: Time-Sensitive Request, re: SB 1332

Mike,

We reviewed the bill last week with our legislative committee and sheriffs had no issues. We did not discuss a fiscal impact.

Matt Dunagan, Deputy Executive Director of Operations

(850) 877-2165 x. 5807 (office)

(850) 274-3599 (cell)

FLORIDA SHERIFFS ASSOCIATION | Protecting, Leading & Uniting Since 1893.

From: Erickson, Mike <ERICKSON.MIKE@flsenate.gov>
Sent: Tuesday, March 14, 2023 9:46 AM
To: Matt Dunagan <mdunagan@flsheriffs.org>
Subject: Time-Sensitive Request, re: SB 1332
Importance: High

CAUTION: This email originated from outside of FSA. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi, Matt-

We are likely going to hear SB 1332 next week. This bill deals with missing person reporting. It appears this bill will have some impact on local law enforcement but that impact is indeterminate. Can you please contact me by tomorrow to tell me if the sheriffs have any opinion on the impact of this bill. Does the Association anticipate the bill will have an insignificant impact or believe that the impact can be absorbed within existing resources? Thanks.

-Mike Erickson

The Florida Senate

APPEARANCE RECORD

SB 1332

3/20/23
Meeting Date

Deliver both copies of this form to
Senate professional staff conducting the meeting

Bill Number or Topic

Criminal Justice
Committee

Amendment Barcode (if applicable)

Name Nancy Lawler, Ph.D (Florida PTA)

Phone 407 855-7604

Address 1747 Orlando Central Pkwy
Street

Email legislation@floridapta.org

Orlando FL 32809
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☒ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Florida PTA

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

March 20, 2023

Meeting Date

Criminal Justice

Committee

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1332

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Barney Bishop III**

Phone **850-510-9922**

Address **1454 Vieux Carre Drive**

Street

Tallahassee

City

FL

State

32308

Zip

Email **Barney@BarneyBishop.com**

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Fla. Smart Justice

...

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1334

INTRODUCER: Criminal Justice Committee and Senator Martin

SUBJECT: Battery by Strangulation

DATE: March 21, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Parker	Stokes	CJ	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1334 creates s. 784.031, F.S., to prohibit battery by strangulation. A person commits battery by strangulation if he or she knowingly and intentionally, against the will of another person, impedes the normal breathing or circulation of the blood of that person, so as to create a risk of or cause great bodily harm by applying pressure on the throat or neck of the other person or by blocking the nose or mouth of the other person.

A person who violates this section commits a third degree felony.

The bill provides an exception for any act of medical diagnosis, treatment, or prescription which is authorized under the laws of this state.

The bill amends s. 921.0022, F.S., ranking the offense on the offense severity chart of the Criminal Punishment Code as a level 4 offense.

The bill may have a positive determinate fiscal impact. See Section V. Fiscal Impact Statement.

The bill provides an effective date of October 1, 2023.

II. Present Situation:

Current law does not specifically prohibit battery by strangulation except in domestic situations. Research shows that strangulation is a common tactic of violence used in domestic abuse situations and is considered a gendered crime with victims overwhelmingly female and offenders male.¹ Recent research has highlighted how common the use of strangulation is in abusive relationships, often emerging late in the progression of a violent relationship and occurring multiple times over the course of the relationship.² Awareness of the gravity of strangulation has resulted in many states across the USA, including Florida, passing specialized laws making non-fatal strangulation a separate criminal felony.³ It is reported that shelter women on average experience 5.3 strangulation attacks during the course of an abusive relationship.⁴ In 591 baseline cases, 68 cases (11.5 percent) explicitly referenced strangulation and 101 cases (17.1 percent) indicated that possible strangulation may have occurred.⁵

Domestic Battery by Strangulation

A person commits domestic battery by strangulation if the person knowingly and intentionally, against the will of another, impedes the normal breathing or circulation of the blood of a family or household member⁶ or of a person with whom he or she is in a dating relationship⁷ so as to create a risk of or cause great bodily harm by applying pressure on the throat or neck of the other person or by blocking the nose or mouth of the other person.⁸ There is an exception for any act of medical diagnosis, treatment, or prescription which is authorized under the laws of this state.⁹

A person who commits domestic battery by strangulation commits a third degree felony.¹⁰

¹ Thomas, K.A., Joshi, M. and Sorenson, S.B. (2014), “‘Do you know what it feels like to drown?’ Strangulation as coercive control in intimate relationships,” *Psychology of Women Quarterly*, Vol. 38 No. 1, pp. 124-137.

² Wilbur, L., Higley, M., Hatfield, J., Surprenant, Z., Taliaferro, E., Smith, D.J. Jr and Paolo, A. (2001), “Survey results of women who have been strangled while in an abusive relationship,” *The Journal of Emergency Medicine*, Vol. 21 No. 3, pp. 297-302.

³ Pritchard, A.J., Reckdenwald, A., Nordham, C. and Holton, J. (2018), “Improving identification of strangulation injuries in domestic violence: Pilot data from a researcher-practitioner collaboration,” *Feminist Criminology*, Vol. 13 No. 2, pp. 160-181.

⁴ *Supra*, Note 2.

⁵ *Id.*

⁶ Section 784.041(2)(b)1., F.S., defines “family or household member” as having the same meaning as in s. 741.28, F.S. Section 741.28(3) defines “Family or household member” to mean spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

⁷ Section 784.041(2)(b)2., F.S., defines “dating relationship” as a continuing and significant relationship of a romantic or intimate nature.

⁸ *Supra*, Note 3.

⁹ Section 784.041(2)(a), F.S.

¹⁰ A third degree felony is punishable by a term of imprisonment not to exceed five years and a \$5,000 fine, as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

Battery, Felony Battery, and Aggravated Battery

A battery occurs when a person: actually and intentionally touches or strikes another person against the other person's will; or intentionally causes bodily harm to another person.¹¹ A person who commits a battery commits a first-degree misdemeanor.^{12, 13}

A person who has one prior conviction for battery, aggravated battery, or felony battery and who commits any second or subsequent battery commits a third degree felony.^{14, 15} A person who commits a battery in furtherance of a riot or an aggravated riot prohibited under s. 870.01, F.S., commits a third degree felony.¹⁶

Felony battery occurs when a person actually and intentionally touches or strikes another person against the will of the other and causes great bodily harm, permanent disability, or permanent disfigurement.¹⁷

A person commits the second-degree felony¹⁸ of aggravated battery if:

- In committing battery, he or she intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement;¹⁹ or
- He or she uses a deadly weapon;²⁰ or
- The person who was the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant.²¹

For the purposes of sentencing under ch. 921, F.S., the crime of aggravated battery, if committed in furtherance of a riot or an aggravated riot prohibited under s. 870.01, F.S., is ranked one level above the ranking under s. 921.0022, F.S., for the offense committed.²²

Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code²³ are listed in a single offense severity ranking chart (OSRC),²⁴ which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense listed in the OSRC is assigned a level according to

¹¹ Section 784.03(1)(a)1. and 2., F.S.

¹² Section 784.08(1)(b), F.S.

¹³ A first degree misdemeanor is punishable by a definite term of imprisonment not exceeding 1 year, as provided in s. 775.082 or s. 775.083, F.S.

¹⁴ Section 784.03(2), F.S.

¹⁵ A third degree felony is punishable by a term of imprisonment not to exceed five years and a \$5,000 fine, as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

¹⁶ Section 784.03(3), F.S.

¹⁷ Section 784.041(1)(a)-(b), F.S.

¹⁸ A second degree felony is punishable by a term of imprisonment not exceeding fifteen years, as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

¹⁹ Section 784.045(1)(a)1., F.S.

²⁰ Section 784.045(1)(a)2., F.S.

²¹ Section 784.045(1)(b), F.S.

²² Section 784.045(3), F.S.

²³ All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. Section 921.002, F.S.

²⁴ Section 921.0022, F.S.

the severity of the offense.^{25, 26} A person's primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each offense.^{27, 28} The final score calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, absent a valid reason for departure.²⁹

III. Effect of Proposed Changes:

The bill creates s. 784.031, F.S., to prohibit battery by strangulation. A person commits battery by strangulation if he or she knowingly and intentionally, against the will of another person, impedes the normal breathing or circulation of the blood of that person, so as to create a risk of or cause great bodily harm by applying pressure on the throat or neck of the other person or by blocking the nose or mouth of the other person.

A person who violates this section commits a third degree felony.³⁰

The bill provides an exception for an act of medical diagnosis, treatment, or prescription. This newly created offense prohibits battery by strangulation regardless of the offender-victim relationship.

The bill amends s. 921.0022, F.S., ranking the offense on the offense severity chart of the Criminal Punishment Code as a level 4 offense.

The bill provides an effective date of October 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

²⁵ Section 921.0022(2), F.S.

²⁶ Felony offenses that are not listed in the OSRC default to statutorily assigned levels, as follows: an unlisted third-degree felony defaults to a level 1; an unlisted second-degree felony defaults to a level 4; an unlisted first-degree felony defaults to a level 7; an unlisted first-degree felony punishable by life defaults to a level 9; and an unlisted life felony defaults to a level 10. Section 921.0023, F.S.

²⁷ Sections 921.0022 and 921.0024, F.S.

²⁸ A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers. Section 921.0024(1), F.S.

²⁹ If a person scores more than 44 points, the lowest permissible sentence is a specified term of months in state prison, determined by a formula. If a person scores 44 points or fewer, the court may impose a nonprison sanction, such as a county jail sentence, probation, or community control. Section 921.0024(2), F.S.

³⁰ A third degree felony is punishable by a term of imprisonment of five years and a \$5,000 fine, as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

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 may have a positive indeterminate impact on prison beds by creating a new felony offense for battery by strangulation, which may result in more prison admissions. Currently, these acts may result in arrests and convictions of misdemeanor battery. Creating the felony offense of battery by strangulation may increase the sentence these offenders would otherwise receive.

In FY 18-19, the incarceration rate for a Level 1, 3rd degree felony was 9.1 percent, and in FY 19-20 the incarceration rate was 8.2 percent. In FY 20-21, the incarceration rate for a Level 1, 3rd degree felony was 7.5 percent, and in FY 21-22 the incarceration rate was 8.6 percent.

Per the FDLE, in FY 21-22, there were 57,525 arrests for misdemeanor battery, with 10,620 guilty/convicted charges and 4,647 adjudication withheld charges. Per the DOC, there were 2,034 new commitments to prison in FY 18-19 for felony battery and aggravated battery offenses, with 193 for domestic battery by strangulation. There were 1,481 new commitments in FY 19-20, with 144 for domestic battery by strangulation. There were 1,316 new commitments in FY 20-21, with 130 for domestic battery by strangulation. There were 1,875 new commitments in FY 21-22, with 175 for domestic battery by strangulation.

It is not known how many misdemeanor and felony convictions involved strangulation, though domestic battery by strangulation currently brings in a large number of offenders to prison each year. Without more detailed data, the impact of this new language on the prison population cannot be quantified.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 784.031 of the Florida Statutes.

This bill substantially amends section 921.0022 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 20, 2023:

The committee substitute:

- Specifies that the prohibited act must create a risk of or cause great bodily harm.
- Provides that the offense is ranked as a level 4 on the Offense Severity Chart.

- B. **Amendments:**

None.



702232

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2023	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 13 - 22
and insert:
knowingly and intentionally, against the will of another person,
impedes the normal breathing or circulation of the blood of that
person, so as to create a risk of or cause great bodily harm by
applying pressure on the throat or neck of the other person or
by blocking the nose or mouth of the other person. This
subsection does not apply to any act of medical diagnosis,



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treatment, or prescription which is authorized under the laws of this state.

(2) A person who violates subsection (1) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

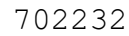
Section 2. Paragraph (d) of subsection (3) of section 921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(d) LEVEL 4

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



Knowing sale or
delivery, or possession
with intent to sell,
contraband prescription
drugs.

Failure to register securities.

Failure of dealer,
associated person, or
issuer of securities to
register.

Battery by Strangulation

Battery of law
enforcement officer,
firefighter, etc.

Battery of sexually
violent predators
facility staff.

Battery on detention or
commitment facility
staff.

32



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784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
784.08 (2) (c)	3rd	Battery on a person 65 years of age or older.
784.081 (3)	3rd	Battery on specified official or employee.
784.082 (3)	3rd	Battery by detained person on visitor or other detainee.
784.083 (3)	3rd	Battery on code inspector.
784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
787.03 (1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.



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39

787.04 (2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
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40

787.04 (3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
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41

787.07	3rd	Human smuggling.
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42

790.115 (1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
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43

790.115 (2) (b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
-----------------	-----	---

44

790.115 (2) (c)	3rd	Possessing firearm on school property.
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45	794.051 (1)	3rd	Indecent, lewd, or lascivious touching of certain minors.
46	800.04 (7) (c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
47	806.135	2nd	Destroying or demolishing a memorial or historic property.
48	810.02 (4) (a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
49	810.02 (4) (b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
50	810.06	3rd	Burglary; possession of tools.
51	810.08 (2) (c)	3rd	Trespass on property,



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52			armed with firearm or dangerous weapon.
	812.014 (2) (c) 3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
53			
	812.014 (2) (c) 4.-10.	3rd	Grand theft, 3rd degree; specified items.
54			
	812.0195 (2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
55			
	817.505 (4) (a)	3rd	Patient brokering.
56			
	817.563 (1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
57			
	817.568 (2) (a)	3rd	Fraudulent use of personal identification information.
58			
	817.625 (2) (a)	3rd	Fraudulent use of scanning device,



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59			skimming device, or reencoder.
	817.625 (2) (c)	3rd	Possess, sell, or deliver skimming device.
60			
	828.125 (1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
61			
	836.14 (2)	3rd	Person who commits theft of a sexually explicit image with intent to promote it.
62			
	836.14 (3)	3rd	Person who willfully possesses a sexually explicit image with certain knowledge, intent, and purpose.
63			
	837.02 (1)	3rd	Perjury in official proceedings.
64			
	837.021 (1)	3rd	Make contradictory statements in official



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proceedings.

838.022

3rd

Official misconduct.

839.13 (2) (a)

3rd

Falsifying records of an individual in the care and custody of a state agency.

839.13 (2) (c)

3rd

Falsifying records of the Department of Children and Families.

843.021

3rd

Possession of a concealed handcuff key by a person in custody.

843.025

3rd

Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.

843.15 (1) (a)

3rd

Failure to appear while on bail for felony (bond estreature or bond jumping).



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72	847.0135 (5) (c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
73	870.01 (3)	2nd	Aggravated rioting.
74	870.01 (5)	2nd	Aggravated inciting a riot.
75	874.05 (1) (a)	3rd	Encouraging or recruiting another to join a criminal gang.
76	893.13 (2) (a) 1.	2nd	Purchase of cocaine (or other s. 893.03 (1) (a), (b), or (d), (2) (a), (2) (b), or (2) (c) 5. drugs).
77	914.14 (2)	3rd	Witnesses accepting bribes.
78	914.22 (1)	3rd	Force, threaten, etc., witness, victim, or informant.
	914.23 (2)	3rd	Retaliation against a witness, victim, or



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79			informant, no bodily injury.
	916.1085 (2) (c) 1.	3rd	Introduction of specified contraband into certain DCF facilities.
80			
	918.12	3rd	Tampering with jurors.
81			
	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
82			
	944.47 (1) (a) 6.	3rd	Introduction of contraband (cellular telephone or other portable communication device) into correctional institution.
83			
	951.22 (1) (h) , (j) & (k)	3rd	Intoxicating drug, instrumentality or other device to aid escape, or cellular telephone or other portable communication device



702232

introduced into county
detention facility.

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

And the title is amended as follows:

Delete line 5

and insert:

criminal penalties; amending s. 921.0022, F.S.;
ranking the offense on the offense severity ranking
chart of the Criminal Punishment Code; providing an
effective date.

By Senator Martin

33-00718A-23

20231334__

A bill to be entitled

An act relating to battery by strangulation; creating
s. 784.031, F.S.; prohibiting battery by
strangulation; providing applicability; providing
criminal penalties; providing an effective date.

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

Section 1. Section 784.031, Florida Statutes, is created to
read:

784.031 Battery by strangulation.—

(1) A person commits battery by strangulation if he or she
knowingly and intentionally impedes the normal breathing or
circulation of the blood of another person, against the will of
that person, by applying pressure on the throat or neck of the
other person or by blocking the nose or mouth of the other
person. This subsection does not apply to any act of medical
diagnosis, treatment, or prescription which is authorized under
the laws of this state.

(2) A person who violates subsection (1) commits a felony
of the third degree, punishable as provided in s. 775.082, s.
775.083, or s. 775.084.

Section 2. This act shall take effect October 1, 2023.

March 20, 2023

Meeting Date

Criminal Justice

Committee

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1334

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Barney Bishop III**

Phone **850-510-9922**

Address **1454 Vieux Carre Drive**

Email **Barney@BarneyBishop.com**

Street

Tallahassee

FL

32308

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
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☐ I am not a lobbyist, but received
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S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1342

INTRODUCER: Criminal Justice Committee and Senator Martin and others

SUBJECT: Capital Sexual Battery

DATE: March 21, 2023

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1342 creates a new section of law to implement a death penalty sentencing procedure for adult persons who commit sexual battery upon a child less than twelve years of age, or who in an attempt to commit the sexual battery injures the sexual organs of the child. The bill creates the same capital felony sentencing procedure for sexual battery upon a child less than twelve years of age, or attempted sexual battery which causes injury to the sexual organs of the child, committed by a person who is in a position of familial or custodial authority. Both of these crimes are currently designated as capital felony offenses.

The bill provides a similar sentencing procedure as provided in ss. 921.141 and 921.142, F.S., which apply in capital murder cases, but contains significant differences. Specifically, the bill provides that:

- A jury death recommendation of not less than eight jurors to sentence the capital sexual battery defendant to death. If fewer than eight jurors recommend death, the jury's recommendation must be for life imprisonment without parole.
- The court has the discretion to enter a death sentence or a sentence of life imprisonment without the possibility of parole if the jury recommends death in the capital sexual battery case.
- There must be a finding of at least two aggravating factors beyond a reasonable doubt for the jury to recommend a sentence of death. The bill creates aggravating factors and mitigating circumstances that are customized to a capital sexual battery crime, for the jury's consideration in arriving at a sentencing recommendation.

- The court must enter a written sentencing order, regardless of whether the defendant has waived a jury sentencing proceeding and regardless of the sentence imposed by the court. The order must include the reasons for not accepting the jury's recommended sentence, if applicable.

The bill provides legislative findings and intent as follows:

- A person who commits a sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age carries a great risk of death and danger to vulnerable members of this state.
- Such crimes destroy the innocence of a young child and violate all standards of decency held by civilized society.
- *Buford v. State of Florida*, 403 So. 2d 943 (Fla. 1981), was wrongly decided, *Kennedy v. Louisiana*, 554 U.S. 407 (2008), was wrongly decided, and such cases are an egregious infringement of the states' power to punish the most heinous of crimes.
- It is the intent of the Legislature that the procedure set forth in this s. 794.011, F.S., shall be followed, and a prosecutor must file a notice, as provided in s. 794.011(2)(a), F.S., if he or she intends to seek the death penalty.

The bill may have an indeterminate fiscal impact. See Section V. Fiscal Impact Statement.

The bill becomes effective October 1, 2023.

II. Present Situation:

Capital Felonies for Sexual Battery Cases and the Eighth Amendment

Section 794.011(2)(a), F.S., states that a person 18 years of age or older who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a *capital felony*, punishable as provided in ss. 775.082, F.S., and 921.141, F.S.¹

Section 794.011(8)(c), F.S., provides that a person who is in a position of familial or custodial authority who engages in any act with a person less than 12 years of age which constitutes sexual battery, or in an attempt to commit sexual battery injures the sexual organs of such person commits a *capital or life felony*, punishable as provided in ss. 775.082 and 921.141, F.S.²

¹ Section 775.082, F.S., provides that a person who has been convicted of a capital felony shall be punished by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141, F.S., results in a determination that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and shall be ineligible for parole. Section 921.141, F.S., provides that upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment as authorized by s. 775.082, F.S.

² *Id.*; and see s. 775.082(3), F.S., setting forth the sentence for a life felony, in general, as: for a life felony committed on or after July 1, 1995, by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment.

Sexual battery means oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.³

No one has been executed for a non-murder offense in this country since 1964, although two people were convicted in Louisiana of capital sexual battery of a child and sentenced to death. One of those individuals, Patrick Kennedy, appealed his case to the U.S. Supreme Court, which struck down Louisiana's law.⁴ Five other states have laws allowing the death penalty for sexual battery against a minor, though no one has been sentenced to death in those states.⁵

Historically, capital sexual battery has been punishable by up to a penalty of death in Florida. Although the crimes found in ss. 794.011(2)(a) and (8)(c), F.S., are categorized as capital crimes, life imprisonment without the possibility of parole is the current maximum sentence for these crimes. This is largely due to a string of court cases from the seventies and early eighties ruling on the constitutionality of the death penalty as applied by the states.⁶

In 1977, the U.S. Supreme Court decided *Coker v. Georgia*, a case involving a death sentence for the sexual battery of an adult female.⁷ Relying heavily on the *Gregg v. Georgia*⁸ decision from the prior term of court, the *Coker* court explained that the Eighth Amendment⁹ bars excessive punishment in relation to the offense committed. Therefore, a particular punishment can be excessive if it "is grossly out of proportion to the severity of the crime."¹⁰

In applying an Eighth Amendment analysis, the *Coker* court said that "judgment should be informed by objective factors to the maximum possible extent...attention must be given to the public attitudes concerning a particular sentence history and precedent, legislative attitudes, and the response of juries reflected in their sentencing decisions."¹¹ After performing such a review,¹² the court found that "in the light of the legislative decisions in almost all of the States and in most of the countries around the world, it would be difficult to support a claim that the

³ Section 794.011(1)(j), F.S.

⁴ Death Penalty Information Center, Death Penalty for Offenses Other than Murder, available at <https://deathpenaltyinfo.org/facts-and-research/crimes-punishable-by-death/death-penalty-for-offenses-other-than-murder> (last visited March 13, 2023); Death Penalty Information Center, Kennedy v. Louisiana Resource Page, available at <https://deathpenaltyinfo.org/facts-and-research/united-states-supreme-court/significant-supreme-court-opinions/kennedy-v-louisiana-resource-page> (last visited March 13, 2023).

⁵ Those states are Montana, South Carolina, Oklahoma, Georgia, and Texas. Death Penalty Information Center, Kennedy v. Louisiana Resource Page, available at <https://deathpenaltyinfo.org/facts-and-research/united-states-supreme-court/significant-supreme-court-opinions/kennedy-v-louisiana-resource-page> (last visited March 13, 2023).

⁶ *Gibson v. State*, 721 So.2d 363 (Fla. 2nd DCA, 1998).

⁷ *Coker v. Georgia*, 433 U.S. 584, (1977).

⁸ *Gregg v. Georgia*, 428 U.S. 153 (1976), (finding that the Georgia death penalty scheme satisfied the requirements of the Eighth Amendment when imposed for the crime of murder. In a footnote, the *Gregg* court specified: "We do not address here the question whether the taking of the criminal's life is a proportionate sanction where no victim has been deprived of life for example, when capital punishment is imposed for rape, kidnapping, or armed robbery that does not result in the death of any human being." at footnote 35).

⁹ The Eighth Amendment to the U.S. Constitution states, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST. Amend VIII.

¹⁰ *Coker v. Georgia*, 433 U.S. 584, 592 (1977).

¹¹ *Coker v. Georgia*, 433 U.S. 584, 592 (1977).

¹² *Coker v. Georgia*, 433 U.S. 584, 593-597 (1977).

death penalty for rape is an indispensable part of the States' criminal justice system."¹³ The court held that a death sentence is disproportionate punishment for the rape of an adult woman, and is therefore cruel and unusual punishment within the meaning of the Eighth Amendment.¹⁴

In 1981, the Florida Supreme Court, in *Buford v. State*,¹⁵ held that a death sentence for sexual battery by an adult upon a child, is constitutionally prohibited.¹⁶ The court stated that "[t]he reasoning of the justices in *Coker v. Georgia* compels us to hold that a sentence of death is grossly disproportionate and excessive punishment for the crime of sexual assault and is therefore forbidden by the Eighth Amendment as cruel and unusual punishment."¹⁷

Three years after *Buford*, the Florida Supreme Court recognized in *Rusaw v. State* that while the death penalty as punishment for the capital crime of sexual battery of a child is not a constitutional sentence, "[t]he legislature, by setting sexual battery of a child apart from other sexual batteries, has obviously found that crime to be of special concern. Just because death is no longer a possible punishment for the crime described in subsection 794.011(2), F.S., does not mean that the alternative penalty suffers from any defect."¹⁸

In 2008, the U.S. Supreme Court, in *Kennedy v. Louisiana*, a child sexual battery case for which the defendant was sentenced to death, also began its Eighth Amendment analysis by examining existing statutes and legislation, and statistics on executions for child sexual battery.¹⁹

Like the *Coker* court, the *Kennedy* court found that there is a national consensus against the death penalty for child sexual battery.²⁰ This finding led the court to conclude that the death penalty is not a proportional punishment for the sexual battery of a child.²¹

¹³ *Id.*

¹⁴ "We have the abiding conviction that the death penalty, which 'is unique in its severity and irrevocability,'... is an excessive penalty for the rapist who, as such, does not take human life." *Coker v. Georgia*, 433 U.S. 584, 97 S.Ct. 286, 153 L.Ed.2d 982 (1977); [internal citation: *Gregg v. Georgia*, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976)].

¹⁵ *Buford v. State*, 403 So.2d 943 (Fla.1981), *cert. denied*, 454 U.S. 1163, 102 S.Ct. 1037, 71 L.Ed.2d 319 (1982).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Rusaw v. State*, 451 So.2d 469 (Fla. 1984), referring to life imprisonment without the possibility of parole, ss. 775.082 and 921.141, F.S.

¹⁹ The state court in *Kennedy* explained that since 1993, four more States—Oklahoma, South Carolina, Montana, and Georgia—had capitalized the crime of child rape, and at least eight States had authorized capital punishment for other nonhomicide crimes. By its count, 14 of the then-38 States permitting capital punishment, plus the Federal Government, allowed the death penalty for nonhomicide crimes and 5 allowed the death penalty for the crime of child rape. *Kennedy v. Louisiana*, 554 U.S. 407, 418 (2008). See also footnotes 3 and 4 above for recent statistics.

²⁰ After reviewing the authorities informed by contemporary norms, including the history of the death penalty for this and other nonhomicide crimes, current state statutes and new enactments, and the number of executions since 1964, we conclude there is a national consensus against capital punishment for the crime of child rape. *Kennedy v. Louisiana*, 554 U.S. 407, 434 (2008).

²¹ *Kennedy v. Louisiana*, 554 U.S. 407, 422 (2008).

Case Law and Subsequent Statutory Changes Regarding Death Penalty Sentencing Procedure

The Sixth Amendment of the U.S. Constitution provides: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. . . .”²² This right, in conjunction with the Due Process Clause, requires that each element of a crime be proved to a jury beyond a reasonable doubt.²³

The U.S. Supreme Court in *Ring v. Arizona*, applied this right to Arizona’s capital sentencing scheme, which required a judge to determine the presence of aggravating and mitigating factors and to only sentence a defendant to death if the judge found at least one aggravating factor.²⁴ The Court struck down the Arizona sentencing scheme, finding it to be a violation of the Sixth Amendment because it permitted sentencing judges, without a jury, to find aggravating circumstances justifying imposition of the death penalty.²⁵

In 2016, the U.S. Supreme Court issued the *Hurst v. Florida* opinion finding that Florida’s death penalty sentencing process was unconstitutional because “the Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death.”²⁶ Thereafter, the Legislature amended ss. 921.141 and 921.142, F.S., to incorporate the following statutory changes:

- The jury is required to identify each aggravating factor found to exist by a unanimous vote in order for a defendant to be eligible for a sentence of death;
- The jury is required to determine whether the aggravating factors outweigh the mitigating circumstances in reaching its sentencing recommendation;
- If at least ten of the twelve members of the jury determine that the defendant should be sentenced to death, the jury’s recommendation is a sentence of death;
- The jury is required to recommend a sentence of life imprisonment without the possibility of parole if fewer than ten jurors determined that the defendant should be sentenced to death;
- The judge is permitted to impose a sentence of life imprisonment without the possibility of parole when the jury recommends a sentence of death; and
- The judge is no longer permitted to “override” the jury’s recommendation of a sentence of life imprisonment by imposing a sentence of death.²⁷

Also in 2016, *Hurst v. State*, on remand from the U.S. Supreme Court, was decided by the Florida Supreme Court. In addition to finding that the prior 2016 statutory amendments to the death penalty sentencing provisions were constitutional, the court also held that “in order for the trial court to impose a sentence of death, the jury’s recommended sentence of death must be unanimous.”²⁸

²² U.S. CONST. Amend. VI.

²³ *United States v. Gaudin*, 515 U.S. 506, 510 (1995).

²⁴ *Ring v. Arizona*, 536 U.S. 584, 592 (2002).

²⁵ *Id.* at 609.

²⁶ *Hurst v. Florida*, 577 U.S. 92 (2016). The *Hurst v. Florida* decision was based on the Sixth Amendment and the 2002 U.S. Supreme Court decision in *Ring v. Arizona*, which held that juries rather than judges acting alone must make crucial *factual* determinations that subject a convicted murderer to the death penalty. *Ring v. Arizona*, 536 U.S. 584 (2002).

²⁷ Chapter 2016-13, L.O.F. (2016).

²⁸ *Hurst v. State*, 202 So.3d 40, 44, (Fla. 2016), *cert. den.*, 137 S.Ct. 2161 (2017).

After the *Hurst v. State* decision in 2016, the Legislature again amended ss. 921.141 and 921.142, F.S., this time to require a unanimous vote of the jury for a sentencing recommendation of death.²⁹

The current sentencing proceeding statutes in murder cases are more fully set forth below.

Florida's Current Sentencing Proceedings in Capital Cases

The statutes governing the proceedings to determine a sentence of either death or life imprisonment without the possibility of parole³⁰ in capital cases are set forth in ss. 921.141 and 921.142, F.S.³¹ The court conducts a sentencing proceeding upon conviction or adjudication of guilt of a defendant in a capital felony.³² Typically, the proceeding is conducted by the trial judge before the trial jury as soon as practicable.³³

Aggravating Factors and Mitigating Circumstances

During the sentencing proceeding, the jury (or the judge if the jury is waived by the defendant) considers evidence that is relevant to the nature of the crime and the character of the defendant. The evidence includes matters relating to any of the aggravating factors enumerated in s. 921.141(6), F.S., or mitigating circumstances enumerated in s. 921.141(7), F.S.³⁴

The aggravating factors are limited to the following:

- The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation.
- The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.
- The defendant knowingly created a great risk of death to many persons.
- The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any: robbery; sexual battery; aggravated child abuse; abuse of an elderly person or disabled adult resulting in great bodily harm, permanent disability, or permanent disfigurement; arson; burglary; kidnapping; aircraft piracy; or unlawful throwing, placing, or discharging of a destructive device or bomb.
- The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
- The capital felony was committed for pecuniary gain.

²⁹ Chapter 2017-1, L.O.F. (2017).

³⁰ Section 775.082(1)(a), F.S.

³¹ The sentencing proceedings in s. 921.142, F.S., are virtually identical to the sentencing proceedings found in s. 921.141, F.S., except that s. 921.142, F.S., only applies in capital drug trafficking cases, which contains certain aggravating factors relevant to drug trafficking cases.

³² Sections 921.141(1) and 921.142(2), F.S.

³³ *Id.*

³⁴ Notice of the prosecutor's intent to present evidence of particular aggravating factors must be served within 45 days after arraignment. Section 782.04(1)(b), F.S. There are 16 different aggravating factors in s. 921.141(6)(a)-(p), F.S., and eight statutory mitigating circumstances in s. 921.141(7), F.S.

- The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
- The capital felony was especially heinous, atrocious, or cruel.
- The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.
- The victim of the capital felony was a law enforcement officer engaged in the performance of his or her official duties.
- The victim of the capital felony was an elected or appointed public official engaged in the performance of his or her official duties if the motive for the capital felony was related, in whole or in part, to the victim's official capacity.
- The victim of the capital felony was a person less than 12 years of age.
- The victim of the capital felony was particularly vulnerable due to advanced age or disability, or because the defendant stood in a position of familial or custodial authority over the victim.
- The capital felony was committed by a criminal gang member, as defined in s. 874.03, F.S.
- The capital felony was committed by a person designated as a sexual predator pursuant to s. 775.21, F.S., or a person previously designated as a sexual predator who had the sexual predator designation removed.
- The capital felony was committed by a person subject to an injunction issued pursuant to s. 741.30, F.S., or s. 784.046, F.S., or a foreign protection order accorded full faith and credit pursuant to s. 741.315, F.S., and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.³⁵

Mitigating circumstances are the following:

- The defendant has no significant history of prior criminal activity.
- The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.
- The victim was a participant in the defendant's conduct or consented to the act.
- The defendant was an accomplice in the capital felony committed by another person and his or her participation was relatively minor.
- The defendant acted under extreme duress or under the substantial domination of another person.
- The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired.
- The age of the defendant at the time of the crime.

Jury Findings and Recommended Sentence

After hearing all of the evidence presented regarding aggravating factors and mitigating circumstances, the jury deliberates and determines if the state has proven, beyond a reasonable doubt, the existence of at least one aggravating factor set forth in s. 921.141(6), F.S.³⁶

³⁵ Section 921.141(6)(a)-(p), F.S. See s. 921.142(7)(a)-(j), F.S., for the aggravating factors in a capital drug trafficking felony case.

³⁶ Section 921.141(2)(a), F.S.; See s. 921.142(3)(a), F.S., for provisions relating to the findings and recommended sentence by the jury in a capital drug trafficking case.

The jury shall return findings identifying each aggravating factor found to exist. A finding that an aggravating factor exists must be unanimous. If the jury:

- Does not unanimously find at least one aggravating factor, the defendant is ineligible for a sentence of death.
- Unanimously finds at least one aggravating factor, the defendant is eligible for a sentence of death and the jury shall make a recommendation to the court as to whether the defendant shall be sentenced to life imprisonment without the possibility of parole or to death. The recommendation shall be based on a weighing of all of the following:
 - Whether sufficient aggravating factors exist.
 - Whether aggravating factors exist which outweigh the mitigating circumstances found to exist.
 - Based on these considerations, whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death.³⁷

If a unanimous jury determines that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of death. If a unanimous jury does not determine that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of life imprisonment without the possibility of parole.³⁸

Imposition of Sentence

If the jury has recommended a sentence of:

- Life imprisonment without the possibility of parole, the court shall impose the recommended sentence.
- Death, the court, after considering each aggravating factor found by the jury and all mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death. The court may consider only an aggravating factor that was unanimously found to exist by the jury.

If the defendant waived his or her right to a sentencing proceeding by a jury, the court, after considering all aggravating factors and mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death. The court may impose a sentence of death only if the court finds that at least one aggravating factor has been proven to exist beyond a reasonable doubt.³⁹

Order of the Court and Automatic Review of the Case

In each case in which the court imposes a sentence of death, the court shall, considering the records of the trial and the sentencing proceedings, enter a written order addressing the aggravating factors found to exist, the mitigating circumstances reasonably established by the evidence, whether there are sufficient aggravating factors to warrant the death penalty, and whether the aggravating factors outweigh the mitigating circumstances reasonably established by

³⁷ Section 921.141(2)(b), F.S.; See s. 921.142(3)(b), F.S., for provisions relating to the findings and recommended sentence by the jury in a capital drug trafficking case.

³⁸ Section 921.141(2)(c), F.S.; See s. 921.142(3)(c), F.S., for provisions relating to the findings and recommended sentence by the jury in a capital drug trafficking case.

³⁹ Section 921.141(3), F.S.; See s. 921.141(4), F.S., for provisions relating to the imposition of sentence in a capital drug trafficking case.

the evidence. If the court does not issue its order requiring the death sentence within 30 days after the rendition of the judgment and sentence, the court shall impose a sentence of life imprisonment without the possibility of parole in accordance with s. 775.082, F.S.⁴⁰

A judgment of conviction and sentence of death shall be subject to automatic review by the Supreme Court of Florida and disposition rendered within 2 years after the filing of a notice of appeal. Such review by the Supreme Court shall have priority over all other cases and shall be heard in accordance with rules adopted by the Supreme Court.⁴¹

Case Law Interpreting Current Death Penalty Proceeding Requirements in Florida

Death Eligibility Decision is Jury's Only Role in Death Penalty Sentencing Under Poole v. State

Subsequent to the Legislature's 2016 amendments to the death penalty sentencing proceedings in an effort to comply with both *Hurst v. Florida*⁴² and *Hurst v. State*⁴³ the Florida Supreme Court receded from its *Hurst v. State* opinion, eliminating the need for most of the statutory changes made in 2016.⁴⁴

In *Poole v. State*, the Florida Supreme Court opined that the *Hurst v. State* court had gone beyond where the U.S. Supreme Court required in order to bring Florida's death penalty proceedings into compliance with constitutional standards.⁴⁵

The *Poole* court left intact only the requirement that a unanimous jury find a statutory aggravating circumstance by a reasonable doubt standard of proof.⁴⁶ This particular part of Florida's death penalty sentencing proceeding is necessary, as the *Poole* court explained, because there are two components to the death penalty sentencing decision-making process: the eligibility decision which is the trier of fact's responsibility, and the selection decision which is the sentencing judge's responsibility.⁴⁷

As to the eligibility decision, the U.S. Supreme Court has required that the death penalty be reserved for only a subset of those who commit murder. "To render a defendant eligible for the death penalty in a homicide case, [the Supreme Court has] indicated that the trier of fact must convict the defendant of murder and find one 'aggravating circumstance' (or its equivalent) at either the guilt or penalty phase."⁴⁸

⁴⁰ Section 921.141(4), F.S.; See s. 921.142(5), F.S., for provisions relating to the order of the court in capital drug trafficking cases.

⁴¹ Section 921.141(5), F.S.; See s. 921.142(6), F.S., for provisions relating to the automatic review by the Florida Supreme Court in capital drug trafficking cases.

⁴² *Hurst v. Florida*, 577 U.S. 92 (2016).

⁴³ *Hurst v. State*, 202 So.3d 40 (Fla. 2016), interpreting and applying *Hurst v. Florida*, 577 U.S. 92 (2016).

⁴⁴ *Poole v. State*, 297 So. 3d 487 (Fla. 2020), receding from *Hurst v. State*, 202 So.3d 40 (Fla. 2016).

⁴⁵ *Poole v. State*, 297 So. 3d 487 (Fla. 2020).

⁴⁶ *Poole v. State*, 297 So. 3d 487 (Fla. 2020).

⁴⁷ *Poole v. State*, 297 So. 3d 487, 501 (Fla. 2020).

⁴⁸ *Poole v. State*, 297 So. 3d 487, 501 (Fla. 2020), quoting *Tuilaepa v. California*, 512 U.S. 967, 971-972 (U.S. 1994).

The selection decision involves determining “whether a defendant eligible for the death penalty should in fact receive that sentence.”⁴⁹ The selection decision is a subjective determination to be made by the court. It is not a “fact” or “element” of the offense for the fact-finder to decide.⁵⁰

According to the *Poole* court, the *Hurst v. State* court misinterpreted the *Hurst v. Florida* decision on this key point: the *Hurst v. Florida* decision is about death penalty eligibility.

Post-*Poole* if a jury unanimously finds at least one aggravating circumstance exists in a murder case, the defendant is death-eligible.

According to *Poole*, the *Hurst v. State* court had a “mistaken view” of what constitutes an element of an offense which is a fact that a jury must determine exists beyond a reasonable doubt for a defendant to be death eligible. *Hurst v. State*, therefore, mistakenly decided that the Sixth Amendment right to trial by a jury required:

- Unanimous jury findings as to all of the aggravating factors that were proven beyond a reasonable doubt;
- That the aggravating factors are sufficient⁵¹ to impose a death sentence;
- That the aggravating factors outweigh the mitigating factors;⁵² and
- A unanimous jury recommendation of a sentence of death.⁵³

In sum, the *Poole* court rejected the *Hurst v. State* court’s view of a capital jury’s role that goes beyond the “fact-finding” required to determine whether a defendant is death eligible.⁵⁴

Other States’ Death Penalty Sentencing

Twenty-seven states have death penalty statutes, however there are only 22 states with an active death penalty. Three states have governor-issued moratoriums in place (Oregon, California, and

⁴⁹ *Id.*

⁵⁰ *Poole v. State*, 297 So. 3d 487, 504 (Fla. 2020).

⁵¹ [F]or purposes of complying with s. 921.141(3)(a), F.S., “sufficient aggravating circumstances” means “one or more.” *See Miller v. State*, 42 So. 3d 204, 219 (Fla. 2010) (“sufficient aggravating circumstances” means “one or more such circumstances.” For purposes of complying with s. 921.141(3)(a), F.S., “sufficient aggravating circumstances” means “one or more.” *See Miller v. State*, 42 So. 3d 204, 219 (Fla. 2010) (“sufficient aggravating circumstances” means “one or more such circumstances”). *Poole v. State*, 297 So. 3d 487, 502 (Fla. 2020).

⁵² “The role of the section 921.141(3)(b) selection finding is to give the defendant an opportunity for mercy if it is justified by the relevant mitigating circumstances and by the facts surrounding his crime.” *Poole v. State*, 297 So. 3d 487, 503 (Fla. 2020). *See also Rogers v. State*, 285 So.3d 872, 886 (Fla. 2019).

⁵³ *Hurst v. Florida* does not require a unanimous jury recommendation—or any jury recommendation—before a death sentence can be imposed. The Supreme Court in *Spaziano* “upheld the constitutionality under the Sixth Amendment of a Florida judge imposing a death sentence even in the face of a jury recommendation of life—a jury override. It necessarily follows that the Sixth Amendment, as interpreted in *Spaziano*, does not require any jury recommendation of death, much less a unanimous one. And as we have also explained, the Court in *Hurst v. Florida* overruled *Spaziano* only to the extent it allows a judge, rather than a jury, to find a necessary aggravating circumstance.” *See Hurst v. Florida*, 136 S. Ct. at 624. *See also Spaziano v. Florida*, 468 U.S. 447 at 464-65, (1984) holding that the Eighth Amendment does not require a jury’s favorable recommendation before a death penalty can be imposed. *Poole v. State*, 297 So. 3d 487, 505 (Fla. 2020).

⁵⁴ “This Court clearly erred in *Hurst v. State* by requiring that the jury make any finding beyond the section 921.141(3)(a) eligibility finding of one or more statutory aggravating circumstances. Neither *Hurst v. Florida*, nor the Sixth or Eighth Amendment, nor the Florida Constitution mandates that the jury make the section 941.121(3)(b) selection finding or that the jury recommend a sentence of death.”

Pennsylvania). The Delaware and Washington state courts have ruled their death penalties unconstitutional. Twenty-three states have abolished the death penalty.⁵⁵

Of the 22 active death penalty states, only Alabama allows a judge to impose a death sentence based upon a non-unanimous (10-2 jury vote) jury verdict for death. If the jury returns a verdict of death, “the court shall sentence the defendant to death.”⁵⁶

Most states with the death penalty impose a life sentence if the jury makes a non-unanimous death recommendation. However, in some instances, if the jury cannot reach a unanimous decision:

- 5 states provide for the state to have another opportunity at a new sentencing hearing with a different jury (Alabama, Arizona, California, Kentucky, and Nevada); and
- Indiana and Missouri juries are considered to be “hung juries,” and the judge becomes the decision-maker.
- In Montana, the judge sentences based on a jury finding of aggravating factors.
- In Nebraska, a panel of judges decides the sentence and if the panel is non-unanimous, the sentence must be for life.⁵⁷

III. Effect of Proposed Changes:

Capital Sexual Battery Sentencing

The bill creates s. 921.1425, F.S., to implement a death penalty sentencing process for capital felony offenses in s. 794.011, F.S. There are currently two sexual battery crimes identified as capital offenses. They are:

- Section 794.011(2)(a), F.S., which states that a person 18 years of age or older who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a capital felony, punishable as provided in ss. 775.082, F.S., and 921.141, F.S.,⁵⁸ and
- Section 794.011(8)(c), F.S., which provides that a person who is in a position of familial or custodial authority who engages in any act with a person less than 12 years of age which constitutes sexual battery, or in an attempt to commit sexual battery injures the sexual organs

⁵⁵ States with the Death Penalty, Death Penalty Bans, and Death Penalty Moratoriums, Britannica ProCon.org, available at <https://deathpenalty.procon.org/states-with-the-death-penalty-and-states-with-death-penalty-bans/>; (last visited March 17, 2023); Life Verdict or Hung Jury? How States Treat Non-Unanimous Jury Votes in Capital-Sentencing Proceedings, Death Penalty Information Center, available at <https://deathpenaltyinfo.org/stories/life-verdict-or-hung-jury-how-states-treat-non-unanimous-jury-votes-in-capital-sentencing-proceedings> (last visited March 17, 2023); and Map: These are the states that allow the death penalty, Joe Murphy, NBC News, October 27, 2021, available at: <https://www.nbcnews.com/news/all/map-these-are-states-allow-death-penalty-n1282556> (last visited March 17, 2023).

⁵⁶ Sections 13A-5-46, and 13A-5-47, A.C.

⁵⁷ See supra note 36.

⁵⁸ Section 775.082, F.S., provides that a person who has been convicted of a capital felony shall be punished by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141, F.S., results in a determination that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and shall be ineligible for parole. Section 921.141, F.S., provides that upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment as authorized by s. 775.082, F.S.

of such person commits a capital or life felony, punishable as provided in ss. 775.082 and 921.141, F.S.⁵⁹

The bill amends s. 794.011(2)(a), F.S., providing that in all capital felony cases under s. 794.011, F.S., the procedure set forth in s. 921.1425, F.S., must be followed in order to determine a sentence of death or life imprisonment without the possibility of parole.

The bill provides that if a prosecutor intends to seek the death penalty, he or she must give notice to the defendant and file the notice with the court within 45 days after arraignment in the case. The notice must contain a list of the aggravating factors the state intends to prove and has reason to believe it can prove beyond a reasonable doubt. The court may allow the prosecutor to amend the notice upon a showing of good cause.

Section 921.1425, F.S., which creates a death penalty sentencing process for ss. 794.011(2)(a) and (8)(c), F.S., contains legislative findings and intent, as follows:

- A person who commits a sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age carries a great risk of death and danger to vulnerable members of this state.
- Such crimes destroy the innocence of a young child and violate all standards of decency held by civilized society.
- *Buford v. State of Florida*, 403 So. 2d 943 (Fla. 1981), was wrongly decided, *Kennedy v. Louisiana*, 554 U.S. 407 (2008), was wrongly decided, and such cases are an egregious infringement of the states' power to punish the most heinous of crimes.
- It is the intent of the Legislature that the procedure set forth in this s. 794.011, F.S., shall be followed, and a prosecutor must file a notice, as provided in s. 794.011(2)(a), F.S., if he or she intends to seek the death penalty.

The bill requires the court to conduct a separate sentencing proceeding upon the conviction or adjudication of guilt of a defendant of a capital felony under s. 794.011, F.S., to determine whether the defendant should be sentenced to death or life imprisonment as authorized by s. 775.082, F.S.

The proceeding must be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may summon a special juror or jurors as provided in ch. 913, F.S., to determine the issue of the imposition of the penalty. If the trial jury has been waived, or if the defendant pleads guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose, unless waived by the defendant.

In the proceeding, evidence may be presented as to any matter that the court deems relevant to the nature of the crime and the character of the defendant and must include matters relating to

⁵⁹ *Id.*; and see s. 775.082(3), F.S., setting forth the sentence for a life felony, in general, as: for a life felony committed on or after July 1, 1995, by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment.

any of the aggravating factors and for which notice has been provided pursuant to s. 794.011(2)(a) F.S., or relating to any of the mitigating circumstances.

Any such evidence that the court deems to have probative value may be received, regardless of its admissibility under the exclusionary rules of evidence, provided the defendant is accorded a fair opportunity to rebut any hearsay statements. However, subsection (2) of s. 941.1425, F.S., may not be construed to authorize the introduction of any evidence secured in violation of the United States Constitution or the State Constitution. The state and the defendant or the defendant's counsel must be permitted to present arguments for or against a sentence of death.

If a defendant has not waived his or her right to a sentencing proceeding by a jury, the jury will hear all of the evidence presented regarding aggravating factors and mitigating circumstances. The jury must deliberate and determine if the state has proven, beyond a reasonable doubt, the existence of at least two aggravating factors.

The jury must return findings identifying each aggravating factor found to exist. A finding that an aggravating factor exists must be unanimous. If the jury:

- Does not unanimously find at least two aggravating factors, the defendant is ineligible for a sentence of death.
- Unanimously finds at least two aggravating factors, the defendant is eligible for a sentence of death and the jury must make a recommendation to the court as to whether the defendant must be sentenced to life imprisonment without the possibility of parole or to death. The recommendation must be based on a weighing of all of the following:
 - Whether sufficient aggravating factors exist.
 - Whether aggravating factors exist which outweigh the mitigating circumstances found to exist.
 - Based on these considerations, whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death.

If at least eight jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court must be a sentence of death. If fewer than eight jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court must be a sentence of life imprisonment without the possibility of parole.

If the jury has recommended a sentence of:

- Life imprisonment without the possibility of parole, the court must impose the recommended sentence of life imprisonment without the possibility of parole.
- Death, the court may impose the recommended sentence of death or a sentence of life imprisonment without the possibility of parole. The court may impose a sentence of death only if the jury unanimously found at least two aggravating factors to have been proven beyond a reasonable doubt.

If the defendant waives his or her right to a sentencing proceeding by a jury, the court, after considering all aggravating factors and mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death. The court may impose a sentence of death only if the court finds that at least two aggravating factors have been proven to exist beyond a reasonable doubt.

Regardless of the sentence, the court must enter a written sentencing order considering the records of the trial and the sentencing proceedings, and addressing:

- The aggravating factors found to exist;
- The mitigating circumstances reasonably established by the evidence;
- Whether there are sufficient aggravating factors to warrant the death penalty; and
- Whether the aggravating factors outweigh the mitigating circumstances reasonably established by the evidence.

The court must include in its written order the reasons for not accepting the jury's recommended sentence, if applicable.

If the court does not issue its sentencing order requiring a sentence of death within 30 days after the rendition of the judgment and sentence, the court must impose a sentence of life imprisonment without the possibility of parole in accordance with s. 775.082, F.S.

The judgment of conviction and sentence of death shall be subject to automatic review by the Florida Supreme Court and disposition rendered within 2 years after the filing of a notice of appeal. Such review by the Florida Supreme Court must have priority over all other cases and must be heard in accordance with rules adopted by the Florida Supreme Court.

Aggravating factors are limited to the following:

- The capital felony was committed by a person who was previously convicted of a felony violation of s. 794.011, F.S., and was under a sentence of imprisonment or was placed on community control or on felony probation.
- The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence.
- The capital felony was committed by a person designated as a sexual predator pursuant to s. 775.21, F.S., or a person previously designated as a sexual predator who had the sexual predator designation removed.
- The capital felony was committed by a sexual offender who is required to register pursuant to s. 943.0435, F.S., or a person previously required to register as a sexual offender who had such requirement removed.
- The defendant knowingly created a great risk of death to one or more persons such that participation in the offense constituted reckless indifference or disregard for human life.
- The defendant used a firearm or knowingly directed, advised, authorized, or assisted another to use a firearm to threaten, intimidate, assault, or injure a person in committing the offense or in furtherance of the offense.
- The capital felony was committed for pecuniary gain.
- The capital felony was especially heinous, atrocious, or cruel.
- The victim of the capital felony was particularly vulnerable due to age or disability, or because the defendant was in a position of familial or custodial authority in relation to the victim.
- The capital felony was committed by a person subject to an injunction issued pursuant to s. 741.30, F.S., or s. 784.046, F.S., or a foreign protection order accorded full faith and credit

pursuant to s. 741.315, F.S., and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.

- The victim of the capital felony sustained serious bodily injury.

Mitigating circumstances are the following:

- The defendant has no significant history of prior criminal activity.
- The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.
- The defendant was an accomplice in the capital felony committed by another person and his or her participation was relatively minor.
- The defendant acted under extreme duress or under the substantial domination of another person.
- The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired.
- The age of the defendant at the time of the crime.
- The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty.

Once the prosecution has provided evidence of the existence of one or more aggravating factors, the prosecution may introduce, and subsequently argue, victim impact evidence to the jury. Such evidence must be designed to demonstrate the victim's uniqueness as an individual human being and the physical and psychological harm to the victim. Characterizations and opinions about the crime, the defendant, and the appropriate sentence may not be permitted as a part of victim impact evidence.

Notwithstanding s. 775.082(2), F.S., s. 775.15, F.S., or any other provision of law, a sentence of death must be imposed under this section notwithstanding existing case law that holds such a sentence to be unconstitutional under the United States Constitution or the State Constitution. In any case for which the Florida Supreme Court or the United States Supreme Court reviews a sentence of death imposed pursuant to this section, and in making such a review reconsiders the prior holdings in *Buford v. State* and *Kennedy v. Louisiana*, and determines a sentence of death remains unconstitutional, the court having jurisdiction over the person previously sentenced to death must cause such person to be brought before the court, and the court must sentence such person to life imprisonment without the possibility of parole as provided in s. 775.082(1), F.S.

Newly-created s. 921.1425, F.S., applies to any capital felony under s. 794.011, F.S., that is committed on or after October 1, 2023.

The bill specifies that s. 921.141, F.S., does not apply to a person convicted or adjudicated guilty of a capital sexual battery offense under s. 794.011, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

There may be an indeterminate fiscal impact on the criminal trial courts, appellate courts, prosecutors, defense attorneys, and appellate counsel as a result of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 794.011 and 921.141.

This bill creates section 921.1425 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 20, 2023:

- Gives the court discretion to impose a sentence of life imprisonment without the possibility of parole *or* a sentence of death, if the jury recommends death. (The bill had required the court to enter a sentence of death if the jury recommended death.)
- Provides that at least two aggravating factors must be found beyond a reasonable doubt for a person to be eligible to be sentenced to death. (The bill had required at least *one* aggravating factor.)
- Provides that the court must enter a written sentencing order, regardless of whether the defendant has waived a jury sentencing proceeding and regardless of the sentence imposed by the court. The order must include the reasons for not accepting the jury's recommended sentence, if applicable. (No sentencing order was required in the bill *unless* the defendant had waived a jury sentencing procedure *and* the court imposed a death sentence. Also, in the bill there was no requirement that the court's sentencing order include reasons for not accepting the jury's recommended sentence, if applicable.)

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2023	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 131 - 182
and insert:
reasonable doubt, the existence of at least two aggravating factors set forth in subsection (7).

(b) The jury must return findings identifying each aggravating factor found to exist. A finding that two aggravating factors exists must be unanimous. If the jury:

1. Does not unanimously find at least two aggravating



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factors, the defendant is ineligible for a sentence of death.

2. Unanimously finds at least two aggravating factors, the defendant is eligible for a sentence of death and the jury must make a recommendation to the court as to whether the defendant must be sentenced to life imprisonment without the possibility of parole or to death. The recommendation must be based on a weighing of all of the following:

a. Whether sufficient aggravating factors exist.

b. Whether aggravating factors exist which outweigh the mitigating circumstances found to exist.

c. Based on the considerations in sub-subparagraphs a. and b., whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death.

(c) If at least eight jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court must be a sentence of death. If fewer than eight jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court must be a sentence of life imprisonment without the possibility of parole.

(4) IMPOSITION OF SENTENCE OF LIFE IMPRISONMENT OR DEATH.—

(a) If the jury has recommended a sentence of:

1. Life imprisonment without the possibility of parole, the court must impose the recommended sentence of life imprisonment without the possibility of parole.

2. Death, the court, after considering each aggravating factor found by the jury and all mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death. The court may consider only an aggravating factor that was unanimously found to exist by the



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jury. The court may impose a sentence of death only if the jury
unanimously finds at least two aggravating factors beyond a
reasonable doubt.

(b) If the defendant waives his or her right to a
sentencing proceeding by a jury, the court, after considering
all aggravating factors and mitigating circumstances, may impose
a sentence of life imprisonment without the possibility of
parole or a sentence of death. The court may impose a sentence
of death only if the court finds that at least two aggravating
factors have been proven to exist beyond a reasonable doubt.

(5) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF LIFE
IMPRISONMENT OR DEATH.— In each case in which the court imposes
a sentence of life imprisonment without the possibility of
parole or death, the court must, considering the records of the
trial and the sentencing proceedings, enter a written order
addressing the aggravating factors set forth in subsection (7)
found to exist, the mitigating circumstances in subsection (8)
reasonably established by the evidence, whether there are
sufficient aggravating factors to warrant the death penalty, and
whether the aggravating factors outweigh the mitigating
circumstances reasonably established by the evidence. The court
must include in its written order the reasons for not accepting
the jury's recommended sentence, if applicable. If the

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

And the title is amended as follows:

Delete lines 27 - 33

and insert:

the court to impose the jury's recommended sentence if



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69 the recommendation is for a sentence of life
70 imprisonment without the possibility of parole; giving
71 the court discretion to impose a sentence of life
72 imprisonment without the possibility of parole or a
73 sentence of death if the recommended sentence is for
74 death; requiring unanimity on at least two aggravating
75 factors beyond a reasonable doubt for a court to
76 impose a sentence of death; requiring a court to enter
77 a written order

By Senator Martin

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1 A bill to be entitled
 2 An act relating to capital sexual battery; amending s.
 3 794.011, F.S.; revising how certain capital felonies
 4 are punished; requiring that specified procedures be
 5 followed to determine a sentence of death or life
 6 imprisonment without the possibility of parole in
 7 specified capital felony cases; requiring a prosecutor
 8 to give certain notice if he or she intends to seek
 9 the death penalty; providing notice requirements;
 10 creating s. 921.1425, F.S.; providing legislative
 11 findings and intent; requiring a court to conduct a
 12 separate sentencing proceeding to determine whether a
 13 defendant should be sentenced to death or life
 14 imprisonment without the possibility of parole upon
 15 the defendant's conviction or adjudication of guilt
 16 for a capital felony; providing proceeding
 17 requirements; authorizing the presentation of certain
 18 evidence during such proceedings; requiring a jury to
 19 make specified determinations, findings, and
 20 recommendations; requiring a recommendation to the
 21 court of a sentence of death if at least eight jurors
 22 determine that the defendant should be sentenced to
 23 death; requiring a recommendation to the court of a
 24 sentence of life imprisonment without the possibility
 25 of parole if fewer than eight jurors determine that
 26 the defendant should be sentenced to death; requiring
 27 the court to impose the jury's recommended sentence;
 28 requiring a finding of unanimity on at least one
 29 aggravating factor beyond a reasonable doubt for a

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

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30 court to impose a sentence of death; requiring a
 31 court, if a defendant waives his or her right to a
 32 sentencing proceeding by a jury and the court imposes
 33 a sentence of death, to enter a written order
 34 addressing specified information; specifying that a
 35 judgment of conviction and sentence of death is
 36 subject to automatic review by the Florida Supreme
 37 Court; specifying aggravating factors; specifying
 38 mitigating circumstances; authorizing the prosecution
 39 to introduce and argue victim impact evidence to the
 40 jury; providing construction; providing applicability;
 41 amending s. 921.141, F.S.; conforming a provision to
 42 changes made by the act; providing an effective date.
 43

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

45
 46 Section 1. Paragraph (a) of subsection (2) of section
 47 794.011, Florida Statutes, is amended, and paragraph (c) of
 48 subsection (8) of that section is republished, to read:
 49 794.011 Sexual battery.—

50 (2) (a) A person 18 years of age or older who commits sexual
 51 battery upon, or in an attempt to commit sexual battery injures
 52 the sexual organs of, a person less than 12 years of age commits
 53 a capital felony, punishable as provided in ss. 775.082 and
 54 921.1425. In all capital felony cases under this section, the
 55 procedure set forth in s. 921.1425 must be followed in order to
 56 determine a sentence of death or life imprisonment without the
 57 possibility of parole. If the prosecutor intends to seek the
 58 death penalty, the prosecutor must give notice to the defendant

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and file the notice with the court within 45 days after arraignment. The notice must contain a list of the aggravating factors the state intends to prove and has reason to believe it can prove beyond a reasonable doubt. The court may allow the prosecutor to amend the notice upon a showing of good cause ~~ss-~~ 775.082 and 921.141.

(8) Without regard to the willingness or consent of the victim, which is not a defense to prosecution under this subsection, a person who is in a position of familial or custodial authority to a person less than 18 years of age and who:

(c) Engages in any act with that person while the person is less than 12 years of age which constitutes sexual battery, or in an attempt to commit sexual battery injures the sexual organs of such person commits a capital or life felony, punishable pursuant to subsection (2).

Section 2. Section 921.1425, Florida Statutes, is created to read:

921.1425 Sentence of death or life imprisonment for capital sexual battery; further proceedings to determine sentence.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds that a person who commits a sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age carries a great risk of death and danger to vulnerable members of this state. Such crimes destroy the innocence of a young child and violate all standards of decency held by civilized society. The Legislature further finds that *Buford v. State of Florida*, 403 So. 2d 943 (Fla. 1981), was wrongly decided, and

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that *Kennedy v. Louisiana*, 554 U.S. 407, (2008), was wrongly decided, and that such cases are an egregious infringement of the states' power to punish the most heinous of crimes.

(b) It is the intent of the Legislature that the procedure set forth in this section shall be followed, and a prosecutor must file a notice, as provided in s. 794.011(2)(a), if he or she intends to seek the death penalty.

(2) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.—Upon conviction or adjudication of guilt of a defendant of a capital felony under s. 794.011, the court must conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment as authorized by s. 775.082. The proceeding must be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may summon a special juror or jurors as provided in chapter 913 to determine the issue of the imposition of the penalty. If the trial jury has been waived, or if the defendant pleads guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose, unless waived by the defendant. In the proceeding, evidence may be presented as to any matter that the court deems relevant to the nature of the crime and the character of the defendant and must include matters relating to any of the aggravating factors enumerated in subsection (7) and for which notice has been provided pursuant to s. 794.011(2)(a) or relating to any of the mitigating circumstances enumerated in subsection (8). Any such evidence that the court deems to have

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117 probative value may be received, regardless of its admissibility
 118 under the exclusionary rules of evidence, provided the defendant
 119 is accorded a fair opportunity to rebut any hearsay statements.
 120 However, this subsection may not be construed to authorize the
 121 introduction of any evidence secured in violation of the United
 122 States Constitution or the State Constitution. The state and the
 123 defendant or the defendant's counsel must be permitted to
 124 present arguments for or against a sentence of death.

125 (3) FINDINGS AND RECOMMENDED SENTENCE BY THE JURY.—This
 126 subsection applies only if the defendant has not waived his or
 127 her right to a sentencing proceeding by a jury.

128 (a) After hearing all of the evidence presented regarding
 129 aggravating factors and mitigating circumstances, the jury must
 130 deliberate and determine if the state has proven, beyond a
 131 reasonable doubt, the existence of at least one aggravating
 132 factor set forth in subsection (7).

133 (b) The jury must return findings identifying each
 134 aggravating factor found to exist. A finding that an aggravating
 135 factor exists must be unanimous. If the jury:

136 1. Does not unanimously find at least one aggravating
 137 factor, the defendant is ineligible for a sentence of death.

138 2. Unanimously finds at least one aggravating factor, the
 139 defendant is eligible for a sentence of death and the jury must
 140 make a recommendation to the court as to whether the defendant
 141 must be sentenced to life imprisonment without the possibility
 142 of parole or to death. The recommendation must be based on a
 143 weighing of all of the following:

144 a. Whether sufficient aggravating factors exist.

145 b. Whether aggravating factors exist which outweigh the

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146 mitigating circumstances found to exist.

147 c. Based on the considerations in sub-subparagraphs a. and
 148 b., whether the defendant should be sentenced to life
 149 imprisonment without the possibility of parole or to death.

150 (c) If at least eight jurors determine that the defendant
 151 should be sentenced to death, the jury's recommendation to the
 152 court must be a sentence of death. If fewer than eight jurors
 153 determine that the defendant should be sentenced to death, the
 154 jury's recommendation to the court must be a sentence of life
 155 imprisonment without the possibility of parole.

156 (4) IMPOSITION OF SENTENCE OF LIFE IMPRISONMENT OR DEATH.—

157 (a) If the jury has recommended a sentence of:

158 1. Life imprisonment without the possibility of parole, the
 159 court must impose the recommended sentence of life imprisonment
 160 without the possibility of parole.

161 2. Death, the court must impose the recommended sentence of
 162 death. The court may impose a sentence of death only if the jury
 163 unanimously found at least one aggravating factor to have been
 164 proven beyond a reasonable doubt.

165 (b) If the defendant waives his or her right to a
 166 sentencing proceeding by a jury, the court, after considering
 167 all aggravating factors and mitigating circumstances, may impose
 168 a sentence of life imprisonment without the possibility of
 169 parole or a sentence of death. The court may impose a sentence
 170 of death only if the court finds that at least one aggravating
 171 factor has been proven to exist beyond a reasonable doubt.

172 (5) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF DEATH.—If
 173 a defendant waives his or her right to a sentencing proceeding
 174 by a jury and the court imposes a sentence of death under

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paragraph (4)(b), the court must, considering the records of the trial and the sentencing proceedings, enter a written order addressing the aggravating factors set forth in subsection (7) found to exist, the mitigating circumstances in subsection (8) reasonably established by the evidence, whether there are sufficient aggravating factors to warrant the death penalty, and whether the aggravating factors outweigh the mitigating circumstances reasonably established by the evidence. If the court does not issue its order requiring a sentence of death within 30 days after the rendition of the judgment and sentence, the court must impose a sentence of life imprisonment without the possibility of parole in accordance with s. 775.082.

(6) REVIEW OF JUDGMENT AND SENTENCE.—The judgment of conviction and sentence of death shall be subject to automatic review by the Florida Supreme Court and disposition rendered within 2 years after the filing of a notice of appeal. Such review by the Florida Supreme Court must have priority over all other cases and must be heard in accordance with rules adopted by the Florida Supreme Court.

(7) AGGRAVATING FACTORS.—Aggravating factors are limited to the following:

(a) The capital felony was committed by a person who was previously convicted of a felony violation of s. 794.011, and was under a sentence of imprisonment or was placed on community control or on felony probation.

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

(c) The capital felony was committed by a person designated

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as a sexual predator pursuant to s. 775.21 or a person previously designated as a sexual predator who had the sexual predator designation removed.

(d) The capital felony was committed by a sexual offender who is required to register pursuant to s. 943.0435 or a person previously required to register as a sexual offender who had such requirement removed.

(e) The defendant knowingly created a great risk of death to one or more persons such that participation in the offense constituted reckless indifference or disregard for human life.

(f) The defendant used a firearm or knowingly directed, advised, authorized, or assisted another to use a firearm to threaten, intimidate, assault, or injure a person in committing the offense or in furtherance of the offense.

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

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

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

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

(k) The victim of the capital felony sustained serious bodily injury.

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(8) MITIGATING CIRCUMSTANCES.—Mitigating circumstances are the following:

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

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

(c) The defendant was an accomplice in the capital felony committed by another person and his or her participation was relatively minor.

(d) The defendant acted under extreme duress or under the substantial domination of another person.

(e) The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired.

(f) The age of the defendant at the time of the crime.

(g) The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty.

(9) VICTIM IMPACT EVIDENCE.—Once the prosecution has provided evidence of the existence of one or more aggravating factors as described in subsection (7), the prosecution may introduce, and subsequently argue, victim impact evidence to the jury. Such evidence must be designed to demonstrate the victim's uniqueness as an individual human being and the physical and psychological harm to the victim. Characterizations and opinions about the crime, the defendant, and the appropriate sentence may not be permitted as a part of victim impact evidence.

(10) CONSTITUTIONALITY.—Notwithstanding s. 775.082(2), s.

33-00739B-23

20231342

775.15, or any other provision of law, a sentence of death must be imposed under this section notwithstanding existing case law that holds such a sentence to be unconstitutional under the United States Constitution or the State Constitution. In any case for which the Florida Supreme Court or the United States Supreme Court reviews a sentence of death imposed pursuant to this section, and in making such a review reconsiders the prior holdings in *Buford v. State* and *Kennedy v. Louisiana*, and determines a sentence of death remains unconstitutional, the court having jurisdiction over the person previously sentenced to death must cause such person to be brought before the court, and the court must sentence such person to life imprisonment without the possibility of parole as provided in s. 775.082(1).

(11) APPLICABILITY.—This section applies to any capital felony under s. 794.011 that is committed on or after October 1, 2023.

Section 3. Subsection (9) of section 921.141, Florida Statutes, is amended to read:

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

(9) APPLICABILITY.—This section does not apply to a person convicted or adjudicated guilty of a capital sexual battery offense under s. 794.011 or a capital drug trafficking felony under s. 893.135.

Section 4. This act shall take effect October 1, 2023.

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
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3/20/23
Meeting Date

Civil Justice
Committee

1342
Bill Number or Topic

Amendment Barcode (if applicable)

Name Ron Book Phone 850-224-3427

Address 104 West Jefferson St Email ron@RLBookPA.com
Street

Tallahassee Fla 32301
City State Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Lauren's Kids Foundation

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

~~SB 1552~~ (H)
SB 1342

3/20/2023

Meeting Date

Criminal Justice

Committee

Deliver both copies of this form to
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Bill Number or Topic

Amendment Barcode (if applicable)

Name

HILDA Alexander

Phone

561-252-7619

Address

POB 2022

Email

hilda.alexander@
yahoo.com

Street

Green belt

City

State

MD

20768

Zip

Speaking:

☐ For

☒ Against

☐ Information

OR

Waive Speaking:

☐ In Support

☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

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S-001 (08/10/2021)

3/20/23

Meeting Date

The Florida Senate
APPEARANCE RECORD

1342

Bill Number or Topic

CRIMINAL JUSTICE

Committee

Deliver both copies of this form to
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Amendment Barcode (if applicable)

Name

AARON WAYT

FL ASSN OF CRIMINAL
DEFENSE LAWYERS

Phone

(407) 435-3194

Address

553 E TENN ST

Email

AARON@DONPUMPHREY.COM

Street

TLH

City

FL

State

32308

Zip

Speaking:

☐ For☐ Against☐ Information

OR

Waive Speaking:

☐ In Support☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB 1342

Meeting Date

Bill Number or Topic

3/20/23
Criminal Justice

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Committee

Amendment Barcode (if applicable)

Name

Phone

Address

Email

Street

City

State

Zip

Speaking:

☐ For

☐ Against

☐ Information

OR

Waive Speaking:

☐ In Support

☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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SB 1342

Bill Number or Topic

3/20/23

Meeting Date

Criminal Justice

Committee

Amendment Barcode (if applicable)

Name VANESSA ROGERS

Phone 850 745-1454

Address 1182 COPPER CREEK

Email VANESSA.ROGERS@LIVE.COM

TALLAHASSEE

FL

32311

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

March 20, 2023

Meeting Date

Criminal Justice

Committee

Name **Barney Bishop III**

Address **1454 Vieux Carre Drive**

Street

Tallahassee

City

FL

State

32308

Zip

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
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1342

Bill Number or Topic

Amendment Barcode (if applicable)

Phone **850-510-9922**

Email **Barney@BarneyBishop.com**

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Fla. Smart Justice
...

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1556

INTRODUCER: Senator Perry

SUBJECT: Contraband Forfeiture

DATE: March 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Parker	Stokes	CJ	Pre-meeting
2.			FP	

I. Summary:

SB 1556 amends s. 932.703, F.S., authorizing a stay of proceedings subsequent to a written order finding probable cause for the seizure.

The bill amends s. 932.704, F.S., to provide that a complaint must state the criminal case number and the name of the court in which any criminal charge associated with the underlying activity forming the basis for the forfeiture action are filed against any claimant, if such information is available.

Additionally, the bill revises policy relating to forfeiture proceedings by providing that if an associated criminal charge is:

- Filed, the forfeiture action must be stayed by the court presiding over the forfeiture action until the disposition of the underlying criminal case. If charges are filed after the complaint for forfeiture is filed, the attorney for the seizing agency must notify the court presiding over the forfeiture action;
- Filed, the forfeiture action may only proceed after the claimant is convicted of or pleads guilty or nolo contendere to, regardless of adjudication, a criminal charge forming the basis for the forfeiture action. The attorney for the seizing agency must notify the court presiding over the forfeiture action of the final disposition; and
- Disposed of by dismissal, nolle prosequi, or acquittal, the attorney for the seizing agency must notify the court presiding over the forfeiture action.

The bill requires the return of seized property if all associated criminal charges are disposed of by dismissal, nolle prosequi, or acquittal.

The bill does not prohibit a forfeiture pursuant to a lawful plea agreement which resolves a criminal charge and a forfeiture action arising from the same activity. Seized property may not be used in bargaining to dismiss or nolle prosequi criminal charges, obtain a guilty plea, or affect criminal sentencing recommendations.

The bill creates s. 932.7071, F.S., prohibiting specified agencies from referring, transferring, or otherwise relinquishing possession of property seized under state law to a federal agency for a specified purpose and provides guidelines relating to state participation in joint task forces.

The bill may have an indeterminate fiscal impact. See Section V. Fiscal Impact Statement.

The bill shall take effect July 1, 2023.

II. Present Situation:

Sections 932.701-932.7062, F.S., comprise the Florida Contraband Forfeiture Act (Act), which provides for the seizure and civil forfeiture of property related to criminal and noncriminal violations of law. The forfeiture procedure advances primarily by a two-step process: the seizure or other initial restraint on the property is applied, and the forfeiture itself occurs once it is determined in court that the property can be legally forfeited.

A contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the Act, or in, upon, or by means of which any violation of the Act has taken or is taking place, may be seized and shall be forfeited subject to the Act.^{1, 2}

¹ Section 932.703(1)(a), F.S.

² Section 932.701(2)(a)1.-12., F.S., defines “Contraband article” to mean:

1. Any controlled substance as defined in ch. 893, F.S., or any substance, device, paraphernalia, or currency or other means of exchange that was used, was attempted to be used, or was intended to be used in violation of any provision of ch. 893, F.S., if the totality of the facts presented by the state is clearly sufficient to meet the state’s burden of establishing probable cause to believe that a nexus exists between the article seized and the narcotics activity, whether or not the use of the contraband article can be traced to a specific narcotics transaction.
2. Any equipment, gambling device, apparatus, material of gaming, proceeds, substituted proceeds, real or personal property, Internet domain name, gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was obtained, received, used, attempted to be used, or intended to be used in violation of the gambling laws of the state, including any violation of ch. 24, F.S., part II of ch. 285, F.S., ch. 546, F.S., ch. 550, F.S., ch. 551, F.S., or ch. 849, F.S.
3. Any equipment, liquid or solid, which was being used, is being used, was attempted to be used, or intended to be used in violation of the beverage or tobacco laws of the state.
4. Any motor fuel upon which the motor fuel tax has not been paid as required by law.
5. Any personal property, including, but not limited to, any vessel, aircraft, item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, securities, books, records, research, negotiable instruments, or currency, which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.
6. Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which was used, is being used, or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.
7. Any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, currency, or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person who takes aquaculture products in violation of s. 812.014(2)(c), F.S.
8. Any motor vehicle offered for sale in violation of s. 320.28, F.S.
9. Any motor vehicle used during the course of committing an offense in violation of s. 322.34(9)(a), F.S.
10. Any photograph, film, or other recorded image, including an image recorded on videotape, a compact disc, digital tape, or fixed disk, that is recorded in violation of s. 810.145, F.S., and is possessed for the purpose of amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.

A seizure may occur only if the owner of the property is arrested for a criminal offense that forms the basis for determining that the property is a contraband article under s. 932.701, F.S., or one or more of the following circumstances apply:

- The owner of the property cannot be identified after a diligent search, or the person in possession of the property denies ownership and the owner of the property cannot be identified by means that are available to the employee or agent of the seizing agency at the time of the seizure.³
- The owner of the property is a fugitive from justice or is deceased.⁴
- An individual who does not own the property is arrested for a criminal offense that forms the basis for determining that the property is a contraband article under s. 932.701, F.S., and the owner of the property had actual knowledge of the criminal activity.⁵

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

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

(b) "Bona fide lienholder" means the holder of a lien perfected pursuant to applicable law.

(c) "Promptly proceed" means to file the complaint within 45 days after seizure.

(d) "Complaint" is a petition for forfeiture filed in the civil division of the circuit court by the seizing agency requesting the court to issue a judgment of forfeiture.

(e) "Person entitled to notice" means any owner, entity, bona fide lienholder, or person in possession of the property subject to forfeiture when seized, who is known to the seizing agency after a diligent search and inquiry.

(f) "Adversarial preliminary hearing" means a hearing in which the seizing agency is required to establish probable cause that the property subject to forfeiture was used in violation of the Florida Contraband Forfeiture Act.

(g) "Forfeiture proceeding" means a hearing or trial in which the court or jury determines whether the subject property shall be forfeited.

(h) "Claimant" means any party who has proprietary interest in property subject to forfeiture and has standing to challenge such forfeiture, including owners, registered owners, bona fide lienholders, and titleholders.

³ Section 932.703(1)(a)1., F.S.

⁴ Section 932.703(1)(a)2., F.S.

⁵ Section 932.703(1)(a)3., F.S. Evidence that an owner received written notification from a law enforcement agency and acknowledged receipt of the notification in writing, that the seized asset had been used in violation of the Act on a prior occasion by the arrested person, may be used to establish actual knowledge.

- The owner of the property agrees to be a confidential informant.^{6, 7} The seizing agency may not use the threat of property seizure or forfeiture to coerce the owner of the property to enter into a confidential informant agreement.⁸
- The property is a monetary instrument.^{9, 10}

Seizure Process

Personal property may be seized at the time of the violation or subsequent to the violation, if the person entitled to notice is notified at the time of the seizure or by certified mail that there is a right to an adversarial preliminary hearing after the seizure. Such hearing determines whether probable cause exists to believe that such property has been or is being used in violation of the FCFA. A seizing agency must make a diligent effort to notify the person entitled to notice. If a person requests an adversarial preliminary hearing, such hearing must be held within 10 days of the request or as soon as practicable thereafter.¹¹

In contrast to personal property, real property may not be seized or restrained, other than by lis pendens, until the person who is entitled to notice is afforded the opportunity to attend the pre seizure adversarial preliminary hearing. The purpose of the adversarial preliminary hearing is to determine whether probable cause exists to believe that such property has been used in violation of the FCFA. The pre seizure adversarial preliminary hearing must be held within 10 days of the filing of lis pendens or as soon as practicable.¹²

If the court determines that probable cause exists to believe that such property was used in violation of the FCFA, the court must authorize the seizure or continued seizure of the contraband.¹³

Upon proof beyond a reasonable doubt that the contraband article was being used in violation of the FCFA, the court must order the seized property forfeited to the seizing law enforcement

⁶ Section 914.28(2)(a), F.S., defines “Confidential informant” to mean a person who cooperates with a law enforcement agency confidentially in order to protect the person or the agency’s intelligence gathering or investigative efforts and:

1. Seeks to avoid arrest or prosecution for a crime, or mitigate punishment for a crime in which a sentence will be or has been imposed; and
2. Is able, by reason of his or her familiarity or close association with suspected criminals, to:
 - a. Make a controlled buy or controlled sale of contraband, controlled substances, or other items that are material to a criminal investigation;
 - b. Supply regular or constant information about suspected or actual criminal activities to a law enforcement agency; or
 - c. Otherwise provide information important to ongoing criminal intelligence gathering or criminal investigative efforts.

⁷ Section 932.703(1)(a)4., F.S.

⁸ Section 932.703(1)(a)4., F.S. The seizing agency shall return the property to the owner if criminal charges are not filed against the owner and the active criminal investigation ends or if the owner ceases being a confidential informant unless the agency includes the final forfeiture of the property as a component of the confidential informant agreement.

⁹ Section 932.703(1)(a)5., F.S.

¹⁰ For purposes of this subparagraph, the term “monetary instrument” means coin or currency of the United States or any other country; a traveler’s check; a personal check; a bank check; a cashier’s check; a money order; a bank draft of any country; an investment security or negotiable instrument in bearer form or in other form such that title passes upon delivery; a prepaid or stored value card or other device that is the equivalent of money and can be used to obtain cash, property, or services; or gold, silver, or platinum bullion or coins.

¹¹ Section 932.703(3)(a), F.S.

¹² Section 932.703(3)(b), F.S.

¹³ Section 932.703(3)(c), F.S.

agency. The final order of forfeiture by the court perfects in the seizing law enforcement agency right, title, and interest in and to such property, subject only to the rights and interests of bona fide lienholders.¹⁴

Under current law, a civil forfeiture action under s. 932.704, F.S., can proceed during the pendency of a related criminal case and the outcome of the forfeiture is not dependent on the outcome of the criminal case. As a result, a defendant may have his or her property forfeited under the FCFA to the seizing law enforcement agency, but later be found not guilty or have charges dismissed in the related criminal action.¹⁵

Forfeiture Process

If the person entitled to notice does not request an adversarial preliminary hearing, the seizing law enforcement agency must promptly proceed¹⁶ against the contraband article.¹⁷ It does so by filing a complaint¹⁸ in the civil division of the circuit court and requesting that the court issue a judgment of forfeiture. The court must enter an order showing a finding of probable cause before a complaint can be served upon the claimant.¹⁹ A claimant contesting the forfeiture has 20 days after receiving the complaint and the probable cause finding to file any responsive pleadings.²⁰

A trial on the ultimate issue of forfeiture shall be decided by a jury unless such right is waived by the claimant through a written waiver or on the record before the court conducting the forfeiture proceedings.²¹ Property may not be forfeited under the Act unless the seizing agency shows by the preponderance of the evidence that the owner or any co-owner knew or should have known after reasonable inquiry, that the property was being used in criminal activity.²²

If the court orders that the property be forfeited to the seizing law enforcement agency, the final order of forfeiture perfects in the agency right, title, and interest in and to the property, subject only to the rights and interest of bona fide lienholders, and relates back to the date of seizure.²³

Disposition of Forfeited Property

Section 932.7055, F.S., provides for the disposition of liens and forfeited property under the Act. The seizing agency may do any of the following when a final judgment of forfeiture is granted:

¹⁴ Office of the State Courts Administrator, *2023 Judicial Impact Statement* (March 10, 2023) at 2, (on file with the Senate Committee on Criminal Justice).

¹⁵ *Id.*

¹⁶ Section 932.701(2)(a)12.(c), F.S., defines “Promptly proceed” to mean to file the complaint within 45 days after seizure.

¹⁷ Section 932.704(4), F.S., states “the seizing agency shall promptly proceed against the contraband article by filing a complaint in the circuit court within the jurisdiction where the seizure or the offense occurred, paying a filing fee of at least \$1,000 and depositing a bond of \$1,500 to the clerk of the court. Unless otherwise expressly agreed to in writing by the parties, the bond shall be payable to the claimant if the claimant prevails in the forfeiture proceeding and in any appeal.”

¹⁸ Section 932.701(2)(a)12.d., F.S., defines “complaint” as a petition for forfeiture filed in the civil division of the circuit court by the seizing agency requesting the court to issue a judgment of forfeiture.

¹⁹ Section 932.701(2)(h), F.S., defines a “claimant” as any party who has proprietary interest in the seized property who has standing to challenge the forfeiture.

²⁰ Section 932.704(5), F.S.

²¹ Section 932.704(3), F.S.

²² Section 932.703(7)(a), F.S.

²³ Section 932.704(8), F.S.

- Retain the property for the agency's use;
- Sell the property at a public auction or by sealed bid to the highest bidder; or
- Salvage, trade, or transfer the property to any public or nonprofit organization.²⁴

If the forfeited property is subject to a lien preserved by the court as provided in s. 932.703(7)(b), F.S., the agency shall:

- Sell the property with the proceeds being used towards satisfaction of any liens; or
- Have the lien satisfied prior to taking any action authorized by subsection (1).²⁵

The proceeds of the sale are to be distributed in this order:

- Payment of the balance due on any lien preserved by the court in the forfeiture proceedings.
- Payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of such property.
- Payment of court costs incurred in the forfeiture proceeding.²⁶

The proceeds which remain after all liens and debts against the forfeited property are paid are then deposited into a special law enforcement trust fund and may be used to fund school resource officers, crime prevention, safe neighborhood, drug abuse education, and prevention programs, or other law enforcement purposes, including defraying the cost of protracted or complex investigations, providing additional equipment or expertise, purchasing automated external defibrillators for law enforcement vehicles, and providing matching funds to obtain federal grants. These proceeds and interest may not be used to meet normal operation expenses.²⁷

These funds may be expended upon request by the sheriff to the board of county commissioners or by the chief of police to the governing body of the municipality, accompanied by a written certification that the request complies with the provisions of this subsection, and only upon appropriation to the sheriff's office or police department by the board of county commissioners or the governing body of the municipality.²⁸

An agency or organization, other than the seizing agency, that wishes to receive such funds shall apply to the sheriff or chief of police for an appropriation and its application shall be accompanied by a written certification that the moneys will be used for an authorized purpose. Such requests for expenditures shall include a statement describing anticipated recurring costs for the agency for subsequent fiscal years. An agency or organization that receives money pursuant to this subsection shall provide an accounting for such moneys and shall furnish the same reports as an agency of the county or municipality that receives public funds. Such funds may be expended in accordance with the following procedures:

- Such funds may be used only for school resource officer, crime prevention, safe neighborhood, drug abuse education, or drug prevention programs or such other law enforcement purposes as the board of county commissioners or governing body of the municipality deems appropriate.

²⁴ Section 932.7055(1), F.S.

²⁵ Section 932.7055(3)(a)-(b), F.S.

²⁶ Section 932.7055(4)(c), F.S.

²⁷ Section 932.7055(5)(a), F.S.

²⁸ Section 932.7055(5)(b), F.S.

- Such funds shall not be a source of revenue to meet normal operating needs of the law enforcement agency.
- Any local law enforcement agency that acquires at least \$15,000 pursuant to the Florida Contraband Forfeiture Act within a fiscal year must expend or donate no less than 25 percent of such proceeds for the support or operation of any drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer program or programs. The local law enforcement agency has the discretion to determine which program or programs will receive the designated proceeds.²⁹

If the seizing agency is a state agency, the remaining proceeds are deposited into the General Revenue Fund, except for the following agencies:

- FDLE,³⁰
- Department of Environmental Protection;³¹
- Division of Alcoholic Beverages and Tobacco;³²
- Department of Highway Safety and Motor Vehicles;³³
- Fish and Wildlife Conservation Commission;³⁴
- State Attorney's Office;³⁵
- School Board Security Agency;³⁶
- State University System Police Departments;³⁷
- Department of Agriculture and Consumer Service;³⁸
- Department of Military Affairs;³⁹
- Medicaid Fraud Control Unit of the Department of Legal Affairs;⁴⁰ and
- Division of Investigative and Forensic Services in the Department of Financial Services^{41, 42}

III. Effect of Proposed Changes:

A contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the Florida Contraband Forfeiture Act (Act), or in, upon, or by means of which any violation of the Act has taken or is taking place, may be seized and shall be forfeited subject to the Act.

The bill amends s. 932.703, F.S., authorizing a stay of proceedings subsequent to a written order finding probable cause for the seizure.⁴³

²⁹ Section 932.7055(5)(c)1.-3., F.S.

³⁰ Section 932.7055(6)(a), F.S.

³¹ Section 932.7055(6)(b), F.S.

³² Section 932.7055(6)(c), F.S.

³³ Section 932.7055(6)(d), F.S.

³⁴ Section 932.7055(6)(e), F.S.

³⁵ Section 932.7055(6)(f), F.S.

³⁶ Section 932.7055(6)(g), F.S.

³⁷ Section 932.7055(6)(h), F.S.

³⁸ Section 932.7055(6)(i), F.S.

³⁹ Section 932.7055(6)(j), F.S.

⁴⁰ Section 932.7055(6)(k), F.S.

⁴¹ Section 932.7055(6)(l), F.S.

⁴² Section 932.7055(6)(m), F.S.

⁴³ Section 932.703(1)(a), F.S.

The bill amends s. 932.704, F.S., to respect the due process rights of the accused, and to provide that a complaint must state the criminal case number and the name of the court in which any criminal charge associated with the underlying activity forming the basis for the forfeiture action are filed against any claimant, if such information is available.

- If a criminal charge associated with the underlying activity forming the basis for the forfeiture action is filed against any claimant, the forfeiture action must be stayed by the court presiding over the forfeiture action until the disposition of the underlying criminal case. If associated criminal charges are filed after the complaint for forfeiture is filed, the attorney for the seizing agency must notify, in writing, the court presiding over the forfeiture action within 3 days after any such criminal charge is filed.
- If an associated criminal charge is filed, the forfeiture action may only proceed after the claimant is convicted of or pleads guilty or nolo contendere to, regardless of adjudication, a criminal charge forming the basis for the forfeiture action. The attorney for the seizing agency must notify, in writing, the court presiding over the forfeiture action of the final disposition of any associated criminal charges within 3 days after a final judgment and sentence is entered, but may notify the court immediately upon the claimant's conviction or plea, regardless of whether the claimant has been sentenced. Upon written notification by the attorney for the seizing agency, the stay shall be lifted and the forfeiture action may proceed as set forth in the Florida Contraband Forfeiture Act.
- If an associated criminal charge against a claimant is disposed of by dismissal, nolle prosequi, or acquittal, the attorney for the seizing agency must notify, in writing, the court presiding over the forfeiture action within 3 days after the associated criminal charge is disposed of by dismissal, nolle prosequi, or acquittal.
- If all associated criminal charges against all claimants are disposed of by dismissal, nolle prosequi, or acquittal, the seizing agency must immediately release the seized property to the person entitled to possession of the property as determined by the court presiding over the forfeiture action. Under such circumstances, the seizing agency may not assess any towing charges, storage fees, administrative costs, or maintenance costs against the claimant with respect to the seized property or the forfeiture action.

A forfeiture pursuant to a lawful plea agreement which resolves a criminal charge and a forfeiture action arising from the same activity is not prohibited. However, seized property may not be used in bargaining to dismiss or nolle prosequi criminal charges, obtain a guilty plea, or affect criminal sentencing recommendations.

The bill creates s. 932.7071, F.S., prohibiting specified agencies from referring, transferring, or otherwise relinquishing possession of property seized under state law to a federal agency for a specified purpose.

A local, county, or state law enforcement agency or other seizing agency may not refer, transfer, or otherwise relinquish possession of property seized under state law to a federal agency by way of adoption of the seized property or other means by the federal agency for the purpose of the

property's forfeiture under the Federal Controlled Substances Act, Pub. L. No. 91-513, 21 U.S.C. ss. 801 et seq.⁴⁴

The bill provides guidelines relating to state participation in joint task forces. The guidelines are as follows:

- In a case in which the aggregate net equity value of the property and currently seized is \$100,000 or less, excluding the value of contraband, a local, county, or state law enforcement agency or other seizing agency participating in a joint task force or other multijurisdictional collaboration with the Federal Government or an agency thereof shall transfer responsibility for the seized property to the local, county, or state seizing agency.
- If the Federal Government prohibits the transfer of seized property and currency to the local, county, or state seizing agency as required above and instead requires that the property be transferred to the Federal Government for forfeiture under federal law, the local, county or state seizing agency is prohibited from accepting payment of any kind of distribution of forfeiture proceeds from the Federal Government.
- A local, county, or state seizing agency is not restricted from transferring responsibility to the Federal Government for forfeiture of seized property and currency that has an aggregate net equity value of greater than \$100,000, excluding the value of contraband.

The bill provisions do not restrict a local, county, or state law enforcement agency or other seizing agency from seizing contraband or property if the agency would otherwise be lawfully permitted to do so.

Additionally, the bill does not prohibit the Federal Government, acting without the involvement of a local, county, or state law enforcement agency or other seizing agency, from seizing property and seeking forfeiture under federal law.

This bill shall take effect July 1, 2023

⁴⁴ Congressional findings and declarations: controlled substances The Congress makes the following findings and declarations:

- (1) Many of the drugs included within this subchapter have a useful and legitimate medical purpose and are necessary to maintain the health and general welfare of the American people.
- (2) The illegal importation, manufacture, distribution, and possession and improper use of controlled substances have a substantial and detrimental effect on the health and general welfare of the American people.
- (3) A major portion of the traffic in controlled substances flows through interstate and foreign commerce. Incidents of the traffic which are not an integral part of the interstate or foreign flow, such as manufacture, local distribution, and possession, nonetheless have a substantial and direct effect upon interstate commerce because—
 - (A) after manufacture, many controlled substances are transported in interstate commerce,
 - (B) controlled substances distributed locally usually have been transported in interstate commerce immediately before their distribution, and
 - (C) controlled substances possessed commonly flow through interstate commerce immediately prior to such possession.
- (4) Local distribution and possession of controlled substances contribute to swelling the interstate traffic in such substances.
- (5) Controlled substances manufactured and distributed intrastate cannot be differentiated from controlled substances manufactured and distributed interstate. Thus, it is not feasible to distinguish, in terms of controls, between controlled substances manufactured and distributed interstate and controlled substances manufactured and distributed intrastate.
- (6) Federal control of the intrastate incidents of the traffic in controlled substances is essential to the effective control of the interstate incidents of such traffic.
- (7) The United States is a party to the Single Convention on Narcotic Drugs, 1961, and other international conventions designed to establish effective control over international and domestic traffic in controlled substances.

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

None.

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 fiscal impact of this legislation is indeterminate due to the unavailability of data needed to quantifiably establish the increase in judicial time and workload as a result of fewer plea bargains in criminal cases and potential backlog of cases associated with inactive civil division cases. Trial court judicial workload is measured using a case weighting system that calculates the amount of time that it takes for a judge to dispose of a case. Passage of this bill may impact the case weighting system. The number of case filings using the case weighting system is used to determine the needs for additional judicial resources each year. Any judicial workload increases in the future as a result of this bill will be reflected in the Supreme Court's annual opinion.⁴⁵

A filing fee of \$1 is levied on all circuit and county civil proceedings to fund mediation and arbitration services, including civil filings brought under the Florida Contraband

⁴⁵ Office of the State Courts Administrator, *2023 Judicial Impact Statement* (March 10, 2023) at 3, (on file with the Senate Committee on Criminal Justice).

Forfeiture Act. The revenues collected from the \$1 filing fee is remitted to the State Courts Revenue Trust Fund (SCRTF). Any changes in civil filings as a result of this bill may impact the revenues remitted to the SCRTF.⁴⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 932.703 and 932.704.

This bill creates section 932.7071 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

C. Amendments:

None.

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

⁴⁶ *Id.*

By Senator Perry

9-01868-23

20231556__

A bill to be entitled

An act relating to contraband forfeiture; amending s. 932.703, F.S.; authorizing a stay of proceedings subsequent to a finding of probable cause for forfeiture; amending s. 932.704, F.S.; revising a statement of policy relating to forfeiture proceedings; requiring a stay of forfeiture actions until final disposition of associated criminal charges; requiring written notice of such charges to the presiding court; requiring a conviction in an associated criminal offense for forfeiture of seized property; requiring the return of seized property if all associated criminal charges are dismissed; creating s. 932.7071, F.S.; prohibiting specified agencies from referring, transferring, or otherwise relinquishing possession of property seized under state law to a federal agency for a specified purpose; providing guidelines relating to state participation in joint task forces; providing construction; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 932.703, Florida Statutes, is republished, and paragraph (c) of subsection (2) and paragraph (d) of subsection (3) of that section are amended, to read:

932.703 Forfeiture of contraband article; exceptions.—

(1) (a) A contraband article, vessel, motor vehicle,

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

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aircraft, other personal property, or real property used in violation of any provision of the Florida Contraband Forfeiture Act, or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place, may be seized and shall be forfeited subject to the Florida Contraband Forfeiture Act. A seizure may occur only if the owner of the property is arrested for a criminal offense that forms the basis for determining that the property is a contraband article under s. 932.701, or one or more of the following circumstances apply:

1. The owner of the property cannot be identified after a diligent search, or the person in possession of the property denies ownership and the owner of the property cannot be identified by means that are available to the employee or agent of the seizing agency at the time of the seizure;

2. The owner of the property is a fugitive from justice or is deceased;

3. An individual who does not own the property is arrested for a criminal offense that forms the basis for determining that the property is a contraband article under s. 932.701 and the owner of the property had actual knowledge of the criminal activity. Evidence that an owner received written notification from a law enforcement agency and acknowledged receipt of the notification in writing, that the seized asset had been used in violation of the Florida Contraband Forfeiture Act on a prior occasion by the arrested person, may be used to establish actual knowledge;

4. The owner of the property agrees to be a confidential informant as defined in s. 914.28. The seizing agency may not

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

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59 use the threat of property seizure or forfeiture to coerce the
 60 owner of the property to enter into a confidential informant
 61 agreement. The seizing agency shall return the property to the
 62 owner if criminal charges are not filed against the owner and
 63 the active criminal investigation ends or if the owner ceases
 64 being a confidential informant, unless the agency includes the
 65 final forfeiture of the property as a component of the
 66 confidential informant agreement; or

67 5. The property is a monetary instrument. For purposes of
 68 this subparagraph, the term "monetary instrument" means coin or
 69 currency of the United States or any other country; a traveler's
 70 check; a personal check; a bank check; a cashier's check; a
 71 money order; a bank draft of any country; an investment security
 72 or negotiable instrument in bearer form or in other form such
 73 that title passes upon delivery; a prepaid or stored value card
 74 or other device that is the equivalent of money and can be used
 75 to obtain cash, property, or services; or gold, silver, or
 76 platinum bullion or coins.

77 (2)

78 (c) If the court finds that the requirements specified in
 79 paragraph (1) (a) were satisfied and that probable cause exists
 80 for the seizure, the forfeiture may proceed as set forth in the
 81 Florida Contraband Forfeiture Act, and no additional probable
 82 cause determination is required unless the claimant requests an
 83 adversarial preliminary hearing as set forth in the act. Upon
 84 such a finding, the court shall issue a written order finding
 85 probable cause for the seizure and order the property held until
 86 the issue of a determination of title is resolved pursuant to
 87 the procedures defined in the act. However, subsequent to the

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88 written order finding probable cause for the seizure, the
 89 forfeiture action may be stayed as provided in s. 932.704(6) (d).

90 (3)

91 (d) If the court determines that probable cause exists to
 92 believe that such property was used in violation of the Florida
 93 Contraband Forfeiture Act, the court shall order the property
 94 restrained by the least restrictive means to protect against
 95 disposal, waste, or continued illegal use of such property
 96 pending final disposition of the forfeiture proceeding. The
 97 court may order the claimant to post a bond or other adequate
 98 security equivalent to the value of the property.

99 Section 2. Subsection (1) and paragraph (b) of subsection
 100 (6) of section 932.704, Florida Statutes, are amended, and
 101 paragraph (d) is added to subsection (6) of that section, to
 102 read:

103 932.704 Forfeiture proceedings.—

104 (1) It is the policy of this state that law enforcement
 105 agencies shall use ~~utilize the provisions of~~ the Florida
 106 Contraband Forfeiture Act to deter and prevent the continued use
 107 of contraband articles for criminal purposes, to protect while
 108 ~~protecting~~ the proprietary interests of innocent owners and
 109 lienholders, to respect the due process rights of the accused,
 110 and to authorize such law enforcement agencies to use the
 111 proceeds collected under the Florida Contraband Forfeiture Act
 112 as supplemental funding for authorized purposes. The potential
 113 for obtaining revenues from forfeitures must not override
 114 fundamental considerations such as public safety, the safety of
 115 law enforcement officers, or the investigation and prosecution
 116 of criminal activity. It is also the policy of this state that

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 117 law enforcement agencies ensure that, in all seizures made under
 118 the Florida Contraband Forfeiture Act, their officers adhere to
 119 federal and state constitutional limitations regarding an
 120 individual's right to be free from unreasonable searches and
 121 seizures, including, but not limited to, the illegal use of
 122 stops based on a pretext, coercive-consent searches, or a search
 123 based solely upon an individual's race or ethnicity.

(6)

(b) The complaint must, in addition to stating that which
 is required by s. 932.703(3)(a) and (b), as appropriate,
 describe the property; state the county, place, and date of
 seizure; state the name of the law enforcement agency holding
 the seized property; ~~and~~ state the name of the court in which
 the complaint will be filed; and, if available, state the
 criminal case number and the name of the court in which any
 criminal charge associated with the underlying activity forming
 the basis for the forfeiture action are filed against any
 claimant.

(d)1. If a criminal charge associated with the underlying
 activity forming the basis for the forfeiture action is filed
 against any claimant, the forfeiture action must be stayed by
 the court presiding over the forfeiture action until the
 disposition of the underlying criminal case. If associated
 criminal charges are filed after the complaint for forfeiture is
 filed, the attorney for the seizing agency must notify, in
 writing, the court presiding over the forfeiture action within 3
 days after any such criminal charge is filed.

2. If an associated criminal charge is filed, the
 forfeiture action may only proceed after the claimant is

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 146 convicted of or pleads guilty or nolo contendere to, regardless
 147 of adjudication, a criminal charge forming the basis for the
 148 forfeiture action. The attorney for the seizing agency must
 149 notify, in writing, the court presiding over the forfeiture
 150 action of the final disposition of any associated criminal
 151 charges within 3 days after a final judgment and sentence is
 152 entered, but may notify the court immediately upon the
 153 claimant's conviction or plea, regardless of whether the
 154 claimant has been sentenced. Upon written notification by the
 155 attorney for the seizing agency, the stay shall be lifted and
 156 the forfeiture action may proceed as set forth in the Florida
 157 Contraband Forfeiture Act.

3. If an associated criminal charge against a claimant is
 disposed of by dismissal, nolle prosequi, or acquittal, the
 attorney for the seizing agency must notify, in writing, the
 court presiding over the forfeiture action within 3 days after
 the associated criminal charge is disposed of by dismissal,
 nolle prosequi, or acquittal.

4. If all associated criminal charges against all claimants
 are disposed of by dismissal, nolle prosequi, or acquittal, the
 seizing agency must immediately release the seized property to
 the person entitled to possession of the property as determined
 by the court presiding over the forfeiture action. Under such
 circumstances, the seizing agency may not assess any towing
 charges, storage fees, administrative costs, or maintenance
 costs against the claimant with respect to the seized property
 or the forfeiture action.

This paragraph does not prohibit a forfeiture pursuant to a

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lawful plea agreement which resolves a criminal charge and a forfeiture action arising from the same activity. However, seized property may not be used in bargaining to dismiss or nolle prosequi criminal charges, obtain a guilty plea, or affect criminal sentencing recommendations.

Section 3. Section 932.7071, Florida Statutes, is created to read:

932.7071 Forfeiture adoption under federal law.—

(1) PROHIBITION OF FEDERAL ADOPTION.—A local, county, or state law enforcement agency or other seizing agency may not refer, transfer, or otherwise relinquish possession of property seized under state law to a federal agency by way of adoption of the seized property or other means by the federal agency for the purpose of the property's forfeiture under the federal Controlled Substances Act, Pub. L. No. 91-513, 21 U.S.C. ss. 801 et seq.

(2) JOINT TASK FORCES.—

(a) In a case in which the aggregate net equity value of the property and currency seized is \$100,000 or less, excluding the value of contraband, a local, county, or state law enforcement agency or other seizing agency participating in a joint task force or other multijurisdictional collaboration with the Federal Government or an agency thereof shall transfer responsibility for the seized property to the local, county, or state seizing agency.

(b) If the Federal Government prohibits the transfer of seized property and currency to the local, county, or state seizing agency as required under paragraph (a) and instead requires that the property be transferred to the Federal

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Government for forfeiture under federal law, the local, county, or state seizing agency is prohibited from accepting payment of any kind or distribution of forfeiture proceeds from the Federal Government.

(c) Paragraphs (a) and (b) do not restrict a local, county, or state seizing agency from transferring responsibility to the Federal Government for forfeiture of seized property and currency that has an aggregate net equity value of greater than \$100,000, excluding the value of contraband.

(3) SEIZURE LAWS UNCHANGED.—Subsections (1) and (2) do not restrict a local, county, or state law enforcement agency or other seizing agency from seizing contraband or property if the agency would otherwise be lawfully permitted to do so.

(4) FEDERAL GOVERNMENT.—Subsections (1) and (2) do not prohibit the Federal Government, acting without the involvement of a local, county, or state law enforcement agency or other seizing agency, from seizing property and seeking forfeiture under federal law.

Section 4. This act shall take effect July 1, 2023.

OFFICE OF THE STATE COURTS ADMINISTRATOR
2023 JUDICIAL IMPACT STATEMENT

DATE: March 10, 2023

BILL NUMBER: SB 1556

SPONSOR(S): Senator Perry

STATUTE(S) AFFECTED: ss. 932.703, 932.704, F.S.; creates s. 932.7071, F.S.

COMPANION BILL(S): HB 1081 (Representative Benjamin)

AGENCY CONTACT: Tashiba Robinson, Legislative Affairs

TELEPHONE: (850) 922-5692

ASSIGNED OSCA STAFF: MEH

I. **SUMMARY:**

The bill revises civil forfeiture proceedings under the Florida Contraband Forfeiture Act (ss.932.701-932.7062, F.S.).

II. **ANALYSIS:**

Current Situation

A contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the Florida Contraband Forfeiture Act (FCFA), or in, upon, or by means of which any violation of the FCFA has taken or is taking place, may be seized by law enforcement and forfeited. A seizure may occur only if the owner of the property is arrested for a criminal offense that forms the basis for determining that the property is a contraband article, or if one or more specified exceptions apply (owner of the property cannot be identified, the owner is a fugitive or deceased, etc.).¹

If a seizure of property is made under the FCFA, the seizing agency must apply to the court within 10 days for an order determining whether probable cause exists for the seizure of the property. If the court finds that the owner was arrested for a qualifying offense, or an arrest exception applies, and probable cause exists for the seizure, the forfeiture of the property to the seizing law enforcement agency may proceed under the civil forfeiture provisions of s. 932.704, F.S.,

Civil forfeiture cases under s. 932.704, F.S., are heard within the circuit courts and governed by The Florida Rules of Civil Procedure. The seizing

¹ Section 932.703(1), F.S.

OFFICE OF THE STATE COURTS ADMINISTRATOR
2023 JUDICIAL IMPACT STATEMENT

agency must promptly pursue forfeiture against the contraband article by filing a complaint in the circuit court within the jurisdiction where the seizure or the offense occurred, paying a filing fee, and depositing a bond.

Upon proof beyond a reasonable doubt that the contraband article was being used in violation of the FCFA, the court must order the seized property forfeited to the seizing law enforcement agency. The final order of forfeiture by the court perfects in the seizing law enforcement agency right, title, and interest in and to such property, subject only to the rights and interests of bona fide lienholders.

Under current law, a civil forfeiture action under s. 932.704, F.S., can proceed during the pendency of a related criminal case and the outcome of the forfeiture is not dependent on the outcome of the criminal case. As a result, a defendant may have his or her property forfeited under the FCFA to the seizing law enforcement agency, but later be found not guilty or have charges dismissed in the related criminal action.

Effect of the Bill

The bill ties the civil forfeiture outcome in with the underlying criminal case by staying the forfeiture case while the criminal case is open. Further, a dismissal, acquittal, or the entry of nolle prosequi in the criminal case would prevent the forfeiture from going forward and require the return of the seized property.

To effectuate this revised civil forfeiture process, the bill:

- Authorizes a stay of forfeiture proceedings subsequent to a judicial finding of probable cause for forfeiture.
- Requires the forfeiture complaint to state, if available, the criminal case number and the name of the court where the underlying criminal case that gave rise to the forfeiture is filed.
- If criminal charges are filed after the filing of the forfeiture complaint, requires the seizing agency to notify the judge who is handling the forfeiture case in writing and within 3 days after the criminal charges are filed.
- Requires the stay of a forfeiture action until final disposition of the associated criminal case.
- Requires the seizing agency to notify the judge handling the forfeiture of the disposition of the criminal case in writing and within 3 days of sentencing or of a dismissal or nolle prosequi or acquittal in the criminal case, but the seizing agency may notify the court of a conviction or plea in the criminal case regardless of whether sentencing has taken place.
- If the criminal case resulted in a dismissal, acquittal, or nolle prosequi, requires the seizing agency to immediately return the

OFFICE OF THE STATE COURTS ADMINISTRATOR
2023 JUDICIAL IMPACT STATEMENT

seized property and prohibits the seizing agency from assessing towing charges, storage fees, or administrative or maintenance costs.

The bill prohibits the use of seized property in bargaining to dismiss or nolle pros or to obtain a guilty plea or affect a criminal sentencing recommendation.

The bill also prohibits the seizing agency from referring, transferring, or otherwise relinquishing possession of property seized under state law to a federal agency for the purpose of forfeiture under the federal Controlled Substances Act. The bill provides that in a case where the value of the property seized is \$100,000 or less (excluding the value of contraband), a seizing agency participating in a joint task force with a federal agency must transfer responsibility of the seized property to the local, county, or state seizing agency, unless federal law prohibits such a transfer. If so, the seizing agency may not accept any payment or distribution of forfeiture proceeds from the federal government. These joint task force-prohibitions do not apply if the property is valued at more than \$100,000 excluding the value of the contraband.

III. **ANTICIPATED JUDICIAL OR COURT WORKLOAD IMPACT:** The bill will likely increase judicial workload because stays will be needed in most civil forfeiture cases and there may be more trials (fewer plea bargains) because an acquittal in a criminal case under the beyond a reasonable doubt standard would allow the defendant to prevail in the civil forfeiture case. Additionally, under current law, seized property may be used in bargaining to dismiss or nolle pros or obtain a guilty plea or affect a criminal sentencing recommendation. The bill prohibits that practice. These changes are likely to create a backlog of inactive cases in civil divisions. However, the amount of the increase is too speculative to quantify.

IV. **IMPACT TO COURT RULES/JURY INSTRUCTIONS:** Unknown at this time.

V. **ESTIMATED FISCAL IMPACTS ON THE JUDICIARY:**

A. Revenues: A filing fee of \$1 is levied on all circuit and county civil proceedings to fund mediation and arbitration services, including civil filings brought under the Florida Contraband Forfeiture Act. The revenues collected from the \$1 filing fee is remitted to the State Courts Revenue Trust Fund (SCRTF). Any changes in civil filings as a result of this bill may impact the revenues remitted to the SCRTF.

B. Expenditures: The fiscal impact of this legislation is indeterminate due to the unavailability of data needed to quantifiably establish the increase in

OFFICE OF THE STATE COURTS ADMINISTRATOR
2023 JUDICIAL IMPACT STATEMENT

judicial time and workload as a result of fewer plea bargains in criminal cases and potential backlog of cases associated with inactive civil division cases, as discussed in Section III, above.

Trial court judicial workload is measured using a case weighting system that calculates the amount of time that it takes for a judge to dispose of a case. Passage of this bill may impact the case weighting system. The number of case filings using the case weighting system is used to determine the needs for additional judicial resources each year. Any judicial workload increases in the future as a result of this bill will be reflected in the Supreme Court's annual opinion *In re: Certification of Need for Additional Judges*.



The Florida Senate

Committee Agenda Request

To: Senator Jonathan Martin, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: March 11, 2023

I respectfully request that **Senate Bill #1556**, relating to Contraband Forfeiture , be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Senator Keith Perry
Florida Senate, District 9

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

SB 1556

Bill Number or Topic

3/20/2023

Meeting Date

CRIMINAL JUSTICE

Committee

Name CHRISTIAN CAMARA

Phone (305) 608-4300

Address PO Box 122

Street

TALLAHASSEE, FL 32302

City

State

Zip

Amendment Barcode (if applicable)

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

INSTITUTE FOR JUSTICE

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

March 20, 2023

Meeting Date

Criminal Justice

Committee

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1556

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Barney Bishop III**

Phone **850-510-9922**

Address **1454 Vieux Carre Drive**

Street

Tallahassee

City

FL

State

32308

Zip

Email **Barney@BarneyBishop.com**

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Fla. Smart Justice

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB 1556

Bill Number or Topic

3/20/2023

Meeting Date

Criminal Justice

Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

HILDA Alexander

Phone

561-252-7649

Address

POB 2022

Email

hilda.alexander@
yahoo.com

Street

Greenbelt, MD 20768

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

3/20/23

Meeting Date

CRIM JUSTICE

Committee

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

1556

Bill Number or Topic

Amendment Barcode (if applicable)

Name

AARON WAYT

FL ASSN OF CRIMINAL
DEFENSE LAWYERS

Phone

(407) 435-3194

Address

553 E TENN ST

Email

AARON@DONPUMPHREY.COM

Street

TLH

City

FL

State

32308

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without
compensation or sponsorship.

☐

I am a registered lobbyist,
representing:

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
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S-001 (08/10/2021)

CourtSmart Tag Report

Room: SB 37

Case No.:

Type:

Caption: Senate Criminal Justice Committee

Judge:

Started: 3/20/2023 3:34:06 PM

Ends: 3/20/2023 5:16:48 PM

Length: 01:42:43

3:34:08 PM Meeting called to order, roll call
3:34:41 PM Quorum is present
3:34:46 PM Tab 3- SB 618, Rights of Law Enforcement Officers and Correctional Officers by Senator Yarborough
3:35:16 PM Amendment 186046
3:35:32 PM Chair Bradley recognizes Senator Yarborough
3:35:35 PM Senator Yarborough explains the amendment
3:37:28 PM Questions:
3:37:29 PM Senator Powell
3:37:53 PM Senator Yarborough
3:38:40 PM Amendment 653756
3:38:47 PM Senator Yarborough explains the amendment
3:39:41 PM Senator Yarborough waives close
3:39:51 PM Chair Bradley reports amendment
3:40:04 PM Chair Bradley reads appearance cards waiving
3:40:22 PM Debate:
3:40:24 PM Senator Pizzo
3:41:31 PM Senator Yarborough closes on the amendment
3:42:33 PM Chair Bradley reports amendment
3:42:44 PM Chair Bradley recognizes public testimony
3:42:54 PM Jack Campbell, State Attorney
3:43:34 PM Chair Bradley reads appearance cards waiving
3:43:49 PM Senator Yarborough waives close
3:43:55 PM Roll call for SB 618
3:44:04 PM Chair Bradley reports the bill
3:44:16 PM Tab 4- SB 764, Interference with Sporting or Entertainment Events by Senator Simon
3:44:27 PM Amendment 922662
3:44:42 PM Senator Simon explains the amendment
3:45:59 PM Senator Simon waives close
3:46:01 PM Chair Bradley reports the amendment
3:46:11 PM Questions:
3:46:16 PM Senator Pizzo
3:46:22 PM Senator Simon
3:46:38 PM Senator Pizzo
3:46:47 PM Senator Simon
3:46:58 PM Senator Powell
3:47:08 PM Senator Simon
3:47:40 PM Senator Ingoglia
3:48:05 PM Senator Simon
3:48:21 PM Senator Ingoglia
3:48:33 PM Senator Simon
3:48:55 PM Senator Ingoglia
3:49:43 PM Senator Simon closes on the amendment
3:51:07 PM Chair Bradley reports the amendment
3:51:18 PM Questions:
3:51:18 PM Senator Powell
3:52:02 PM Senator Simon
3:52:19 PM Debate:
3:52:21 PM Senator Perry
3:52:50 PM Senator Simon waives close
3:52:53 PM Roll call on SB 764
3:53:07 PM Chair Bradley reports the bill
3:53:22 PM Tab 1- SB 504, Expunction of Criminal History Records by Senator Rodriguez

3:53:35 PM	Chair Martin recognizes Senator Rodriguez
3:53:39 PM	Senator Rodriguez explains the bill
3:54:35 PM	Amendment 546484
3:54:44 PM	Senator Rodriguez explains the amendment
3:55:01 PM	Senator Rodriguez waives close
3:55:07 PM	Chair Martin reports amendment
3:55:20 PM	Chair Martin recognizes public testimony
3:55:36 PM	Mary Smith-Santana
3:56:18 PM	Christian Minor, Florida Juvenile Justice Association
3:57:12 PM	Chair Martin reads appearance cards waiving
3:58:01 PM	Senator Rodriguez closes on the bill
3:58:30 PM	Roll call on SB 504
3:58:39 PM	Chair Martin reports the bill
3:58:57 PM	Chair Martin passes the chair over to Senator Bradley
3:59:10 PM	Tab 6- SB 1332, Missing Persons by Senator Martin
4:00:04 PM	Chair Bradley recognizes Senator Martin
4:00:06 PM	Senator Martin explains the bill
4:01:27 PM	Amendment 616726
4:01:32 PM	Senator Martin explains the amendment
4:02:01 PM	Senator Martin waives close
4:02:07 PM	Chair Bradley reports amendment
4:02:17 PM	Chair Bradley reads appearance cards waiving
4:02:29 PM	Senator Martin waives close
4:02:33 PM	Roll call on SB 1332
4:02:47 PM	Chair Bradley reports the bill
4:02:57 PM	Chair Bradley turns the chair back over to Senator Martin
4:03:17 PM	Tab 5- SB 1226, Controlled Substances by Senator Burgess
4:03:20 PM	Chair Martin recognizes Senator Burgess
4:03:28 PM	Senator Burgess explains the bill
4:03:43 PM	Amendment 569834
4:03:55 PM	Senator Burgess explains the amendment
4:05:19 PM	Questions:
4:05:21 PM	Senator Pizzo
4:05:34 PM	Senator Burgess
4:05:56 PM	Senator Pizzo
4:06:45 PM	Mike Erickson
4:07:05 PM	Senator Pizzo
4:07:59 PM	Mike Erickson
4:08:03 PM	Senator Powell
4:08:53 PM	Senator Burgess
4:11:33 PM	Senator Powell
4:13:06 PM	Senator Burgess
4:14:24 PM	Senator Polsky
4:14:43 PM	Senator Burgess
4:15:56 PM	Senator Polsky
4:16:02 PM	Senator Burgess
4:17:05 PM	Senator Burgess closes on the amendment
4:17:40 PM	Chair Martin reports the amendment
4:17:45 PM	Questions:
4:17:49 PM	Senator Pizzo
4:18:27 PM	Senator Burgess
4:18:57 PM	Senator Pizzo
4:19:59 PM	Senator Burgess
4:20:53 PM	Senator Pizzo
4:21:41 PM	Senator Burgess
4:21:58 PM	Chair Martin
4:22:32 PM	Senator Burgess
4:22:42 PM	Senator Pizzo
4:23:14 PM	Chair Martin recognizes public testimony:
4:23:26 PM	Jonathan Webber, SPLC Action Fund
4:25:07 PM	Chair Martin reads appearance cards waiving
4:25:28 PM	Debate:

4:25:29 PM Senator Pizzo
4:27:37 PM Chair Martin
4:29:47 PM Senator Burgess closes on the bill
4:31:19 PM Roll call on SB 1226
4:31:37 PM Chair Martin reports the bill
4:31:49 PM Chair Martin passes the chair to Senator Perry
4:32:10 PM Tab 7- SB 1334, Battery by Strangulation by Senator Martin
4:32:15 PM Chair Perry recognizes Senator Martin
4:32:20 PM Senator Martin explains the bill
4:32:56 PM Amendment 702232
4:33:05 PM Senator Martin explains the amendment
4:33:38 PM Chair Perry reads appearance cards waiving
4:33:58 PM Chair Perry reports the amendment
4:33:59 PM Senator Martin waives close
4:34:05 PM Roll call on SB 1334
4:34:20 PM Chair Perry reports the bill
4:34:24 PM Tab 8- SB 1342, Capital Sexual Battery by Senator Martin
4:34:32 PM Chair Perry recognizes Senator Martin
4:34:38 PM Senator Martin explains the bill
4:36:06 PM Amendment 667084
4:36:13 PM Senator Martin explains the amendment
4:36:53 PM Questions:
4:36:55 PM Senator Bradley
4:36:59 PM Senator Martin
4:37:22 PM Senator Bradley
4:37:37 PM Senator Martin
4:37:52 PM Senator Pizzo
4:38:59 PM Senator Ingoglia
4:39:28 PM Senator Pizzo
4:39:42 PM Senator Ingoglia
4:40:04 PM Senator Pizzo
4:40:44 PM Senator Ingoglia
4:41:16 PM Senator Martin waives close
4:41:26 PM Chair Perry reports amendment
4:41:34 PM Questions:
4:41:37 PM Senator Pizzo
4:42:09 PM Senator Martin
4:42:16 PM Senator Pizzo
4:42:26 PM Senator Martin
4:42:30 PM Senator Pizzo
4:43:10 PM Senator Martin
4:43:42 PM Senator Ingoglia
4:43:59 PM Senator Martin
4:44:03 PM Senator Ingoglia
4:44:28 PM Senator Martin
4:44:44 PM Senator Ingoglia
4:45:18 PM Senator Martin
4:45:42 PM Senator Ingoglia
4:46:38 PM Senator Martin
4:46:39 PM Senator Ingoglia
4:46:45 PM Senator Martin
4:47:09 PM Senator Ingoglia
4:47:23 PM Senator Bradley
4:47:55 PM Senator Martin
4:50:13 PM Senator Bradley
4:51:39 PM Senator Martin
4:51:47 PM Chair Perry recognizes appearance cards
4:51:58 PM Ron Book, Lauren's Kids Foundation
5:00:16 PM Chair Perry reads appearance cards waiving
5:00:50 PM Debate:
5:00:54 PM Senator Pizzo
5:06:08 PM Senator Bradley

5:06:48 PM	Senator Martin closes on the bill
5:15:45 PM	Roll call on SB 1342
5:16:04 PM	Chair Perry reports the bill
5:16:11 PM	Senator Yarborough moves to record missed votes
5:16:27 PM	Senator Bradley moves to record a missed vote
5:16:37 PM	Meeting adjourned