

Tab 1	SB 28 by Gibson (CO-INTRODUCERS) Bradley; (Identical to H 06507) Relief of Clifford Williams by the State of Florida					
Tab 2	CS/SB 170 by CJ, Stewart (CO-INTRODUCERS) Perry, Harrell; (Similar to CS/H 00199) Time Limitation on the Prosecution of Sexual Battery Cases					
413116	A	S	WD	ACJ, Stewart	Delete L.12 - 32:	02/19 04:52 PM
Tab 3	CS/SB 652 by CJ, Pizzo; (Compare to CS/H 00201) Urban Core Gun Violence Task Force					
299286	D	S	RCS	ACJ, Pizzo	Delete everything after	02/19 05:38 PM
Tab 4	SB 790 by Brandes; (Compare to CS/CS/H 00591) Clerks of the Circuit Court					
476652	D	S	RCS	ACJ, Brandes	Delete everything after	02/19 07:29 PM
314044	AA	S	RCS	ACJ, Brandes	Delete L.5 - 105:	02/19 07:29 PM
Tab 5	CS/SB 852 by CJ, Pizzo (CO-INTRODUCERS) Taddeo, Braynon; (Compare to CS/CS/H 01259) Incarcerated Pregnant Women					
846110	A	S	RS	ACJ, Pizzo	Delete L.190:	02/19 07:46 PM
656522	SA	S	RCS	ACJ, Pizzo	Delete L.190:	02/19 07:46 PM
Tab 6	SB 884 by Hooper (CO-INTRODUCERS) Perry; (Compare to CS/H 00453) Law Enforcement and Correctional Officers					
460020	D	S	RCS	ACJ, Hooper	Delete everything after	02/19 07:48 PM
Tab 7	CS/SB 1262 by JU, Bracy (CO-INTRODUCERS) Rodriguez; (Identical to H 01245) 1920 Ocoee Election Day Riots					
566828	A	S	RCS	ACJ, Bracy	Delete L.98 - 154.	02/19 07:51 PM
Tab 8	SB 1304 by Brandes (CO-INTRODUCERS) Powell; (Similar to H 01003) Sentencing					
Tab 9	CS/SB 1328 by JU, Wright; (Compare to CS/H 00903) Fines and Fees					
385158	D	S	RCS	ACJ, Wright	Delete everything after	02/19 07:52 PM
Tab 10	CS/SB 1396 by CJ, Simmons; (Compare to CS/H 01145) Driving Under the Influence					
Tab 11	CS/SB 1450 by EN, Gruters; (Similar to CS/H 01091) Environmental Enforcement					
255866	D	S	RCS	ACJ, Gruters	Delete everything after	02/19 07:58 PM
676938	AA	S	RCS	ACJ, Brandes	btw L.840 - 841:	02/19 07:58 PM
889978	A	S		ACJ, Brandes	btw L.910 - 911:	02/17 01:27 PM
Tab 12	CS/SB 1510 by JU, Brandes; (Similar to CS/H 07059) Jurisdiction of Courts					
533428	A	S	RS	ACJ, Brandes	btw L.64 - 65:	02/19 08:06 PM
669174	SA	S	RCS	ACJ, Brandes	btw L.64 - 65:	02/19 08:06 PM
486692	A	S	WD	ACJ, Brandes	Delete L.65 - 96:	02/19 08:06 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
APPROPRIATIONS SUBCOMMITTEE ON CRIMINAL AND
CIVIL JUSTICE
Senator Brandes, Chair
Senator Bracy, Vice Chair

MEETING DATE: Tuesday, February 18, 2020
TIME: 1:30—3:30 p.m.
PLACE: *Mallory Horne Committee Room, 37 Senate Building*

MEMBERS: Senator Brandes, Chair; Senator Bracy, Vice Chair; Senators Gainer, Gruters, Harrell, Perry, Rouson, and Taddeo

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 28 Gibson (Identical H 6507)	Relief of Clifford Williams by the State of Florida; Providing for the relief of Clifford Williams; providing an appropriation to compensate him for being wrongfully incarcerated for 43 years; directing the Chief Financial Officer to draw a warrant for the purchase of an annuity; providing that the act does not waive certain defenses or increase the state's limits of liability; providing that certain benefits are vacated upon specified findings, etc. SM JU 01/28/2020 Favorable ACJ 02/18/2020 Favorable AP	Favorable Yeas 8 Nays 0
2	CS/SB 170 Criminal Justice / Stewart (Similar CS/H 199, Compare H 69, H 541, S 892)	Time Limitation on the Prosecution of Sexual Battery Cases; Providing that a prosecution may be commenced at any time for specified sexual battery offenses against victims who were younger than a certain age at the time the offense was committed, etc. CJ 10/22/2019 Fav/CS ACJ 02/18/2020 Favorable AP	Favorable Yeas 8 Nays 0
3	CS/SB 652 Criminal Justice / Pizzo (Compare CS/H 201, Linked CS/CS/S 1802)	Urban Core Gun Violence Task Force; Creating the Urban Core Gun Violence Task Force; specifying duties and powers of the task force; authorizing the task force to seek assistance from state agencies; providing for access to certain information and records, etc. CJ 01/28/2020 Fav/CS ACJ 02/18/2020 Fav/CS AP	Fav/CS Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDAAppropriations Subcommittee on Criminal and Civil Justice
Tuesday, February 18, 2020, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 790 Brandes (Compare CS/H 591)	Clerks of the Circuit Court; Specifying that certain revenues from service charges collected by the clerk for remittance to the Department of Revenue include only revenues for court-related functions; providing for revenues for county operations to be retained by the clerk; revising the distribution of revenue from filing fees from the institution of certain appellate proceedings; revising retroactive application regarding the collection of revenue for court-related functions for remittance to the department, etc. JU 12/10/2019 Favorable ACJ 02/18/2020 Fav/CS AP	Fav/CS Yeas 8 Nays 0
5	CS/SB 852 Criminal Justice / Pizzo (Compare CS/CS/H 1259, S 854)	Incarcerated Pregnant Women; Revising the circumstances under which a prisoner who is known to be pregnant may not be restrained; specifying conditions under which restraints may be used; requiring that invasive body cavity searches on a pregnant prisoner be conducted by a medical professional; prohibiting the involuntary placement of pregnant prisoners in restrictive housing, etc. CJ 01/14/2020 Fav/CS ACJ 02/18/2020 Fav/CS AP	Fav/CS Yeas 8 Nays 0
6	SB 884 Hooper (Compare CS/H 453)	Law Enforcement and Correctional Officers; Revising the definitions of "correctional officer" and "law enforcement officer" to include persons employed on a part-time basis; authorizing an agency to take disciplinary action against a correctional officer or law enforcement officer accused of misconduct within a specified timeframe, regardless of the allegation's origin; authorizing an officer to bring an action for injunctive relief if a law enforcement or correctional agency fails to comply with certain requirements of part VI of ch. 112, F.S., etc. CJ 01/14/2020 Favorable ACJ 02/18/2020 Fav/CS AP	Fav/CS Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations Subcommittee on Criminal and Civil Justice
 Tuesday, February 18, 2020, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/SB 1262 Judiciary / Bracy (Identical H 1245, Compare H 1247, Linked CS/S 1264)	1920 Ocoee Election Day Riots; Establishing the Ocoee Election Day Riots Descendant Compensation Fund Program within the Department of Legal Affairs; requiring the department to accept and process applications for payment of claims for compensation; requiring the Department of Economic Opportunity to prioritize certain applications for the Black Business Loan Program; directing the Commissioner of Education's African American History Task Force to determine ways in which the 1920 Ocoee Election Day Riots may be included in required instruction on African-American history, etc. JU 01/21/2020 Fav/CS ACJ 02/18/2020 Fav/CS AP	Fav/CS Yeas 8 Nays 0
8	SB 1304 Brandes (Similar H 1003)	Sentencing; Creating conditional sentences for substance use and mental health offenders; providing minimum sentencing requirements; specifying duties of the Department of Corrections; requiring the department to provide written notice to specified parties upon the offender's admission into an in-prison treatment program; requiring that an offender be transitioned to probation upon the completion of an in-prison program, etc. CJ 01/21/2020 Favorable ACJ 02/18/2020 Favorable AP	Favorable Yeas 8 Nays 0
9	CS/SB 1328 Judiciary / Wright (Compare CS/H 903)	Fines and Fees; Removing the option for a monthly processing charge for certain payment plans established with the clerk of the circuit court; revising the methods by which the clerk of the circuit court may accept payments for certain fees, charges, costs, and fines; requiring the clerks of court, in consultation with the Florida Clerks of Court Operations Corporation, to develop a uniform payment plan form by a specified date; requiring that a notification form and the uniform traffic citation include certain information about paying a civil penalty, etc. JU 01/21/2020 Workshop-Discussed JU 01/28/2020 Fav/CS ACJ 02/18/2020 Fav/CS AP	Fav/CS Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations Subcommittee on Criminal and Civil Justice
 Tuesday, February 18, 2020, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	CS/SB 1396 Criminal Justice / Simmons (Compare CS/H 1145)	Driving Under the Influence; Requiring each judicial circuit to establish a Driving Under the Influence Diversion Pilot Program; requiring the state attorney of each judicial circuit to develop and operate the pilot program; requiring that a person who completes the pilot program be offered a certain plea agreement; authorizing the state attorney to discharge a person who fails to complete the pilot program and pursue prosecution of driving under the influence, etc. CJ 02/04/2020 Fav/CS ACJ 02/18/2020 Favorable AP	Favorable Yeas 8 Nays 0
11	CS/SB 1450 Environment and Natural Resources / Gruters (Similar CS/H 1091)	Environmental Enforcement; Revising administrative penalties for violations of certain provisions relating to beach and shore construction and activities; revising civil penalties for violations of certain provisions relating to the Biscayne Bay Aquatic Preserve, aquatic preserves, water resources, the Pollutant Discharge Prevention and Control Act, the Clean Ocean Act, regulation of oil and gas resources, the Phosphate Land Reclamation Act, and other provisions relating to pollution and the environment, respectively; revising criminal penalties for violations of certain provisions relating to pollution and the environment, etc. EN 01/27/2020 Fav/CS ACJ 02/18/2020 Fav/CS AP	Fav/CS Yeas 7 Nays 1
12	CS/SB 1510 Judiciary / Brandes (Identical H 7059)	Jurisdiction of Courts; Limiting the appellate jurisdiction of the circuit courts to appeals from final administrative orders of local code enforcement boards and other reviews and appeals expressly provided by law; authorizing a county court to certify a question to a district court of appeal in a final judgment that is appealable to a circuit court; authorizing a district court of appeal to review certain questions certified by a county court, etc. JU 01/21/2020 Fav/CS ACJ 02/13/2020 Temporarily Postponed ACJ 02/18/2020 Fav/CS AP	Fav/CS Yeas 8 Nays 0

Other Related Meeting Documents



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5229

DATE	COMM	ACTION
1/23/20	SM	Report Submitted
1/27/20	JU	Favorable
2/18/20	ACJ	Recommend: Favorable
	AP	

February 18, 2020

The Honorable Bill Galvano
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 28** – Senator Gibson
HB 6507 – Representative Daniels
Relief of Clifford Williams by the State of Florida

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$2,150,000 FROM THE GENERAL REVENUE FUND FOR THE PURCHASE OF AN ANNUITY, AND A WAIVER OF TUITION AND FEES FOR UP TO 120 HOURS OF INSTRUCTION, TO COMPENSATE CLIFFORD WILLIAMS FOR 42 YEARS AND 11 MONTHS OF WRONGFUL INCARCERATION.

FINDINGS OF FACT:

General Overview

On May 2, 1976, Clifford Williams (the claimant) and his nephew, Hubert Nathan Myers (Nathan Myers), were arrested and charged with first-degree murder of Jeanette Williams and attempted murder of Nina Marshall. Mr. Williams and Mr. Myers were convicted, eventually both were sentenced to life in prison, and remained incarcerated for 42 years and 11 months.

In seeking post-conviction relief, Mr. Myers sent a letter to the Office of the State Attorney of the Fourth Judicial Circuit in 2017. After the Conviction Integrity Review (CIR) Division was established within the Office of the State Attorney in January

of 2018, the CIR Division began a review and investigation based upon the request of Mr. Myers.¹

The CIR Division's review and investigation resulted in a report concluding Mr. Myers and Mr. Williams were serving life sentences based upon testimony from one person, and "in the face of overwhelming contradictory forensic evidence and alibi testimony,"² which had not been presented to the jury.

The CIR Division found Mr. Myers and Mr. Williams demonstrated claims of actual innocence substantiated by credible evidence³ and an audit board⁴ reviewed the report as part of the CIR Division process. The audit board was unanimous in finding there was not sufficient evidence of guilt to support the convictions; a lack of faith in the convictions; "no definitive proof of innocence, such as DNA evidence"; and there was "sufficient credible evidence to support a finding that the defendants are, in fact, 'probably' innocent of the charges."⁵ The State Attorney of the Fourth Judicial Circuit agreed with the findings.⁶

On March 28, 2019, the convictions and sentences of Mr. Myers and Mr. Williams were vacated.⁷

¹ See Special Master Hearing, Testimony of Shelley Thibodeau (Director of CIR Division), 53:10–55:30 (Oct. 30, 2019) (discussing the CIR process—generally and specifically regarding this case—and that she and an investigator lead the reviews and investigations).

² State Attorney's Office of the Fourth Judicial Circuit of Florida, Conviction Integrity Review Division Investigation (CIR Report), 42 (Mar. 2019); see https://secureservercdn.net/198.71.233.254/9c2.a8b.myftpupload.com/wp-content/uploads/2019/03/CIR_Investigative_Report_FINAL_3.28.19_R.pdf (last visited Jan. 16, 2020). The report was authored by Ms. Shelley Thibodeau, Assistant State Attorney and Director of the CIR Division. Special Master Hearing, Testimony from Shelley Thibodeau, 33:30–36:15 (Oct. 30, 2019) (discussing the general contents of the CIR Division report).

³ CIR Report at 44.

⁴ The independent audit board serves in a fact-finding capacity as a "backstop" to the CIR Division director's investigation and help prevent the potential for confirmation bias. The board reviews all of the information provided and audits the director's investigation. The board can make suggestions and ask questions regarding consideration or review of information. Special Master Hearing at 46:00–47:10. The independent audit board for this matter was comprised of two former prosecutors, a retired special agent from the Federal Bureau of Investigation, a former public defender, and a community member at large. *Id.* at 47:10–47:40.

⁵ CIR Report at 43.

⁶ Claimant's Exhibit 2, Video of State Attorney's Press Conference at 8:49–9:16 (Mar. 28, 2019).

⁷ Order Vacating Defendant's Judgment and Sentences, State of Fla. v. Williams, No. 1976-CF-000912 (Fla. 4th Circ. Ct.) (Mar. 28, 2019). The director of the CIR Division said the judge presiding over the hearing noted during the hearing she had read the CIR report, did some of her own research, and read prior post-conviction motions. Special Master Hearing at 37:00–38:44 (discussing interaction of the claimant's attorneys and the State Attorney's Office with the judge presiding over the hearing and what was provided for consideration).

Subsequently, Mr. Myers filed a petition for compensation under the Victims of Wrongful Incarceration Compensation Act.⁸ On September 10, 2019, the court in which he sought relief determined he is eligible to receive compensation and demonstrated actual innocence by clear and convincing evidence as required by statute.⁹

Mr. Williams, however, has two unrelated prior felonies¹⁰ precluding him from receiving compensation through the statutory procedure and seeks relief through a claim bill. Despite the prior felonies, attorneys for Mr. Williams filed a petition due to the 90-day jurisdictional window of the statute.¹¹ Mr. Williams also filed a motion to have portions of the Victims of Wrongful Incarceration Compensation Act found unconstitutional and that matter is ongoing.¹²

The Shooting as Alleged by the Surviving Witness and Law Enforcement Interaction as Described in the General Offense Report

On May 2, 1976, at approximately 1:30 a.m., Jeanette Williams and Nina Marshall were shot while in their bed.¹³ Ms. Williams died instantly¹⁴ from the bullet that entered the back of her head while Ms. Marshall survived the wounds she sustained.¹⁵

Ms. Marshall recalled falling asleep while watching television, waking at the sound of someone unlocking the door, falling

⁸ Chapter 961, Fla. Stat.

⁹ Order Granting Petition of Wrongful Incarceration and Eligibility for Compensation Pursuant to the “Victims of Wrongful Incarceration Act” of Florida, State of Fla. v. Hubert Nathan Myers, No. 76-CF-000912 (Fla. 4th Cir. Ct.) (Sept. 10, 2019).

¹⁰ In 1960, Mr. Williams was found guilty of attempted arson and sentenced to two years in county jail. In 1965, Mr. Williams was found guilty of robbery and sentenced to eight years in prison.

¹¹ Special Master Hearing at 48:00–48:36.

¹² Motion to Declare Portions of Chapter 961, Florida Statutes, “Victims of Wrongful Incarceration Compensation Act” Unconstitutional, State of Fla. v. Williams, No.76-912 (Fla. 4th Cir. Ct.) (June 10, 2019); see *also* Senate Rule 4.81(6) (regarding when claim bills shall be held in abeyance but stating “[t]his section does not apply to a bill which relates to a claim of wrongful incarceration”).

¹³ See Jacksonville Police Department, General Offense Report, at 2 and 7 (July 8, 1976).

¹⁴ State of Fla. v. Williams and Myers, No. 76-912 (Fla. 4th Cir. Ct.) (Second Trial Testimony of Dr. Sam E. Stephenson) 336 (Sept. 1976).

¹⁵ Dr. Stephenson, the Chief of Surgery at University Hospital who oversaw Ms. Marshall’s surgery stated she had two, possibly three, gunshot wounds. There was a “through and through” wound. One bullet “entered just below the left cavity on the left side and blew out the anterior part of the neck about the level of the thyroid.” The second wound (the “through and through” entered on the left side of her neck, across her voice box, and exited through the right side of her neck. The third wound was on her left forearm and was the only bullet in her body when she presented at the hospital. He also noted Ms. Marshall had only “mild shock,” which would have had “practically” no effect on an individual. Second Trial Testimony of Dr. Sam E. Stephenson at 326–328.

back asleep, and sometime later waking for the second time with a burning sensation in her neck from a bullet wound.¹⁶ She heard popping sounds and said the sounds were coming from in front of the television, where two men were standing.¹⁷ She said she saw sparks as they fired guns, wrapped in something, from the foot of the bed.¹⁸ She claimed she saw who they were when she rolled onto the floor, then sat up while leaning on the bed, and she then fell back to the floor.¹⁹

Ms. Marshall gave inconsistent statements with regard to what occurred after she was shot. In her written statement from the morning of May 4, 1976, Ms. Marshall stated, after she was shot, she laid across Ms. Williams and acted as though she were dead.²⁰ Other inconsistent statements from Ms. Marshall were she fell out of the bed with both knees on the ground and then an account that she fell out of the bed with one leg still on the bed.²¹ Ms. Marshall also gave conflicting testimony as to whether Ms. Williams said anything during the shooting.²²

After the shooting, Ms. Marshall said she was stepped over (but could not recall if she was stepped over by one or both shooters after she fell to the floor).²³ She also claimed this was the moment she identified the shooters (while she was laying on the ground) because she saw them looking into the room from the doorway on their way out. She later exited the apartment, attempted to get help at a neighboring apartment but no one opened the door; she then walked toward the road where she said she saw Clifford Williams and Nathan Meyers walking toward the party; and a passerby stopped and gave her a ride to the hospital.²⁴ Multiple times, the driver asked

¹⁶ First Trial Testimony from Nina Marshall, 23 (July 1976); Deposition, Nina Marshall, 50–51 (July 8, 1976).

¹⁷ Second Trial Testimony from Nina Marshall at 176; Deposition, Nina Marshall at 52–53.

¹⁸ See Deposition, Detective Richard Bowen, 41 (June 15, 1976). Detective Bowen stated no weapon(s) or items used to muffle a gun were found. *Id.* at 42–43.

¹⁹ First Trial Testimony of Nina Marshall at 122 (stating she saw sparks coming from two directions); Deposition, Nina Marshall at 55–58.

²⁰ Written Statement from Nina Marshall (May 5, 1976). See Deposition, Henry Curtis, 5 (January 2, 1997) (stating Ms. Marshall told him she had laid across Ms. Williams and played dead).

²¹ First Trial Testimony from Nina Marshall at 65–69.

²² First Trial Testimony from Nina Marshall at 63 (stating Ms. Williams called out for her).

²³ Deposition, Nina Marshall at 106; see Deposition, Nina Marshall at 58–59; see also Nina Marshall, Written Statement (May 5, 1986). Ms. Marshall also stated she saw them walking outside and did not pay any attention as to whether they had pillows or blankets. First Trial Testimony from Nina Marshall at 90.

²⁴ Second Trial Testimony from Nina Marshall at 180; Deposition, Nina Marshall, at 65–66. Ms. Marshall was logged into the emergency room at 2:07 a.m. on May 2, 1976. General Offense Report at 12. Harold Torrence was the individual who gave Ms. Marshall a ride to the hospital and confirms there was a vehicle in front of him–

Ms. Marshall who shot her but she did not answer the question. While in the hospital, Ms. Marshall wrote separate notes to an officer—one with “Clifford Williams” and the other with “Nathan”²⁵ and claimed both men had entered the apartment and shot her and Ms. Williams.²⁶

Around 2:40 a.m., officers noted approximately 35–50 people gathered in a crowd at the scene.²⁷ While speaking with people from the crowd, an officer was approached by Nathan Myers, who identified himself as a resident of the apartment and asked what happened.²⁸ In response to inquiries from the officer, Mr. Myers stated he had not been at the apartment since the morning and provided information about where he had been—including his presence at the party down the street.²⁹ Mr. Williams also spoke with the officer and stated he had been at the party, as well.

As the officer’s investigation continued, the officer determined Ms. Rachel Jones hosted the party down the street and Ms. Jones, as well as others, confirmed the attendance of Mr. Myers and Mr. Williams at the party, before and during the time when shots rang out.³⁰ See footnotes 90 and 91 for alibi witness accounts.

Alleged Motives and Statements

Although the CIR investigation was not able to substantiate any of the following alleged motives and statements, the following information is provided as a matter of completeness with regard to contents of records and information furnished.

which matches Ms. Marshall’s account; however, he did not see any men walking down the street and Ms. Williams did not stop for a significant period of time (as she stated she did when seeing Mr. Williams and Mr. Myers) once she started toward his vehicle. Second Trial Testimony from Harold Torrence at 310, 315, 318, and 322; Deposition, Harold Torrence 4 (July 6, 1976). Mr. Torrence said he asked Ms. Marshall five times who shot her and she did not answer but told him to stop talking and get her to the hospital. Deposition, Harold Torrence at 5–6, 9; see Second Trial Testimony from Harold Torrence at 318.

²⁵ General Offense Report at 6. A third note requested for someone to check on Jeanette Williams. See Hospital Notes and Deposition, Officer Kenneth Monroe (July 7, 1976).

²⁶ Second Trial Testimony from Nina Marshall at 167; General Offense Report at 15–16. Mr. Myers, Ms. Marshall, and Ms. Williams were roommates and Mr. Williams kept personal items at the apartment, stayed there sometimes, and helped pay rent on occasion and both men had keys to the apartment. Additionally, after Mr. Myers identified himself as someone who lived at the apartment, he was asked to identify Ms. Williams at the crime scene.

²⁷ General Offense Report at 4.

²⁸ *Id.* at 4.

²⁹ *Id.*; Deposition, Detective Richard Bowen at 26.

³⁰ General Offense Report at 4.

Records and information provided during the claim bill process show Ms. Marshall made various statements with regard to whether Mr. Williams or Mr. Myers may have had motive to hurt her and Ms. Williams. For example, the police report includes an alleged issue over a drug deal involving Mr. Williams, Mr. Meyers, Ms. Williams, Ms. Marshall, and others. The police report also includes reference to the possibility Mr. Williams demanded \$100 of rent money be returned to him during an alleged physical altercation with Ms. Williams a week before the shooting.³¹

Additionally, in her deposition, Ms. Marshall initially responded in the negative with regard to whether she could think of any reason Mr. Myers would have wanted to shoot her or Ms. Williams. When asked again, “No reason whatsoever?” Ms. Marshall replied, “Nothing but that we had heard them talking about some murders and things. I really don’t know why.”³² Ms. Marshall alleged the conversation occurred about a month, or a month-and-a-half, before the shooting. She stated she overheard “they had killed a guy and took him off and buried him in the woods.”³³ She then indicated it was actually not a conversation with both men that was overheard but an alleged conversation she had with Mr. Myers and she was not sure whether Mr. Williams had heard their conversation.³⁴ She also stated “they” were smoking marijuana at the time of the conversation and Mr. Myers had supposedly bragged about being high.³⁵

With regard to the alleged statement from Mr. Williams, in 1976, a man named Christopher Snype provided a written statement describing statements made to him by an individual named Tony Gordon. Mr. Snype stated Mr. Gordon told him he was around the crime scene when people found out only one person had died and Mr. Williams allegedly walked “over close to him, hit a car with his fist and [said], ‘[Expletive], one of the [expletive] ain’t dead!’”³⁶ Mr. Gordon did not want to be involved and did not cooperate with the CIR investigation.³⁷

³¹ Deposition, Nina Marshall at 73–74;127. General Offense Report at 13–14; Deposition, Detective J.R. Bradley at 46 – 47.

³² Deposition, Nina Marshall at 111.

³³ *Id.* at 116.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Christopher Snype, Statement July 13, 1976.

³⁷ *Infra* 11–12.

The undersigned inquired of counsel and the director of the CIR Division regarding these alleged potential motives and statements, as well as whether anything in the investigation suggested the men had knowledge the shooting would occur. Significantly, the CIR director was unable to substantiate any of the alleged potential motives.³⁸ The director located and interviewed the brother of the individual Ms. Marshall alleged Mr. Williams and Mr. Myers may have killed and buried. Through the interview with the brother of the deceased, the director was informed that the brother heard someone else (not Mr. Williams or Mr. Myers) may be responsible for his brother's death.³⁹

The director also noted concern with changes and variations from Ms. Marshall regarding motives. She also attempted to find, but was not able to develop, any information the men would have had knowledge the shooting was going to happen. Additionally, in response to the alleged comment of Mr. Williams, she did not know the context or what to make of the alleged comment. She noted no one else made a statement similar to Mr. Snype's, and referred to other witnesses not understanding why Mr. Myers and Mr. Williams were being arrested because they had been at the party.⁴⁰

With regard to the relationship of Mr. Myers and Mr. Williams with Ms. Marshall and Ms. Williams, the CIR director noted they had dinner together the Friday before the evening of the party during which the shooting occurred.⁴¹

Arrest of Mr. Williams and Mr. Myers

Officers at the scene were informed of the names written down by Ms. Marshall.⁴² At approximately 3:00 a.m. and 3:10 a.m., respectively, Mr. Williams and Mr. Myers were arrested

³⁸ Conference Call with Counsel for Parties and the Director of the CIR (Dec. 12, 2019); see also E-mail correspondence from Shelley Thibodeau (Dec. 18, 2019).

³⁹ *Id.*

⁴⁰ Conference Call with Counsel for Parties and the Director of the CIR (Dec. 12, 2019).

⁴¹ E-mail correspondence from Shelley Thibodeau (Dec. 18, 2019).

⁴² Second Trial Testimony from Nina Williams at 188. Additionally, in July of 1976, Ms. Marshall provided she had smoked marijuana the night of the shooting. Second Trial Testimony from Nina Marshall at 170; First Trial Testimony from Nina Marshall at 16; Deposition, Nina Williams at 106. Deposition, Detective J.R. Bradley at 45. Ms. Marshall stated she used methadone as she had been to the methadone clinic the morning before the shooting. Second Trial Testimony from Nina Marshall, 165; Deposition, Nina Marshall at 16 and 70. First Trial Testimony from Nina Marshall at 6 (July 20, 1976).

for murder and attempted murder.⁴³ The police report notes Mr. Williams shouted to people nearby to get a list of all of the people who were at the party and to contact his attorney.⁴⁴

After being arrested, Mr. Meyers told law enforcement he did not have anything to worry about because he did not shoot the victims and he had been at the party.⁴⁵ Mr. Williams and Mr. Myers have consistently proclaimed their innocence.⁴⁶

The Convictions and Sentences of Mr. Myers and Mr. Williams

Prior to trial, Mr. Myers was offered 2–5 years⁴⁷ in exchange for a guilty plea. Mr. Myers, who was 18-years old at the time, maintained his innocence and did not take the offer.⁴⁸

Mr. Williams and Mr. Myers were tried in July of 1976 (two months after the shooting) and then, after a mistrial was declared, they were tried again in September of 1976, and each faced the death penalty if convicted.

Both men were convicted with Mr. Myers being sentenced to life in prison and Mr. Williams being sentenced to death contrary to the jury's recommendation. Mr. Williams's death sentence was overturned and he was subsequently sentenced to life after spending four years on death row.

Physical Evidence and Information Contradicting Testimony of the Surviving Victim

The Conviction Integrity Review (CIR) Division's investigation and report focused on information not presented to the jury (or not available at the time), including the physical evidence, individuals stating another man had confessed to shooting

⁴³ General Offense Report at 5–6.

⁴⁴ General Offense Report at 5; Deposition, Detective Richard Bowen at 35–36. See *also* Deposition, Officer Robert Horne, 48 (July 14, 1976).

⁴⁵ Deposition, J.R. Bradley at 33–35.

⁴⁶ Williams and Mr. Meyers also independently told officers they had not fired a weapon in the last 24 hours; with Mr. Williams further stating he had not fired a weapon since New Year's. Deposition, Detective J.R. Bradley at 34. The police report contains a statement that the physical evidence matches Ms. Williams's account of shooters in the room while also noting the holes and damage to the window. A part of the report reads, "it appears as though the suspects in this case intended to make it look as though the victims had been shot by someone from the bedroom window." General Offense Report at 16.

⁴⁷ Special Master Hearing, Testimony of Shelley Thibodeau at 1:35:10–1:36:00 Mr. Myers recalled the offer being two years while the State provided the offer was five years. CIR Report at 1, n. 4.

⁴⁸ Special Master Hearing, Testimony of Shelley Thibodeau at 32:30–33:20 (discussing prior attempts at post-conviction relief).

Ms. Williams and Ms. Marshall, and alibi witnesses. This section provides an overview of the CIR Division report (including the findings of crime scene reconstruction professionals⁴⁹) and information provided during the claim bill process.⁵⁰

Sound Experiment

Crime scene reconstruction professionals from Knox and Associates, LLC (Knox) conducted a sound experiment to determine what could be heard at the party if a gun was fired inside of the bedroom versus through the window (from the outside).⁵¹ The shots fired inside of the room “were barely perceptible and were not measurably louder than the ambient noise level” during testing.⁵² Individuals from the State Attorney’s Office who were at the location of the recording device, which was in the location of the party, reported the shots as being “only faintly perceptible.”⁵³

Contrary to the shots fired inside of the bedroom, shots fired from outside the bedroom window produced “clearly perceptible” audio recordings at the location of the party.⁵⁴ The experiment supported statements by witnesses that the shooting had occurred from outside of the bedroom window and contradicted the statements of the lone testifying witness.⁵⁵

Window Screen and Frame

Knox demonstrated, from near contact, three inches, six inches, and 12 inches from the muzzle to the screen, it was possible to fire six shots through the screen and form just a single tear⁵⁶ as was present in the screen from the crime scene.

⁴⁹ See CIR Report. In 2018, the CIR Division hired Knox and Associates, LLC to reconstruct, analyze, and report findings with regard to the crime scene.

⁵⁰ See *generally* Special Master Hearing, Testimony of Shelly Thibodeau at 1:02:45–1:28:56 (describing the CIR’s investigation and comparison to Ms. Marshall’s report).

⁵¹ Special Master Hearing, Testimony of Shelley Thibodeau at 2:04:00–2:05:44 (describing the sound experiment in detail and the inability to hear, at the location of the party, shots fired from inside the bedroom).

⁵² Knox and Associates, LLC Report (Knox) 16–17 (Nov. 27, 2018).

⁵³ *Id.* at 17.

⁵⁴ *Id.*

⁵⁵ *Id.* at 21.

⁵⁶ *Id.* at 17.

The curtains, screen, and window of the north bedroom window all had holes in them.⁵⁷ The lower right portion of the window frame “revealed an apparent bullet hole” and had “carbonaceous material” on it.⁵⁸

Additionally, by deposition in 1976, the lead detective stated, “the physical evidence at the window itself indicated that a projectile of some sort had gone inside of the bedroom from the outside.”⁵⁹ Another detective made the same observation, stating the “screen was pushed from the outside to the inside” and recalled glass fragments being on the bed, which he believed to be from the window.⁶⁰ All of this information supported the shots being fired from outside of the window.

Wound Path

The reconstruction included analysis of the wound paths. Knox found the wound to the back of Ms. Williams’s head was “most consistent” with having been fired from outside of the window.⁶¹ The report states, “other gunshot wounds were non-specific as to location from which they were fired, though all of the gunshot wounds could have been inflicted from outside the bedroom window.”⁶²

The director testified she spent significant time on the issue of wound dynamics and wound path to determine if it would have been possible for the women to have received their injuries from shots being fired at the foot of the bed as Ms. Marshall described. She summarized all of the injuries of Ms. Williams, who was laying on her right side with her back to the window (and was closest to the window), who had wounds to her backside. She had four injuries—three to the back of her left arm and the fatal injury to the back of her head while Ms. Marshall was struck twice. The director highlighted that none of the injuries were to the front side of either woman.⁶³

Using a computer program, the CIR investigation created visual representations of the wound paths with the use of

⁵⁷ General Offense Report at 4.

⁵⁸ FDLE, Tallahassee Regional Crime Laboratory Report (July 5, 1976); see Special Master Hearing, Testimony of Shelley Thibodeau at 1:11:00–1:11:45.

⁵⁹ Deposition, Detective Richard Bowen at 46.

⁶⁰ Deposition, Detective J.R. Bradley at 11–12.

⁶¹ Knox at 18.

⁶² *Id.* at 18.

⁶³ Special Master Hearing, Testimony of Shelley Thibodeau at 1:12:15–1:13:30.

dowels going into entry and exit wounds. The extended dowel moved with the body in the recreation. The finding was of all wounds being demonstrably possible with shots fired from the window, but they could not find a plausible pathway for all wounds when recreating shots being fired from the foot of the bed and television.⁶⁴

The CIR director also testified with regard to the current medical examiner's findings—and particularly, with regard to an irregular wound of significance. The most important wound for the director was the irregular entrance wound because the medical examiner, without knowing information about this case, described the irregularity would be created by the projectile having struck something prior to entering the victim. Striking something would cause the projectile to tumble, which would then result in the unique entrance wound as the projectile entered the skin.⁶⁵ The CIR director found this information significant because, if the shooting had occurred from the foot of the bed—there would not have been an intervening object for the bullet to hit and cause the bullet to tumble and create the irregular entrance wound. However, the information provided by the medical examiner made sense to the director if the bullet was shot through the window and struck the glass, screen, or window frame causing it to tumble and then enter the skin of the victim.⁶⁶ The rest of the entrance wounds on Ms. Williams were circular but for the one irregular wound. This information corroborated the shooting having occurred from outside of the window.⁶⁷

Blood Evidence

The report includes the observation that Ms. Marshall was bleeding profusely from her wounds and left bloody footprints when she left the apartment. The Knox report notes, and pictures from the crime scene show, an absence of bloody footprints from any other individual despite Ms. Marshall stating two people had shot from inside of the bedroom and she was stepped over after she laid on the ground bleeding.⁶⁸

⁶⁴ *Id.* at 1:23:10–1:24:12.

⁶⁵ *Id.* at 1:15:00–1:15:56.

⁶⁶ *Id.* at 1:15:56 – 1:16:38.

⁶⁷ *Id.* at 1:16:38–1:17:14.

⁶⁸ See Knox at 19. The CIR director testified the blood evidence was “a smaller piece of the puzzle” but did identify inconsistencies with Ms. Marshall's statements and the blood evidence. She noted the undisturbed pool of blood where Ms. Marshall laid, injured, in the middle of the floor and a lack of footprints from indoor perpetrators as described by Ms. Marshall. Special Master Hearing at 2:20:40–2:22:40.

Flashes and Sounds of Gunshots

The Knox report found Ms. Marshall's testimony of having seen flashes coming from two guns was inconsistent with her statement that the guns were wrapped in pillows or blankets. The report also notes there were no pillows or blankets with singed or gunshot residue fibers found.⁶⁹

Room Arrangement

A review of evidence demonstrates the shooters would have needed to enter the room, then walk at about a 90-degree angle to get to the foot of the bed to attain the position Ms. Marshall described.⁷⁰ The pictures show an apparently undisturbed box fan balanced on the arms of a small wooden rocking chair, an undisturbed laundry basket filled with stacked laundry,⁷¹ and undisturbed, neatly arranged shoes partially tucked under the dressers.⁷²

The Knox report notes, "[t]he likelihood of a shooter(s) entering the residence and taking a position at the furthestmost position within the scene (foot of the bed and back of the bedroom) is in conflict with the ease of which a shooter could take a position outside and effectively hit targets on the bed." The report also notes shooting from outside would have no risk of survivor identification, defensive movements, and would allow for an unimpeded escape.⁷³

Summary of Knox Report Conclusion

The Knox report provides the following in support of the likelihood the shooting occurred from outside of the bedroom window: 1) broken glass on the floor and on top of the bed by the window; 2) the tear in the window screen; 3) a bullet on the floor below the window; 4) the identified bullet hole in the window frame.⁷⁴ The report also noted the wound to Ms. Williams's head in conjunction with the position of her body was consistent with having been shot from the window. The

⁶⁹ Knox at 20.

⁷⁰ See Special Master Hearing, Testimony of Ms. Thibodeau at 1:02:44–1:06:37 (summarizing the testimony of Ms. Marshall; referencing the police had documented shattered glass on the bed from the window next to the bed, damage to the aluminum screen with prongs facing inward, damage to the window frame they thought was from a bullet, etc.; and noting the physical evidence was not presented to the jury).

⁷¹ The basket of clothes remained how Ms. Williams remembered it prior to the shooting. Deposition, Nina Williams at 92–93; see *also* Special Master Hearing, Testimony of Shelly Thibodeau at 1:08:00–1:09:03.

⁷² CIR Report, exhibits P and Q at 62–63.

⁷³ Knox at 21.

⁷⁴ *Id.* at 22.

sound experiment demonstrated it would have been unlikely for individuals at a party to have heard gunshots if they were fired from inside the bedroom; and the physical evidence was consistent with shots having been fired from outside of the bedroom window.

Gunshot Residue Testing

The hands of Mr. Williams and Mr. Myers were tested for gunshot residue at approximately 5:15 a.m. on May 2, 1976.⁷⁵ Results of the tests were negative for gunshot residue.⁷⁶

Polygraph

Mr. Myers and Mr. Williams agreed to take polygraph exams. Mr. Myers was asked three questions during the polygraph—all of which asked whether he shot either of the women. He responded in the negative and there was no deception indicated in his exam results.⁷⁷ With regard to Mr. Williams, the polygraph examiner noted he was having difficulty understanding the instructions and was incorrectly answering questions and, therefore, was “not a suitable subject for a polygraph examination” because of his “advanced age.”⁷⁸

Evidence of One Shooter

Analysis of the evidence (including recovered bullets and statements) supports the crime being committed with the use of one gun by a single individual.

Five .38 caliber bullets were recovered (three from the scene and two from the body of Ms. Williams) as well as a damaged .38 caliber bullet from Ms. Marshall.⁷⁹ An additional .32 caliber bullet was removed from Ms. Williams and noted to be from a healed wound as it was covered in scar tissue.⁸⁰ The crime

⁷⁵ General Offense Report at 7. Mr. Williams and Mr. Myers were arrested around 3:00 a.m. while present in the crowd at the scene. *Id.* at 5.

⁷⁶ Department of the Treasury Bureau of Alcohol, Tobacco, and Firearms, Report of Laboratory Examination (May 18, 1976) (“The amount of antimony found in the hand swabs was insufficient to indicate the presence of gunshot residue; therefore, no testing for barium was conducted. From these findings, no conclusion can be drawn as to whether the subject(s) did or did not handle or fire a weapon.”); see General Offense Report at 7.

⁷⁷ Office of the Sheriff, Jacksonville, FL, Intradepartmental Correspondence Re: Hubert [Nathan] Myers Polygraph Examination 2–3 (July 20, 2018).

⁷⁸ Office of the Sheriff, Jacksonville, FL, Intradepartmental Correspondence Re: Clifford Williams Polygraph Examination 2 (November 7, 2018).

⁷⁹ CIR Report at 28.

⁸⁰ See FDLE, Tallahassee Regional Crime Laboratory Report (“FLDE, Crime Lab Report”) (July 5, 1976); Lipkovic, M.D., Peter, Report: Office of the Medical Examiner, 3 (May 2, 1976); General Offense Report at 7. The three .38 caliber bullets removed from Ms. Williams were from her head, left upper arm, and left lower arm. *Id.*

laboratory report indicates five of the bullets were able to be microscopically compared and were all fired from the same weapon. A damaged bullet and a fragment were determined to have “some evidence of a relationship” to the others, but the relationship was “too limited in amount and character” for conclusive results.⁸¹

Henry Curtis, an individual who knew Mr. Williams, Mr. Myers, Ms. Williams, and Ms. Marshall, was deposed in 1997, and provided information indicating Ms. Marshall told him conflicting stories. Mr. Curtis said Ms. Marshall once told him Mr. Williams and Mr. Myers were the shooters and she laid on the bed and acted as if she were dead once she had been shot.⁸² However, she also told him she did not know who shot her because she was asleep when it happened.⁸³ Mr. Curtis also stated he was positive Ms. Marshall used heroin during the trial, including while she was at his house.⁸⁴

Mr. Torrence, who gave Ms. Marshall a ride to the hospital, returned to the scene later and stated about three or four people said the shots came from outside of the window and there was a man who saw it but would not say anything.⁸⁵

A July 13, 1976, statement from Christopher Snype states a friend of his, named Tony Gordon, told him he looked out the window after hearing the first shot and saw a black male, dressed in black, standing outside of the bedroom window shooting several more times.⁸⁶ Testimony from the director and the witness chart from the CIR investigation note Mr. Gordon claimed he did not see or witness anything; however, he also failed a polygraph in 1976 when answering in the negative as to whether he had knowledge of the shooting.⁸⁷ The notes also indicate Mr. Gordon remembered the event but did not want to be involved; he did not cooperate during the CIR investigation.⁸⁸

⁸¹ FDLE, Crime Lab Report at 2; see Special Master Hearing, Testimony of Shelley Thibodeau at 1:14:30–1:14:55 regarding the analyst finding the bullets were fired from the same weapon).

⁸² Deposition, Henry Curtis at 5.

⁸³ *Id.* at 7 and 15.

⁸⁴ See Deposition, Henry Curtis at 1 and 14.

⁸⁵ Deposition, Harold Torrence at 11.

⁸⁶ Christopher Snype, Statement (July 13, 1976).

⁸⁷ Special Master Hearing, Testimony from Shelley Thibodeau at 2:09:48–2:10:43; Witness Chart; Conference Call with Counsel for Parties and the Director of the CIR (Dec. 12, 2019).

⁸⁸ Conference Call with Counsel for Parties and the Director of the CIR (Dec. 12, 2019).

The CIR director testified evidence only shows one gun being fired and (but for Ms. Marshall's account) no evidence of more than one shooter.⁸⁹

Alibi Witnesses

Mr. Williams and Mr. Myers informed officers they were at a party in an apartment building nearby. The presence of both men at the party, before and during the time when shots rang out, was confirmed by the host,⁹⁰ as well as a number of other individuals.⁹¹

⁸⁹ Special Master Hearing, Testimony of Shelley Thibodeau at 2:15:16–2:15:35.

⁹⁰ Rachel Jones, the host of the party, confirmed both men and Mr. Williams's wife, Barbara Williams, were all at the party. Ms. Jones recalled she was intoxicated that evening. She first recalled being in a bedroom with Mr. Myers when someone asked them to turn the music down because they thought they heard gunshots. Later, she stated she was on the porch when three shots were fired and both Mr. Williams and Mr. Myers were in her apartment. General Offense Report at 8.

⁹¹ Virginia Wilkerson also attended the party and told police she saw Mr. Williams and Mr. Myers arrive approximately fifteen minutes after she did (about 20 minutes after 1:00 a.m.). She stated she heard about the gunshots after they had arrived; Mr. Williams was in the kitchen, and subsequently asked Mr. Williams what time it was and went to her apartment to check on her children. She also said she saw Mr. Williams and Mr. Myers walking with everyone else toward the scene. See Deposition, Virginia Wilkerson, 9, 11, 17, and 23 (July 16, 1976); General Offense Report at 9. Frances Brown, the other host of the party, confirmed seeing Mr. Williams and Mr. Myers arrive at the party with Barbara Williams and Rico Rivers. Ms. Brown told police she did not drink and remembered making plates of food for Mr. Williams and Mr. Myers after they got to the party. She recalled hearing five shots sometime after they had arrived. General Offense Report at 9–10. Debra White lived near the party and went back and forth from her apartment to the party throughout the night. She recalled hearing shots and saw Mr. Williams walking out of the party toward the road with a plate of food in his hand. General Offense Report at 11. Ella Ruth Maddox recalled Mr. Williams and Mr. Myers being at the party before she left to take a friend home. Upon returning to the party, the police were at the scene of the shooting. General Offense Report at 11. Joann Fleming, roommate of Debra White and Ella Ruth Maddox, was at her apartment with Ms. White when she heard five shots, looked outside to see Mr. Williams walk out of the party to the road and then return to the party; she also confirmed seeing Mr. Myers coming from the porch where the party was after the shots were fired. Deposition, Joann Fleming, 6–7 (July 16, 1976). About five to fifteen minutes later, she walked with Mr. Williams to the scene (where two police cars were present) and he asked her to go find out what was going on. *Id.* at 7–8; General Offense Report at 10. Vanessa Snypes confirmed the presence of Mr. Williams, Mr. Myers, Barbara Williams, and another man arriving at the party together. She recalled being intoxicated and did not hear any shots. General Offense Report at 11. Nellie Mae Anderson saw Mr. Williams, Mr. Myers, Barbara Williams, and Rico Rivers arrive at the party and was eating with Mr. Williams and Mr. Myers when she heard five shots. Once someone announced police being at the scene, she walked to the scene with others from the party. General Offense Report at 11; Deposition, Nellie Mae Anderson, 10–11 (July 16, 1976). Rosa Lee Royster, a friend of the deceased, stated the victim owed Mr. Williams \$100, and said she saw Mr. Williams and Mr. Myers arrive at the party. She later heard four shots fired and said she saw Mr. Williams walk toward the street with a plate of food and walk back to the party commenting that it was an intoxicated person shooting into the air. General Offense Report at 12. Pauline Dawson was at the party, recalled Mr. Williams being there and giving her seat at the table to Barbara Williams because she was pregnant at the time. In her deposition, she stated she saw Mr. Williams arrive and thought he was still in the kitchen when the shots rang out. Deposition, Pauline Dawson, 5–8 (July 16, 1976). She said Mr. Williams walked along with others from the party down to the scene. *Id.* at 10. Barbara Williams recalled arriving at the party with Mr. Williams and Mr. Myers and Mr. Williams eating while seated on the arm of a sofa when the shots rang out; she also recalled Mr. Myers being seated by a stereo. Deposition, Barbara Williams, 34–35 (July 16, 1976). She also stated, from the time they arrived until the shots were fired, Mr.

Information gathered in interviews conducted by the CIR director were consistent with testimony from 1976 with regard to Mr. Myers and Mr. Williams being at the party at the time shots were fired.⁹²

The CIR report highlighted three of the alibi witnesses.⁹³ First, Joann Fleming, whose apartment was next door to the party, who still clearly recalls seeing Mr. Myers when the shots rang out. Second, Vincent Williams, who is noted in the report as being related to Mr. Williams and Mr. Myers, but whose parents did not like him spending time with his cousin because of his lifestyle. He did not know anyone else at the party, but was able to accurately describe the apartment layout, made statements consistent with other witnesses, and remembered seeing Mr. Williams and Mr. Myers when people heard the shots being fired. The third alibi witness was Geraldine Prey. Although not present at the time of the shooting, she provided information that “everyone” knew Mr. Williams and Mr. Myers were not the shooters because they were at the party. She also noted Ms. Williams was well-liked and did not think other women from the area would provide an alibi for Mr. Williams or Mr. Myers if it were not true because of their like of Ms. Williams. She also noted Mr. Myers told her the prosecution wanted him to testify against his uncle but he could not do that because he and his uncle (Mr. Williams) were at the party together. See footnotes 90 and 91 for additional statements from alibi witnesses.

Sometime after hearing the shots, a group of people attending the party (including Mr. Williams and Mr. Myers) gathered outside of the apartment building where the shooting had taken place.

Reported Confessions by Nathaniel Lawson

The Conviction Integrity Review (CIR) Division’s director testified to interviewing four individuals to whom a man named Nathaniel Lawson allegedly confessed. The director attempted to link the four individuals together and found, but for them growing up in the same area, she could not tie them

Williams never left the party. *Id.* at 40. Mrs. Williams left the party with Rosetta Simon, Raymond Rico Rivers, and Nathaniel Lawson. *Id.*

⁹² Special Master Hearing, Testimony of Shelley Thibodeau at 2:05:50–2:06:54.

⁹³ CIR Report at 17–19.

together in any other way and found them credible.⁹⁴ The four individuals are Tony Brown, Leatrice Carter, Frank Williams, and James Stepps.

Alleged Confession to Tony Brown

By sworn affidavit, Mr. Tony Brown stated Nathaniel Lawson (who was incarcerated with him) told him he had shot Ms. Marshall and Ms. Williams. He said Mr. Lawson stated he was paid, by Albert Young, to shoot the women because Ms. Williams had not paid Mr. Young for heroin Ms. Marshall stole from him. He said he was never caught, and Mr. Williams and Mr. Myers were serving time for the shooting. Mr. Brown said Mr. Lawson told him he had looked through the bedroom window to see where Ms. Williams was, he shot from outside the window, and then ran to the back of the apartments and jumped over a fence to get into a vehicle driven by Rico Rivers.⁹⁵

Mr. Brown had known Mr. Myers only as “Nate” while incarcerated, but once he learned “Nate” was Hubert Nathan Myers—he shared this information and Mr. Myers requested he write it down.⁹⁶

Alleged Confession to Leatrice Carter

Leatrice Carter told the CIR director that Mr. Lawson confessed to her in the early 1990s at the tavern she and her husband owned. Mr. Lawson allegedly told her Mr. Williams did not commit the crime and admitted that he was the one who committed the crime. Ms. Carter also told the director Mr. Lawson said the only people who were mad were “Dot and Frank” (Clifford Williams’s siblings and Nathan Myers’s mother and uncle).⁹⁷

Alleged Confession to Frank Williams

The third person to whom Mr. Lawson allegedly confessed is Franks Williams (brother of Clifford Williams and uncle to Nathan Myers). Mr. F. Williams, who had dated Diane Lawson (sister of Nathaniel Lawson) stated he actually confronted Mr. Lawson when he heard he may have been involved and told

⁹⁴ Special Master Hearing, Testimony of Shelley Thibodeau at 3:13:50–3:15:55. Mr. Lawson died in 1994. *Id.*

⁹⁵ Sworn Affidavit, Tony Brown, 1–2 (October 21, 2014); see CIR Report at 20.

⁹⁶ *Id.*

⁹⁷ CIR Report at 21.

the director Mr. Lawson said he was “staying out of it” and did not want to speak about it.⁹⁸

Years after the first interaction, Mr. F. Williams told the director that he saw Ms. Lawson and she said her brother was “sick and might want to clear his conscience,” so Mr. F. Williams had a meeting arranged with Mr. Lawson. Mr. F. Williams said Mr. Lawson requested the meeting be in public, gave details of the interaction, and said Mr. Lawson ultimately confessed to shooting the women because one of the women was stealing from him and he had to send a message. Mr. Lawson also allegedly admitted to giving money to Dot (sister of Clifford and Frank Williams and mother of Nathan) for Mr. Myers and Mr. Williams. Mr. F. Williams said his sister confirmed she had received money from Mr. Lawson for the incarcerated men.⁹⁹

Alleged Confession to James Stepps

James Stepps was the fourth individual to tell the CIR director Mr. Lawson confessed to him and the director found Mr. Stepps to be “most credible.”¹⁰⁰ Mr. Stepps was friends with Mr. Lawson through his death and said, not long before he died, Mr. Lawson indicated he had killed Ms. Williams and wanted to send money to Mr. Williams.¹⁰¹ Mr. Lawson allegedly wondered aloud and stated, “What can I do? I can’t turn myself in.”¹⁰² Mr. Stepps did not ask questions, believed Mr. Lawson, and—because he believed his friend was telling him this in confidence—he would not have come forward if Mr. Lawson were alive.¹⁰³

The CIR director was able to place Nathaniel Lawson at the scene when reviewing the materials a second time because, in reviewing the deposition of Barbara Williams (Mr. Williams’s wife), she referenced leaving with a group of individuals including Nathaniel Lawson.¹⁰⁴

⁹⁸ *Id.* at 22.

⁹⁹ *Id.*

¹⁰⁰ Special Master Hearing, Testimony of Shelly Thibodeau at 3:29:00–3:29:00.

¹⁰¹ CIR Report at 23.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Special Master Hearing, Testimony of Shelley Thibodeau at 1:54:30–1:56:05. The others in the group leaving with Ms. Barbara Williams were a woman named “Cookie” and a man named Rico Rivers. This is the same group, with the addition of Mr. Myers and Mr. Williams, the CIR director found, via witness interviews and prior testimony, had arrived to the party together. *Id.* at 1:59:40–1:59:55.

A Court Determined Mr. Myers is Eligible for Compensation and Demonstrated Clear and Convincing Evidence of Actual Innocence

After the CIR Division's investigation and the vacation of convictions and sentences of Mr. Myers and Mr. Williams, Mr. Myers sought statutory relief. He filed a petition for compensation under the Victims of Wrongful Incarceration Compensation Act,¹⁰⁵ and on September 10, 2019, the court in which he sought relief determined he is eligible to receive compensation and demonstrated actual innocence by clear and convincing evidence as required by statute.¹⁰⁶

The findings of the CIR Division's investigation and report pertain to Mr. Williams, as well; however, Mr. Williams seeks relief through a claim bill because he has two prior felonies. State law currently precludes Mr. Williams from eligibility for compensation through the statutory process.

The undersigned sought clarification as to the scope of the investigation and report of the CIR Division. The director confirmed the scope of the finding of substantial evidence of actual innocence was applicable with regard to any involvement in the crime in the murder and attempted murder. The CIR director noted an inability to uncover any evidence to support the conviction of Mr. Williams¹⁰⁷ and was not able to find any evidence Mr. Williams is anything other than innocent.¹⁰⁸ Significantly, the director noted there was no evidence to suggest either Mr. Williams or Mr. Myers had been involved in any capacity;¹⁰⁹ and a member of the audit board, a former prosecutor, indicated he is "as confident as [he] can get" with regard to Mr. Williams's innocence.¹¹⁰

¹⁰⁵ Chapter 961, Fla. Stat.

¹⁰⁶ Order Granting Petition of Wrongful Incarceration and Eligibility for Compensation Pursuant to the "Victims of Wrongful Incarceration Act" of Florida, State of Fla. v. Hubert Nathan Myers, No. 76-CF-000912 (Fla. 4th Circ. Ct.) (Sept. 10, 2019). The order provides, "[t]he Petitioner has met the burden of establishing by clear and convincing evidence that the Petitioner committed neither the act nor the offense that served as the basis for the conviction and incarceration, and that the [P]etitioner did not aid, abet, or act as an accomplice to a person who committed the act or offense." *Id.*

¹⁰⁷ Special Master Hearing, Testimony of Shelley Thibodeau at 2:31:58–2:32:49.

¹⁰⁸ *Id.* at 3:17:21–3:19:34.

¹⁰⁹ Conference Call with Counsel for Parties and the Director of the CIR (Dec. 12, 2019).

¹¹⁰ Special Master Hearing, Testimony of Raymond Reid at (3:40:50–3:47:27 and 3:50:58–3:51:16) (describing evidence he found significant in demonstrating Mr. Williams and Mr. Myers were wrongfully convicted and believing there are supported claims of actual innocence in this matter).

Lastly, counsel for the respondent (the State Attorney's Office of the Fourth Judicial Circuit) indicated, although his client expressed no position on the claim bill, he would agree "there is, in fact, substantial credible evidence of Mr. Williams's innocence" and "given that experienced lawyers and judges have gone before [him] and come to that same conclusion [he thinks] it would be disingenuous to suggest that is not the case."¹¹¹

CONCLUSIONS OF LAW:

Generally, the standard of proof used in the claim bill process is preponderance of the evidence. The report for the one wrongful incarceration claim bill that passed since chapter 961 was created discussed the clear and convincing standard from the Victims of Wrongful Incarceration Act (Chapter 961), but ultimately applied the preponderance standard.¹¹²

Standard of Proof Used in Wrongful Incarceration Compensation Claims

Chapter 961 requires the petitioner provide evidence of "actual innocence" and a court to find the petitioner has provided clear and convincing evidence "the petitioner committed neither the act nor the offense that served as the basis for the conviction and incarceration, and that the petitioner did not aid, abet, or act as an accomplice to a person who committed the act or offense."¹¹³

For reference, the standard of clear and convincing evidence is defined as "[e]vidence indicating that the thing to be proved is highly probable or reasonably certain" and "is a greater burden than preponderance of the evidence, the standard applied in most civil trials, but less than evidence beyond a reasonable doubt, the norm for criminal trials."¹¹⁴ Jury instructions provide clear and convincing evidence "is evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief, without hesitation, about the matter in issue."¹¹⁵

¹¹¹ Special Master Hearing, Britt Thomas, counsel for the respondent at 4:19:00–4:20:19.

¹¹² Senate Special Master Report Re: CS/SB 2 (2012) (Nov. 1, 2011) (recommending relief regarding Mr. William Dillon's wrongful incarceration claim); see also Ch. 2012–229, Laws of Fla.

¹¹³ Section 961.03(3), Fla. Stat.

¹¹⁴ Bryan A. Garner, *Black's Law Dictionary* (2006).

¹¹⁵ *E.g.*, In re Standard Jury Instruction in Criminal Cases—Report 2012–07, 122 So.3d 302 (Mem) (Fla. 2013); Standard Jury Instructions—Civil Cases (No. 98–3), 720 So.2d 1077 (Mem) (Fla. 2008).

Statutory Compensation

Compensation for an eligible individual who meets the standard includes \$50,000 for each year of wrongful incarceration; a waiver of tuition and fees for up to 120 hours of instruction at a career center, Florida College System institution, or any state university; the amount of any fine, penalty, or court costs imposed and paid by the wrongfully incarcerated person; and the amount of attorney's fees and expenses incurred by the wrongfully incarcerated person. Per statute, the total amount awarded may not exceed \$2 million.¹¹⁶

Credibility of Ms. Marshall's Testimony

Although only able to read prior depositional and trial testimony and handwritten documents from Ms. Marshall, serious concerns exist regarding the credibility of her statements when compared to substantiated physical evidence and consistent statements of other witnesses.

Physical Evidence Demonstrates the Shooting Did Not Occur as Ms. Marshall Described

Of great significance, undercutting Ms. Marshall's credibility is the physical evidence does not support her account. Additionally, information and details provided by Ms. Marshall varied. Some of the variations previously described include: stating she laid over Ms. Williams then indicating that did not happen; the different ways she described falling off of the bed; how many times she fell off of the bed; and at what point she claimed she saw the alleged shooters.

The CIR Director was Unable to Develop Information Supporting other Statements Made by Ms. Marshall

The director of the CIR Division stated there were attempts to verify some general statements made by Ms. Marshall during the investigation. These statements included attempts to substantiate Ms. Marshall's claims of having been married twice, having children, and the name of her father and where he lived.¹¹⁷

The director was unable to substantiate Ms. Marshall being married to the individuals she named or that she had children. Ms. Marshall claimed she had married a man named Eddie

¹¹⁶ Section 961.06(1), Fla. Stat.

¹¹⁷ See Special Master Hearing, Testimony of Shelley Thibodeau at 2:57:05–2:59:20 (describing these attempts and a finding that Ms. Marshall used approximately 30 aliases over time).

Lee Dyals. The CIR Division director noted although Mr. Dyals is deceased she was able to contact the widow of Mr. Dyals and she had never heard of Nina Marshall.¹¹⁸ The director interviewed the other man Ms. Marshall claimed to have married, Mr. Felton Marshall, and he admitted knowing Ms. Marshall and using drugs with her but denied ever being married to Ms. Marshall.¹¹⁹ The director was unable to develop information regarding Ms. Marshall having children and noted none of the women in the neighborhood had ever met children of Ms. Marshall.¹²⁰

Conclusion Based upon Findings of Fact and Substantiated and Credible Evidence

The physical evidence demonstrates the shooting did not occur as Ms. Marshall described. Although, the physical evidence does not go to the identity of who committed the shooting, it greatly undercuts the credibility of Ms. Marshall. The undersigned does not find Ms. Marshall's testimony credible.

The testimony of Ms. Marshall was the only tie of Mr. Williams and Mr. Myers to the commission of the crime. From the materials submitted during the special master hearing process, the undersigned does not find evidence to substantiate Mr. Williams committing the shooting of Ms. Williams and Ms. Marshall. To the contrary, the statements of alibi witnesses made to the police in 1976, in depositions in 1976, and in interviews during the CIR investigation corroborate Mr. Williams and Mr. Myers being at a party while shots were heard.

The materials presented did not include any substantiated evidence with regard to Mr. Williams being otherwise involved. While Ms. Marshall alleged various motives—the evidence provided did not substantiate any of them. While the undersigned had questions with regard to the statement Mr. Williams allegedly made (according to Mr. Snype whose written statement provides he was told about the alleged statement by Mr. Gordon), the truthfulness, significance, and context of the statement is unknown. There were no other

¹¹⁸ See Deposition, Nina Marshal, 4–5; Witness Chart; Conference Call with Counsel for Parties and the Director of the CIR (Dec. 12, 2019).

¹¹⁹ Special Master Hearing, Testimony of Shelley Thibodeau at 2:57:05–2:59:20; Witness Chart; Conference Call with Counsel for Parties and the Director of the CIR (Dec. 12, 2019).

¹²⁰ Conference Call with Counsel for Parties and the Director of the CIR (Dec. 12, 2019).

similar statements to compare this piece of information. This unsubstantiated piece of evidence is not enough to undercut the numerous, consistent statements of alibi witnesses, or the four individuals who stated another man had confessed to the crime.

Therefore, given the evidence provided during the claim bill process, which included:

- the CIR Division's report, testimony from the director and a member of the independent audit board, and the press conference of the State Attorney supporting a finding of substantial evidence of actual innocence;
- a showing of physical evidence contradicting testimony of the only surviving victim through the report of an independent crime scene recreationist;
- the eye witness's inconsistent statements and statements contradicting physical evidence;
- individuals stating another person, Mr. Nathaniel Lawson, confessed to the shooting;
- alibi witnesses stating Mr. Williams was at a party with them at the time the shots rang out;
- the finding of a court that Mr. Myers successfully demonstrated clear and convincing evidence of actual innocence for the same crime using the same CIR Division report and findings in seeking statutory relief; and
- other information addressed in this report, the CIR Division's report, and provided before, during, and after the special master hearing,

the undersigned finds the claimant has demonstrated actual innocence by clear and convincing evidence.

Although the amount of \$2,150,000 in the bill exceeds the cap available in the statutory process, the undersigned finds the amount is reasonable as it is close to the calculation of years served multiplied by the statutory amount of \$50,000 per year of wrongful incarceration.¹²¹

Lastly, although the claim bill includes coverage for 120 hours of instruction, counsel for Mr. Williams indicated he would not be able to utilize compensation related to the 120 hours of

¹²¹ Mr. Williams served 42 years and 11 months. The amount of 42.92 years multiplied by \$50,000 equals \$2,145,833.33.

educational instruction given his advanced age and health and is not seeking the educational compensation.¹²²

ATTORNEY FEES:

The bill does not allocate any funds for attorney or lobbying fees. Additionally, the claimant's counsel, Mr. George E. Schulz, Jr. of Holland and Knight, provided a closing statement indicating, "representation of Mr. Williams is on a pro bono basis and that there are no fees, expenses or costs associated with the claim."

RECOMMENDATIONS:

Per Mr. Williams's counsel representing he is not seeking the educational component of compensation provided in the bill, the undersigned recommends deleting lines 83–92 of SB 28.

Based upon the information and evidence provided before, during, and after the special master hearing, the undersigned finds the claimant has demonstrated actual innocence by clear and convincing evidence and the amount sought is reasonable.

Respectfully submitted,

Christie M. Letarte
Senate Special Master

cc: Secretary of the Senate

¹²² Conference Call with Counsel for Parties and the Director of the CIR (Dec. 12, 2019).



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Rules, *Vice Chair*
Appropriations
Innovation, Industry, and Technology
Judiciary

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR AUDREY GIBSON

Minority Leader
6th District

January 28, 2020

Senator Jeff Brandes, Chair
Appropriations Subcommittee on Criminal and Civil Justice
201 The Capitol
404 South Monroe Street
Tallahassee, Florida 32399-1100

Chair Brandes:

I respectfully request that SB 28, on behalf of Clifford Williams, relating to wrongful incarceration, be placed on the next committee agenda.

The claim arises from significant damages for being wrongfully incarcerated for 43 years. The bill also provides a waiver of certain tuition and fees for Mr. Williams and requires \$2,150,000.00 to be paid upon approval of the claims bill. This bill passed unanimously in the first committee.

Thank you for your time and consideration.

Sincerely,

Audrey Gibson
State Senator
District 6

SENT TO: CHAIRMAN
TAFT DIR. STAFF
2020 JAN 29 AM 9:44
SENATE APPROPRIATIONS
RECEIVED

101 East Union Street, Suite 104, Jacksonville, Florida 32202 (904) 359-2553
200 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/18/22

Meeting Date

28

Bill Number (if applicable)

Topic Relief of Clifford Williams

Amendment Barcode (if applicable)

Name Kim Porteous

Job Title Volunteer for FLNOW

Address 6666 Crenshaw Dr

Phone 706-669-8192

Street

Orlando

FL 32835

Email Kim@FLNOW@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing President For FLNOW

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

18 Feb 2020
Meeting Date

28
Bill Number (if applicable)

Topic Clifford William

Amendment Barcode (if applicable)

Name Melina Rayna Svanhild Farley Barratt

Job Title Legislative Director

Address 8689 SE 69 Ter
Street

Phone 352-226-7477

Trenton FL 32693
City State Zip

Email _____

Speaking: For Against Information

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

Representing FL NOW

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

By Senator Gibson

6-00176-20

202028__

1 A bill to be entitled
2 An act for the relief of Clifford Williams; providing
3 an appropriation to compensate him for being
4 wrongfully incarcerated for 43 years; directing the
5 Chief Financial Officer to draw a warrant for the
6 purchase of an annuity; requiring the Department of
7 Financial Services to pay specified funds; providing
8 for the waiver of certain tuition and fees for Mr.
9 Williams; specifying conditions for payment; providing
10 that the act does not waive certain defenses or
11 increase the state's limits of liability; prohibiting
12 any further award to include certain fees and costs;
13 providing that certain benefits are vacated upon
14 specified findings; providing an effective date.

15
16 WHEREAS, Clifford Williams was arrested on May 2, 1976, and
17 convicted of first-degree murder and first-degree attempted
18 murder on September 2, 1976, and

19 WHEREAS, Clifford Williams spent 4 years on death row
20 before the Florida Supreme Court reversed his death sentence in
21 1980, and

22 WHEREAS, Clifford Williams has maintained his innocence,
23 and

24 WHEREAS, on February 25, 2019, the Conviction Integrity
25 Review Division (CIR) for the Office of the State Attorney for
26 the Fourth Judicial Circuit issued a report and recommendation,
27 based on a comprehensive investigation spanning nearly a year,
28 in Clifford Williams' case, and

29 WHEREAS, on March 28, 2019, the Circuit Court for the

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30 Fourth Judicial Circuit granted, with the concurrence of the
31 state, a motion for postconviction relief, vacated the judgment
32 and sentence of Clifford Williams, and ordered a new trial, and

33 WHEREAS, on March 28, 2019, the state orally pronounced a
34 nolle prosequi with regard to the retrial of Clifford Williams,
35 and

36 WHEREAS, the report found that there was no credible
37 evidence of Clifford Williams' guilt, and likewise, that there
38 was substantial credible evidence of Clifford Williams'
39 innocence, and

40 WHEREAS, the Legislature acknowledges that the state's
41 system of justice yielded an imperfect result that had tragic
42 consequences in this case, and

43 WHEREAS, the Legislature acknowledges that, as a result of
44 his physical confinement, Clifford Williams suffered significant
45 damages that are unique to Clifford Williams, and such damages
46 are due to the fact that he was physically restrained and
47 prevented from exercising the freedom to which all innocent
48 citizens are entitled, and

49 WHEREAS, before his conviction for the above-mentioned
50 crimes, Clifford Williams had two prior convictions for
51 unrelated felonies, and

52 WHEREAS, because of his prior violent felony convictions,
53 Clifford Williams is ineligible for compensation under chapter
54 961, Florida Statutes, and

55 WHEREAS, the Legislature is providing compensation to
56 Clifford Williams to acknowledge the fact that he suffered
57 significant damages that are unique to Clifford Williams for
58 being wrongfully incarcerated, and

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59 WHEREAS, the CIR's comprehensive investigation of the
60 matter found verifiable and substantial evidence of Clifford
61 Williams' actual innocence of first-degree murder and first-
62 degree attempted murder, and

63 WHEREAS, the Legislature apologizes to Clifford Williams on
64 behalf of the state, NOW, THEREFORE,

65

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

67

68 Section 1. The facts stated in the preamble to this act are
69 found and declared to be true.

70 Section 2. The sum of \$2,150,000 is appropriated from the
71 General Revenue Fund to the Department of Financial Services
72 under the conditions provided in this act.

73 Section 3. The Chief Financial Officer is directed to draw
74 a warrant in the sum specified in section 2 for the purposes
75 provided in this act.

76 Section 4. The Department of Financial Services shall pay
77 the funds appropriated under this act to an insurance company or
78 other financial institution admitted and authorized to issue
79 annuity contracts in this state and selected by Clifford
80 Williams to purchase an annuity. The Chief Financial Officer
81 shall execute all necessary agreements to implement this act and
82 to maximize the benefit to Clifford Williams.

83 Section 5. Tuition and fees for Clifford Williams shall be
84 waived for up to a total of 120 hours of instruction at any
85 career center established pursuant to s. 1001.44, Florida
86 Statutes, Florida College System institution established under
87 part III of chapter 1004, Florida Statutes, or state university.

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88 For any educational benefit made, Clifford Williams must meet
89 and maintain the regular admission and registration requirements
90 of such career center, institution, or state university and make
91 satisfactory academic progress as defined by the educational
92 institution in which he is enrolled.

93 Section 6. The Chief Financial Officer shall purchase the
94 annuity as required by this act upon delivery by Clifford
95 Williams to the Chief Financial Officer, the Department of
96 Financial Services, the President of the Senate, and the Speaker
97 of the House of Representatives of a release executed by
98 Clifford Williams for himself and on behalf of his heirs,
99 successors, and assigns which fully and forever releases and
100 discharges the state and its agencies and subdivisions, as
101 defined by s. 768.28(2), Florida Statutes, from any and all
102 present or future claims or declaratory relief that Clifford
103 Williams or any of his heirs, successors, or assigns may have
104 against the state and its agencies and subdivisions, as defined
105 by s. 768.28(2), Florida Statutes, arising out of the factual
106 situation in connection with the arrest, conviction, and
107 incarceration for which compensation is awarded. Without
108 limitation on the foregoing, the release must specifically
109 release and discharge Sheriff Mike Williams of the Jacksonville
110 Sheriff's Office in his official capacity, and any current or
111 former sheriffs, deputies, agents, or employees of the
112 Jacksonville Sheriff's Office in their individual capacities,
113 from all claims, causes of action, demands, rights, and claims
114 for attorney fees or costs, of whatever kind or nature, whether
115 in law or equity, including, but not limited to, any claims
116 pursuant to 42 U.S.C. s. 1983, that Clifford Williams had, has,

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117 or might hereinafter have or claim to have, whether known or
118 not, against the Jacksonville Sheriff's Office, and Sheriff Mike
119 Williams' assigns, successors in interest, predecessors in
120 interest, heirs, employees, agents, servants, officers,
121 directors, deputies, insurers, reinsurers, and excess insurers,
122 in their official and individual capacities, and that arise out
123 of, are associated with, or are a cause of the arrest,
124 conviction, and incarceration for which compensation is awarded,
125 including any known or unknown loss, injury, or damage related
126 to or caused by the same and which may arise in the future.
127 However, this act does not prohibit declaratory action by a
128 judicial or executive branch agency, as otherwise provided by
129 law, for Clifford Williams to obtain judicial expungement of his
130 criminal history record as related to the arrest and convictions
131 for first-degree murder and first-degree attempted murder.

132 Section 7. The Legislature does not waive any defense of
133 sovereign immunity or increase the limits of liability on behalf
134 of the state or any person or entity that is subject to s.
135 768.28, Florida Statutes, or any other law.

136 Section 8. This award is intended to provide the sole
137 compensation for any and all present and future claims arising
138 out of the factual situation described in this act which
139 resulted in Clifford Williams' arrest, conviction, and
140 incarceration. There may not be any further award to include
141 attorney fees, lobbying fees, costs, or other similar expenses
142 to Clifford Williams by the state or any agency,
143 instrumentality, or political subdivision thereof, or any other
144 entity, including any county constitutional officer, officer, or
145 employee, in state or federal court.

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146 Section 9. If any future factual finding determines that
147 Clifford Williams, by DNA evidence or otherwise, participated in
148 any manner related to the death of Jeanette Williams or the
149 attempted murder of Nina Marshall, the unused benefits to which
150 Clifford Williams is entitled under this act are vacated.

151 Section 10. This act shall take effect upon becoming a law.

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 170

INTRODUCER: Criminal Justice Committee; and Senators Stewart, Perry, and Harrell

SUBJECT: Time Limitation on the Prosecution of Sexual Battery Cases

DATE: February 17, 2020 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	Fav/CS
2.	Dale	Jameson	ACJ	Recommend: Favorable
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 170 provides that there is no time limitation for prosecuting sexual battery, pursuant to section 794.011, Florida Statutes, when the victim is younger than 18 years of age at the time of the offense, and the offense was committed on or after July 1, 2020. This bill creates a new exception to the general time limitation proscribed in section 775.15, Florida Statutes.

Section 775.15, Florida Statutes, sets forth time limitations for the prosecution of crime. Prosecution is barred if it is not commenced within the time limitations provided in section 775.15, Florida Statutes. The general time limitations for the prosecution of offenses are based upon the degree of offense. This section also provides exceptions to the general time limitations. There are multiple exceptions that apply to violations of section 794.011, Florida Statutes.

This bill is effective July 1, 2020.

II. Present Situation:

Statute of Limitations

Historical Perspective

At common law, there was no time limitation under which a criminal charge was barred from prosecution. Time limitations for criminal prosecutions exist only as a creation of statute and are considered to be acts of grace by the State.¹

In *State v. Hickman*, the court stated:

The only purpose of a Statute limiting the time within which a criminal charge may be prosecuted is to protect every person from being interminably under the threat or cloud of possible criminal prosecution, which otherwise might be indefinitely delayed until the time when defense witnesses might die, disappear or otherwise become unavailable, judges would change office, or innumerable other time hazards might develop, which could conceivably defeat, or at least hamper, an otherwise good defense.²

Since the creation of statutes of limitation, courts have held that:

- Generally, the statute of limitation that was in effect when a crime was committed controls.³
- Statutes of limitation in criminal cases should be construed liberally in favor of the defendant.⁴
- The Legislature may apply time limitations retroactively without violating the ex post facto clause of the State Constitution⁵ if the Legislature makes the change before the prosecution is barred under the old statute and clearly demonstrates that the new statute applies to cases pending when the extension takes effect.⁶
- Courts have recently upheld extensions of time limitations for sexual battery when the amendment takes effect before the case was procedurally barred.⁷

¹ *State v. Hickman*, 189 So. 2d 254, 261-62 (Fla. 2d DCA 1966).

² *Id.*

³ *Beyer v. State*, 76 So.3d 1132, 1134 (Fla. 4th DCA 2012).

⁴ *Id.*

⁵ FLA. CONST. art. I, s. 10.

⁶ *Schargschwerdt v. Kanerek*, 553 So.2d 218, 220 (Fla. 4th DCA 1989), citing *Andrews v. State*, 392 So.2d 270 (Fla. 2d DCA 1980), rev. denied, 399 So.2d 114 (Fla. 1981); See also *United States v. Richardson*, 512 F. 2d 105, 106 (3rd Cir. 1975); *Smith v. State*, 213 So.3d 722, 1740 (Fla. 2017).

⁷ *Brown v. State*, 179 So. 3d 466, 468 (Fla. 4th DCA 2015) (The court affirmed the conviction for one count of sexual battery on a victim less than 16 years of age. The abuse occurred between May 1997 and July 1998. The abuse was reported November 15, 1999. The State brought charges against the defendant in 2011. The Statute of limitation in effect at the time of the offense would have barred prosecution in November 2003; however, the Legislature amended the statute of limitations in October 2003 to provide no time limitation for the offense for which the defendant was charged. Because the case was not barred at the time the amended statute of limitations went into effect, the court held that the statute of limitation was properly extended and did not violate the ex post facto clause).

Existing Provisions

Section 775.15, F.S., sets forth time limitations, also referred to as statutes of limitation, for the prosecution of crime. Prosecution is barred if it is not commenced within the time limitations provided in this section. The time limitation for prosecuting a criminal case begins to run on the day after the offense is committed, unless otherwise stated. An offense is deemed to have been committed when either every element of the offense has occurred or, if it plainly appears that the legislative purpose is to prohibit a continuing course of conduct, at the time when the course of conduct or the defendant's complicity therein is terminated.⁸

In part, s. 775.15, F.S., provides time limitations for initiating a criminal prosecution for a felony offense. The general provisions provide that there is:

- No time limitation for prosecuting a capital felony, a life felony, a felony resulting in death.⁹
- A 4-year time limitation for prosecuting a first degree felony.¹⁰
- A 3-year time limitation for prosecuting a second or third degree felony.¹¹

However, a number of exceptions to the time limitation provisions mentioned above exist. Many of these exceptions are specific to certain offenses or types of victims. Many of these exceptions apply to sexual battery, pursuant to s. 794.011, F.S. These exceptions include:

- No time limitation for prosecuting:
 - A first or second degree felony sexual battery when the victim is under 18 years of age and he or she reports the crime to law enforcement within 72 hours provided the offense was not barred from prosecution on or before December 31, 1984;¹²
 - A first degree felony sexual battery when the victim is younger than 18 years of age provided the offense was not barred from prosecution on or before October 1, 2003;¹³
 - Any felony sexual battery when the victim is younger than 16 years of age provided the offense was not barred from prosecution on or before July 1, 2010;¹⁴
 - A first or second degree felony sexual battery when the victim is 16 years of age or older and reports the crime to law enforcement within 72 hours;¹⁵
- There is an eight-year time limitation on prosecuting a first or second degree felony sexual battery when the victim is 16 years of age or older at the time of the offense provided the offense was not barred from prosecution on or before July 1, 2015, except for:
 - A first or second degree felony sexual battery when the victim is 16 years of age or older and reports the crime to law enforcement within 72 hours; or
 - A first degree felony sexual battery when the victim is younger than 18 years of age provided the offense was not barred from prosecution on or before October 1, 2003.¹⁶

⁸ Section 775.15(3), F.S.

⁹ Section 775.15(1), F.S.

¹⁰ Section 775.15(2)(a), F.S. A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹¹ Section 775.15(2)(b), F.S. A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine and a third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

¹² Section 775.15(13)(a), F.S.

¹³ Section 775.15(13)(b), F.S.

¹⁴ Section 775.15(13)(c), F.S.

¹⁵ Section 775.15(14)(a), F.S.

¹⁶ Section 775.15(14)(b), F.S.

In addition to the time periods prescribed in this section, the prosecution for specific enumerated offenses,¹⁷ including sexual battery, may be prosecuted at any time after the date on which the offender's identity is established, or should have been established through the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence collected at the time of the original investigation. The DNA sample for these prosecutions must be available for testing by the accused.¹⁸

Another exception provides that the applicable period of limitation does not begin to run until the victim of a sexual battery or other specified offense reaches the age of 18 years or the violation is reported to a law enforcement or governmental agency, whichever occurs first. This provision only applies to a victim who was younger than 18 years of age at the time of the offense.¹⁹

III. Effect of Proposed Changes:

The bill provides that there is no time limitation for prosecuting offenses of sexual battery, pursuant to s. 794.011, F.S., when the victim is younger than 18 years of age and the offense was committed on or after July 1, 2020. This creates a new exception to the general time limitations proscribed in s. 775.15, F.S.

This change is not retroactive and applies only to crimes committed on or after July 1, 2020.

The bill is effective July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

It is possible that the requirements of the bill related to time limitations may result in local fund expenditures for housing offenders in county jail, or investigating future offenses that otherwise would have been barred from prosecution. However, because any such local funding resulting from the requirements of the bill will directly relate to the defense and prosecution of criminal offenses, under Article VII, subsection 18(d) of the Florida Constitution, it appears there is no unfunded mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁷ Section 775.15(16)(a), F.S., applies these provisions to the following offenses: aggravated battery or any felony battery offense under ch. 784, F.S.; kidnapping offenses under s. 787.01, F.S., or false imprisonment offenses under s. 787.02, F.S.; sexual battery offenses under ch. 794, F.S.; lewd or lascivious offenses under s. 800.04, F.S., s. 825.1025, F.S., or s. 847.0135(5), F.S.; burglary offenses under s. 810.02, F.S.; robbery offenses under s. 812.13, F.S., s. 812.131, F.S., or s. 812.135, F.S.; carjacking offenses under s. 812.133, F.S.; or aggravated child abuse under s. 827.03, F.S.

¹⁸ Section 775.15(16)(a), F.S.

¹⁹ Section 775.15(13)(a), F.S.

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 Criminal Justice Impact Conference has not reviewed the bill at this time.

The Department of Corrections (DOC) reports that there are three sexual battery offenses against a minor victim that have a time limitation on when prosecution may proceed. Over the last three fiscal years, the DOC received a total of 120 admissions for these three offenses. This includes 95 prison commitments and 25 supervision placements.

According to the DOC, although data is not available on the number of unreported offenses that could be captured with an expanded statute of limitations, it is unlikely that the increase would be significant.²⁰

In future years, the bill may result in a negative indeterminate fiscal impact to the courts, State Attorneys, and Public Defenders due to removing the time limitations for prosecution of sexual battery offenses committed on or after July 1, 2020, against children between the ages of 16 and 18.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁰ The DOC SB 170 Agency Analysis, p. 2. Dated October 18, 2019 (on file with the Appropriations Subcommittee on Criminal and Civil Justice).

VIII. Statutes Affected:

This bill substantially amends section 775.15 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 October 22, 2019:

The committee substitute ensures that the proposed time limitations will not be applied retroactively and will only apply to crimes committed on or after July 1, 2020.

- B. **Amendments:**

None.



413116

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/19/2020	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Stewart) recommended the following:

Senate Amendment (with title amendment)

Delete lines 12 - 32

and insert:

Section 1. Paragraph (c) is added to subsection (14) of section 775.15, Florida Statutes, paragraph (b) of that subsection is amended, and subsection (2) of that section is republished, to read:

775.15 Time limitations; general time limitations; exceptions.—



413116

11 (2) Except as otherwise provided in this section,
12 prosecutions for other offenses are subject to the following
13 periods of limitation:

14 (a) A prosecution for a felony of the first degree must be
15 commenced within 4 years after it is committed.

16 (b) A prosecution for any other felony must be commenced
17 within 3 years after it is committed.

18 (c) A prosecution for a misdemeanor of the first degree
19 must be commenced within 2 years after it is committed.

20 (d) A prosecution for a misdemeanor of the second degree or
21 a noncriminal violation must be commenced within 1 year after it
22 is committed.

23 (14)

24 (b) Except as provided in paragraph (a) or paragraph
25 (13)(b), a prosecution for a first or second degree felony
26 violation of s. 794.011, if the victim is 18 ~~16~~ years of age or
27 older at the time of the offense, must be commenced within 8
28 years after the violation is committed. This paragraph applies
29 to any such offense except an offense the prosecution of which
30 would have been barred by subsection (2) on or before July 1,
31 2015.

32 (c) Except as provided in paragraph (a) or subsection (13),
33 a prosecution for a felony violation of s. 794.011, if the
34 victim was 16 years of age or older and younger than 18 years of
35 age at the time of the offense, must be commenced within 10
36 years after the violation is committed. This paragraph applies
37 to an offense that is committed on or after July 1, 2020.

38
39 ===== T I T L E A M E N D M E N T =====



413116

40 And the title is amended as follows:

41 Delete lines 4 - 7

42 and insert:

43 775.15, F.S.; revising the age of a victim of
44 specified sexual battery offenses for purposes of
45 commencing a prosecution within a specified time;
46 providing that a prosecution must be commenced within
47 a certain time after a specified sexual battery
48 offense occurs against a victim of a specified age at
49 the time the offense was committed;



2020 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Corrections

<u>BILL INFORMATION</u>	
BILL NUMBER:	SB 170
BILL TITLE:	Time Limitation on the Prosecution of Sexual Battery Cases
BILL SPONSOR:	Senator Stewart
EFFECTIVE DATE:	July 1, 2020

<u>COMMITTEES OF REFERENCE</u>
1) Criminal Justice
2) Appropriations Subcommittee on Criminal and Civil Justice
3) Appropriations
4)
5)

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

<u>CURRENT COMMITTEE</u>

<u>SIMILAR BILLS</u>	
BILL NUMBER:	HB 69
SPONSOR:	Representative Davis

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

<u>Is this bill part of an agency package?</u>
No.

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	October 18, 2019
LEAD AGENCY ANALYST:	Michelle Palmer
ADDITIONAL ANALYST(S):	Linda Postorino
LEGAL ANALYST:	Steven J. Zuilkowski
FISCAL ANALYST:	Sharon McNeal

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill amends s. 775.15, F.S., the statute of limitations, to authorize the prosecution of any sexual battery in violation of s. 794.011, F.S., where the victim is a minor to be commenced at any time. Provides an effective date of July 1, 2020.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The United States Supreme Court has stated that, "The purpose of a statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the legislature has decided to punish by criminal sanctions. Such a limitation is designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past. Such a time limit may also have the salutary effect of encouraging law enforcement officials promptly to investigate suspected criminal activity." (*Toussie v United States*).

Florida's statute of limitations is s.775.15, F.S. There is no statute of limitations for capital or life felonies, or crimes that result in death. There is no statute of limitations for most violations of s. 794.011, F.S., sexual battery, against minor victims. For violations of s. 794.011, F.S., involving victims who are minors, the limitations period begins when the victim turns 18 or when the crime is reported, whichever is earlier. If the sexual battery is a first or second degree felony, and the crime is reported within 72 hours, there is no statute of limitations.

2. EFFECT OF THE BILL:

The bill amends s. 775.15, F.S., to remove the statute of limitations for all sexual battery offenses in violation of s. 794.011, F.S., when the victim is a minor. This will allow prosecutions of these crimes to commence at any time. This change applies to any such offense except one already time-barred on or before July 1, 2020. The change is retroactive to previously committed offenses, provided that the statute of limitations did not run out prior to July 1, 2020.

Three sexual battery offenses against a minor victim have a time limitation on when prosecution may proceed. Over the last three fiscal years, the Florida Department of Corrections (FDC or Department) has received a total of 120 admissions for these 3 sexual battery offenses, 95 prison commitments and 25 supervision placements. Data is not available on the number of unreported offenses that could be captured in an expanded statute of limitation, but given the number of past admissions it is unlikely that the increase would be significant. It is also unknown how many additional future prosecutions might be enabled under the new time limits. Given the lack of information about unreported past crimes or future prosecutions, the impact is indeterminate

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:	Unknown
Opponents and summary of position:	Unknown

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:	Overall inmate and community supervision fiscal impact is 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.	Based on the analysis received, technology 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

N/A.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	N/A.
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THE FLORIDA SENATE
APPEARANCE RECORD

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

2-18-20

Meeting Date

SB 170

Bill Number (if applicable)

413716

Amendment Barcode (if applicable)

Topic TIME LIMIT

Name MICHAEL CRASS

Job Title LIEUTENANT

Address 2500 W. COLONIAL DR
Street

Phone 321-436-4447

ORLANDO
City

FL
State

32824
Zip

Email _____

Speaking: For Against Information

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

Representing ORANGE COUNTY Sheriff

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/10/2020
Meeting Date

SB170
Bill Number (if applicable)

41316
Amendment Barcode (if applicable)

Topic Time limit prosecution sexual battery

Name Kattina Duesterhaus

Job Title owner

Address 970 SW Palm Cove Dr.

Phone 772-267-6353

Palm City FL 34996
City State Zip

Email kattduesterhaus@gmail.com

Speaking: For Against Information

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

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/20

Meeting Date

SB 170

Bill Number (if applicable)

413116

Amendment Barcode (if applicable)

Topic Amendment to limit time frame for prosecution

Name Lori Wright

Job Title Business Owner

Address 4223 Rocky Ridge Pl

Street

Phone 407-314-9938

Sanford

City

FL

State

32773

Zip

Email Lori@twiservices.com

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-18-20

Meeting Date

SB170

Bill Number (if applicable)

Topic Time Limitation on the Prosecution of Sexual Battery

413116

Amendment Barcode (if applicable)

Name Terese Lansell

Job Title Estate Sale Specialist

Address 1777 Seville St.

Phone 352-391-4365

Street

Clermont FL

34711

City

State

Zip

Email terelan0913@yahoo.com

Speaking: For Against Information

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

Representing myself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

18 Feb 2020
Meeting Date

~~SB~~ SB 170
Bill Number (if applicable)

Topic Time limit for prosecution of sexual

4-13116
Amendment Barcode (if applicable)

Name Kim Jamil

Battery

Job Title —

Address 907 E. Hunter Rd

Phone 813 765 9299

Plant City FL 33515
City State Zip

Email arnowife@gmail.com

Speaking: For Against Information

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

Representing Self self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2-12-20
Meeting Date

SB 170
~~SB 170~~
Bill Number (if applicable)

Topic Amendment to limit time frame for prosecution A 413116
Amendment Barcode (if applicable)

Name Donna Hedrick

Job Title Dental Hygienist

Address 5368 Hawford Circle
Street
Belle Meade, FL 32812
City State Zip

Phone 407-694-4656

Email donna.hedrick56@hotmail.com

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

18 Feb 2020
Meeting Date

CS/SB 170
Bill Number (if applicable)

Topic Sexual Battery Amendment Barcode (if applicable)

Name Melina Rayna Svanhild Farley Barratt

Job Title Legislative Director

Address 9689 SE 69 Ter Phone 352-226-7477
Street

Trenton FL 32693 Email _____
City State Zip

Speaking: For Against Information

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

Representing FL NOW

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/2020

Meeting Date

SB 170

Bill Number (if applicable)

Topic timelimit prosecution of sexual battery
in support of Donna's Law (statute, sexual battery) Amendment Barcode (if applicable)

Name Katrina Duesterhaus

Job Title owner

Address 970 SW Palm Cove Dr.

Phone 72.267.6353

Street

Palm City

FL

34990

Email katduesterhaus@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/20

Meeting Date

SB170

Bill Number (if applicable)

Topic Statue of limitations Timeline

~~SB170~~

Amendment Barcode (if applicable)

Name Lori Wright

Job Title Business Owner

Address 4223 Rocky Ridge Pl

Phone 407-314-9938

Street

Sanford

City

FL

State

32773

Zip

Email lori@twiservices.com

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-18-20

Meeting Date

SB 170

Bill Number (if applicable)

Topic Time Limitation on the Prosecution of Sexual Battery Amendment Barcode (if applicable)
Name Teresa Lansell

Job Title Estate Sale Specialist

Address 1777 Settle St.
Street

Phone 352-391-4365

Clermont FL 34711
City State Zip

Email terlan0913@yahoo.com

Speaking: For Against Information

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

Representing myself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

9-18-2020
Meeting Date

SB170
Bill Number (if applicable)

Topic Statute of Limitations Timeline

Amendment Barcode (if applicable)

Name Donna Hedrick

Job Title Dental Hygienist

Address 5368 Hawford Circle

Phone 407-694-4656

Belle Meade, FL 32812
City State Zip

Email donnaledrick54@hotmail.com

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

18 Feb 2020

Meeting Date

SB 170

Bill Number (if applicable)

Topic Time Limitation on the Prosecution of

Amendment Barcode (if applicable)

Name Kim Jarne

Sexual Battery

Job Title _____

Address 907 E. Hunter Rd

Phone 813-765-9299

Street

Plant City

FL

33565

City

State

Zip

Email arncowife@gmail.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

18 February 20

Meeting Date

170

Bill Number (if applicable)

Topic Time Limitation Prosecution of Sexual Battery

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title Lobbyist

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/18/2020
Meeting Date

SB 170
Bill Number (if applicable)

Topic Donna's Law For Sexual Battery
Name Kim Porteous
Job Title President of FL NOW
Address 6616 Crenshaw Dr.
Orlando FL 32835

Time Limit

Amendment Barcode (if applicable)

Phone 706-669-8192

Email Kim4FLNOW@

Speaking: For Against Information

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

Representing Volunteer For FL NOW

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2.18.20

Meeting Date

SB 170

Bill Number (if applicable)

Topic Time Limitation on Prosecution of Sexual Battery

Amendment Barcode (if applicable)

Name Jodi Stevens

Job Title Director of Government Affairs

Address 645 Philips Industrial Hwy

Phone _____

Street

Jacksonville FL 32256

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Pace Center for Girls

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/2020
Meeting Date

58170
Bill Number (if applicable)

Topic SOL

Amendment Barcode (if applicable)

Name GAIL GARDNER

Job Title RETIRED EDUCATOR

Address 1028 CRESTWOOD COMMONS AVE
Street

Phone 321-202-0288

OCFEE FL 34761
City State Zip

Email Gail.f.gardner@gmail.com

Speaking: For Against Information

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

Representing RAIN N

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2-18-20

Meeting Date

170

Bill Number (if applicable)

Topic TIME LIMIT

Amendment Barcode (if applicable)

Name MICHAEL CRABB

Job Title LIEUTENANT

Address 2500 W. COLONIAL DR

Phone 321-436-4447

Street

MICHAEL CRABB

OR

FL

32804

Email @ocr.net

City

State

Zip

Speaking: For Against Information

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

Representing ORANGE COUNTY SHERIFF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

By the Committee on Criminal Justice; and Senators Stewart and Perry

591-00982-20

2020170c1

1 A bill to be entitled

2 An act relating to the time limitation on the
3 prosecution of sexual battery cases; amending s.
4 775.15, F.S.; providing that a prosecution may be
5 commenced at any time for specified sexual battery
6 offenses against victims who were younger than a
7 certain age at the time the offense was committed;
8 providing applicability; providing an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Subsection (20) is added to section 775.15,
13 Florida Statutes, and subsection (2) of that section is
14 republished, to read:

15 775.15 Time limitations; general time limitations;
16 exceptions.—

17 (2) Except as otherwise provided in this section,
18 prosecutions for other offenses are subject to the following
19 periods of limitation:

20 (a) A prosecution for a felony of the first degree must be
21 commenced within 4 years after it is committed.

22 (b) A prosecution for any other felony must be commenced
23 within 3 years after it is committed.

24 (c) A prosecution for a misdemeanor of the first degree
25 must be commenced within 2 years after it is committed.

26 (d) A prosecution for a misdemeanor of the second degree or
27 a noncriminal violation must be commenced within 1 year after it
28 is committed.

29 (20) If a victim was younger than 18 years of age at the

591-00982-20

2020170c1

30 time the offense was committed, a prosecution for a violation of
31 s. 794.011 may be commenced at any time. This subsection applies
32 to an offense that is committed on or after July 1, 2020.

33 Section 2. This act shall take effect July 1, 2020.

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/CS/SB 652 (850900)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice; Criminal Justice Committee; and Senator Pizzo

SUBJECT: Urban Core Gun Violence Task Force

DATE: February 20, 2020 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Dale</u>	<u>Jameson</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 652 creates a 10-member task force within the Florida Department of Law Enforcement (FDLE). The Urban Core Gun Violence Task Force (Task Force) is tasked with investigating system failures and the causes of high crime rates and gun violence incidents in urban core neighborhoods and communities.

Also, the bill requires the Task Force to develop recommendations for solutions, programs, services, and strategies for improved interagency communications between local and state government agencies which will help facilitate the reduction of crime and gun violence in urban core neighborhoods and communities.

The section of law creating the task force is repealed on December 31, 2023.

The bill also creates the Florida Firearm Violence Reduction Pilot Program within FDLE to support effective firearm violence reduction initiatives in counties that are disproportionately impacted by firearm violence. Specifically, the bill:

- Establishes an application process and eligibility requirements;
- Requires FDLE, subject to an appropriation in the General Appropriations Act, to use program funds to provide grants for up to six counties to implement the pilot program;
- Requires counties to match funds requested from the department;

- Requires FDLE to evaluate the effectiveness of the pilot program by measuring firearm violence reduction in the participating counties and reporting data to the Governor and Legislature annually; and
- Provides the pilot program expires on June 30, 2023.

The FDLE reports that, based on the number of hours committed by the FDLE to the Marjory Stoneman Douglas Commission for similar support efforts, it expects total expenditures including travel and per diem of \$414,183 to support the Task Force. See Section V.

The bill is effective July 1, 2020.

II. Present Situation:

In American urban centers with significant minority populations, like New Orleans, Detroit, and Baltimore, the homicide rate is up to 10 times higher than the national average—between 30 and 40 murders per 100,000 people.¹ One study calculated that young black men living in a high-crime area of Rochester, NY, had a murder rate of 520 per 100,000, over 100 times higher than the national average.² Firearm homicide is the leading cause of death for black males ages 15–34.³

Urban cores can be defined as areas that have high population densities (7,500 or more per square mile or 2,900 per square kilometer or more) and high transit, walking and cycling work trip market shares (20 percent or more). Urban cores also include non-exurban sectors with median house construction dates of 1945 or before.⁴

A study of adolescents participating in an urban violence intervention program showed that 26 percent of participants had witnessed a person being shot and killed, while half had lost a loved one to gun violence. The impact of this is compounded because exposure to firearm violence—being shot, being shot at, or witnessing a shooting—doubles the probability that a young person will commit a violent act within two years.⁵

Crime statistics collected from law enforcement agencies and compiled by the FDLE isolate for “gun violence” but not specifically for “urban core.” However, because the data is submitted by individual agencies, one can look at data from larger cities’ police or sheriff departments and assume that at least a part of those statistics come from an “urban core.” Having this limitation in mind, the following 2018 data provides examples of how much “gun violence” occurs in the “urban core” of these locations.

¹ Giffords Law Center to Prevent Gun Violence, *Healing Communities in Crisis, Lifesaving Solutions to the Urban Gun Violence Epidemic*, p. 11, available at <https://lawcenter.giffords.org/wp-content/uploads/2019/01/Healing-Communities-in-Crisis.pdf> (last visited January 23, 2020).

² *Id.* at 12.

³ *Id.*

⁴ Wendell Cox, *Urban Cores, Core Cities and Principal Cities*, *Newgeography*, August 1, 2014, available at <http://www.newgeography.com/content/004453-urban-cores-core-cities-and-principal-cities> (last visited January 23, 2020).

⁵ *Id.*

Agency	Population in Agency Jurisdiction	2018 Total Firearm Involved Violent Crimes and Manslaughter
Miami – Dade Police	1,203,732	2,068
Jacksonville Sheriff’s Office	908,512	2,695
Tampa Police Department	378,531	585
Orlando Police Department	285,099	611
From FDLE Florida Index Crime by Jurisdiction, Total Reported Firearm-Involved Violent Crimes and Manslaughter in Florida, by Offense and Jurisdiction, 2018. ⁶		

III. Effect of Proposed Changes:

Urban Core Gun Violence Task Force

The bill creates a task force within the FDLE at s. 943.6872, F.S. The Urban Core Gun Violence Task Force is created pursuant to s. 20.03, F.S., and must comply with the requirements of s. 20.052, F.S. The Task Force is created for the purposes of:

- Investigating system failures and the causes of high crime rates and gun violence incidents in urban core neighborhoods and communities;⁷ and
- Developing recommendations for solutions, programs, services, and strategies for improved interagency communications between local and state government agencies which will help facilitate the reduction of crime and gun violence in urban core neighborhoods and communities.

The Task Force will convene no later than September 1, 2020, and will be comprised of 10 members who will serve at the pleasure of the officer who appointed him or her. At least five of the members shall be women and at least six of the members shall be members of racial minority groups. The appointments will be made as follows:

- Two members will be appointed by the President of the Senate;
- Two members will be appointed by the Minority Leader of the Senate;
- Two members will be appointed by the Speaker of the House of Representatives;
- Two members will be appointed by the Minority Leader of the House of Representatives; and
- Two members will be appointed by the Governor.

The Governor will appoint the Chair from among the 10 members.

The General Counsel of the FDLE will serve as the general counsel for the task force. Additionally, the chair of the Task Force will assign staff from the FDLE and the Department of Juvenile Justice (DJJ) to assist the Task Force in performing its duties.

The Task Force will meet on a quarterly basis or as necessary to conduct its work at the call of the chair and at a time designated by him or her at a location in the state. It will submit an initial report on its findings and recommendations to the Governor, the President of the Senate, and the

⁶ FDLE Florida Index Crime by Jurisdiction, Total Reported Firearm-Involved Violent Crimes and Manslaughter in Florida, by Offense and Jurisdiction, 2018, available at <https://www.fdle.state.fl.us/FSAC/Data-Statistics/UCR-Offense-Data.aspx> (last viewed January 23, 2020).

⁷ The term “urban core neighborhoods and communities” is not defined in the bill.

Speaker of the House of Representatives by January 1, 2021, and may issue reports annually thereafter.

The Task Force may not conduct its meetings through teleconferences or other similar means. Members of the task force are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 20.052, F.S.

The Task Force is given the authority to request professional assistance from appropriate state agencies in the discharge of its duties. The bill requires those state agencies to provide any requested assistance in a timely manner.

The bill specifies that, notwithstanding any other law to the contrary, the Task Force may request and shall be provided with access to *any information or records* that pertain to crime and gun violence incidents in this state's urban core neighborhoods and communities. The bill recognizes that some amount of the information or records requested by the Task Force may be otherwise exempt or confidential and exempt. The bill states that the information or records shall retain such exempt or confidential and exempt status, and that the Task Force may not disclose any such information or records.⁸

Section 943.6872, F.S., the section of law created by the bill, is repealed on December 31, 2023.⁹

Florida Firearm Violence Reduction Pilot Program

The bill creates the Florida Firearm Violence Reduction Pilot Program within FDLE to support effective firearm violence reduction initiatives in counties that are disproportionately impacted by firearm violence.

A county that is disproportionately impacted by firearm violence has experienced:

- Twenty or more firearm related homicides per calendar year during two or more of the three calendar years immediately preceding the pilot program application; or
- Ten or more firearm related homicides per calendar year and had a homicide rate that was at least 50 percent higher than the statewide homicide rate during two or more of the three calendar years immediately preceding the pilot program application.

The bill requires a county interested in participating in the pilot program to apply to FDLE. The application must include:

- A statement indicating that the county is disproportionately impacted by firearm violence;
- Information related to the impact of firearm violence in the county within the previous three years;

⁸ Note that any discussion at an open meeting of the Task Force related to the protected information or records would likely violate the exempt or confidential or exempt status of the information or reports. However, SB 1802, the public meetings exemption bill linked to this bill would preserve the exempt or confidential and exempt status of the information or reports.

⁹ According to s. 20.03(8), F.S., under which the Task Force is created, the lifespan of the Task Force is 3 years. This date would be June 30, 2023. Because s. 20.03(8), F.S., also states that a task force's existence terminates upon the completion of its assignment, if it has not completed any final report by June 30, 2023, presumably the Members of the Task Force could continue to work on the report until it is complete, but certainly no later than December 31, 2025, when the section of law creating the Task Force is repealed.

- A description of:
 - The evidence-based firearm violence reduction model the county will utilize during the program period;
 - The program implementation organization¹⁰ the county will consult to develop and implement the program;
 - Any public or private organization the county intends to collaborate with to provide services;
 - The criteria the county will use to identify eligible participants; and
 - The county's strategy to coordinate the evidence-based firearm violence reduction model and any existing violence prevention and intervention programs to minimize duplication of services.

Subject to an appropriation in the General Appropriations Act, FDLE is required to use program funds to provide grants for up to six counties to implement the pilot program. Each county must match grant funds requested from FDLE with \$1 for every \$1 requested. FDLE will determine the appropriate grant amount awarded to each county based on the pilot program eligibility requirements and other needs-based criteria established by FDLE.

Each pilot program county must appoint a program steering committee to collaborate with a program implementation organization to implement an appropriate evidence-based firearm violence reduction model.

To maintain eligibility for participation in the program, each county must submit an annual report to FDLE. The bill requires FDLE to evaluate the effectiveness of the pilot program by measuring firearm violence reduction in participating counties and report data to the Governor and Legislature annually.

The pilot program expires June 30, 2023.

The bill is effective July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁰ A program implementation organization is an organization with experience implementing an evidence-based firearm violence reduction strategy including providing training, collecting and analyzing data, and conducting program evaluations.

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 FDLE reports that, based on the number of hours committed by the FDLE to the Marjory Stoneman Douglas Commission (MSD) for similar support efforts, it expects total expenditures to support the Task Force as follows:¹¹

- Expenditures include per diem and travel expenses pursuant to s. 112.061 F.S. This amount cannot be quantified since the amount of travel and per diem is indeterminate until the expenses are incurred; however, FDLE's estimated costs are \$51,040.
- If the task force meets quarterly, average expenses for meeting travel would be \$638 per person (\$150 (lodging) + \$36 (meals) x 3 days = \$558 + \$80 per diem = \$638). Annual travel costs for four meetings for 10 task force members and 10 staff members = \$51,040 (\$638 x 20 = \$12,760 x 4 meetings/year = \$51,040).
- Based on hours committed by FDLE members to the MSD Commission this calendar year for similar support efforts, FDLE requires five FTE positions including three Government Analyst II and two Government Analyst I totaling \$363,143 (\$343,668 recurring).
- Total Fiscal: \$414,183 (\$394,708 recurring)

The bill allows the chair of the Task Force to assign staff from the DJJ to assist the Task Force in performing its duties. DJJ states that any research or consultation DJJ is required to provide would increase the workload on DJJ staff. There is no specific expected fiscal impact from the bill attached to the potential increased workload.¹²

Subject to an appropriation in the General Appropriations Act, the bill requires FDLE to use program funds to provide grants for up to six counties to implement the pilot

¹¹ 2020 FDLE Legislative Bill Analysis, October 2019. (On file with the Senate Criminal Justice Committee).

¹² 2020 Agency Legislative Bill Analysis, Department of Juvenile Justice, December 30, 2019. (On file with the Senate Criminal Justice Committee).

program. Each county must match grant funds requested from FDLE with \$1 for every \$1 requested. This grant program is not currently funded in SB 2500, the Senate's General Appropriation Bill for Fiscal Year 2020-2021.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 943.6872 and 943.6873.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on February 18, 2020:

The committee substitute:

- Amends the repeal date for the Task Force;
- Removes the requirement in the underlying bill that at least five of the task force members must be women and at least six must be members of racial minority groups; and
- Creates the Florida Firearm Violence Reduction Pilot Program within the FDLE to support effective firearm violence reduction initiatives in counties that are disproportionately impacted by firearm violence.

CS by Criminal Justice on January 28, 2020

The committee substitute:

- Creates s. 943.6872, F.S., a new section of law.
- Clarifies that the Urban Core Gun Violence Task Force, an advisory body, will comply with the requirements of s. 20.052, F.S.
- Removes reference in the bill to members' per diem, because s. 20.052(4)(d), F.S., specifies that members of the advisory body are authorized to receive per diem.
- Removes the Task Force's authorization to investigate and delegate authority to its investigators to administer oaths and affirmations.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2020	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Pizzo) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 943.6872, Florida Statutes, is created
to read:

943.6872 Urban Core Gun Violence Task Force.-

(1) The Urban Core Gun Violence Task Force, a task force as
defined in s. 20.03, is created within the Department of Law
Enforcement. Except as otherwise provided in this section, the



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11 task force shall comply with the requirements of s. 20.052.

12 (2) (a) The 10-member task force shall convene no later than
13 September 1, 2020, and must be composed of two members appointed
14 by each of the following: the President of the Senate, the
15 Minority Leader of the Senate, the Speaker of the House of
16 Representatives, the Minority Leader of the House of
17 Representatives, and the Governor. Appointments must be made by
18 August 1, 2020. The Governor shall appoint a chair from among
19 the members. Members serve at the pleasure of the officer who
20 appointed them. A vacancy on the task force must be filled in
21 the same manner as the original appointment.

22 (b) The General Counsel of the Department of Law
23 Enforcement shall serve as the general counsel for the task
24 force.

25 (c) The chair shall assign staff from the Department of Law
26 Enforcement and the Department of Juvenile Justice to assist the
27 task force in performing its duties.

28 (d) The task force shall meet on a quarterly basis or at
29 the call of the chair, as necessary to conduct its work, at a
30 time and location in this state designated by the chair. The
31 task force may not conduct its meetings through teleconferences
32 or other similar means.

33 (3) The task force shall investigate system failures and
34 the causes of high crime rates and gun violence incidents in
35 urban core neighborhoods and communities. In addition, the task
36 force shall develop recommendations for solutions, programs,
37 services, and strategies for improved interagency communications
38 between local and state government agencies which will help
39 facilitate the reduction of crime and gun violence in urban core



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40 neighborhoods and communities.

41 (4) The task force may call upon appropriate state
42 government agencies for such professional assistance as may be
43 needed in the discharge of its duties, and such agencies shall
44 provide such assistance in a timely manner.

45 (5) Notwithstanding any other law to the contrary, the task
46 force may request and shall be provided with access to any
47 information or records that pertain to crime and gun violence
48 incidents in this state's urban core neighborhoods and
49 communities. Information or records obtained by the task force
50 which are otherwise exempt or confidential and exempt shall
51 retain such exempt or confidential and exempt status, and the
52 task force may not disclose any such information or records.

53 (6) The task force shall submit an initial report on its
54 findings and recommendations to the Governor, the President of
55 the Senate, and the Speaker of the House of Representatives by
56 January 1, 2021, and may issue reports annually thereafter.

57 (7) This section is repealed on June 30, 2023.

58 Section 2. Section 943.6873, Florida Statutes, is created
59 to read:

60 943.6873 Florida Firearm Violence Reduction Pilot Program.-

61 (1) CREATION.-Beginning July 1, 2020, the Florida Firearm
62 Violence Reduction Pilot Program is created within the
63 department for a period of 3 years. The purpose of the pilot
64 program is to improve public health and safety by supporting
65 evidence-based firearm violence reduction models in counties
66 that are disproportionately impacted by firearm violence.

67 (2) DEFINITIONS.-As used in this section, the term:

68 (a) "Disproportionately impacted by firearm violence" means



69 the county experienced 20 or more firearm-related homicides per
70 calendar year during at least 2 of the 3 calendar years
71 immediately preceding the application, or the county experienced
72 at least 10 firearm-related homicides per calendar year and had
73 a homicide rate that was at least 50 percent higher than the
74 statewide homicide rate during at least 2 of the 3 calendar
75 years immediately preceding the application.

76 (b) "Evidence-based firearm violence reduction model" means
77 a program, proven through empirical evidence, to reduce firearm
78 violence through focused deterrence or recidivism reduction
79 strategies.

80 (c) "Program implementation organization" means an
81 organization with experience implementing an evidence-based
82 firearm violence reduction model including providing training,
83 collecting and analyzing data, and conducting program
84 evaluations.

85 (3) ELIGIBILITY REQUIREMENTS; APPLICATIONS.-To be eligible
86 to participate in the pilot program, a county must submit an
87 application in a form prescribed by the department by October 1,
88 2020. At a minimum, the application must include:

89 (a) A statement and any empirical evidence indicating that
90 the county is disproportionately impacted by firearm violence or
91 otherwise demonstrating the county's compelling need for
92 additional resources to address the impact of firearm violence.

93 (b) A statement of the estimated fiscal impact of firearm
94 violence in the county including the costs incurred by the
95 county investigating, prosecuting, incarcerating, and treating
96 individuals related to firearm violence in the 3 calendar years
97 immediately preceding the application.



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98 (c) A description of the evidence-based firearm violence
99 reduction model the county will implement during the pilot
100 program. A county must implement one of the following evidence-
101 based firearm violence reduction models: the Group Violence
102 Intervention program, the Cure Violence program, or a hospital-
103 based violence intervention program.

104 (d) A statement identifying a program implementation
105 organization the county will consult to implement the evidence-
106 based firearm violence reduction model and a description of the
107 organization's experience implementing such programs.

108 (e) A description of any public or private organization the
109 county intends to collaborate with to provide services. Such
110 organizations may include faith-based service groups that offer
111 community support services including, but not limited to,
112 substance abuse counseling, mental health counseling, housing
113 support programs, and employment support programs.

114 (f) A description of the criteria the county will use to
115 identify eligible participants. A participant must be an
116 individual who has been identified as being at a high risk for
117 becoming a victim or perpetrator of firearm violence.

118 (g) A statement describing how the county proposes to
119 coordinate the evidence-based firearm violence reduction model
120 and any existing violence prevention and intervention programs
121 operating in the county to minimize duplication of services.

122 (4) DEPARTMENT DUTIES.-

123 (a) The department shall develop and make available an
124 application form to be used by counties seeking to participate
125 in the pilot program.

126 (b) Subject to an appropriation in the General



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127 Appropriations Act, the department shall use program funds to
128 provide grants for up to six counties to implement the pilot
129 program. Each county must meet the eligibility and application
130 requirements provided in subsection (3). The department may
131 develop other needs-based criteria for pilot program selection
132 and to determine the appropriate grant amount to award to each
133 county based on such needs-based criteria.

134 (c) The department shall evaluate the effectiveness of the
135 pilot program by measuring firearm violence reduction in the
136 participating counties. The department shall compile the
137 information required under subsection (5), and by June 30, 2022,
138 and each June 30 thereafter, submit a report to the Governor,
139 the President of the Senate, and the Speaker of the House of
140 Representatives on the impact of the pilot program. The
141 department shall publish the report on its website.

142 (d) The department may adopt rules to administer this
143 section.

144 (5) DUTIES OF PARTICIPATING COUNTIES.-

145 (a) Each county participating in the pilot program must
146 contribute \$1 for every \$1 requested from the department. All
147 funds, whether provided by the county or by the department, must
148 be used to implement the pilot program.

149 (b) Each county participating in the pilot program shall
150 appoint a program steering committee which must, at a minimum,
151 include one representative from each law enforcement agency
152 located in the county. The program steering committee shall
153 collaborate with a program implementation organization to
154 implement an appropriate evidence-based firearm violence
155 reduction model.



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156 (c) To maintain its eligibility for participation in the
157 pilot program, a county must report to the department by January
158 1, 2022, and each January 1 thereafter, in a format prescribed
159 by the department, the following information:

160 1. A description of the evidence-based firearm violence
161 reduction model utilized.

162 2. A description of program strategies used to attract and
163 retain participants.

164 3. A description of the type and quantity of services
165 provided to participants.

166 4. The total number of participants served and the
167 demographic characteristics of participants.

168 5. A description of how the services provided improved
169 participant outcomes, including, but not limited to:

170 a. Any change in participants' employment status or
171 educational attainment level.

172 b. Any change in the frequency of arrests experienced by
173 participants.

174 c. Any change in the frequency of victimizations
175 experienced by participants.

176 6. Any change in the frequency or severity of firearm
177 violence experienced by the county, including any increase or
178 reduction in the number of:

179 a. Firearm-related arrests.

180 b. Firearm-related injuries.

181 c. Other firearm-related law enforcement calls for service.

182 7. The period for which the data submitted was collected,
183 aggregated, and analyzed.

184 (6) EXPIRATION.-This section expires June 30, 2023.



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185 Section 3. This act shall take effect July 1, 2020.

186

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

188 And the title is amended as follows:

189 Delete everything before the enacting clause
190 and insert:

191 A bill to be entitled
192 An act relating to gun violence reduction; creating s.
193 943.6872, F.S.; creating the Urban Core Gun Violence
194 Task Force; requiring the task force to comply with
195 specified requirements; providing for membership;
196 providing for staff support; providing requirements
197 for meetings; specifying duties and powers of the task
198 force; authorizing the task force to seek assistance
199 from state agencies; providing for access to certain
200 information and records; requiring an initial report;
201 authorizing annual reports; providing for repeal of
202 the task force; creating s. 943.6873, F.S.; creating
203 the Florida Firearm Violence Reduction Pilot Program;
204 providing the purpose of the pilot program; providing
205 definitions; providing program eligibility and
206 application requirements; authorizing the Department
207 of Law Enforcement to provide grants to a specified
208 number of counties to implement the pilot program,
209 subject to appropriation; requiring the department to
210 evaluate the effectiveness of the pilot program,
211 submit an annual report to the Governor and
212 Legislature, and publish the report on its website;
213 authorizing the department to adopt rules; requiring



214 each county participating in the pilot program to
215 appoint a program steering committee to implement an
216 evidence-based firearm violence reduction model and to
217 submit an annual report to the department; providing
218 requirements for the report; providing for expiration
219 of the pilot program;; providing an effective date.



The Florida Senate

Committee Agenda Request

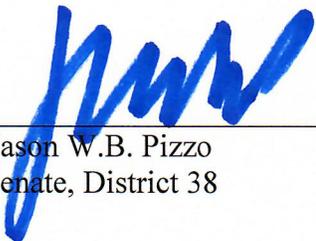
To: Senator Jeff Brandes, Chair
Appropriations Subcommittee on Criminal and Civil Justice

Subject: Committee Agenda Request

Date: January 30, 2020

I respectfully request that **CS/SB 652**, relating to Urban Core Gun Violence Task Force, be placed on the:

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



Senator Jason W.B. Pizzo
Florida Senate, District 38

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/2020
Meeting Date

652
Bill Number (if applicable)

Topic gun violence Task Force

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title _____

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing ~~Organize~~ Organize Florida + New Florida Majority

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

By the Committee on Criminal Justice; and Senator Pizzo

591-02747-20

2020652c1

1 A bill to be entitled
2 An act relating to the Urban Core Gun Violence Task
3 Force; creating s. 943.6872, F.S.; creating the Urban
4 Core Gun Violence Task Force; requiring the task force
5 to comply with specified requirements; providing for
6 membership; providing for staff support; providing
7 requirements for meetings; specifying duties and
8 powers of the task force; authorizing the task force
9 to seek assistance from state agencies; providing for
10 access to certain information and records; requiring
11 an initial report; authorizing annual reports;
12 providing for repeal of the task force; providing an
13 effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Section 943.6872, Florida Statutes, is created
18 to read:

19 943.6872 Urban Core Gun Violence Task Force.—

20 (1) The Urban Core Gun Violence Task Force, a task force as
21 defined in s. 20.03, is created within the Department of Law
22 Enforcement. Except as otherwise provided in this section, the
23 task force shall comply with the requirements of s. 20.052.

24 (2) (a) The 10-member task force shall convene no later than
25 September 1, 2020, and must be composed of 2 members appointed
26 by each of the following: the President of the Senate, the
27 Minority Leader of the Senate, the Speaker of the House of
28 Representatives, the Minority Leader of the House of
29 Representatives, and the Governor. Appointments must be made by

591-02747-20

2020652c1

30 August 1, 2020. The Governor shall appoint a chair from among
31 the members. Members serve at the pleasure of the officer who
32 appointed them. A vacancy on the task force must be filled in
33 the same manner as the original appointment. At least five of
34 the task force members must be women and at least six must be
35 members of racial minority groups.

36 (b) The General Counsel of the Department of Law
37 Enforcement shall serve as the general counsel for the task
38 force.

39 (c) The chair shall assign staff from the Department of Law
40 Enforcement and the Department of Juvenile Justice to assist the
41 task force in performing its duties.

42 (d) The task force shall meet on a quarterly basis or at
43 the call of the chair, as necessary to conduct its work, at a
44 time and location in this state designated by the chair. The
45 task force may not conduct its meetings through teleconferences
46 or other similar means.

47 (3) The task force shall investigate system failures and
48 the causes of high crime rates and gun violence incidents in
49 urban core neighborhoods and communities. In addition, the task
50 force shall develop recommendations for solutions, programs,
51 services, and strategies for improved interagency communications
52 between local and state government agencies which will help
53 facilitate the reduction of crime and gun violence in urban core
54 neighborhoods and communities.

55 (4) The task force may call upon appropriate state
56 government agencies for such professional assistance as may be
57 needed in the discharge of its duties, and such agencies shall
58 provide such assistance in a timely manner.

591-02747-20

2020652c1

59 (5) Notwithstanding any other law to the contrary, the task
60 force may request and shall be provided with access to any
61 information or records that pertain to crime and gun violence
62 incidents in this state's urban core neighborhoods and
63 communities. Information or records obtained by the task force
64 which are otherwise exempt or confidential and exempt shall
65 retain such exempt or confidential and exempt status, and the
66 task force may not disclose any such information or records.

67 (6) The task force shall submit an initial report on its
68 findings and recommendations to the Governor, the President of
69 the Senate, and the Speaker of the House of Representatives by
70 January 1, 2021, and may issue reports annually thereafter.

71 (7) This section is repealed on December 31, 2025.

72 Section 2. This act shall take effect July 1, 2020.

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/SB 790 (226652)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice and Senator Brandes

SUBJECT: Clerks of the Circuit Court

DATE: February 20, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Elsesser</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Dale</u>	<u>Jameson</u>	<u>ACJ</u>	Recommend: Fav/CS
3.	_____	_____	<u>AP</u>	_____

I. Summary:

PCS/SB 790 provides that the clerks of court must remit certain fees to the Department of Revenue only if those fees are collected for performing “court-related” functions, and allows the clerks to retain certain fees collected for performing “county-related” functions.

The bill also requires clerks to remit the Department of Revenue \$20 of the \$100 filing fee for appeals from the county or circuit courts to the district courts of appeal or the Supreme Court.

Removing the \$20 General Revenue portion of the filing fee for filing a notice of appeal from the county court to the circuit court and reinserting the \$20 General Revenue portion onto the fee for filing a notice of appeal from the county or circuit court to the district court of appeal or to the Supreme Court is estimated to negatively impact the General Revenue Fund by \$49,240 annually.

The bill is effective upon becoming law.

II. Present Situation:

Service Charges

Clerks of circuit courts are required to charge for services rendered in recording documents and instruments.¹ Section 28.24, F.S., specifies the maximum amount a clerk may charge for these services. Some services described in s. 28.24, F.S., are “court-related” functions, while other services are “county-related” functions performed by the clerk in its capacity as County Recorder,² such as providing certified copies of official county records. Some functions described in s. 28.24, F.S., can be either court-related or county-related functions, depending on the type of document or service requested. For example, s. 28.24(3), F.S., describes a charge for

¹ Section 28.24, F.S.

² See s. 28.222(1), F.S.

certifying copies of any instrument in the public records. If the requested record is a court filing, the clerk's providing of certified copies of this record is a court-related function, while if the requested record is from the county official records, the clerk's providing of certified copies of this record is a county-related function.

In 2008, the Legislature amended s. 28.24, F.S., increasing many service charges for both county- and court-related functions.³ Included in the 2008 amendments was a provision prohibiting the revenue increases generated by the 2008 amendments from being used by the Clerks of Court Operations Corporation (CCOC)⁴ to increase the court clerk's budgets.⁵ As a result, court clerks began retaining services charges for court-related functions only in the pre-2008 amounts, and began remitting the difference to the Department of Revenue for deposit in the General Revenue Fund; the clerks continued to retain the entirety of the charges for the performance of county-related functions.⁶

In 2019, the Legislature again amended s. 28.24, F.S., specifically requiring court clerks to remit portions of service charges (portions equal to the difference between the pre- and post-2008 specified charge amounts) to the Department of Revenue for deposit into the General Revenue fund, effectively codifying the practices generally observed by the clerks.⁷ The 2019 amendments, however, did not specify that the increased fees generated by the 2008 amendments were to be remitted only when the fees were collected for the performance of court-related functions.

Appellate Filing Fees

Prior to 2008, s. 28.241(2), F.S., required court clerks to collect a \$250 filing fee for appeals from the county to circuit courts and a \$50 filing fee for appeals from the circuit court to the district court of appeal (DCA) or the Supreme Court.⁸ Clerks were required to remit \$50 of these fees to the Department of Revenue for deposit into the General Revenue Fund.⁹ Therefore, the clerks were able to retain \$200 of the fees for appeals from county to circuit courts, but none of the fees from appeals from circuit courts to the DCAs or the Supreme Court.¹⁰

In 2008, the Legislature amended s. 28.241(2), F.S., increasing the filing fee for appeals from the county to the circuit courts from \$250 to \$280 and increasing the fee for appeals from the circuit courts to the DCAs or Supreme Court from \$50 to \$100.¹¹ The amendment required the clerks to remit \$80 from both fees to the Department of Revenue for deposit in the General Revenue Fund, and to remit one-third of the fees collected in excess of \$80 to the Department of Revenue

³ Ch. 2008-111, § 6, Laws of Fla.

⁴ The CCOC is a public corporation whose duties include "adopting a plan of operation including a detailed budget" for the court clerks. Section 28.35, F.S.

⁵ *Id.* at § 47.

⁶ *Florida Clerks of Court Operations Corporation*, CCOC Bill Analysis at 5.

⁷ Ch. 2019-58, § 6, Laws of Fla.; *Florida Clerks of Court Operations Corporation*, CCOC Bill Analysis at 5.

⁸ *See* Ch. 2008-111, § 8, Laws of Fla.

⁹ *See Id.*

¹⁰ *Florida Clerks of Court Operations Corporation*, CCOC Bill Analysis at 1.

¹¹ *Id.*

for deposit into the Clerks of Court Trust Fund.^{12,13} Thus, the clerks' retention of the fee for appeal from the county to circuit courts remained at \$200, but the clerks were now allowed to retain \$20 of the DCA and Supreme Court appellate fee.¹⁴ But the 2008 amendments included a provision stating that the Florida Court Clerks of Court Operations Corporation (CCOC) could not approve increases in court clerks' budgets based on increased revenue generated by the amendments.¹⁵ As a result, the new money collected in excess of the \$80 filing fee, i.e. the \$20 retained from the fees for appeals to the DCAs or Supreme Court, sent to the Department of Revenue for deposit in the Clerks of Court Trust Fund, could not be used for court clerks' budgets. Thus, all of the \$100 fee for appeals from the circuit courts to the DCAs or Supreme Court was deposited in the General Revenue Fund.¹⁶

In 2017, the Legislature again amended s. 28.241(2), F.S., removing the requirement that clerks remit \$80 of the appellate filing fees to the Department of Revenue for deposit in the General Revenue Fund.¹⁷ But the provision barring the clerks' use of revenue generated by the 2008 fee increases remained intact, and the clerks continued remitting \$20 of the \$100 DCA and Supreme Court appellate fee to the Department of Revenue for deposit in the General Revenue Fund. Thus, after the 2017 amendments, the clerks were able to retain all of the \$280 fee for appeals from the county to the circuit courts, and retain \$80 of the \$100 fee for appeals from the circuit courts to the DCAs or Supreme Court.¹⁸

When the Legislature amended s. 28.241(2), F.S., in 2019, the clerks were required to remit \$20 from the \$280 filing fee for appeals from the county court to the circuit courts to the Department of Revenue for deposit into the General Revenue Fund.¹⁹ The 2019 amendments to, s. 28.241, F.S., were "remedial and clarifying in nature" and applied retroactively to July 1, 2008.²⁰

The CCOC maintains the \$20 remittal added in 2019 "was applied to the wrong fee" and "should have been applied" to the \$100 fee for appeals from the circuit courts to the DCAs or Supreme Court.²¹ The 2019 amendment, according to the CCOC, was meant to codify the clerks' practice of remitting \$20 of the \$100 fee to the Department of Revenue.

III. Effect of Proposed Changes:

The bill specifies that if a service charge is related to a court record, the charge is split between the clerks and the General Revenue Fund. It further clarifies, within the subsections it amends, that if the specific service charge is not for a court record, the clerk retains the full amount of the charge.

¹² *Id.*

¹³ The Clerks of Court Trust Fund exists within the Department of Revenue and receives funds from clerks of court, to be used "for purposes set forth in legislation." Section 213.131, F.S.—Amendment Notes (2009).

¹⁴ *Florida Clerks of Court Operations Corporation*, CCOC Bill Analysis at 2.

¹⁵ *See* Ch. 2008-111, § 47, Laws of Fla.

¹⁶ *Florida Clerks of Court Operations Corporation*, CCOC Bill Analysis at 2.

¹⁷ Ch. 2017-126, § 2, Laws of Fla.

¹⁸ *Florida Clerks of Court Operations Corporation*, CCOC Bill Analysis at 3.

¹⁹ Ch. 2019-58, § 8, laws of Fla.

²⁰ *Id.* at § 30.

²¹ *Florida Clerks of Court Operations Corporation*, CCOC Bill Analysis at 3.

The bill amends s. 28.222, F.S., to specify that the distribution of funds is based on the type of service performed (court-related or county-related). This codifies a practice which, according to the Clerk of Court Operations Corporation, the court clerks are already engaged in.

The bill amends s. 28.24, F.S., to define the term “court-related functions” to have the same meaning as provided in the Florida Rules of Judicial Administration.

Rule 2.430 of the Rules of Judicial Administration (2019) defines “Court records” as the contents of the court file, including the progress docket and other similar records generated to document activity in a case, transcripts filed with the clerk, documentary exhibits in the custody of the clerk, and electronic records, video tapes, or stenographic tapes of depositions or other proceedings filed with the clerk, and electronic records, videotapes or stenographic tapes of court proceedings.²²

The bill also clarifies that for appeals from the county or circuit courts to an appellate court, the clerks shall charge a \$100 filing fee, and shall remit \$20 of that fee to the Department of Revenue for deposit into the General Revenue Fund. This codifies a practice which, according to CCOC, the clerks already engage in.

The bill also deletes language in s. 28.241, F.S., stating that the \$280 filing fee applied both to appeals from lower courts to circuit courts and to appeals from county or circuit courts to appellate courts. This deletion clarifies that the \$280 fee applies to appeals from lower courts to circuit courts, while the \$100 fee applies to appeals from county or circuit courts to appellate courts (i.e. the DCAs and the Supreme Court).

The bill takes effect upon becoming law.

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.

²² Florida Rules of Judicial Administration 2019 p. 80 <https://www-media.floridabar.org/uploads/2019/01/RJA-1-1-19.pdf>
(Last visited February 18, 2020)

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 clarifies that clerks are no longer required to remit to the Department of Revenue \$20 from the \$280 fee for appeals from lower courts to circuit courts. The Clerk of Court Operations Corporation (CCOC) reports that there were 2,462 such appeals in the previous three fiscal years, and the non-remittance of \$20 for each case will result in a \$49,240 decrease to the General Revenue Fund and a corresponding increase to the clerks. The bill requires clerks to remit \$20 of the \$100 filing fee for appeals to the DCAs and Supreme Court, but, as the CCOC advised that clerks are already engaged in this practice, the fee will not result in an increase in revenue.²³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 28.222, 28.24, and 28.241.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on February 18, 2020:

The committee substitute:

²³ Clerks of Court Operations Corporation Bill Analysis of SB 790 dated November 11, 2020 (on file with Senate Appropriations Subcommittee on Criminal and Civil Justice).

- Specifies that if a service charge is related to a court record, the charge is split between the clerks and the General Revenue Fund; and
- Defines "court records" for the purpose of s. 28.24, F.S. as having the same meaning as provided in the Florida Rules of Judicial Administration.

B. Amendments:

None.

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



476652

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2020	.	
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Appropriations Subcommittee on Criminal and Civil Justice
(Brandes) 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
28.001, Florida Statutes, are renumbered as subsections (2) and
(3), respectively, and a new subsection (1) is added to that
section, to read:

28.001 Definitions.—As used in this chapter:

(1) "Court records" means the contents of a court file and



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11 also includes:

12 (a) The progress docket and other similar records generated
13 to document activity in a case.

14 (b) Transcripts filed with the clerk.

15 (c) Documentary exhibits in the custody of the clerk.

16 (d) Electronic records, videotapes, or stenographic tapes
17 of depositions or other proceedings filed with the clerk.

18 (e) Electronic records, videotapes, and stenographic tapes
19 of court proceedings.

20 Section 2. Subsection (7) of section 28.222, Florida
21 Statutes, is amended to read:

22 28.222 Clerk to be county recorder.—

23 (7) (a) All instruments recorded in the Official Records
24 shall always be open to the public, under the supervision of the
25 clerk, for the purpose of inspection thereof and of making
26 extracts therefrom. ~~but~~

27 (b) The clerk is ~~shall~~ not be required to perform any
28 service in connection with such inspection or making of extracts
29 without payment of service charges as provided in s. 28.24.

30 (c) The payment of the service charges under s. 28.24 must
31 be retained by the clerk of the circuit court in his or her
32 capacity as county recorder, except that service charges under
33 s. 28.24 relating to court records or functions meeting the
34 description of court-related functions in s. 28.35(3) (a) must be
35 distributed for the specified functions.

36 Section 3. Subsections (3), (4), (6), (8), (13), (14),
37 (17), and (20) of section 28.24, Florida Statutes, are amended
38 to read:

39 28.24 Service charges.—The clerk of the circuit court shall



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40 charge for services rendered manually or electronically by the
41 clerk's office in recording documents and instruments and in
42 performing other specified duties. These charges may not exceed
43 those specified in this section, except as provided in s.
44 28.345.

45 (3) (a) For certifying copies of any instrument that is a
46 court record in the public records: 2.00, from which the clerk
47 shall remit 0.50 to the Department of Revenue for deposit into
48 the General Revenue Fund.

49 (b) For certifying copies of any instrument that is not a
50 court record in the public records: 2.00.

51 (4) (a) For verifying any instrument that is a court record
52 which is presented for certification prepared by someone other
53 than the clerk, per page: 3.50, from which the clerk shall remit
54 0.50 per page to the Department of Revenue for deposit into the
55 General Revenue Fund.

56 (b) For verifying any instrument that is not a court record
57 which is presented for certification prepared by someone other
58 than the clerk, per page: 3.50.

59 (6) For making microfilm copies of any public records:

60 (a) That are court records:

61 1. 16 mm 100' microfilm roll: 42.00, from which the clerk
62 shall remit 4.50 to the Department of Revenue for deposit into
63 the General Revenue Fund.

64 2. ~~(b)~~ 35 mm 100' microfilm roll: 60.00, from which the
65 clerk shall remit 7.50 to the Department of Revenue for deposit
66 into the General Revenue Fund.

67 3. ~~(e)~~ Microfiche, per fiche: 3.50, from which the clerk
68 shall remit 0.50 to the Department of Revenue for deposit into



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69 the General Revenue Fund.

70 (b) That are not court records:

71 1. 16 mm 100' microfilm roll: 42.00.

72 2. 35 mm 100' microfilm roll: 60.00.

73 3. Microfiche, per fiche: 3.50.

74 (8) (a) For writing any paper that is a court record other
75 than a paper otherwise herein specifically identified in this
76 section mentioned, same as for copying, including signing and
77 sealing: 7.00, from which the clerk shall remit 1.00 to the
78 Department of Revenue for deposit into the General Revenue Fund.

79 (b) For writing any paper that is not a court record other
80 than a paper otherwise specifically identified in this section,
81 including signing and sealing: 7.00.

82 (13) (a) Oath, administering, attesting, and sealing of
83 court records, not otherwise provided for in this section
84 herein: 3.50, from which the clerk shall remit 0.50 to the
85 Department of Revenue for deposit into the General Revenue Fund.

86 (b) Oath, administering, attesting, and sealing of noncourt
87 records not otherwise provided for in this section: 3.50.

88 (14) (a) For validating certificates or~~7~~ any authorized
89 bonds that are court records, each: 3.50, from which the clerk
90 shall remit 0.50 each to the Department of Revenue for deposit
91 into the General Revenue Fund.

92 (b) For validating certificates or any authorized bonds
93 that are not court records, each: 3.50.

94 (17) (a) For authenticated certificates, including the
95 signing and sealing of court records: 7.00, from which the clerk
96 shall remit 1.00 to the Department of Revenue for deposit into
97 the General Revenue Fund.



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98 (b) For authenticated certificates, including the signing
99 and sealing of noncourt records: 7.00.

100 (20) (a) For searching of court records, for each year's
101 search: 2.00, from which the clerk shall remit 0.50 for each
102 year's search to the Department of Revenue for deposit into the
103 General Revenue Fund.

104 (b) For searching of noncourt records, for each year's
105 search: 2.00.

106 Section 4. Subsection (2) of section 28.241, Florida
107 Statutes, is amended to read:

108 28.241 Filing fees for trial and appellate proceedings.—

109 (2) Upon the institution of any appellate proceeding from
110 any lower court to the circuit court of any such county,
111 including appeals filed by a county or municipality as provided
112 in s. 34.041(5), or from the county or circuit court to an
113 appellate court of the state, the clerk shall charge and collect
114 from the party or parties instituting such appellate proceedings
115 a filing fee, as follows:

116 ~~(a) not to exceed \$280, from which the clerk shall remit~~
117 ~~\$20 to the Department of Revenue for deposit into the General~~
118 ~~Revenue Fund, For filing a notice of appeal from the county~~
119 ~~court to the circuit court, a filing fee not to exceed \$280.~~
120 ~~and, in addition to the filing fee required under s. 25.241 or~~
121 ~~s. 35.22, \$100~~

122 (b) For filing a notice of appeal from the county or
123 circuit court to the district court of appeal or to the Supreme
124 Court, in addition to the filing fee required under s. 25.241 or
125 s. 35.22, a filing fee not to exceed \$100, of which the clerk
126 shall remit \$20 to the Department of Revenue for deposit into



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127 the General Revenue Fund.

128

129 If the party is determined to be indigent, the clerk shall defer
130 payment of the fee otherwise required by this subsection.

131 Section 5. This act shall take effect July 1, 2020.

132

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

134 And the title is amended as follows:

135 Delete everything before the enacting clause
136 and insert:

137 A bill to be entitled

138 An act relating to clerks of the circuit court;
139 amending s. 28.001, F.S.; defining the term "court
140 records"; amending s. 28.222, F.S.; specifying the
141 manner in which the clerk of court must retain and
142 distribute proceeds from specified service charges;
143 amending s. 28.24, F.S.; specifying the amount for
144 service charges for certain services rendered, and
145 noncourt records filed, by the clerk of court;
146 amending s. 28.241, F.S.; specifying the portion of
147 the filing fee for specified appellate proceedings
148 which must be deposited into the General Revenue Fund;
149 providing an effective date.



314044

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2020	.	
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Appropriations Subcommittee on Criminal and Civil Justice
(Brandes) recommended the following:

1 **Senate Amendment to Amendment (476652) (with title**
2 **amendment)**

3
4 Delete lines 5 - 105
5 and insert:

6 Section 1. Subsection (7) of section 28.222, Florida
7 Statutes, is amended to read:

8 28.222 Clerk to be county recorder.—

9 (7) (a) All instruments recorded in the Official Records
10 shall always be open to the public, under the supervision of the



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11 clerk, for the purpose of inspection thereof and of making
12 extracts therefrom. ~~;~~ ~~but~~

13 (b) The clerk is shall not be required to perform any
14 service in connection with such inspection or making of extracts
15 without payment of service charges as provided in s. 28.24.

16 (c) The payment of the service charges under s. 28.24 must
17 be retained by the clerk of the circuit court in his or her
18 capacity as county recorder, except that service charges under
19 s. 28.24 relating to court records or functions meeting the
20 description of court-related functions in s. 28.35(3)(a) must be
21 distributed for the specified functions.

22 Section 2. Section 28.24, Florida Statutes, is amended to
23 read:

24 28.24 Service charges.—The clerk of the circuit court shall
25 charge for services rendered manually or electronically by the
26 clerk's office in recording documents and instruments and in
27 performing other specified duties. These charges may not exceed
28 those specified in this section, except as provided in s.
29 28.345. For purposes of this section, the term "court records"
30 has the same meaning as provided in the Florida Rules of
31 Judicial Administration.

32 (1) For examining, comparing, correcting, verifying, and
33 certifying transcripts of record in appellate proceedings,
34 prepared by attorney for appellant or someone else other than
35 clerk, per page: 5.00, from which the clerk shall remit 0.50 per
36 page to the Department of Revenue for deposit into the General
37 Revenue Fund.

38 (2) For preparing, numbering, and indexing an original
39 record of appellate proceedings, per instrument: 3.50, from



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40 which the clerk shall remit 0.50 per instrument to the
41 Department of Revenue for deposit into the General Revenue Fund.

42 (3) (a) For certifying copies of any instrument that is a
43 court record in the public records: 2.00, from which the clerk
44 shall remit 0.50 to the Department of Revenue for deposit into
45 the General Revenue Fund.

46 (b) For certifying copies of any instrument that is not a
47 court record in the public records: 2.00.

48 (4) (a) For verifying any instrument that is a court record
49 which is presented for certification prepared by someone other
50 than the clerk, per page: 3.50, from which the clerk shall remit
51 0.50 per page to the Department of Revenue for deposit into the
52 General Revenue Fund.

53 (b) For verifying any instrument that is not a court record
54 which is presented for certification prepared by someone other
55 than the clerk, per page: 3.50.

56 (5) (a) For making copies by photographic process of any
57 instrument in the public records consisting of pages of not more
58 than 14 inches by 8 1/2 inches, per page.....1.00

59 (b) For making copies by photographic process of any
60 instrument in the public records of more than 14 inches by 8 1/2
61 inches, per page.....5.00

62 (6) For making microfilm copies of any public records:

63 (a) That are court records:

64 1. 16 mm 100' microfilm roll: 42.00, from which the clerk
65 shall remit 4.50 to the Department of Revenue for deposit into
66 the General Revenue Fund.

67 2. ~~(b)~~ 35 mm 100' microfilm roll: 60.00, from which the
68 clerk shall remit 7.50 to the Department of Revenue for deposit



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69 into the General Revenue Fund.
70 3.-(e) Microfiche, per fiche: 3.50, from which the clerk
71 shall remit 0.50 to the Department of Revenue for deposit into
72 the General Revenue Fund.
73 (b) That are not court records:
74 1. 16 mm 100' microfilm roll: 42.00.
75 2. 35 mm 100' microfilm roll: 60.00.
76 3. Microfiche, per fiche: 3.50.
77 (7) For copying any instrument in the public records by
78 other than photographic process, per page.....6.00
79 (8) (a) For writing any paper that is a court record other
80 than a paper otherwise herein specifically identified in this
81 section mentioned, same as for copying, including signing and
82 sealing: 7.00, from which the clerk shall remit 1.00 to the
83 Department of Revenue for deposit into the General Revenue Fund.
84 (b) For writing any paper that is not a court record other
85 than a paper otherwise specifically identified in this section,
86 including signing and sealing: 7.00.
87 (9) For indexing each entry not recorded.....1.00
88 (10) For receiving money into the registry of court:
89 (a)1. First \$500, percent.....3
90 2. Each subsequent \$100, percent.....1.5
91 (b) Eminent domain actions, per deposit: 170.00, from which
92 the clerk shall remit 20.00 per deposit to the Department of
93 Revenue for deposit into the General Revenue Fund.
94 (11) For examining, certifying, and recording plats and for
95 recording condominium exhibits larger than 14 inches by 8 1/2
96 inches:
97 (a) First page.....30.00



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98 (b) Each additional page.....15.00
99 (12) For recording, indexing, and filing any instrument not
100 more than 14 inches by 8 1/2 inches, including required notice
101 to property appraiser where applicable:
102 (a) First page or fraction thereof.....5.00
103 (b) Each additional page or fraction thereof.....4.00
104 (c) For indexing instruments recorded in the official
105 records which contain more than four names, per additional
106 name.....1.00
107 (d) An additional service charge must be paid to the clerk
108 of the circuit court to be deposited in the Public Records
109 Modernization Trust Fund for each instrument listed in s.
110 28.222, except judgments received from the courts and notices of
111 lis pendens, recorded in the official records:
112 1. First page.....1.00
113 2. Each additional page.....0.50
114
115 Said fund must be held in trust by the clerk and used
116 exclusively for equipment and maintenance of equipment,
117 personnel training, and technical assistance in modernizing the
118 public records system of the office. In a county where the duty
119 of maintaining official records exists in an office other than
120 the office of the clerk of the circuit court, the clerk of the
121 circuit court is entitled to 25 percent of the moneys deposited
122 into the trust fund for equipment, maintenance of equipment,
123 training, and technical assistance in modernizing the system for
124 storing records in the office of the clerk of the circuit court.
125 The fund may not be used for the payment of travel expenses,
126 membership dues, bank charges, staff-recruitment costs, salaries



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127 or benefits of employees, construction costs, general operating
128 expenses, or other costs not directly related to obtaining and
129 maintaining equipment for public records systems or for the
130 purchase of furniture or office supplies and equipment not
131 related to the storage of records. On or before December 1,
132 1995, and on or before December 1 of each year immediately
133 preceding each year during which the trust fund is scheduled for
134 legislative review under s. 19(f)(2), Art. III of the State
135 Constitution, each clerk of the circuit court shall file a
136 report on the Public Records Modernization Trust Fund with the
137 President of the Senate and the Speaker of the House of
138 Representatives. The report must itemize each expenditure made
139 from the trust fund since the last report was filed; each
140 obligation payable from the trust fund on that date; and the
141 percentage of funds expended for each of the following:
142 equipment, maintenance of equipment, personnel training, and
143 technical assistance. The report must indicate the nature of the
144 system each clerk uses to store, maintain, and retrieve public
145 records and the degree to which the system has been upgraded
146 since the creation of the trust fund.

147 (e) An additional service charge of \$4 per page shall be
148 paid to the clerk of the circuit court for each instrument
149 listed in s. 28.222, except judgments received from the courts
150 and notices of lis pendens, recorded in the official records.
151 From the additional \$4 service charge collected:

152 1. If the counties maintain legal responsibility for the
153 costs of the court-related technology needs as defined in s.
154 29.008(1)(f)2. and (h), 10 cents shall be distributed to the
155 Florida Association of Court Clerks and Comptrollers, Inc., for



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156 the cost of development, implementation, operation, and
157 maintenance of the clerks' Comprehensive Case Information
158 System; \$1.90 shall be retained by the clerk to be deposited in
159 the Public Records Modernization Trust Fund and used exclusively
160 for funding court-related technology needs of the clerk as
161 defined in s. 29.008(1)(f)2. and (h); and \$2 shall be
162 distributed to the board of county commissioners to be used
163 exclusively to fund court-related technology, and court
164 technology needs as defined in s. 29.008(1)(f)2. and (h) for the
165 state trial courts, state attorney, public defender, and
166 criminal conflict and civil regional counsel in that county. If
167 the counties maintain legal responsibility for the costs of the
168 court-related technology needs as defined in s. 29.008(1)(f)2.
169 and (h), notwithstanding any other provision of law, the county
170 is not required to provide additional funding beyond that
171 provided herein for the court-related technology needs of the
172 clerk as defined in s. 29.008(1)(f)2. and (h). All court records
173 and official records are the property of the State of Florida,
174 including any records generated as part of the Comprehensive
175 Case Information System funded pursuant to this paragraph and
176 the clerk of court is designated as the custodian of such
177 records, except in a county where the duty of maintaining
178 official records exists in a county office other than the clerk
179 of court or comptroller, such county office is designated the
180 custodian of all official records, and the clerk of court is
181 designated the custodian of all court records. The clerk of
182 court or any entity acting on behalf of the clerk of court,
183 including an association, may not charge a fee to any agency as
184 defined in s. 119.011, the Legislature, or the State Court



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185 System for copies of records generated by the Comprehensive Case
186 Information System or held by the clerk of court or any entity
187 acting on behalf of the clerk of court, including an
188 association.

189 2. If the state becomes legally responsible for the costs
190 of court-related technology needs as defined in s.
191 29.008(1)(f)2. and (h), whether by operation of general law or
192 by court order, \$4 shall be remitted to the Department of
193 Revenue for deposit into the General Revenue Fund.

194 (13) (a) Oath, administering, attesting, and sealing of
195 court records, not otherwise provided for in this section
196 ~~herein~~: 3.50, from which the clerk shall remit 0.50 to the
197 Department of Revenue for deposit into the General Revenue Fund.

198 (b) Oath, administering, attesting, and sealing of noncourt
199 records not otherwise provided for in this section: 3.50.

200 (14) (a) For validating certificates ~~or~~ any authorized
201 bonds that are court records, each: 3.50, from which the clerk
202 shall remit 0.50 each to the Department of Revenue for deposit
203 into the General Revenue Fund.

204 (b) For validating certificates or any authorized bonds
205 that are not court records, each: 3.50.

206 (15) For preparing affidavit of domicile.....5.00

207 (16) For exemplified certificates, including signing and
208 sealing: 7.00, from which the clerk shall remit 1.00 to the
209 Department of Revenue for deposit into the General Revenue Fund.

210 (17) (a) For authenticated certificates, including the
211 signing and sealing of court records: 7.00, from which the clerk
212 shall remit 1.00 to the Department of Revenue for deposit into
213 the General Revenue Fund.



214 (b) For authenticated certificates, including the signing
215 and sealing of noncourt records: 7.00.

216 (18) (a) For issuing and filing a subpoena for a witness,
217 not otherwise provided for herein (includes writing, preparing,
218 signing, and sealing): 7.00, from which the clerk shall remit
219 1.00 to the Department of Revenue for deposit into the General
220 Revenue Fund.

221 (b) For signing and sealing only: 2.00, from which the
222 clerk shall remit 0.50 to the Department of Revenue for deposit
223 into the General Revenue Fund.

224 (19) For approving bond: 8.50, from which the clerk shall
225 remit 1.00 to the Department of Revenue for deposit into the
226 General Revenue Fund.

227 (20) (a) For searching of court records, for each year's
228 search: 2.00, from which the clerk shall remit 0.50 for each
229 year's search to the Department of Revenue for deposit into the
230 General Revenue Fund.

231 (b) For searching of noncourt records, for each year's
232 search: 2.00.

233 (21) For processing an application for a tax deed sale
234 (includes application, sale, issuance, and preparation of tax
235 deed, and disbursement of proceeds of sale), other than excess
236 proceeds.....60.00

237 (22) For disbursement of excess proceeds of tax deed sale,
238 first \$100 or fraction thereof.....10.00

239 (23) Upon receipt of an application for a marriage license,
240 for preparing and administering of oath; issuing, sealing, and
241 recording of the marriage license; and providing a certified
242 copy.....30.00



314044

243 (24) For solemnizing matrimony.....30.00

244 (25) For sealing any court file or expungement of any
245 record: 42.00, from which the clerk shall remit 4.50 to the
246 Department of Revenue for deposit into the General Revenue Fund.

247 (26) (a) For receiving and disbursing all restitution
248 payments, per payment: 3.50, from which the clerk shall remit
249 0.50 per payment to the Department of Revenue for deposit into
250 the General Revenue Fund.

251 (b) For receiving and disbursing all partial payments,
252 other than restitution payments, for which an administrative
253 processing service charge is not imposed pursuant to s. 28.246,
254 per month.....5.00

255 (c) For setting up a payment plan, a one-time
256 administrative processing charge in lieu of a per month charge
257 under paragraph (b).....25.00

258 (27) Postal charges incurred by the clerk of the circuit
259 court in any mailing by certified or registered mail must be
260 paid by the party at whose instance the mailing is made.

261 (28) For furnishing an electronic copy of information
262 contained in a computer database: a fee as provided for in
263 chapter 119.

264
265 ===== T I T L E A M E N D M E N T =====

266 And the title is amended as follows:

267 Delete lines 139 - 143

268 and insert:

269 amending s. 28.222, F.S.; specifying the manner in
270 which the clerk of court must retain and distribute
271 proceeds from specified service charges; amending s.



314044

272
273

28.24, F.S.; defining the term "court records";
specifying the amount for

JD Peacock, II
OKALOOSA COUNTY
EXECUTIVE COUNCIL CHAIR

Jeffrey R. Smith, CPA, CGMA
INDIAN RIVER COUNTY
VICE-CHAIR

Tiffany Moore Russell, Esq.
ORANGE COUNTY
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TODD NEWTON
GILCHRIST COUNTY

LAURA E. ROTH
VOLUSIA COUNTY

HARVEY RUVIN, ESQ.
MIAMI-DADE COUNTY

RON FICARROTTA
13TH JUDICIAL CIRCUIT JUDGE
SUPREME COURT APPOINTEE

**ANGELINA "ANGEL"
COLONNESO, ESQ.**
MANATEE COUNTY
SENATE APPOINTEE

VACANT
HOUSE APPOINTEE

JOHN DEW
EXECUTIVE DIRECTOR

JOE BOYD
GENERAL COUNSEL

2560-102 BARRINGTON CIRCLE | TALLAHASSEE, FLORIDA 32308 | PHONE 850.386.2223 | FAX 850.386.2224 | WWW.FLCCOC.ORG

CCOC BILL ANALYSIS

BILL NUMBER: SB 790

SUBJECT: Clerks of the Circuit Court

SPONSOR: Brandes

COMMITTEE REFERENCE: Judiciary; Appropriations Subcommittee on Criminal and Civil Justice; Appropriations

SIMILAR/IDENTICAL BILL: HB 591, Representative Clemons

LEAD CCOC STAFF: Jason Welty, CCOC Budget and Communications Director

BILL SUMMARY:

The bill seeks to clarify changes made by Ch. 2019-58, L.O.F. Specifically, the bill clarifies that only court-related services are impacted by the changes made in the service charges in s. 28.24, F.S. Additionally, the bill seeks to modify the appellate filing fee to conform with the changes made in Ch. 2008-111, L.O.F., to apply the \$20 General Revenue (GR) portion of the filing fee on appeals from circuit courts rather than appeals from the county courts.

This bill is intended to be a technical "glitch" bill and not intended to modify or reverse any of the codification of the Ch. 2008-111, L.O.F., made in Ch. 2019-58 L.O.F.

CURRENT SITUATION:

Filing fees for trial and appellate proceedings

The filing fees for appellate proceedings are found in s. 28.241(2), F.S. In 2007, the filing fees the clerks collected were:

- \$250 – appeal from county to circuit court
 - \$200 – retained by the clerk
 - \$50 – sent to General Revenue
- \$50 – appeal from circuit court to district court of appeal (DCA) or Supreme Court
 - \$50 – sent to General Revenue

In 2008, the legislature increased the filing fees for appellate proceedings with the passage of Ch. 2008-111, L.O.F. to:

- \$280 – appeal from county to circuit court
 - \$200 – retained by the clerk
 - \$80 – sent to General Revenue

Our Mission: As a governmental organization created by the Legislature, we evaluate Clerks' court-related budgetary needs, and recommend the fair and equitable allocation of resources needed to sustain court operations.

- \$100 – appeal from circuit court to district court of appeal (DCA) or Supreme Court
 - \$80 – sent to General Revenue
 - \$20 – sent to General Revenue after being deposited in the Clerks of the Court Trust Fund

For the appeals from circuit court to the DCA or Supreme Court, the clerks sent the first \$80 to GR and one-third of the remainder was to be deposited into the Clerks of the Court Trust Fund. The language from Ch. 2008-111, L.O.F., stated,

The clerk shall remit the first \$80 to the Department of Revenue for deposit into the General Revenue Fund. One-third of the fee collected by the clerk in excess of \$80 also shall be remitted to the Department of Revenue for deposit into the Clerks of the Court Trust Fund.

However, Section 47 of the bill prohibited the Clerks of the Court Operations Corporation (CCOC) from using any of the increased fees for the clerks' budgets, effectively making the full \$100 a source of revenue for GR. The clerks' distribution schedule showed the \$100 fee split of \$80 to GR and \$20 to the Clerks of the Court Trust Fund, to also be deposited into the General Revenue Fund.

The statute remained unchanged, until 2017 when the legislature provided the clerks with funding relief and allowed the clerks to keep the first \$80 from appeals. Chapter 2017-126, L.O.F., removed the language directing the first \$80 to GR, effectively allowing the clerks to keep this revenue as a funding source for the clerks' budgets. However, still being bound by Section 47 of Ch. 2008-111, the clerks continued to remit the remaining \$20 to GR on appeals from circuit court to the DCA or Supreme Court.

After the 2017 Session, the distribution schedule for the appellate proceedings was:

- \$280 – appeal from county to circuit court
 - \$280 – retained by the clerk
- \$100 – appeal from circuit court to district court of appeal (DCA) or Supreme Court
 - \$80 – retained by the clerk
 - \$20 – sent to General Revenue

Finally, the legislature passed HB 337 (Ch. 2019-58, L.O.F.) amending the appellate fees. The bill made several modifications to service charges, filing fees, and court costs to codify all the changes made in Ch. 2008-111, L.O.F. Specifically relating to the appellate filing fee, the law states:

(2) Upon the institution of any appellate proceeding from any lower court to the circuit court of any such county, including appeals filed by a county or municipality as provided in s. 34.041(5), or from the county or circuit court to an appellate court of the state, the clerk shall charge and collect from the party or parties instituting such appellate proceedings a filing fee not to exceed \$280, from which the clerk shall remit \$20 to the Department of Revenue for deposit into the General Revenue Fund, for filing a notice of appeal from the county court to the circuit court and, in addition to the filing fee required under s. 25.241 or s. 35.22, \$100 for filing a notice

of appeal from the county or circuit court to the district court of appeal or to the Supreme Court.

After the changes in Ch. 2019-58, L.O.F., were incorporated, the Distribution Schedule displays the distribution directed by statutes as:

- \$280 – appeal from county to circuit court
 - \$260 – retained by the clerk
 - \$20 – sent to General Revenue
- \$100 – appeal from circuit court to district court of appeal (DCA) or Supreme Court
 - \$80 – retained by the clerk
 - \$20 – sent to General Revenue

Section 30 of the bill reads (emphasis added):

The amendments made by this act to ss. 27.52, 28.24, 28.2401, **28.241**, 34.041, 45.035, 55.505, 61.14, 316.193, 318.14, 318.15, 318.18, 322.245, 327.35, 327.73, 379.401, 713.24, 721.83, 744.365, 744.3678, 766.104, and 938.05, Florida Statutes, are remedial and clarifying in nature and apply retroactively to July 1, 2008.

The changes made by Ch. 2019-58 were intended to be remedial and clarifying in nature; however, the \$20 General Revenue portion of the filing fee was applied to the wrong fee in s. 28.241(2), F.S. The \$20 fee should have been applied to the \$100 filing fee for a case sent from circuit court to the DCA or Supreme Court instead of the \$280 filing fee for a case sent from the county court to the circuit court.

Service Charges

The schedule of service charges for various Clerk functions are found in s. 28.24, F.S.

Ch. 2008-111, L.O.F., increased several service charges in s. 28.24, F.S. as follows:

- s. 28.24(1), F.S. from \$4.50 to \$5.00
- s. 28.24(2), F.S. from \$3.00 to \$3.50
- s. 28.24(3), F.S. from \$1.50 to \$2.00
- s. 28.24(4), F.S. from \$3.00 to \$3.50
- s. 28.24(6)(a), F.S. from \$37.50 to \$42.00
- s. 28.24(6)(b), F.S. from \$52.50 to \$60.00
- s. 28.24(6)(c), F.S. from \$3.00 to \$3.50
- s. 28.24(8), F.S. from \$6.00 to \$7.00
- s. 28.24(10)(b), F.S. from \$150.00 to \$170.00
- s. 28.24(13), F.S. from \$3.00 to \$3.50
- s. 28.24(14), F.S. from \$3.00 to \$3.50
- s. 28.24(16), F.S. from \$6.00 to \$7.00
- s. 28.24(17), F.S. from \$6.00 to \$7.00
- s. 28.24(18)(a), F.S. from \$6.00 to \$7.00

- s. 28.24(18)(b), F.S. from \$1.50 to \$2.00
- s. 28.24(19), F.S. from \$7.50 to \$8.50
- s. 28.24(20), F.S. from \$1.50 to \$2.00
- s. 28.24(25), F.S. from \$37.50 to \$42.00
- s. 28.24(26)(a), F.S. from \$3.00 to \$3.50

Further, section 47 of Ch. 2008-111, L.O.F. provided:

Notwithstanding s. 28.36, Florida Statutes, the Florida Clerks of Court Operations Corporation may not approve increases to the clerks' budgets based on increased revenue generated under this act. The corporation may increase the clerks' budgets in the aggregate by \$1,188,184 for the period from July 1, 2008, through September 30, 2008, and \$3,564,551 for the period from October 1, 2008, through June 30, 2009, for the increased duties related to paying jurors and juror meals and lodging expenses as provided in this act. These budget increases shall be considered as part of the recurring base budget of the clerks for future budgets approved pursuant to s. 28.36, Florida Statutes

(Emphasis added). As a result, increases to the various subsections of s. 28.24, F.S. by Ch. 2008-111, L.O.F. resulted in a distribution change. For each increase in service charges noted above, the difference the subsection was increased by was remitted to the General Revenue fund and not retained by clerks. For example, when s. 28.24(1) was increased from \$4.50 to \$5.00 by Ch. 2008-111, L.O.F., when this subsection was utilized on or after the effective date of July 1, 2008, \$4.50 continued to be retained by the clerk and the \$.50 increase was remitted to General Revenue.

While the change to s.28.24(1), F.S. was easy to implement as it is a subsection specific to court-related services, other affected subsections could be performed by the clerk as either a court-related service or county-related service. Of the above s. 28.24, F.S. subsections changed by 2008-111, L.O.F., the following subsections are performed by clerks in this dual capacity:

- s. 28.24(3), F.S. from \$1.50 to \$2.00
- s. 28.24(4), F.S. from \$3.00 to \$3.50
- s. 28.24(6)(a), F.S. from \$37.50 to \$42.00
- s. 28.24(6)(b), F.S. from \$52.50 to \$60.00
- s. 28.24(6)(c), F.S. from \$3.00 to \$3.50
- s. 28.24(8), F.S. from \$6.00 to \$7.00
- s. 28.24(13), F.S. from \$3.00 to \$3.50
- s. 28.24(14), F.S. from \$3.00 to \$3.50
- s. 28.24(17), F.S. from \$6.00 to \$7.00
- s. 28.24(20), F.S. from \$1.50 to \$2.00

As a practical matter, what this means is that if a person requests a certified copy of an instrument pursuant to s. 28.24(3), F.S. they would pay \$2.00. If the record requested was

an official record, meaning the Clerk is providing a county-related service, the clerk would retain the entire \$2 in their capacity as County Recorder. However, if the record requested was a court record, the clerks would distribute fifty cents to the General Revenue fund based on the information provided above and would retain \$1.50 for their court-related budget in their capacity as Clerk of Courts.

In 2019, H.B. 337 was passed by the Florida Legislature, approved by the Governor, and codified through Ch. 2019-58, L.O.F. This bill clarified that the same subsections of s.28.24, F.S. with service charges that were increased by Ch. 2008-111, L.O.F., were to direct the increased portion of the service charges to the General Revenue fund by explicitly including such language in those subsections. For example, s. 28.24(1), F.S. was amended by Ch. 2019-59, L.O.F. to read:

For examining, comparing, correcting, verifying, and certifying transcripts of record in appellate proceedings, prepared by attorney for appellant or someone else other than clerk, per page 5.00, from which the clerk shall remit 0.50 per page to the Department of Revenue for deposit into the General Revenue Fund.

Further, section 30 of Ch. 2019-58, L.O.F. provided:

The amendments made by this act to ss. 27.52, **28.24**, 28.2401, 28.241, 34.041, 45.035, 55.505, 61.14, 316.193, 318.14, 318.15, 318.18, 322.245, 327.35, 327.73, 379.401, 713.24, 721.83, 744.365, 744.3678, 766.104, and 938.05, Florida Statutes, are remedial and clarifying in nature and apply retroactively to July 1, 2008.

(Emphasis added). Accordingly, this bill seeks to clarify that for the following subsections of s. 28.24, F.S., which can be performed by the clerk as both county-related services and court-related services, that the portion to be remitted to the General Revenue Fund is only remitted when the clerk is performing a court-related service:

- s. 28.24(3), F.S. from \$1.50 to \$2.00
- s. 28.24(4), F.S. from \$3.00 to \$3.50
- s. 28.24(6)(a), F.S. from \$37.50 to \$42.00
- s. 28.24(6)(b), F.S. from \$52.50 to \$60.00
- s. 28.24(6)(c), F.S. from \$3.00 to \$3.50
- s. 28.24(8), F.S. from \$6.00 to \$7.00
- s. 28.24(13), F.S. from \$3.00 to \$3.50
- s. 28.24(14), F.S. from \$3.00 to \$3.50
- s. 28.24(17), F.S. from \$6.00 to \$7.00
- s. 28.24(19), F.S. from \$7.50 to \$8.50
- s. 28.24(20), F.S. from \$1.50 to \$2.00

EFFECT OF THE BILL:

The bill creates a new subsection (29) within s. 28.24, F.S., to provide those sums of money required to be remitted to the General Revenue Fund are only those revenues collected for the court-related activities, not county-related activities. If a clerk charges a service charge for a county-related activity, the full amount of that service charge remains with the clerk and is not remitted to the General Revenue Fund.

The bill also modifies the filing fee for appellate cases. The bill removes the \$20 General Revenue portion of the filing fee from appellate cases originating in the county court and reinserts the \$20 General Revenue portion onto cases originating from the circuit court being appealed to the district court of appeals or the Supreme Court.

This bill is intended to be a technical “glitch” bill and not intended to modify or reverse any of the codification of the Ch. 2008-111, L.O.F., made in Ch. 2019-58 L.O.F.

FISCAL IMPACT:

The bill may have a negative insignificant impact on General Revenue. On average, the clerks reported 862 criminal cases appealed from the county court to the circuit court over the last three county fiscal years. Additionally, there were approximately 1,600 civil cases appealed from the county court to the circuit court during that same time.

- $1,600+862= 2,462$ cases x \$20 filing fee = \$49,240 negative fiscal impact to General Revenue.

This fiscal impact is the maximum impact and is likely overstated because many of the filing fees from criminal appeals are waived because the defendants are indigent.

Even after the passage of Ch. 2019-58, L.O.F., the clerks continued to remit the \$20 General Revenue portion to DOR of the appeals from circuit court to the DCA or Supreme Court, even though the law does not explicitly require this portion to be remitted to GR. This current revenue is uninterrupted by the changes made in last year’s legislation.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/2020
Meeting Date

790
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name JASON Welty

Job Title Budget and Communications Director

Address 2560 Barrington Circle

Phone 386-2273

Tallahassee FL 32308

City State Zip

Email jwelty@flccco.org

Speaking: For Against Information

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

Representing Florida Clerks of Court Operations Corporation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

By Senator Brandes

24-00830-20

2020790__

1 A bill to be entitled
2 An act relating to clerks of the circuit court;
3 amending s. 28.24, F.S.; specifying that certain
4 revenues from service charges collected by the clerk
5 for remittance to the Department of Revenue include
6 only revenues for court-related functions; defining
7 the term "court-related functions"; providing for
8 revenues for county operations to be retained by the
9 clerk; amending s. 28.241, F.S.; revising the
10 distribution of revenue from filing fees from the
11 institution of certain appellate proceedings; amending
12 chapter 2019-58, Laws of Florida; revising retroactive
13 application regarding the collection of revenue for
14 court-related functions for remittance to the
15 department; defining the term "court-related
16 functions"; providing for revenues for county
17 operations to be retained by the clerk; providing an
18 effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Subsection (29) is added to section 28.24,
23 Florida Statutes, to read:

24 28.24 Service charges.—The clerk of the circuit court shall
25 charge for services rendered manually or electronically by the
26 clerk's office in recording documents and instruments and in
27 performing other specified duties. These charges may not exceed
28 those specified in this section, except as provided in s.
29 28.345.

24-00830-20

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30 (29) Moneys required by this section to be remitted to the
31 Department of Revenue for deposit into the General Revenue Fund
32 include only those revenues collected for court-related
33 functions. For purposes of this subsection, the term "court-
34 related functions" has the same meaning as provided in s.
35 28.35(3). Any other revenues that, by law, are collected for
36 county operations must continue to be retained by the clerk.

37 Section 2. Subsection (2) of section 28.241, Florida
38 Statutes, is amended to read:

39 28.241 Filing fees for trial and appellate proceedings.—

40 (2) Upon the institution of any appellate proceeding from
41 any lower court to the circuit court of any such county,
42 including appeals filed by a county or municipality as provided
43 in s. 34.041(5), ~~or from the county or circuit court to an~~
44 ~~appellate court of the state,~~ the clerk shall charge and collect
45 from the party or parties instituting such appellate proceedings
46 a filing fee not to exceed \$280, ~~from which the clerk shall~~
47 ~~remit \$20 to the Department of Revenue for deposit into the~~
48 ~~General Revenue Fund,~~ for filing a notice of appeal from the
49 county court to the circuit court. For any appellate proceedings
50 from the county or circuit court to an appellate court and, in
51 addition to the filing fee required under s. 25.241 or s. 35.22,
52 the clerk shall charge and collect from the party or parties
53 instituting such appellate proceedings \$100 for filing a notice
54 of appeal from the county or circuit court to the district court
55 of appeal or to the Supreme Court. The clerk shall remit \$20 of
56 the \$100 filing fee to the Department of Revenue for deposit
57 into the General Revenue Fund. If the party is determined to be
58 indigent, the clerk must ~~shall~~ defer payment of the fee

24-00830-20

2020790__

59 otherwise required by this subsection.

60 Section 3. Section 30 of chapter 2019-58, Laws of Florida,
61 is amended to read:

62 Section 30. The amendments made by this act to ss. 27.52,
63 28.24, 28.2401, 28.241, 34.041, 45.035, 55.505, 61.14, 316.193,
64 318.14, 318.15, 318.18, 322.245, 327.35, 327.73, 379.401,
65 713.24, 721.83, 744.365, 744.3678, 766.104, and 938.05, Florida
66 Statutes, which relate to revenues collected for court-related
67 functions for remittance to the Department of Revenue for
68 deposit in the General Revenue Fund are remedial and clarifying
69 in nature and apply retroactively to July 1, 2008. For purposes
70 of this section, the term "court-related functions" has the same
71 meaning as provided in s. 28.35(3), Florida Statutes 2019.
72 Amendments to the revenues collected pursuant to those sections
73 which, by law, are to be provided for county operations must
74 continue to be retained by the clerk.

75 Section 4. This act shall take effect upon becoming a law.

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/CS/SB 852 (703954)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice; Criminal Justice Committee; and Senator Pizzo

SUBJECT: Incarcerated Pregnant Women

DATE: February 20, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cox</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Jameson</u>	<u>Jameson</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 852 amends section 944.241, Florida Statutes, which currently addresses the use of restraints on pregnant prisoners in Florida's correctional institutions, to expand the prohibition on the use of restraints on pregnant prisoners. Additionally, the bill prescribes when a corrections officer may conduct an invasive body cavity search and when a pregnant prisoner may be placed in restrictive housing.

The bill expands the prohibition of using restraints on a pregnant prisoner under current law to cover when a pregnant prisoner is being transported. This applies to a pregnant prisoner at any point in her known pregnancy. The bill prescribes certain circumstances in which restraints may not be used, which are substantively similar to the exceptions provided for in current law.

The bill provides that an invasive body cavity search of a pregnant prisoner may only be conducted by a medical professional, unless a correctional officer has a reasonable belief that the prisoner is concealing contraband and such correctional officer submits a written report to the corrections official within 72 hours after the search including specified information supporting the need for the search.

The bill prohibits a pregnant prisoner from being involuntarily placed in restrictive housing unless specified correctional staff determine that an extraordinary circumstance exists such that restrictive housing is necessary and there are no less restrictive means available.

The bill requires the corrections official to write a report documenting the need for the use of restrictive housing prior to placing the prisoner in restrictive housing. The corrections official is required to review the report at least every 24 hours to confirm that the extraordinary circumstance still exists. A copy of the report and each review must be provided to the prisoner.

Additionally, the bill requires a pregnant prisoner who is placed in restrictive housing to be seen at least every 24 hours, housed in the least restrictive setting consistent with the health and safety of the individual, and given an intensive treatment plan for prenatal care and medical treatment at the facility.

In the case that a pregnant prisoner needs infirmary care, the bill requires a primary care nurse practitioner or obstetrician to provide an order for the prisoner to be admitted to the infirmary and requires that a prisoner who is passed her due date be admitted to the infirmary until labor begins or until the obstetrician makes other housing arrangements.

The bill has a significant negative fiscal impact. See Section V.

The bill is effective July 1, 2020.

II. Present Situation:

Pregnancy in Prison

Reports predict that an estimated four to ten percent of women are pregnant upon being committed to prison or jail.¹ However, documentation of pregnancies and pregnancy care while incarcerated is sparse. The most recent data from the Bureau of Justice Statistics (BJS) was collected more than 15 years ago. In 2002, the BJS found that five percent of women in local jails were pregnant when admitted. In 2004, the BJS reported that four percent of women in state prisons and three percent of women in federal prisons were pregnant upon admission. The government has not released any further national data since.²

The American College of Obstetricians and Gynecologists (ACOG) report that pregnancies among incarcerated women are often higher risk due to a number of factors, including that such pregnancies are often unplanned and are compromised by a lack of prenatal care, poor nutrition, domestic violence, mental illness, and drug and alcohol abuse.³

¹ Ferszt, G., Palmer, M., and McGrane, C., Nursing for Women's Health, *Where Does Your State Stand on Shackling of Pregnant Incarcerated Women?*, February 2018, available at [https://nwhjournal.org/article/S1751-4851\(17\)30335-5/pdf](https://nwhjournal.org/article/S1751-4851(17)30335-5/pdf) (hereinafter cited as "Nursing for Women's Health Report"); Daniel, R., Prison Policy Initiative, *Prisons neglect pregnant women in their healthcare policies*, December 5, 2019, available at <https://www.prisonpolicy.org/blog/2019/12/05/pregnancy/> (hereinafter cited as "Prison Policy Initiative report") (all sites last visited January 3, 2020).

² Prison Policy Initiative Report. See also Sufrin, C., Beal, L., Clarke, J., Jones, R., and Mosher, W., *The American Journal of Public Health, Pregnancy Outcomes in US Prison, 2016-2017*, January 15, 2019, available at <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2019.305006> (hereinafter cited as "Pregnancy Outcomes Report") (last visited on January 3, 2020).

³ The American College of Obstetricians and Gynecologists, Committee Opinion, *Health Care for Pregnancy and Postpartum Incarcerated Women and Adolescent Females*, November 2011, available at <https://www.acog.org/Clinical->

Further, the ACOG reports a number of risks that are directly related to a pregnant inmate being restrained, including:

- Added discomfort during the common pregnancy symptoms of nausea and vomiting.
- The inability of a pregnant inmate to break a fall and protect herself and the fetus in the case of a forward fall.
- The inability for healthcare providers to perform a number of tests to evaluate for conditions such as appendicitis, preterm labor, or kidney infection if a pregnant inmate has abdominal pain during pregnancy.
- A delay in diagnosing issues after vaginal bleeding during pregnancy.
- The inability to safely treat a pregnant inmate who is suffering from seizures related to hypertensive disease and preeclampsia,⁴ which are common in pregnancy.
- Interference with normal labor and delivery, such as prohibiting the pregnant inmate from:
 - Ambulating during labor, which increases the likelihood for adequate pain management, successful cervical dilation, and a successful vaginal delivery.
 - Moving or being moved in preparation for emergencies of labor and delivery, including shoulder dystocia, hemorrhage, or abnormalities of the fetal heart rate requiring intervention, including urgent cesarean delivery.⁵

The Florida Department of Corrections (DOC) has five female correctional institutions statewide.⁶ The DOC assigns female prisoners to institutions based on current classification procedures while facilitating the individual risk and needs of prisoners to the extent possible considering security, medical and mental health needs, programmatic needs, geographic realities, and prohibitive monetary factors. The Lowell Correctional Institution houses all pregnant prisoners for the duration of the pregnancy and prisoners within six weeks post-delivery. Lowell Correctional Institution is the only institution in the state designed and staffed to care for expectant and early postpartum prisoners.

Upon confirmation of pregnancy, the prisoner's medical grade is changed and the pregnant prisoner is referred to a licensed physician for obstetrical care to provide prenatal care and follow them throughout the pregnancy. High risk patients are identified by obstetricians and given the necessary medical care. Inmates receive prenatal counseling, vitamins, and exams. They also are prescribed a prenatal diet that includes three fortified breakfast beverages per day and is adjusted

[Guidance-and-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Health-Care-for-Pregnant-and-Postpartum-Incarcerated-Women-and-Adolescent-Females?IsMobileSet=false](#) (last visited January 3, 2020);

See also Nursing for Women's Health Report.

⁴ Preeclampsia results in a pregnant woman exhibiting high blood pressure, protein in the urine, and swelling in the body. It also results in signs of damage to another organ system, most often the liver and kidneys. Preeclampsia usually begins after 20 weeks of pregnancy in women whose blood pressure had been normal. See Mayo Clinic, *Preeclampsia, Overview*, available at <https://www.mayoclinic.org/diseases-conditions/preeclampsia/symptoms-causes/syc-20355745>; WebMD, *What is Preeclampsia?*, available at <https://www.webmd.com/baby/preeclampsia-eclampsia#1> (all sites last visited January 6, 2020).

⁵ *Supra*, n. 3.

⁶ These facilities are Gadsden Correctional Facility in Quincy, Lowell Correctional Institution in Ocala, Florida Women's Reception Center in Ocala, Hernando Correctional Institution in Brooksville, and Homestead Correctional Institution in Florida City. The DOC, *Agency Analysis for SB 852*, January 10, 2020, p. 2 (on file with Senate Criminal Justice Committee)(hereinafter cited as "The DOC SB 852 Analysis").

for the caloric value and nutritional recommendations for pregnancy.⁷ Pregnant prisoners are transferred to a contract hospital for the actual delivery and then returned to the institution when discharged by the attending obstetrician. The DOC reports that postpartum care is provided at the institution according to the discharge orders of the attending obstetrician, but that the six-week checkup is provided by the obstetrician.⁸

The DOC reports that the pregnant prisoner population over the last three fiscal years is as follows:

- 101 prisoners in Fiscal Year 2018-2019.
- 98 in Fiscal Year 2017-2018.
- 109 in Fiscal Year 2016-2017.⁹

The Federal First Step Act’s Prohibition on the Use of Restraints

In December, 2018, the United States Congress passed, and President Trump signed into law, the “Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act” or the “FIRST STEP Act” (First Step Act).¹⁰ The law makes a number of changes to the federal criminal justice system and procedures applicable to inmates in the Federal Bureau of Prisons (BOP), including, in part, imposing a prohibition on the use of restraints on pregnant prisoners in the custody of the BOP and the U.S. Marshalls Office.

The prohibition on the use of restraints begins on the date that pregnancy is confirmed by a healthcare professional and ends when postpartum recovery is completed. However, the First Step Act authorizes restraints to be used in limited circumstances, including when the:

- Pregnant inmate is determined to be an immediate and credible flight risk;
- Pregnant inmate poses an immediate and serious threat of harm to herself or others that cannot be reasonably prevented by other means; or
- Healthcare professional determines that the use of restraints is appropriate for the medical safety of the inmate.¹¹

If one of the above-mentioned exceptions apply, the BOP or U.S. Marshall Service still may not:

- Use restraints around the ankles, legs, or waist of an inmate;
- Restrain an inmate’s hands behind her back;
- Use four-point restraints; or
- Attach an inmate to another inmate.¹²

Additionally, upon the request of a healthcare professional, correctional officials or deputy marshals must refrain from using restraints on an inmate or must remove restraints used on an inmate. If restraints are used on a pregnant inmate, the correctional official or deputy marshal

⁷ The DOC SB 852 Analysis, p. 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ The First Step Act of 2018, Pub. L. No. 115-391 (2018).

¹¹ Congressional Research Service, *The First Step Act of 2018: An Overview*, March 4, 2019, available at <https://crsreports.congress.gov/product/pdf/R/R45558> (last visited January 2, 2020). The Act provides that only the least restrictive restraints necessary to prevent escape or harm may be used if one of the exceptions applies.

¹² *Id.*

who used the restraints is required to submit a report within 30 days that describes the facts and circumstances surrounding the use of the restraints, including the reasons for using the restraints, the details of the use, including the type of restraint and length of time they were used, and any observable physical effects on the inmate.¹³

The First Step Act also requires the BOP and U.S. Marshall Service to develop training guidelines regarding the use of restraints on inmates during pregnancy, labor, and postpartum recovery. The guidelines are required to include:

- How to identify certain symptoms of pregnancy that require immediate referral to a healthcare professional;
- Circumstances under which exceptions to the prohibition on the use of restraints would apply;
- How to use restraints in a way that does not harm the inmate, the fetus, or the newborn in the case that an above-mentioned exception applies;
- Details on the information required to be reported when restraints are used; and
- The right of a healthcare professional to request that restraints not be used and the requirement to comply with such a request.¹⁴

The First Step Act does not include provisions related to various types of searches of or the use of restrictive housing for pregnant prisoners.

Florida's Prohibition on the Use of Restraints

Section 944.241, F.S., prohibits restraints¹⁵ from being used on a prisoner¹⁶ who is known to be pregnant during labor,¹⁷ delivery, and postpartum recovery,¹⁸ unless the corrections official¹⁹ makes an individualized determination that the prisoner presents an extraordinary

¹³ *Id.* The reports must be submitted to the BOP or U.S. Marshall Service and the healthcare provider responsible for the inmate's health and safety.

¹⁴ *Id.*

¹⁵ Section 944.241(2)(h), F.S., defines "restraints" to mean any physical restraint or mechanical device used to control the movement of a prisoner's body or limbs, including, but not limited to, flex cuffs, soft restraints, hard metal handcuffs, a black box, chubb cuffs, leg irons, belly chains, a security or tether chain, or a convex shield.

¹⁶ Section 944.241(2)(g), F.S., defines "prisoner" to mean any person incarcerated or detained in any correctional institution who is accused of, convicted of, sentenced for, or adjudicated delinquent for a violation of criminal law or the terms and conditions of parole, probation, community control, pretrial release, or a diversionary program. Additionally, the term includes any woman detained under the immigration laws of the United States at any correctional institution.

¹⁷ Section 944.241(2)(e), F.S., defines "labor" to mean the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix.

¹⁸ Section 944.241(2)(f), F.S., defines "postpartum recovery" to mean, as determined by her physician, the period immediately following delivery, including the recovery period when a woman is in the hospital or infirmary following birth, up to 24 hours after delivery unless the physician after consultation with the DOC or correctional institution recommends a longer period of time.

¹⁹ Section 944.241(2)(b), F.S., defines "corrections official" to mean the official who is responsible for oversight of a correctional institution, or his or her designee.

circumstance.²⁰ This section applies to any facility under the authority of the DOC, the DJJ, a county or municipal detention facility, or a detention facility operated by a private entity.²¹

A physician may request that restraints not be used for documentable medical purposes. In that case, the correctional officer, correctional institution employee, or other officer accompanying the pregnant prisoner may consult with the medical staff and if the officer determines there is an extraordinary public safety risk, the officer is authorized to apply restraints. However, leg, ankle, or waist restraints may not be used on any pregnant prisoner who is in labor or delivery.²² If restraints are used on a pregnant prisoner, the:

- Type of restraint applied and the application of the restraint must be done in the least restrictive manner necessary; and
- Corrections official is required to make written findings within ten days after the use of restraints to document the extraordinary circumstance that required the use of the restraints.²³

Leg, ankle, and waist restraints may not be used during the third trimester of pregnancy or when requested by the physician treating a pregnant prisoner unless there are significant documentable security reasons noted by the correctional institution to the contrary that would threaten the safety of the prisoner, the unborn child, or the public in general. Also, if wrist restraints are used, they must be applied in the front so the pregnant prisoner is able to protect herself in the event of a forward fall.²⁴ Any restraint of a prisoner who is known to be pregnant must be done in the least restrictive manner necessary in order to mitigate the possibility of adverse clinical consequences.²⁵

Section 944.241(4), F.S., provides that any prisoner who is restrained may file a grievance with the correctional institution and be granted a 45-day extension if requested in writing pursuant to rules promulgated by the correctional institution and that a woman harmed through the use of restraints in violation of s. 944.241, F.S., is not prohibited from filing a complaint under any other relevant provision of federal or state law.

The DOC and the DJJ are required to adopt rules to administer the provisions and must inform female prisoners of such rules upon admission to the correctional institution, including the policies and practices in the prisoner handbook, and post the policies and practices in locations in the correctional institution where such notices are commonly posted and will be seen by female prisoners, including common housing areas and medical care facilities.²⁶

The Florida Model Jail Standards (FMJS) are minimum standards which jails across Florida must meet to ensure the constitutional rights of those incarcerated are upheld. The FMJS

²⁰ Section 944.241(2)(d), F.S., defines “extraordinary circumstance” to mean a substantial flight risk or some other extraordinary medical or security circumstance that dictates restraints be used to ensure the safety and security of the prisoner, the staff of the correctional institution or medical facility, other prisoners, or the public.

²¹ See s. 944.241(2)(a), F.S.

²² Section 944.241(3)(a), F.S.

²³ Section 944.241(3)(b), F.S. The written findings must be kept on file by the DOC or correctional institution for at least five years.

²⁴ Section 244.241(3)(c), F.S.

²⁵ Section 944.241(3)(d), F.S.

²⁶ Section 944.241(5), F.S.

Committee is required to develop and continually enforce model standards adopted by the group.²⁷ The FMJS Rule 11.15 adopts the language of s. 944.241, F.S., related to the use of restraints on pregnant inmates.

Searches of Detained Persons in Florida's Prisons and Other Facilities

Department of Corrections

There are a number of searches of inmates that are utilized to control the introduction and movement of contraband and to prevent escapes of inmates, including searches while clothed, strip searches, and body cavity searches.²⁸

Rule 33-602.204, of the Florida Administrative Code (Rule 33-602.204), in part, requires that body cavity searches must be conducted only by appropriate Health Services staff, but allows authorized staff to be of the opposite sex from the inmates.²⁹ Body orifice and cavity searches must be conducted only when authorized by the warden, assistant warden, or the correctional officer chief upon a finding that there exists reasonable cause to believe that an inmate has contraband secreted in a body cavity.³⁰

Specified procedures and conditions must apply to body orifice and cavity searches, including, in part, that:

- The degree and intensity of the search must be the least required to bring the search to a conclusion.
- Oral cavity searches may be conducted visually as a routine element of any search of an inmate.³¹
- Physical intrusion into the inmate's body³² or physical isolation and observation may be utilized in specified circumstances.³³

²⁷ The Florida Sheriff's Association (FSA), *Florida Model Jail Standards as of 1/1/2019, What is FMJS?*, available at <https://www.flsheriffs.org/law-enforcement-programs/training/florida-model-jail-standards> (last visited January 10, 2020) (hereinafter cited as "FMJS Rule").

²⁸ Fla. Admin. Code R. 33-602.204.

²⁹ Fla. Admin. Code R. 33-602.204(3)(a).

³⁰ Fla. Admin. Code R. 33-602(3)(b). Reasonable cause may be established from specified evidence, including confidential information received from a reliable source, irregularities found in the area of the body during a strip search, or observed actions or behavior resulting in reasonable cause to believe that the individual has secreted contraband within a body cavity.

³¹ Additionally, if there are indications that an inmate is concealing contraband in his or her mouth, the Rule states that the inmate will be restrained or be placed under constant visual observation and no restraints or holds may be applied in any manner which inhibit breathing or swallowing. However, the inmate may be physically controlled and isolated from other inmates if necessary in order to avoid his or her disposal of the contraband. When there is reasonable cause to believe contraband has been swallowed, any attempt to retrieve the contraband will be accomplished by Health Service staff. No physical intrusion into the inmate's oral cavity will be attempted by any other person other than Health Service staff.

³² Fla. Admin. Code R. 33-602(3)(c)d.3. The specified circumstances allowing physical intrusion into the body include when: a member of the Health Services staff has determined that failure to remove the contraband presents an imminent danger to the health of the inmate; the contraband is clearly identified and is determined to be a clear and present danger to the security of the institution or the safety of the inmate or other persons; or the intrusion is necessary to retrieve the contraband for purposes of identification or to secure it as evidence and less intrusive means to retrieve such contraband are not feasible.

³³ Fla. Admin. Code R. 33-602(3)(c)d.4. Physical isolation and observation are authorized when the inmate cannot or will not voluntarily remove and surrender the contraband or in the event that a Medical Doctor has determined that the physical removal of contraband may be hazardous to the health and safety of the inmate. The isolation must occur in a medically approved isolated setting under constant visual supervision until the contraband can be retrieved through natural means. The

- Prior to the initiation of the first phase of the search, and before each successive escalation of the search, the individual must be given opportunities to voluntarily remove and surrender the contraband.³⁴
- A specified correctional officer of the same sex must be physically present when the search is conducted.³⁵
- The search must be made only by a physician or a designated member of the Health Services staff working under sanitary conditions and in a medically approved way using only the force necessary to ensure the person submits to the examination.³⁶
- Complete and detailed documentation of all body cavity searches other than visual or metal detector searches must be submitted to the warden and include specified information.³⁷

Department of Juvenile Justice

The DJJ has implemented procedures for conducting searches of juveniles who are in detention as well as those that have been committed to a residential facility. Rule 63G-2.019(11), F.A.C., which addresses detention services within the DJJ, and Rule 63E-7.107, F.A.C., which addresses residential placement, provide very similar procedures for when searches of juveniles may occur.

These rules provide, in part, that:

- The Superintendent must ensure that the primary function of any search is to locate contraband and to identify any item or situation that may be hazardous or otherwise compromise safety or security.³⁸
- All searches and the result of each search must be documented in specified documents.³⁹
- Any item or situation which may compromise safety or security must be immediately reported to the detention officer supervisor and law enforcement must be contacted if any item found would be considered illegal under Florida law or if there is evidence of any type of unlawful activity.⁴⁰

Further, the rules provide, in part, that:

- A frisk search must be conducted by an officer of the same sex as the youth being searched and such searches must be conducted:
 - During admission.
 - Following activities outside the secure area of the facility or visitation with a person from outside of the facility.
 - Prior to and after transportation.
 - When there is a reasonable suspicion that a youth is harboring contraband.⁴¹

natural process of waste elimination must be used as an alternative to forcible intrusion into the body cavities or surgery when a Medical Doctor determines that the natural method is feasible and does not pose a hazard to the inmate's health and safety.

³⁴ Fla. Admin. Code R. 33-602(3)(c)d.6.

³⁵ Fla. Admin. Code R. 33-602(3)(c)d.7.

³⁶ Fla. Admin. Code R. 33-602(3)(c)d.9.-10.

³⁷ Fla. Admin. Code R. 33-602(3)(c)d.12.

³⁸ Fla. Admin. Code R. 63G-2.019(11)(a); Fla. Admin. Code R. 63E-7.107(2)(b).

³⁹ Fla. Admin. Code R. 63G-2.019(11)(b); Fla. Admin. Code R. 63E-7.107(2)(a).

⁴⁰ Fla. Admin. Code R. 63G-2.019(11)(d). These provisions do not appear in Rule 63E-7.107.

⁴¹ Fla. Admin. Code R. 63G-2.019(11)(e); *See* Fla. Admin. Code R. 63E-7.107(2)(a) and (b).

- Strip searches must be conducted during admission or if there is a reasonable suspicion a youth is harboring contraband and the strip search must be conducted in a private area with two staff members present, both of the same sex as the youth being searched.⁴²
- Staff must explain the purpose and procedure of the search, assure the youth of his or her safety, avoid using unnecessary force, and treat the youth with dignity and respect to minimize the youth's stress and embarrassment.⁴³
- Staff may not search or physically examine a transgender or intersex youth for the sole purpose of determining the youth's genital status.⁴⁴
- Cavity searches must be approved by the superintendent, conducted by trained medical personnel in a hospital setting, and only conducted when it is strongly suspected that a youth has concealed contraband in a body cavity.⁴⁵

County Detention Facilities

The FMJS also had model standards for conducting searches on inmates in the custody of a county detention facility. FMJS Rules 4.2 and 4.3, provide that inmates must be searched by certified staff when being admitted to a detention facility and that the provisions of s. 901.211, F.S., must apply to such searches. Additionally, a body cavity search is only authorized to be conducted by licensed medical personnel.⁴⁶

Section 901.211, F.S., in part, provides that a person arrested for a traffic, regulatory, or misdemeanor offense, except in a case which is violent in nature, which involves a weapon, or which involves a controlled substance, may not be strip searched⁴⁷ unless certain circumstances apply.⁴⁸ Each strip search is required to be performed by a person of the same gender as the arrested person and on premises where the search cannot be observed by persons not physically conducting or observing the search. Additionally, an observer must be of the same gender as the arrested person.⁴⁹ Any body cavity search must be performed under sanitary conditions.⁵⁰

⁴² See Fla. Admin. Code R. 63G-2.019(11)(e)4. and 5.; Fla. Admin. Code R. 63E-7.107(2)(a). A strip search is a visual check of a youth without clothing. Both of these Rules also provide that if two staff of the same sex as the youth are not available that one staff of the same sex as the youth may conduct the strip search while a staff of the opposite sex is positioned to observe the staff person conducting the search outside the view of the youth.

⁴³ Fla. Admin. Code R. 63G-2.019(11)(e)6.; Fla. Admin. Code R. 63E-7.107(2).

⁴⁴ Fla. Admin. Code R. 63G-2.019(11)(e)7. Further, if the youth's genital status is unknown, it may be determined during conversation with the youth, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner. Rule 63E-7.107 is silent on this provision.

⁴⁵ Fla. Admin. Code R. 63G-2.019(11)(e)8.; Fla. Admin. Code R. 63E-7.107(2)(c).

⁴⁶ FMJS Rule 4.2 and 4.3. A written report documenting such action must be submitted to the officer-in-charge or designee.

⁴⁷ Section 901.211(1), F.S., defines the term "strip search" to mean having an arrested person remove or arrange some or all of his or her clothing so as to permit a visual or manual inspection of the genitals; buttocks; anus; breasts, in the case of a female; or undergarments of such person.

⁴⁸ See s. 901.211(2), F.S.

⁴⁹ Section 901.211(3), F.S.

⁵⁰ Section 901.211(4), F.S.

Confinement in Florida's Correctional Facilities

Department of Corrections

Confinement - General

Inmates in the custody of the DOC may be placed in confinement status based on specified conditions, which are detailed in the DOC's rules. Confinement status types used by the DOC include administrative or disciplinary confinement and protective management. "Administrative confinement" means the temporary removal of an inmate from the general inmate population in order to provide for security and safety until such time as more permanent inmate management processes can be concluded.⁵¹ "Disciplinary confinement" means a form of punishment in which inmates found guilty of committing violations of the DOC rules are confined for specified periods of time to individual cells based upon authorized penalties for prohibited conduct.⁵² "Protective management" means a special management status for the protection of inmates from other inmates in an environment as representative of that of the general population as is safely possible.⁵³

All inmates are subject to the same consideration for placement in administrative or disciplinary confinement. These types of confinement may limit conditions and privileges to assist with promoting the security, order, and effective management of the institution, but otherwise the treatment of inmates in confinement is as near to that of the general population as assignment to confinement permits.⁵⁴ For protective management, the rule provides that other privileges may be restricted on a daily case-by-case basis when such restrictions are necessary for the security, order, or effective management of the institution.⁵⁵

Certain procedures appear to apply consistently across all types of confinement, such as:

- Prior to placing the inmate in confinement, the inmate is given a pre-confinement health assessment or medical evaluation.⁵⁶
- The ability to house inmates in confinement with other inmates, subject to the inmates being interviewed by the housing supervisor to ensure that none of the inmates constitute a threat to each other prior to placing inmates in the same cell.⁵⁷

⁵¹ Fla. Admin. Code R. 33-602.220(1)(a).

⁵² Fla. Admin. Code R. 33-602.222(1)(f).

⁵³ Fla. Admin. Code R. 33-602.221(1)(j). Protective management is not disciplinary in nature and, to the extent possible, all less restrictive avenues to address protection needs must be employed.

⁵⁴ Fla. Admin. Code R. 33-602.220(5); Fla. Admin. Code R. 33-602.221(2)(a) and (4); and Fla. Admin. Code R. 33-602.222(4).

⁵⁵ Fla. Admin. Code R. 33-602.221(4)(t). All such restrictions must be documented on a specified form and reported to the Inmate Classification Team (ICT). The ICT is authorized to restrict privileges on a continuing basis after a determination that such restrictions are necessary for the security, order or effective management of the institution. The ICT's decision for continuing restriction must also be documented on a specified form.

⁵⁶ See Fla. Admin. Code R. 33-602.220(2)(b) and (c) and Fla. Admin. Code R. 33-602.222(2)(a). An inmate does not have to be given the pre-confinement evaluation if he or she is currently in another confinement status that required a pre-confinement medical assessment. Rule 33-602.221, related to protective management is silent on whether a pre-confinement evaluation is necessary.

⁵⁷ Fla. Admin. Code R. 33-602.220(4)(a); Fla. Admin. Code R. 33-602.221(3)(a); and Fla. Admin. Code R. 33-602.222(3).

- The number of inmates housed in an administrative confinement cell must not exceed the number of bunks in the cell.⁵⁸

Inmates in confinement retain certain modified privileges, as mentioned above. For example, such inmates are provided:

- Exercise, which occurs either in the inmate's cell if confined on a 24-hour basis or, if confinement extends beyond a 30-day period, three hours per week of exercise at a minimum outdoors.
- Showers at least three times per week and on days that the inmate works.
- Normal institution meals.⁵⁹
- The same clothing and clothing exchange as is provided to the general inmate population.⁶⁰
- Out of cell time is permitted for regularly scheduled mental health services, unless, within the past four hours, the inmate has displayed hostile, threatening, or other behavior that could present a danger to others.
- Correspondence opportunities which are the same as the general inmate population.
- Telephone privileges for emergency situations, when necessary to ensure the inmate's access to courts, or in any other circumstance when a call is authorized by the warden or duty warden.
- Visits, when authorized by the warden or his or her designated representative.
- Legal visits, unless there is evidence that the visit is a threat to security and order.⁶¹
- Legal materials in the same manner as in the general population as long as security concerns permit.^{62, 63}

Administrative Confinement

Florida Administrative Rule 33-602.220 provides that an inmate may be placed into administrative confinement for the following reasons:

- Disciplinary charges are pending and the inmate needs to be temporarily removed from the general inmate population in order to provide for security or safety until such time as the disciplinary hearing is held.
- Outside charges are pending against the inmate and the presence of the inmate in the general population would present a danger to the security or order of the institution.
- Pending review of an inmate's request for protection from other inmates.
- An inmate has presented a signed written statement alleging that they are in fear of staff and has provided specific information to support this claim.

⁵⁸ Fla. Admin. Code R. 33-602.220(4)(a) and (d); Fla. Admin. Code R. 33-602.221(3); and Fla. Admin. Code R. 33-602.222(3)(a).

⁵⁹ The exception to this is when an item on the normal menu creates a security problem in the confinement unit, in which case, another item of comparable quality is substituted. Utilization of the special management meal is authorized for any inmate in administrative confinement who uses food or food service equipment in a manner that is hazardous to him or herself, staff, or other inmates.

⁶⁰ The exception to this is when there is an individual factual basis that exceptions are necessary for the welfare of the inmate or the security of the institution.

⁶¹ The warden or his or her designee must approve all legal visits in advance.

⁶² An inmate in confinement may be required to conduct legal business by correspondence rather than a personal visit to the law library if security requirements prevent a personal visit. However, all steps are taken to ensure the inmate is not denied needed access while in administrative confinement.

⁶³ Fla. Admin. Code R. 33-602.220(5); 33-602.221(4); and 33-602.222(4).

- An investigation, evaluation for change of status, or transfer is pending and the presence of the inmate in the general population might interfere with that investigation or present a danger to the inmate, other inmates, or to the security and order of the institution.
- An inmate is received from another institution when classification staff is not available to review the inmate file and classify the inmate into general population.⁶⁴

Staff are required to conduct regular visits to administrative confinement. These visits are to be conducted a minimum of:

- At least every 30 minutes by a correctional officer, but on an irregular schedule.
- Daily by the housing supervisor.
- Daily by the shift supervisor on duty for all shifts except in the case of riot or other institutional emergency.
- Weekly by the chief of security, when on duty at the facility, except in the case of riot or other institutional emergency.
- Daily by a clinical health care person.
- Weekly by the chaplain, warden, assistant wardens, a classification officer, and a member of the ICT.⁶⁵

An inmate is assessed weekly to determine the appropriateness of placement with the goal of returning the inmate to general population as soon as the facts of the case indicate that such return can be done safely.⁶⁶ Other assessment requirements that are applicable to inmates who have been confined for more than 30 days include:

- A psychological screening assessment by a mental health professional to determine his or her mental condition.⁶⁷
- An interview by the ICT, who must prepare a formal assessment and evaluation report after each 30 day period in administrative confinement.⁶⁸

Disciplinary Confinement

Staff are required to conduct regular visits to disciplinary confinement in the same frequency as mentioned above related to administrative confinement with the addition of specific visits as follows:

- As frequently as necessary, but not less than once every 30 days, by a member of the ICT to ensure that the inmate's welfare is properly provided for and to determine the time and method of release.

⁶⁴ Fla. Admin. Code R. 33-602.220(3).

⁶⁵ Fla. Admin. Code R. 33-602.220(4).

⁶⁶ Fla. Admin. Code R. 63-602.220(8)(a).

⁶⁷ Fla. Admin. Code R. 33.602.220(8)(b). The assessment includes a personal interview if determined necessary by mental health staff. All such assessments are documented in the inmate's mental health record. The psychologist or psychological specialist prepares a report and presents it to the ICT regarding the results of the assessment with recommendations. The ICT then makes the decision to continue administrative confinement. If the decision is to continue confinement, a psychological screening assessment is completed at least every 90-day period.

⁶⁸ Fla. Admin. Code R. 33-602.220(8)(c) and (d). Additionally, the state classification office (SCO) reviews the reports provided by mental health and the ICT, and may interview the inmate, to determine the final disposition of the inmate's administrative confinement status.

- As frequently as necessary by the SCO to ensure that the inmate's welfare is provided for and to determine if the inmate should be released if said inmate is housed in disciplinary confinement for longer than 60 consecutive days.⁶⁹

Department of Juvenile Justice

The DJJ does not use solitary confinement with youth that are in the custody of its secure detention centers⁷⁰ or residential commitment programs.⁷¹ Section 985.03(7), F.S., defines a “child” or “juvenile” or “youth” to mean any person under the age of 18 or any person who is alleged to have committed a violation of law occurring prior to the time that person reached the age of 18 years.

The DJJ, in conjunction with the Annie E. Casey Foundation, has implemented the Juvenile Detention Alternatives Initiative (JDAI). JDAI is the most widely recognized set of national best practices on the practices and conditions inside juvenile justice facilities. The JDAI Standards provide that solitary confinement can never be used for purposes of punishment or discipline and must be limited to periods of less than four hours.⁷²

The DJJ does use short-term supervised confinement, precautionary observation, and secure and controlled observation for youth presenting an immediate danger to themselves or others in its detention and residential facilities. Additionally, medical confinement is used for youth who present with a communicable disease that may infect others.⁷³

Detention Facilities

The applicable DJJ Rules provide definitions related to types of confinement, including behavioral confinement and medical confinement. “Behavioral confinement” is defined to mean placement of a youth in a secure room during volatile situations in which a youth’s sudden or unforeseen onset of behavior imminently and substantially threatens the physical safety of others or himself or herself.⁷⁴ “Medical confinement” is defined to mean the placement of a youth in a

⁶⁹ Fla. Admin. Code R. 33-602.222(7). Fla. Admin. Code R. 33-602.222(1)(l) provides that the SCO refers to the office or office staff at the central office level that is responsible for the review of inmate classification decisions. Duties include approving, disapproving, or modifying ICT recommendations.

⁷⁰ Section 985.03(19), F.S., defines “detention center or facility” to mean a facility used pending court adjudication or disposition or execution of court order for the temporary care of a child alleged or found to have committed a violation of law. A detention center or facility may provide secure custody. A facility used for the commitment of adjudicated delinquents is not considered a detention center or facility.

⁷¹ Section 985.43, F.S., provides that upon adjudication of a delinquency case a court may commit a youth to the DJJ for placement in a residential commitment program. Section 985.03(44), F.S., which defines “restrictiveness level,” addresses the different levels of commitment programs, including, in part, “minimum-risk nonresidential,” “nonsecure residential,” and “high-risk residential.”

⁷² See JDAI, A Project of the Annie E. Casey Foundation, *Revised JDAI Standards, Standards Instrument, 2014 Update*, p. 6, December 2014, available at <http://www.cclp.org/wp-content/uploads/2016/06/JDAI-Detention-Facility-Assessment-Standards.pdf> (last visited January 10, 2020).

⁷³ The DJJ, *SB 624 Agency Analysis*, p. 2, January 31, 2019 (on file with the Senate Committee on Criminal Justice)(hereinafter cited as “The DJJ SB 624 Analysis”)[SB 624 (2019) addressed confinement for youth in the custody of the DOC, the DJJ, and county detention facilities]; See also Fla. Admin. Code Chs. 63E-7, 63G-2, and 63N-1.

⁷⁴ Fla. Admin. Code R. 63G-2.014(7).

secure room to allow the youth to rest and recover from illness and/or prevents the spread of a communicable illness (i.e. flu, H1N1 virus, etc.).⁷⁵

Additionally, confinement may not be used to harass, embarrass, demean, or otherwise abuse a youth. The use of confinement must be monitored by the superintendent or designee and the time limit for placement of a youth in confinement is no more than eight hours unless the superintendent or his or her designee grants an extension because release of the youth would imminently threaten his or her safety or the safety of others. The Regional Director or designee must review and grant any confinement extended beyond 24 hours, and, if granted, must notify the Assistant Secretary or designee.⁷⁶

A confinement report must be submitted by the detention officer as soon as possible, but no later than one hour after the youth's confinement. The confinement report must be reviewed by the detention officer's supervisor as soon as possible, but no later than two hours after the youth's confinement. The detention officer supervisor must evaluate and document the youth's status, at a minimum, every three hours to determine if the continued confinement of the youth is required. A youth is prohibited from being held in confinement beyond 72 hours without a confinement hearing.⁷⁷

Residential Commitment Facilities

The DJJ Rules applicable to residential facilities prohibits a residential commitment program's behavior management system from including disciplinary confinement, wherein a youth is isolated in a locked room, as discipline for misbehavior.⁷⁸ A residential commitment program may use room restriction, which is described to mean temporarily restricting the youth's participation in routine activities by requiring the youth to remain in his or her sleeping quarters, when:

- A youth is out of control or a suicide risk.
- A supervisor has given prior approval for each use of room restriction.
- It does not exceed four hours and the door to the room remains open to facilitate staff supervision.
- Staff engages, or attempts to engage, the youth in productive interactions at least every 30 minutes.
- The program does not deny a youth basic services, such as regular meals and physical or mental health services.
- The program staff uses strategies, such as conflict resolution and constructive dialogue, to facilitate the youth's reintegration into the general population.⁷⁹

The program documents certain details for each case of room restriction, including:

- A description of the behavior that resulted in room restriction;
- The date and time room restriction was implemented;

⁷⁵ Fla. Admin. Code R. 63G-2.014(50). The use of medical confinement is not intended as punishment or discipline and is ordered by the Designated Health Authority.

⁷⁶ Fla. Admin. Code R. 63G-2.022(4).

⁷⁷ Fla. Admin. Code R. 63G-2.022(4).

⁷⁸ Fla. Admin. Code R. 63E-7.009(3)(e).

⁷⁹ Fla. Admin. Code R. 63E-7.009(4).

- The name of the staff person who recommended the use of room restriction and the name of the approving supervisor;
- The name of the staff person removing the youth from room restriction;
- The date and time of removal and a description of the youth's behavior and attitude upon removal; and
- Follow-up actions taken or attempted to help re-integrate the youth back into the general population when released from room restriction.⁸⁰

A residential commitment program must ensure that staff observe a youth at least every ten minutes while in their sleeping quarters, including when on room restriction. Staff must conduct the observations in a manner to ensure the safety and security of each youth and document real time observations manually or electronically.⁸¹

Further, a residential commitment program may use controlled observation only when necessary and as a last resort.⁸² Controlled observation is defined to mean an immediate, short-term crisis management strategy, not authorized for use as punishment or discipline, wherein a youth in a residential commitment program is placed in a separate, identified, safe, and secure room.⁸³ Such specified programs are authorized to temporarily place a youth in a controlled observation room only in the following situations when non-physical interventions would not be effective:

- Emergency safety situations where there is imminent risk of the youth physically harming himself or herself, staff, or others; or
- When the youth is engaged in major property destruction that is likely to compromise the security of the program or jeopardize the youth's safety or the safety of others.⁸⁴

Controlled observation has a maximum time limit of two hours, that can be extended by the program director in two-hour increments for no longer than 24 hours. Youth who are in controlled observation receive the standard 10-minute sight and sound check along with documentation of their behavior in 15-minute intervals.⁸⁵

A supervisor with delegated authority must give prior authorization for each use of controlled observation unless the delay caused by seeking prior approval would further jeopardize the safety of others and the program's security. Staff is prohibited from leaving a youth alone in a controlled observation room until an inspection of the room is conducted and it is deemed safe, secure, and in compliance with specified guidelines.⁸⁶ The Rule further provides specific

⁸⁰ *Id.* Further, Rule 63E-7.011, F.A.C., provides that a youth is prohibited from large muscle exercise when he or she is temporarily separated from the general population, including when placed on controlled observation or room restriction status pursuant to Rule 63E-7.013, F.A.C. However, if a youth is restricted to a room, the program must give the youth an opportunity for large muscle exercise as soon as is reasonably possible after the youth is reintegrated into the general population.

⁸¹ Fla. Admin. Code R. 63E-7.013(3)(b).

⁸² Fla. Admin. Code R. 63E-7.013(16).

⁸³ Fla. Admin. Code R. 63E-7.002(20).

⁸⁴ Fla. Admin. Code R. 63E-7.013(16).

⁸⁵ The DJJ SB 624 Agency Analysis, p. 2.

⁸⁶ *Id.*

procedures for how to address a youth whose health or safety deteriorates once placed into controlled observation.⁸⁷

The Rule prohibits the use of controlled observation as punishment or discipline.⁸⁸

County Detention Facilities

The FMJS defines terms such as administrative confinement and disciplinary confinement. “Administrative confinement” is defined to mean the segregation of an inmate for investigation, protection, or some cause other than disciplinary action.⁸⁹ “Disciplinary confinement” is defined to mean the segregation of an inmate for disciplinary reasons.⁹⁰

The FMJS provides that inmates may be placed in administrative confinement for the purpose of ensuring immediate control and supervision when it is determined they constitute a threat to themselves, to others, or to the safety and security of the detention facility. The Rule requires an incident report or disciplinary report to follow the action that prompted placement in administrative confinement. Additionally, the time of release for inmates in disciplinary or administrative confinement must be recorded and filed in the inmate’s file.⁹¹

Each inmate in administrative confinement must receive housing, food, clothing, medical care, exercise, visitation, showers, and other services and privileges comparable to those available to the general population except as justified by his or her classification status or special needs inmate status.^{92, 93} Further, special needs inmates should be checked by medical staff at intervals not exceeding 72 hours and inmates in administrative or disciplinary confinement must bathe twice weekly.⁹⁴ The FMJS provides that the Officer-in-Charge or designee must see and talk to each inmate in disciplinary or administrative confinement at least once each morning and once each afternoon and document the inmate’s general condition and attitude at each visit.⁹⁵

Additionally, the FMJS requires that an inmate confined in an isolation cell used for medical purposes be examined by a physician or designee within 48 hours following his or her confinement in such area or cell. A physician or designee must determine when the inmate will be returned to the general population. The inmate must remain in isolation if the physician or designee:

- Finds that the inmate presents a serious risk to himself or others; or

⁸⁷ See Fla. Admin. Code R. 63E-7.013(16)(e)-(i). For example, a youth must be immediately removed from the controlled observation room and provided follow-up mental health services if he or she begins demonstrating acute psychological distress or suicide risk behaviors subsequent to placement in controlled observation.

⁸⁸ Fla. Admin. Code R. 63E-7.001(20).

⁸⁹ The FMJS Rule 1.2.

⁹⁰ The FMJS Rule 1.17.

⁹¹ The FMJS Rule 13.13.

⁹² *Id.*

⁹³ The FMJS Rule 5.4 defines “special needs inmates” as “inmates who have been determined by the health authority to be mentally ill, suicidal, alcoholic or drug addicted going through withdrawal and in need of close monitoring.”

⁹⁴ The FMJS Rule 13.13.

⁹⁵ The FMJS Rule 13.14.

- Continues to provide the inmate with follow-up medical care and treatment during the entire time that the inmate remains confined in such area or cell as deemed necessary.⁹⁶

Florida law and the rules of the DOC, the DJJ, and the FMJS do not appear to address restrictive housing of pregnant prisoners in separate provisions.

III. Effect of Proposed Changes:

The bill amends s. 944.241, F.S., modifying current provisions for using restraints on a pregnant prisoner and prescribing procedures for when a pregnant prisoner may be subject to an invasive body cavity search or placed in restrictive housing.

Additionally, the bill renames the Act the “Tammy Jackson Healthy Pregnancies for Incarcerated Women Act.”

Definitions

The bill amends the definitions section to:

- Expand the term “extraordinary circumstance” to apply to the exceptions of circumstances that dictate the use of restrictive housing in addition to the use of restraints.
- Add the definitions:
 - “Invasive body cavity search,” which means a search that involves a manual inspection using touch, insertion, or probing of the openings, cavities, and orifices of the human body, including, but not limited to the genitals, buttocks, anus, or breasts that is not conducted for a medical purpose; and
 - “Restrictive housing,” which means the placement of pregnant prisoners separately from the general population of a correctional institution and imposing restrictions on their movement, behavior, and privileges solely based on the condition of being pregnant. The term includes placing the prisoner in medical isolation or in the infirmary.

Use of Restraints

The bill expands the prohibition of using restraints on a pregnant prisoner under current law to cover when a pregnant prisoner, at any point in her known pregnancy, is being transported. The bill prescribes that restraints may not be used:

- If any doctor, nurse, or other health professional treating the prisoner in labor, in delivery, or in postpartum recovery requests that restraints not be used due to a documentable medical purpose. If the doctor, nurse, or other health professional makes such a request, the correctional officer or other law enforcement officer accompanying the prisoner must immediately remove all restraints.
- During transport, labor, delivery, and postpartum recovery, unless the corrections official makes an individualized determination that the prisoner presents an extraordinary circumstance.

⁹⁶ The FMJS Rule 7.23.

The bill provides an exception to the prohibition on the use of restraints, which specifically provides that:

- A restraint may be used on a pregnant prisoner or a prisoner who is in postpartum recovery only if all of the following apply:
 - The corrections official makes an individualized determination that the prisoner presents an extraordinary circumstance.
 - The restraints used are the least restrictive necessary.
 - If wrist restraints are used, the restraints are applied in the front of the prisoner so that she may protect herself in the event of a forward fall.
- A pregnant prisoner who is transported by a correctional institution must be transported using a restraint that is the least restrictive necessary.

Current law remains the same as it relates to the requirement that the corrections official must provide written findings when restraints are used on a pregnant prisoner due to an extraordinary circumstance that dictated the use of the restraints.

Invasive Body Cavity Searches

The bill provides that an invasive body cavity search of a pregnant prisoner may only be conducted by a medical professional, unless a correctional officer has a reasonable belief that the prisoner is concealing contraband. The bill requires that an officer who conducts an invasive body cavity search submit a written report to the corrections official within 72 hours after the search, which must:

- Explain the reasons for the search; and
- Identify any contraband recovered in the search.

Restrictive Housing

The bill prohibits, with limited exceptions, a pregnant prisoner from being involuntarily placed in restrictive housing. However, the bill provides that a corrections official is not prohibited from placing a pregnant prisoner in restrictive housing for disciplinary violations or to address security risks to the pregnant prisoner, other prisoners, or staff directly related to the pregnant prisoner provided the corrections official complies with the requirements discussed below.

The only exception provided for in the bill authorizes a pregnant prisoner to be involuntarily placed in restrictive housing if the corrections official of the correctional institution, in consultation with the individual overseeing prenatal care and medical treatment at the correctional institution, determines that an extraordinary circumstance exists such that restrictive housing is necessary and that there are no less restrictive means available.

The bill requires the corrections official to, *before* placing a prisoner in restrictive housing, write a report that states:

- The extraordinary circumstance that is present; and
- The reason less restrictive means are not available.

The corrections official is required to review the report at least every 24 hours to confirm that the extraordinary circumstances cited in the report still exist and a copy of the report and each review must be provided to the prisoner.

A pregnant prisoner who is placed in restrictive housing under s. 944.241, F.S., must be:

- Seen at least every 24 hours by the person overseeing prenatal care and medical treatment in the facility;
- Housed in the least restrictive setting consistent with the health and safety of the individual; and
- Given an intensive treatment plan developed and approved by the person overseeing prenatal care and medical treatment at the facility.

In the case that a pregnant prisoner needs infirmary care, the bill requires an authorized medical staff to provide an order for the prisoner to be admitted to the infirmary. Further, if the prisoner has passed her due date, she must be admitted to the infirmary until labor begins or until the obstetrician makes other housing arrangements. The bill provides that a pregnant prisoner who has been placed in the infirmary must be provided:

- The same access to outdoor recreation, visitation, mail, and telephone calls as other prisoners; and
- The ability to continue to participate in other privileges and classes granted to the general population.

The bill amends s. 944.215(7), F.S., deleting a date related to the rulemaking authority, therefore providing the entities covered under the section with the necessary rulemaking authority to implement the changes made by the act.

The bill is effective July 1, 2020.

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 requires that the DOC, DJJ, and county and municipal detention facilities comply with new standards for using restraints with, conducting invasive body cavity searches on, and placing in restrictive housing pregnant prisoners. These new standards require that specific staff document the extraordinary circumstance leading to the utilization of the enumerated exceptions to the use of restraints or restrictive housing with pregnant prisoners and to conduct reviews of the extraordinary circumstance that is the basis for the exception. The prisoner must be reviewed every 24 hours and must also be placed in the infirmary in certain circumstances.

According to the Department of Corrections and the Department of Juvenile Justice, changing the requirement for the frequency of interaction with medical staff from every eight hours to every 24 hours eliminates the fiscal impact.⁹⁷

Similarly, the Sheriffs' Association, previously advised that the medical examinations every 8 hours is a concern. They report that many medium and small jails do not have 24/7 medical staff onsite and would not be able to conduct the medical examinations without hiring or contracting for additional staff.⁹⁸ It is anticipated that the impact to sheriffs will be reduced with this change.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁹⁷ Telephone call with Mark Talent at the Department of Corrections, and with Rachel Moscosco at the Department of Juvenile Justice. (February 18, 2020).

⁹⁸ Email from the Sheriffs' Association (February 7, 2020) (on file with the Senate Committee on Criminal and Civil Justice Appropriations).

VIII. Statutes Affected:

This bill substantially amends section 944.241 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.)

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on February 18, 2020:

The committee substitute revised the previous requirement that pregnant prisoners who are placed in restrictive housing be “examined” at least every eight hours, to require that they be “seen” at least every 24 hours.

CS by Criminal Justice on January 14, 2020:

The committee substitute:

- Renames the Act the “Tammy Jackson Healthy Pregnancies for Incarcerated Women Act”;
- Modifies the term “extraordinary circumstance” to apply to restraints and restrictive housing;
- Defines the terms “invasive body cavity search” and “restrictive housing”;
- Expands the prohibition on using restraints on pregnant prisoners to cover a pregnant prisoner at any point in her pregnancy if she is being transported;
- Provides an exception to when restraints can be used on a pregnant prisoner and requires the corrections official to document the reasons why restraints were necessary;
- Prohibits invasive body cavity searches on a pregnant prisoner and provides an exception for when a correctional officer can conduct such a search;
- Prohibits a corrections institution from placing a pregnant prisoner in restrictive housing just as a result of the condition of being pregnant;
- Provides exceptions to when restrictive housing can be used on a pregnant prisoner and requires the corrections official to document the reasons why restrictive housing was necessary;
- Requires a corrections official to examine a pregnant prisoner placed into restrictive housing every eight hours to ensure the restrictive housing is still necessary;
- Requires pregnant prisoners placed in the infirmary for restrictive housing to be provided the same rights as in the general population; and
- Provides rulemaking authority.

- B. **Amendments:**

None.



846110

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/19/2020	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Pizzo) recommended the following:

Senate Amendment

Delete line 190

and insert:

1. Examined at least every 24 hours by the medical staff



656522

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2020	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Pizzo) recommended the following:

- 1 **Senate Substitute for Amendment (846110)**
- 2
- 3 Delete line 190
- 4 and insert:
- 5 1. Seen at least every 24 hours by the medical staff



2020 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Corrections

<u>BILL INFORMATION</u>	
BILL NUMBER:	SB 852
BILL TITLE:	Restrictive Housing for Incarcerated Pregnant Women
BILL SPONSOR:	Senator Pizzo
EFFECTIVE DATE:	July 1, 2020

<u>COMMITTEES OF REFERENCE</u>
1) Criminal Justice
2) Appropriations Subcommittee on Criminal and Civil Justice
3) Appropriations
4)
5)

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

<u>CURRENT COMMITTEE</u>

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

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

<u>Is this bill part of an agency package?</u>
No

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	January 22, 2020
LEAD AGENCY ANALYST:	Rusty McLaughlin
ADDITIONAL ANALYST(S):	Amber Vargas, Shana Lasseter, Jeff Bryan, Laura Carter, Sibyle Walker
LEGAL ANALYST:	Paul Vazquez
FISCAL ANALYST:	Sharon McNeal

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Amends s. 944.241, F.S., by defining the term “restrictive housing” and prohibiting the involuntary placement of pregnant prisoners in this type of housing unless extraordinary circumstances exist necessitating the placement. In that event, corrections officials must write a specified report as to those circumstances and the need for the placement. Providing requirements for the report; requiring corrections officials to review such reports at specified intervals; requiring a copy of such reports and reviews to be provided to pregnant prisoners in restrictive housing; providing requirements for the treatment of pregnant prisoners placed in restrictive housing; requiring pregnant prisoners to be admitted to the infirmary under certain circumstances; providing certain rights for pregnant prisoners admitted to the infirmary.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The Florida Department of Corrections (FDC or Department) has five female correctional institutions statewide: (1) Gadsden Correctional Facility in Quincy; (2) Lowell Correctional Institution in Ocala; (3) Florida Women’s Reception Center in Ocala; (4) Hernando Correctional Institution in Brooksville; and, (5) Homestead Correctional Institution in Florida City. The Department assigns female inmates to institutions based on current classification procedures which work to stabilize the total inmate population, while facilitating the individual risk and needs of inmates to the extent possible considering security, medical and mental health needs, programmatic needs, geographic realities, and prohibitive monetary factors.

All pregnant inmates are housed at Lowell Correctional Institution in Ocala, for the duration of their pregnancy. All inmates within six weeks post-delivery are also housed at Lowell C.I. Lowell C.I. is the sole institution in the state designed and staffed to care for expectant and early postpartum inmates. Inmates are transferred to a contract hospital for the actual delivery, returning to the institution when discharged by the attending obstetrician. Postpartum care will be provided at the institution according to the discharge orders of the attending obstetrician. The six-week checkup will be provided by the obstetrician.

Florida law requires the Department to provide each pregnant inmate with prenatal care and medical treatment during her pregnancy. The inmates are transferred to outside (contracted) hospitals for labor and delivery.

Upon confirmation of pregnancy, the inmate’s medical grade is changed and the pregnant inmate is referred to a licensed physician for obstetrical care to provide prenatal care and follow them throughout their pregnancy. High risk patients are identified by obstetricians and handled accordingly. Inmates receive prenatal counseling, vitamins and exams. They also are prescribed a prenatal diet that includes three fortified breakfast beverages per day and is adjusted for the caloric value and nutritional recommendations for pregnancy. Any time a woman is pregnant and sent to prison she must decide where to place her child well prior to birth. Over the last three fiscal years, the pregnant inmate population was as follows:

FY 2018/2019 – 101

FY 2017/2018 – 98

FY 2016/2017 – 109

A review of the 101 pregnant inmates incarcerated in FY 2018-2019 revealed the inmates were serving commitments for the following offense categories:

Offense Category	Description	Number of Inmates
1	Murder	0
2	Sex Crimes	1
3	Robbery	3
4	Violent Personal Crimes	20
5	Burglary	8
6	Thefts, forgery, fraud	23
7	Drugs	32
8	Weapons	1
9	All Others	13

Of the 101 pregnant inmates during FY 2018-2019, 62 inmates, or 62%, have a disciplinary report (DR) history. Of those 62 inmates, 23 have at least one DR in the serious or assaultive categories. Examples in these categories include battery on a correctional officer or inmate, fighting, possession of narcotics, and participation in a disturbance.

All inmates, including pregnant inmates, are subject to placement in certain housing statuses, including restrictive housing, as indicated below. All confinement placements are justified and reviewed by more than one staff entity, and all attempts are made for less restrictive options before such placement. Additionally, all staff are trained to closely observe inmate behavior for signs indicating that medical and/or mental health care is needed. Moreover, all inmates are repeatedly informed that they may request such aid at any time.

The Department has specific procedures in place to address mental health emergencies, and has various facilities that are equipped with the necessary resources to address mental health crises, such as inmate-declared psychological emergencies. Procedure 404.001, Suicide and Self-Injury Prevention, and Health Services Bulletin (HSB) 15.05.18, Outpatient Mental Health Services, describe the requirements of mental health and nursing when dealing with psychological emergencies.

Some, but not all, of the relevant language contained within these policies is as follows:

Procedure 404.001 Section 1(b): "Inmate-declared psychological emergencies and emergent staff referrals will be responded to as quickly as possible but within one (1) hour by health services staff. Documentation of emergency contacts must be written and filed on the day of encounter."

HSB 15.05.18 Section V(A): "Inmate-declared emergencies and emergent staff referrals will be responded to as promptly as feasible, but must be responded to by health services staff within one (1) hour of notification. At institutions where twenty-four (24) hour health care coverage is not available; security staff will coordinate with available health care staff at the nearest institution to ensure response to emergent referrals in accordance with Procedure 404.001."

Administrative Confinement

Rule 33-602.220, F.A.C., administrative confinement is "the temporary removal of an inmate from the general inmate population in order to provide for security and safety until such time as more permanent inmate management processes can be concluded." Otherwise the treatment of inmates in administrative confinement is as near to that of the general population as assignment to administrative confinement permits.

An inmate may be placed into administrative confinement for the following reasons:

- Disciplinary charges are pending and the inmate needs to be temporarily removed from the general inmate population in order to provide for security or safety until such time as the disciplinary hearing is held.
- Outside charges are pending against the inmate and the presence of the inmate in the general population would present a danger to the security or order of the institution.
- Pending review of an inmate's request for protection from other inmates.
- An inmate has presented a signed written statement alleging that they are in fear of staff and has provided specific information to support this claim.
- An investigation, evaluation for change of status, or transfer is pending and the presence of the inmate in the general population might interfere with that investigation or present a danger to the inmate, other inmates, or to the security and order of the institution.
- An inmate is received from another institution when classification staff is not available to review the inmate file and classify the inmate into general population.

Prior to placing the inmate in administrative confinement, the inmate is given a pre-confinement health assessment, which includes a physical and mental health evaluation that is documented in the inmate's health care record.

The Institutional Classification Team (ICT) reviews inmates in administrative confinement within 72 hours.

Inmates in administrative confinement may be housed with other inmates. However, prior to placing inmates in the same cell, the inmates are interviewed by the housing supervisor to ensure that none of the inmates constitute a threat to each other. The number of inmates housed in an administrative confinement cell does not exceed the number of bunks in the cell. The only exception to this policy is during an emergency situation as declared by the warden or duty warden.

Staff are required to conduct regular visits to administrative confinement. These visits are to be conducted a minimum of:

- At least every 30 minutes by a correctional officer, but on an irregular schedule.

- Daily by the housing supervisor.
- Daily by the shift supervisor on duty for all shifts except in case of riot or other institutional emergency.
- Weekly by the Chief of Security, when on duty at the facility, except in case of riot or other institutional emergency.
- Daily by a clinical health care person.
- Weekly by the chaplain, warden, assistant wardens, a classification officer and a member of the ICT.

An inmate is assessed regularly to determine the appropriateness of placement. Specifically:

Mental Health: Any inmate assigned to administrative confinement for more than 30 days is given a psychological screening assessment by a mental health professional to determine his or her mental condition. The assessment includes a personal interview if determined necessary by mental health staff. All such assessments are documented in the inmate's mental health record. The psychologist or psychological specialist prepares a report and presents it to the ICT regarding the results of the assessment with recommendations. The ICT then makes the decision to continue administrative confinement. If the decision is to continue confinement, a psychological screening assessment is completed at least every 90-day period.

ICT: If an inmate is confined for more than 30 days, the ICT interviews the inmate and prepares a formal assessment and evaluation report after each 30-day period in administrative confinement.

State Classification Office (SCO): The SCO reviews the reports provided by mental health and the ICT, and may interview the inmate, to determine the final disposition of the inmate's administrative confinement status.

Inmates in administrative confinement retain certain privileges but some may be more restrictive than the general population. They are provided:

Exercise - Those inmates confined on a 24-hour basis excluding showers and clinic trips may exercise in their cells. However, if confinement extends beyond a 30-day period, an exercise schedule is implemented to ensure a minimum of three hours per week of exercise out of doors.

Showers - At a minimum each inmate in confinement showers three times per week and on days that they work.

Meals - All inmates receive normal institutional meals as are available to the general inmate population. However, if any item on the normal menu creates a security problem in the confinement unit, another item of comparable quality is substituted. Utilization of the special management meal is authorized for any inmate in administrative confinement who uses food or food service equipment in a manner that is hazardous to him or herself, staff, or other inmates.

Clothing – Inmates are provided the same clothing and clothing exchange as the general inmate population unless there are facts to suggest that on an individual basis exceptions are necessary for the welfare of the inmate or the security of the institution.

Medical – Inmates are allowed out of their cells to receive regularly scheduled mental health services as specified unless, within the past four hours, the inmate has displayed hostile, threatening, or other behavior that could present a danger to others.

Correspondence – Inmates have the same opportunities for correspondence that are available to the general inmate population.

Telephone privileges are allowed for emergency situations, when necessary to ensure the inmate's access to courts, or in any other circumstance when a call is authorized by the warden or duty warden.

Visits are permitted only when specifically authorized by the warden or his/her designee.

Legal visits are allowed and are not restricted except when there is evidence that the visit is a threat to security and order. The warden or his or her designee must approve all legal visits in advance.

Legal Access - Legal materials are accessible to inmates in administrative confinement as to inmates in general population as long as security concerns permit. An inmate in confinement may be required to conduct legal business

by correspondence rather than a personal visit to the law library if security requirements prevent a personal visit. However, all steps are taken to ensure the inmate is not denied needed access while in administrative confinement.

Disciplinary Confinement

As defined in Rule 33-602.222, F.A.C., "Disciplinary Confinement refers to a form of punishment in which inmates found guilty of committing violations of the department rules are confined for specified periods of time to individual cells based upon authorized penalties for prohibited conduct." All inmates, regardless of age, are subject to the same penalties stated in Rule 33-601.314, F.A.C., Rules of Prohibited Conduct and Penalties for Infractions.

Inmates are given pre-confinement medical evaluations by medical staff prior to being placed in disciplinary confinement. Any inmate currently in another confinement status who received a pre-confinement medical assessment is not to be required to have another medical assessment prior to movement to disciplinary confinement.

Inmates in disciplinary confinement may be housed with another inmate. However, prior to placing inmates in the same cell, the inmates are interviewed by the housing supervisor to ensure that none of the inmates constitute a threat to each other. Inmates are not housed in disciplinary confinement cells in greater number than there are beds in the cells. The only exception to this policy is during an emergency situation as declared by the warden or duty warden.

Staff are required to conduct regular visits to disciplinary confinement. These visits are to be conducted at the same frequency as inmates in administrative confinement, with additional visits as follows:

- As frequently as necessary, but not less than once every 30 days, by a member of the ICT to ensure that the inmate's welfare is properly provided for and to determine the time and method of release.
- As frequently as necessary by the SCO to ensure that the inmate's welfare is provided for and to determine if the inmate should be released if said inmate is housed in disciplinary confinement for longer than 60 consecutive days.

Inmates in disciplinary confinement status retain certain privileges, but some may be more restrictive than the general population. Privileges for inmates in disciplinary confinement are comparable to those listed above for administrative confinement, and are specified in Rule 33-602.222, F.A.C.

Close Management

As defined in Rule 33-601.800, F.A.C., close management is the confinement of an inmate apart from the general population, for reasons of security, or the order and effective management of the institution, where the inmate, through his or her behavior, has demonstrated an inability to live in the general population without abusing the rights and privileges of others. There are three levels of close management. Close management I (CMI) is the most restrictive single cell housing level of all the close management status designations. CMII is restrictive cell housing, which may or may not be restricted to single cell housing. CMIII is the least restrictive cell housing unit in close management.

When an inmate in general population has committed acts that threaten the safety of others, threaten the security of the institution, or demonstrate an inability to live in the general population without abusing the rights and privileges of others, the inmate shall be placed in administrative confinement pending close management review. When an inmate in any other confinement status has committed acts that threaten the safety of others, threaten the security of the institution, or demonstrated an inability to live in a segregated population without abusing the rights and privileges of others the inmate shall be housed in his or her current status pending close management review.

Specific placement processes, review and reporting requirements as well as conditions and privileges in CM units are outlined in Rule 33-601.800, F.A.C.

Medical Isolation

Under current Department procedures, when an inmate needs to be isolated from other inmates for medical reasons, he or she is housed in a medical isolation cell within the infirmary area of the institution. As indicated in the department's Health Services Bulletin 15.03.26, the infirmary will be staffed twenty-four (24) hours per day by health care personnel; all infirmary inmates must be within sight or sound of staff; and, staff shall make rounds at least every two (2) hours for all patients in the infirmary.

2. EFFECT OF THE BILL:

Amends s. 944.241, F.S., by adding the term “restrictive housing” meaning housing some prisoners separately from the general population of a correctional institution and imposing restrictions on their movement, behavior, and privileges. The term includes placing the prisoner in medical isolation or in the infirmary.

All inmates, including pregnant inmates, are subject to placement in certain housing statuses, including those of a restrictive nature, as described above. All confinement placements are justified and reviewed by more than one staff entity for appropriateness, and all attempts are made for less restrictive options before any such placement.

The proposed language states that a pregnant prisoner may not be involuntarily placed in restrictive housing unless the corrections official of the correctional facility (warden or his/her designee), along with the individual overseeing the inmate’s prenatal care and medical treatment, determine that an extraordinary circumstance exists to warrant placement in restrictive housing and that there are no less restrictive means available. Additionally, the legislation requires that:

(1) a report describing the extraordinary circumstance(s) and the reason less restrictive means are unavailable must be written prior to placement;

““Extraordinary circumstance” is defined in the bill as a substantial flight risk or some other extraordinary medical or security circumstance that dictates restraints be used to ensure the safety and security of the prisoner, the staff of the correctional institution or medical facility, other prisoners, or the public. Based on this definition of “extraordinary circumstance” within the statute, unlike for restraints, the usage of such requirement doesn’t seem applicable to the day to day decisions for a placement into restrictive housing. The existing definition is specifically constructed to dictate for the usage of restraints. The decision / necessity to use restraints is not the circumstantial equivalent of the decision / necessity for placement into a restrictive housing status. Presently, prior to placing the inmate in administrative confinement, an inmate is given a pre-confinement health assessment to include a physical and mental health evaluation that is documented in the health care record.

The proposed legislation declares no prohibition on placement in restrictive housing for protection needs, investigations or discipline, it is presumed “extraordinary circumstances” would include these reasons for placement, which aligns with current department administrative rules.

If the intent is to exclude these reasons, then the bill conflicts with existing administrative rules and essentially creates a new classification and confinement system for pregnant inmates who would be exempted in many ways from the Department’s current confinement and special housing rules, especially disciplinary confinement. The Department has very few tools at its disposal and abolishing processes for enforcing consequences of negative behavior is risky. More specifically, the restriction of certain management tools serves to provide no incentive for inmates to follow rules and regulations, effectively undermining the Department’s ability to ensure the safety of staff and inmates, the security of the facility.

Under current Department practices, all confinement placements are justified in writing and reviewed by more than one staff entity, and all attempts are made for less restrictive options before such placement.

(2) the report is reviewed by “the corrections official” (warden) at least every 24 hours to confirm the extraordinary circumstance(s) still exists and provide a copy of the report and each review to the inmate;

Risk factors differ among pregnant inmates based on things such as the duration of the pregnancy and whether or not the inmate was a high risk from the onset of pregnancy based upon a pre-existing condition.

This requirement poses a substantial workload increase for the warden or his/her designee. Some pregnant inmates have higher risk factors than others; therefore, every pregnant inmate may not require such frequent reviews.

The Department utilizes administrative confinement, disciplinary confinement, and close management to separate inmates from the general population. A myriad of staff is required to visit the inmate in these statuses daily and weekly. Staff is always present and is specifically required to visit the inmate, including the warden, assistant wardens, shift supervisor on all shifts, the housing supervisor, the chaplain, mental health professional, and a member of the Institutional Classification Team. Additionally, a correctional officer makes routine checks of each inmate. Each of these visits are specifically documented.

(3) any pregnant inmate placed in restrictive housing shall be examined at least every 8 hours by the individual overseeing the inmate's prenatal care and medical treatment;

It does not limit the stage of pregnancy or provide any requirements or parameters for the examination. Because some pregnant inmates have higher risk factors than others, every pregnant inmate may not require such frequent medical examinations. Compliance with this requirement would necessitate additional medical and security staff, including after-hours staff. The following example may shed some light on the increased workload:

In FY 18/19, there were 101 pregnant inmates in the Department's custody. Of those, 23 received a serious or assaultive DR warranting disciplinary confinement. Using the average confinement time of 30 days and factoring in medical examinations for these inmates every 8 hours yields a total of 90 exams per inmate and a total of 2,070 total medical exams in a 30-day period for 23 inmates.

A total of 4.2 FTE staff is needed to provide 24/7 coverage in compliance with this bill. Assuming the language "individual overseeing the inmate's prenatal care" refers to the clinician, this would increase staffing by 3.2 FTE clinicians over the current 1.0 FTE staffing. The current approved salary range for a physician is \$145,000 - \$230,000. Based on current contract language that provides for a contract amendment when changes in healthcare standards substantially impact the contractor's cost, the Department would be required to implement this change through a formal contract amendment.

Compliance with the bill will also require an additional 13 FTE correctional officers in security to escort pregnant inmates in restrictive housing to and from their medical examinations. This will include transporting the inmates from the confinement unit at Lowell Annex to the Lowell Main Unit which houses all medical specialists and equipment.

(4) the pregnant inmate is housed in the least restrictive setting consistent with the health and safety of the inmate;

Under current Department practices all attempts are made for less restrictive options before placing any inmate in a restricted housing status. No inmate is ever placed in any type of restricted housing status unless warranted.

(5) the pregnant inmate is given an intensive treatment plan developed and approved by the individual overseeing the inmate's prenatal care and medical treatment;

It is unclear of the intended purpose, required content, or what the "treatment plan" is to address. A pregnant inmate, regardless of their housing location, will always be followed by an obstetrician throughout their pregnancy through discharge after the 6-week postpartum follow-up.

In order to comply with this requirement, the Department would require clarification of the legislative intent.

(6) any pregnant prisoner in need of infirmary care must have an admit order to the infirmary from a primary care nurse practitioner or obstetrician;

Current Department procedures authorize Physicians, ARNPs, and Physician Assistants to admit patients to the infirmary.

(7) any inmate who has passed her due date must be admitted to the infirmary until labor begins or other housing arrangements are made;

This may not be necessary depending on the pregnant inmate's risk factors. Under current practice, inmates are housed in the infirmary when clinically indicated.

(8) any pregnant inmate placed in the infirmary shall be provided the same access to outdoor recreation, visitation, mail, phone calls, and to participate in other privileges and classes granted to the general population.

Under current Department policy and procedure, this already occurs when the inmate is physically able to participate.

The passage of this bill as written would represent a significant shift from the way the Department manages its special housing populations. Department compliance with this bill would require:

(1) Substantial revisions and additions to Chapter 33, F.A.C., at a minimum requiring a new and separate matrix of disciplinary infractions and penalties;

(2) Additional correctional and medical staff.

(3) Program changes to the department's Offender Based Information System (OBIS), as well as sufficient fiscal appropriation, to ensure that pregnant inmates are processed and handled differently than the current system provides for.

The effective date of the bill is July 1, 2020.

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:	Unknown
Opponents and summary of position:	Unknown

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:	Indeterminate.																																																																																						
Expenditures:	<p>If this bill is passed, it is anticipated that this bill would require additional correctional officers and medical staff to ensure compliance, as well as technology impact due to OBIS changes. Estimated costs are as follows:</p> <table border="1"> <thead> <tr> <th></th> <th>Unit Costs</th> <th>FTE #</th> <th>Annual Costs</th> </tr> </thead> <tbody> <tr> <td colspan="4">Various Program Areas Fiscal Impact</td> </tr> <tr> <td colspan="4"><u>Contracted OB/GYN Clinician</u></td> </tr> <tr> <td>Clinician</td> <td>200,000</td> <td>3.2</td> <td>640,000</td> </tr> <tr> <td>Benefits package @ 27%</td> <td></td> <td></td> <td>172,800</td> </tr> <tr> <td>Administrative Fee @ 11.5%</td> <td></td> <td></td> <td>93,472</td> </tr> <tr> <td style="text-align: right;">Subtotal</td> <td></td> <td>3.2</td> <td>\$ 906,272</td> </tr> <tr> <td colspan="4"><u>Security Staff</u></td> </tr> <tr> <td>Correctional Officers</td> <td>58,118</td> <td>13.0</td> <td>755,534</td> </tr> <tr> <td>Recurring expense - CO</td> <td>2,691</td> <td></td> <td>34,983</td> </tr> <tr> <td>Non-recurring expense - CO</td> <td>2,225</td> <td></td> <td>28,925</td> </tr> <tr> <td style="text-align: right;">Total expenses</td> <td></td> <td></td> <td>63,908</td> </tr> <tr> <td>Human Resource Services</td> <td>329</td> <td></td> <td>4,277</td> </tr> <tr> <td>Salary incentive</td> <td>1,128</td> <td></td> <td>14,664</td> </tr> <tr> <td style="text-align: right;">Subtotal</td> <td></td> <td>13.0</td> <td>\$ 838,383</td> </tr> <tr> <td colspan="3"></td> <td style="text-align: right;">\$ 17,400</td> </tr> <tr> <td colspan="3" style="text-align: right;">Total</td> <td>16.2 \$ 1,762,055</td> </tr> <tr> <td colspan="4">Summary of Costs</td> </tr> <tr> <td></td> <td>Recurring</td> <td></td> <td>\$ 1,659,088</td> </tr> <tr> <td></td> <td>Non-recurring</td> <td></td> <td>46,325</td> </tr> <tr> <td></td> <td style="text-align: right;">Total</td> <td></td> <td>\$ 1,762,055</td> </tr> </tbody> </table> <p>It is important to note that based on current contract language that provides for a contract amendment when changes in healthcare standards substantially impact the contractor's cost, the Department would be required to implement this change through a formal contract amendment.</p>				Unit Costs	FTE #	Annual Costs	Various Program Areas Fiscal Impact				<u>Contracted OB/GYN Clinician</u>				Clinician	200,000	3.2	640,000	Benefits package @ 27%			172,800	Administrative Fee @ 11.5%			93,472	Subtotal		3.2	\$ 906,272	<u>Security Staff</u>				Correctional Officers	58,118	13.0	755,534	Recurring expense - CO	2,691		34,983	Non-recurring expense - CO	2,225		28,925	Total expenses			63,908	Human Resource Services	329		4,277	Salary incentive	1,128		14,664	Subtotal		13.0	\$ 838,383				\$ 17,400	Total			16.2 \$ 1,762,055	Summary of Costs					Recurring		\$ 1,659,088		Non-recurring		46,325		Total		\$ 1,762,055
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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 likely be a significant technology impact due to OBIS changes to include changes to location, restrictions, DR's and penalties as well as changes to the current intake and processing for pregnant inmates.
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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.	
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ADDITIONAL COMMENTS

N/A.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	<p>Direct legal impact is as follows:</p> <p>Lines 162-165: Section 944.241(6), F.S, as currently written requires the Department to adopt rules to "administer this section" by September 1, 2012. This language apparently relates to the original enactment of s. 944.241, F.S., regarding the use of restraints on incarcerated pregnant women. The implementation of SB 852 will likely require the Department to promulgate new rules related to population management. Therefore, new rulemaking authority will need to be given to the Department in order to implement the proposed amendments to the statute.</p> <p>Further comments:</p> <p>Lines 39-44: "Extraordinary circumstance" does not appear to be sufficiently defined in the bill as drafted. The definition apparently relates to the original enactment of s. 944.241, F.S., regarding the use of restraints on incarcerated pregnant women. In order to have any meaning in the context of lines 131-133, the definition needs to be amended.</p> <p>Lines 69-73: The definition of "restrictive housing" should be limited to use in s. 944.241, F.S., to avoid any unintended confusion regarding how that phrase is used by the Department in other areas of operation.</p>
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	<p>Line 135: The Department is required to write a report, but the bill as drafted does not address how the report is to be maintained.</p>
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2020 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Juvenile Justice

BILL INFORMATION

BILL NUMBER:	CS/SB 852
BILL TITLE:	Restrictive Housing for Incarcerated Pregnant Women
BILL SPONSOR:	Senator Pizzo
EFFECTIVE DATE:	July 1, 2020

COMMITTEES OF REFERENCE

1) Criminal Justice
2) Appropriations Sub. on Criminal and Civil Justice
3) Appropriations
4) Click or tap here to enter text.
5) Click or tap here to enter text.

CURRENT COMMITTEE

Appropriations Sub. on Criminal and Civil Justice

SIMILAR BILLS

BILL NUMBER:	HB 1259
SPONSOR:	Representative Jones

PREVIOUS LEGISLATION

BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.
YEAR:	Click or tap here to enter text.
LAST ACTION:	Click or tap here to enter text.

IDENTICAL BILLS

BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.

Is this bill part of an agency package?

Click or tap here to enter text.

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	1/21/2020 – For more information please contact Legislative Affairs Director Rachel Moscoso at (850) 717-2716
LEAD AGENCY ANALYST:	Sam Kerce, Deputy Legislative Affairs Director
ADDITIONAL ANALYST(S):	Click or tap here to enter text.
LEGAL ANALYST:	John Mila, Asst. General Counsel
FISCAL ANALYST:	Marti Harkness, Budget Director

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Prohibiting the involuntary placement of pregnant prisoners in restrictive housing; providing exceptions; requiring corrections officials to write a specified report if an extraordinary circumstance necessitates placing a pregnant prisoner in restrictive housing; providing requirements for the treatment of pregnant prisoners placed in restrictive housing, etc.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

In 2019, the department served 2,584 females through detention and 477 in residential commitment. Of those females, 65 were pregnant while in detention and 27 were pregnant while committed to residential.

Upon a female youth entering into secure detention, they are screened for pregnancy and submit to a voluntary pregnancy test. If found to be pregnant, an appointment with the designated health authority and an outside OBGYN will be set. Each detention center and residential center has a designated health authority who is a licensed medical doctor. While in custody of the department, each facility's designated health authority is responsible for coordinating prenatal and postnatal care. This includes helping a youth schedule appointments in the community, connecting her to resources, and ensuring her health which may include providing vitamins, health education, and regular medical monitoring of her and her baby.

Restraints:

The department does not use any type of ankle, waist, or leg restraints on a pregnant youth. If a pregnant youth is being transported, they may be placed in front handcuffs for security purposes.

Searches:

The Department's Administrative Rules for detention and residential layout the process for conducting searches and cross gender viewing. The rules are [Detention Rule 63G-2.019 Security](#), [Residential Rule 63E-7.004 Youth Intake](#), and [Residential Rule 63E-7.013 Safety and Security](#). The department also follows the Federal Guidelines found in the Prison Rape Elimination Act (PREA) by having a youth who is searched done so by an officer of the same sex, except in exigent circumstances. If a cross gender search is preformed it must be documented and reported. Cavity searches are never done by officers and can only be done by a medical professional in a hospital setting.

Confinement and Supervision:

Youth in the department's care are never put into solitary confinement. The department does use short-term solutions to ensure the safety and health of all in our facilities.

Detention Behavioral Confinement:

In detention, a youth who poses a risk to the safety of themselves or others may be placed in behavioral confinement. This type of confinement last no more than eight hours unless the superintendent or his or her designee grants an extension because release of the youth would imminently threaten his or her safety or the safety of others. The Regional Director or designee must review and grant any confinement extended beyond 24 hours; and, if granted, must notify the Assistant Secretary or designee. While very rare, the department's rule allows for no youth to be held in confinement beyond 72 hours without a confinement hearing. In this type of confinement, a detention officer must reevaluate the youth's status every three hours to determine if confinement is still needed. Like all of our youth, 10-minute supervision checks will still be conducted.

Residential Controlled Observation:

In residential, a youth who poses a risk to the safety of themselves or others may be placed on controlled observation. The time limit for placement of a youth on controlled observation is two hours unless the program director or his or her designee grants an extension because release of the youth would imminently threaten his or her safety or the safety of others. The total placement time for a youth in controlled observation, including all extensions, shall not exceed 24 hours. A standard safety check will continually be performed every 15 minutes on the youth.

Medical Confinement:

A licensed physician must make the determination to place a youth in Medical Confinement. While the Department does not have 24-hour, 7 day a week medical staff, there is always a physician available by phone to be contacted in order for a youth to be put into Medical Confinement. That physician and the nurses will continue periodic evaluations of the youth's health and the physician will make the decision on when a youth is able to leave medical confinement. During medical confinement, a youth continues to receive regular supervision by way of 10-minute visual checks. The use of Medical Confinement is normally voluntary, but can be ordered, as the medical professional works with the youth to explain the circumstances of their Medical Confinement. Every effort is made to continue the youth's normal routine while confined for medical purposes. The youth will be monitored through normal daily medical rounds with nurses or the physician.

In each of the above situations, documentation is kept, and a youth is never denied access to basic needs.

2. EFFECT OF THE BILL:

Section 1:

Currently, s. 944.241 F.S., relates to the restraint of pregnant women. In this section of statute, a correctional institution includes any facility under the authority of the Department of Juvenile Justice or a county or municipal detention center, or a detention facility operated by a private entity.

The bill adds a definition of "**invasive body cavity search**" to mean a search that involves a manual inspection using touch, insertion, or probing of the opening, cavities, and orifices of the human body, including, genitals, buttocks, anus, or breast that is not conducted for a medical purpose. The department does allow frisk searches for security reasons, but no staff, except a medical professional, may conduct a cavity search on any youth.

Adds a definition of the term "**restrictive housing**" to mean housing a prisoner separately from the general population and imposing restrictions on their movement, behavior, and privileges for the sole purpose of her pregnancy. This term includes placement in medical isolation or in the infirmary.

As currently stated in statute, "**extraordinary circumstance**" is defined as a substantial flight risk or some other extraordinary medical or security circumstance.

The bill extends the protections for pregnant inmates to all stages of pregnancy. Currently, the most far-reaching protections in s. 944.241, F.S., only extend to inmates in labor, delivery and postpartum, with lessened protection in the third trimester.

Restraints:

The bill amends current law relating to restraints.

The bill adds during transport to the list of times that a woman should not be restrained. Currently restraints should not be used during labor, delivery, or postpartum recovery. In addition, a pregnant woman will not be put in restraints if a medical professional request that no restraints should be used.

The bill amends current law to provide a more detailed set of circumstances in which restraints can be used. All of the below must be met.

1. The corrections official makes an individualized determination that the prisoner presents an extraordinary circumstance.
2. The restraints used are the least restrictive necessary.
3. If wrist restraints are used, the restraints must be applied in the front so that she may protect herself in the event of a forward fall.

The bill keeps the reporting requirement where an officer must make written findings as the reason restraints were used. However, the bill also adds that if a pregnant prisoner is being transported and restraints are used, the same reporting requirements apply.

Restrictive Housing:

The bill continues by addressing in detail the circumstances surrounding restrictive housing for pregnant women by stating that involuntary placement in restrictive housing may not happen unless certain circumstances are met.

Exceptions that allow a woman to be held in restrictive housing are if the correctional official in consultation with the individual overseeing prenatal care and medical treatment determines that an extraordinary circumstance exists such that restrictive housing is necessary and that there are no less restrictive means available.

If an extraordinary circumstance is found, the corrections official shall write a report that states the following, prior to placing the prisoner in restrictive housing.

- The extraordinary circumstance that is present
- The reason less restrictive means are not available

The corrections official shall review the report at least every 24 hours to confirm that the extraordinary circumstances cited still exist. A copy of the report must be provided to the prisoner. A pregnant woman who is placed in restrictive housing shall be:

- Given an examination done every 8 hours by the medical professional overseeing prenatal care
- Housed in the least restrictive setting
- Given an intensive treatment plan developed and approved by the medical professional overseeing prenatal care.

If the pregnant prisoner needs infirmary care, an authorized medical staff must provide an order for the prisoner to be admitted to the infirmary. If the prisoner has passed her due date, she must be admitted to the infirmary until labor begins or until the obstetrician makes other housing arrangements.

A prisoner placed in the infirmary shall be provided

- Access to the outdoor recreation, visitation, mail, and telephone calls as other prisoners, and
- The ability to continue to participate in other privileges and classes granted to the general population

Section 2:

The bill provides an effective date of July 1, 2020.

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:	Click or tap here to enter text.
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.):	Click or tap here to enter text.
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4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown.
Opponents and summary of position:	Unknown.

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?

Y N

If yes, provide a description:	Click or tap here to enter text.
Date Due:	Click or tap here to enter text.
Bill Section Number(s):	Click or tap here to enter text.

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

Y N

Board:	Click or tap here to enter text.
Board Purpose:	Click or tap here to enter text.
Who Appoints:	Click or tap here to enter text.
Changes:	Click or tap here to enter text.
Bill Section Number(s):	Click or tap here to enter text.

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?

Y N

Revenues:	Click or tap here to enter text.
Expenditures:	A portion of the detention cost would be billed to counties according to detention cost share. Read "State Government Impact" for more details.
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	Click or tap here to enter text.

prior to implementation of the tax or fee increase?	
---	--

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?

Y N

Revenues:	
Expenditures:	<p>Restrictive confinement as defined in this bill would include the departments use of behavioral confinement and secure observation. To complete the 8-hour medical review of the pregnant female, additional on call medical staff will be needed at all 21 of the department's detention centers and the nine female residential programs.</p> <p><u>Detention cost</u> was estimated to allow for no more than an 8-hour gap in coverage. Since we currently contract for 76 hours per week with medical professionals, the Department would have to provide coverage for an additional 36 hours a week/44 hours a month that could be done by on call nurses. Due to the inability to predict who will come into detention, all centers would need to have on call nursing. It cannot be predicted how many hours a month an on-call nurse would be activated as it would entirely depend on the youth's medical status and behavior. However, each time a nurse would need to be called in, the expected cost is time and half which equates to \$53 an hour for a minimum of 2 hours.</p> <p><u>Below is the minimum cost as active hours cannot be predicted:</u></p> <p><u>On Call Only Cost:</u> 144 Hours A Month X 12 Months X 21 Detention Centers X \$2 On Call Hour = \$72,576</p> <p>In accordance with detention cost share, non-fiscally constrained counties that do not provide their own detention, will pay half of the detention cost. This is done through a cost reimbursement, which means the department would need the full funding for year one and half the funding on a recurring basis for the following years.</p> <p><u>Residential cost</u></p> <p>Residential programs received 27 pregnant youth in 2019. There are 9 residential girl's programs throughout the state, but 1 is located where prenatal emergency care is not readily available and not able to house pregnant women and one currently has 24-hour nursing. This would leave 7 programs that would need to increase nursing hours through a mixture of on call hours and active hours when needed. Each contract varies as to how many hours a medical professional is on site. The number of hours a nurse would need to be on call could range from 20 hours a week to 40 hours a week. Similar to detention, it also cannot be predicted how many hours a month an on-call nurse would be activated as it would entirely depend on the youth's medical status and behavior. However, each time a nurse would need to be called in, the expected cost is time and half which equates to \$53 an hour for a minimum of 2 hours.</p>

Does the legislation contain a State Government appropriation?	No.
If yes, was this appropriated last year?	Click or tap here to enter text.

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

Revenues:	Click or tap here to enter text.
Expenditures:	Click or tap here to enter text.
Other:	Click or tap here to enter text.

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

If yes, explain impact.	Click or tap here to enter text.
Bill Section Number:	Click or tap here to enter text.

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.	Click or tap here to enter text.
--	----------------------------------

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.	Click or tap here to enter text.
--	----------------------------------

ADDITIONAL COMMENTS

Lines 51-55: Relating to Invasive Body Cavity Search seems to combine frisk search, strip search, and cavity search all into one over arching term. Under this new definition, a detention officer would not be able to frisk search a pregnant youth as touch would be applied to her breast and buttocks. Searches are paramount to the safety of both the youth and staff in our centers. A pregnant youth who is brought into a detention center but could not be searched without a medical professional could impact basic security and operations of our programs.

Lines 80 - 85: Restrictive housing appears to include the departments use of behavioral confinement, medical confinement, and controlled observation. While a youth under these statuses have their movement limited, they are simply put in their room where a youth continues to receive regular supervision by way of 10-minute visual checks. In addition, the department does not have an infirmary like the Florida Department of Corrections. Instead, a medical professional puts a youth on medical confinement, which requires them to be in their room however, all normal activities that do not jeopardize their health continue.

Lines 179 - 180: States that prior to placing a pregnant woman in "restrictive housing" a report must be completed. The all-encompassing definition of restrictive housing means that if a pregnant youth was to get into a fight, staff would not be able to put her on behavioral confinement by sending her to her room, until a report is completed. Staff would have no place to safely take the youth to calm down while completing the required report, which could potentially have further safety implications.

Lines 190 - 191: This relates to being examined every 8 hours by medical staff if a youth is put into restrictive housing. Unlike the Florida Department of Corrections, the department does not have 24/7 nursing or medical on site. Instead the department can call the designated health authority 24/7 to consult with. Please see fiscal impact section for more information.

Line 194: It is not clear as to what an intensive treatment plan is.

Lines 199-202: This requires a pregnant youth who is past her due date to be admitted to the infirmary. The term infirmary is not applicable to the department.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	Click or tap here to enter text.
---------------------------	----------------------------------

From: Matt Dunagan <mdunagan@flsheriffs.org>
Sent: Friday, February 7, 2020 4:31 PM
To: Jameson, PK <PK.Jameson@LASPBS.STATE.FL.US>
Cc: Allie Pass <apass@flsheriffs.org>
Subject: RE: CS/SB 852

Yes, sorry about the delay. The medical checks every 8 hours is a concern. Many medium to small jails do not have 24/7 medical staff onsite and would not be able to conduct these checks every 8 hours without hiring/contracting for additional staff.

House amended it to daily medical checks. We are reviewing that requirement with our legislative committee next week.

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: Jameson, PK <PK.Jameson@LASPBS.STATE.FL.US>
Sent: Friday, February 7, 2020 4:14 PM
To: Matt Dunagan <mdunagan@flsheriffs.org>
Subject: CS/SB 852
Importance: High

Good afternoon Matt,

On January 20, 2020, I contacted you regarding the fiscal impact of this bill on sheriffs. Can you send that to me before Monday?

Thanks for your help.

PK Jameson, J.D.
Staff Director
Senate Subcommittee on Criminal & Civil Justice Appropriations
(850) 487-5140



The Florida Senate

Committee Agenda Request

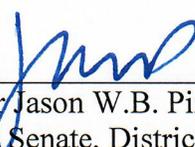
To: Senator Jeff Brandes, Chair
Appropriations Subcommittee on Criminal and Civil Justice

Subject: Committee Agenda Request

Date: January 14, 2020

I respectfully request that **CS/SB 852**, relating to Restrictive Housing for Incarcerated Pregnant Women, be placed on the:

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



Senator Jason W.B. Pizzo
Florida Senate, District 38

THE FLORIDA SENATE
APPEARANCE RECORD

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

18 February 20

Meeting Date

852

Bill Number (if applicable)

Topic Incarerated Pregnant Women

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title Lobbyist

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2/18/2020

Meeting Date

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

SB 852

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN Jogerst

Job Title _____

Address PO BOX 11094

Phone 850-222-0191

Tallahassee FL 32302
City State Zip

Email brian@waypointstat.com

Speaking: For Against Information

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

Representing Florida Assn of Healthy Start Coalitions

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2.17.2020
Meeting Date

SB 852
Bill Number (if applicable)

Topic Jamario Jackson Bill

Amendment Barcode (if applicable)

Name Trish Brown

Job Title Organizer / Facilitator

Address _____

Phone (850) 688-7153

Street Sallahessio
City State Zip

Email power4people4us@gmail.com

Speaking: For Against Information

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

Representing Dignity

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

18 Feb 2020
Meeting Date

CSFSB 832
Bill Number (if applicable)

Topic Unconcoated Pregnant Women Amendment Barcode (if applicable)

Name Melina Rayna Svanhild Farley Barrott

Job Title Legislative Director

Address 8689 SE 69 Ter Phone 352-226-7477
Street

Trenton FL 32693 Email _____
City State Zip

Speaking: For Against Information

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

Representing FL NOW

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2/18/2020 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)
Meeting Date

852
Bill Number (if applicable)

Topic Incarcerated Pregnant Women Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title _____

Address _____
Street

Phone _____

City _____ State _____ Zip _____

Email _____

Speaking: For Against Information

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

Representing New Florida Majority + Organize Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

0-18-20
Meeting Date

852-854
Bill Number (if applicable)

and pay comments
Amendment Barcode (if applicable)

Topic TAMMY JACKSON ACT

Name PATRICIA KNIGHT

Job Title _____

Address 1795 N.W. 85th St.

Phone _____

Miami, Fla. 33147
City State Zip

Email miscooneyfree@gmail.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/20

Meeting Date

852

Bill Number (if applicable)

Topic Confinement of Pregnant Women

Amendment Barcode (if applicable)

Name Carey Haughwout

Job Title Public Defender, 15th Judicial Circuit

Address 421 3d St.

Phone 561-355-7500

Street

West Palm Beach

FL

33401

Email CareyPD@pd15.state.fl.us

City

State

Zip

Speaking: For Against Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/2020

Meeting Date

852

Bill Number (if applicable)

Topic Incarcerated Pregnant Women

Amendment Barcode (if applicable)

Name Karen Woodell

Job Title Exec. Director

Address 579 E. Call St.

Phone 850-321-9386

Street

Tallahassee, FL 32301

City

State

Zip

Email fcsep@fcyale.com

Speaking: For Against Information

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

Representing FI Center for Fiscal & Economic Policy

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

852

Meeting Date

Bill Number (if applicable)

Topic Incarcerated Pregnant Women

Amendment Barcode (if applicable)

Name Scott McCoy

Job Title Policy Director

Address P.O. Box 10788

Phone 334-224-4309

Street

Tallahassee FL

32302

Email

City

State

Zip

Speaking: For Against Information

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

Representing Southern Poverty Law Center Action Fund

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

02/18/20
Meeting Date

SB 852
Bill Number (if applicable)

Topic Tammy Jackson Act

Amendment Barcode (if applicable)

Name Tray Johns

Job Title Criminal Justice Organizer

Address 6659 Adriatic Way
Street

Phone _____

Greencove FL 33413
City State Zip

Email Tray@newfloridamajority

Speaking: For Against Information

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

SPEAKING

Representing Dignity Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/2020
Meeting Date

852
Bill Number (if applicable)

Topic Tony Jackson Act

Amendment Barcode (if applicable)

Name Melanie Smith Holmes

Job Title Lead Educator

Address 350 NW 46
Street

Phone (486) 260 2409

City Miami State FL Zip 33128

Email holmes.melanie@phd.com

Speaking: For Against Information

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

NOT SPEAKING

Representing WASH STATE WOMEN'S DIGNITY TEAM

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

Feb. 18, 2020
Meeting Date

852
Bill Number (if applicable)

Topic INCARCERATED Women

Amendment Barcode (if applicable)

Name Kiwanda Green

Job Title _____

Address 910 N.W. 16th Terr. #2
Street

Phone _____

Ft. Lauderdale Fla. 33311
City State Zip

Email _____

Speaking: For Against Information

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

Representing DIGNITY Coalition

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

Feb 18, 2020

Meeting Date

SB 852

Bill Number (if applicable)

Topic Dignity / Incarcerated Women / Tammy Jackson Act

Amendment Barcode (if applicable)

Name Jankosa

Job Title Full time student / Barry Fellow

Address 40 NW 162nd St

Phone 321-419-9041

Street

Miami

City

FL

State

33169

Zip

Email

Speaking: For Against Information

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

Representing Dignity Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

02/18/20
Meeting Date

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

852
Bill Number (if applicable)

Topic Dignity Florida / rights womens equal
Name Aaron Burks

Amendment Barcode (if applicable)

Job Title _____

Address 3901 36 CT
West Palm Beach 33407
Street City State Zip

Phone 561-628-1824

Email aburks263@gmail.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/18/20
Meeting Date

852
Bill Number (if applicable)

Topic TAMMY JACKSON Act

Amendment Barcode (if applicable)

Name CHARO VALERO

Job Title FL POLICY DIRECTOR

Address 1971 NW 7 AVE

Phone

Street

MIAMI

FL

33138

Email CHARO@LATWAINSTITUTE.ORG

City

State

Zip

Speaking: For Against Information

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

Representing FL LATINA ADVOCACY NETWORK

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/18/20

Meeting Date

852

Bill Number (if applicable)

Topic DIGNITY

Amendment Barcode (if applicable)

Name Loetricia Gibbs-Tolbert

Job Title ED Die Reactions Inc.

Address 1561 Crabapple Cove Ct N

Phone 904-860-2624

Street

Jacksonville FL 32225

City

State

Zip

Email loetricia@cliereactions.net

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/2020
Meeting Date

SR 852
Bill Number (if applicable)

Topic DIGNITY INCARCERATED Women

Amendment Barcode (if applicable)

Name CHERYL R. WATFORD

Job Title _____

Address 2002 NE 167th ST #1

Phone _____

Street

N. MIAMI BEACH FL

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing DIGNITY COALITION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/20
Meeting Date

SB852
Bill Number (if applicable)

Topic Tammy Jackson Act

Amendment Barcode (if applicable)

Name Carmen D. Antanietty

Job Title Birth Justice Doula

Address 1424 NW 6 ave
Street

Phone _____

Fort Lauderdale
City State Zip

Email _____

Speaking: For Against Information

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

Representing Dignity Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/20
Meeting Date

SB 852
Bill Number (if applicable)

Topic INCARCERATES WOMEN

Amendment Barcode (if applicable)

Name Sherry Elisha Oliver

Job Title Organizer

Address 1224 Bridier St.
Street
Jacksonville
City State Zip

Phone 904-763-5131

Email SherryOliver2@gmail.com

Speaking: For Against Information

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

Representing DIGNITY Coalition

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2-18-20

Meeting Date

852 SB

~~AD581~~

Bill Number (if applicable)

Topic Tammy Jackson Act

Amendment Barcode (if applicable)

Name Ms. Jacqueline Y. Cooney

Job Title Activist

Address PO BOX 540825

Phone 305 859-1782

Street

OPA-locks FL 33054

City

State

Zip

Email msj.cooney305@gmail

Speaking: For Against Information

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

Representing Dignity Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-18-2020
Meeting Date

SB 1259852
Bill Number (if applicable)

Topic Tammy Jackson Act

Amendment Barcode (if applicable)

Name Foxy Mason

Job Title _____

Address 6659 Adriatic Way
Street

Phone 808 476 7388

Greenacres FL 33413
City State Zip

Email Foxy.fedfam41ife@gmail.com

Speaking: For Against Information

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

Representing DIGNITY COALITION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2-18-2020

Meeting Date

852

Bill Number (if applicable)

Topic Tammy Jackson Act

Amendment Barcode (if applicable)

Name MONALISA WEBER

Job Title ORGANIZER

Address 4302 HOLLYWOOD BLVD #274

Phone _____

Street

FLWD

City

FL

State

33021

Zip

Email _____

Speaking: For Against Information

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

Representing DIGNITY FL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/2020

Meeting Date

SB 852

Bill Number (if applicable)

Topic Tammy Jackson Act

Amendment Barcode (if applicable)

Name Muzette Thomas

Job Title _____

Address 2920 Merrill Rd Unit 808

Phone 904 803 1447

Street

Jacksonville

City

State

32277

Zip

Email MuzetteThomas@gmail.com

Speaking: For Against Information

Waive Speaking: In Support Against

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

Representing Dignity Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2-18-2020

Meeting Date

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

SB 852

Bill Number (if applicable)

Topic Tammy Jackson Act

Amendment Barcode (if applicable)

Name Breyonne Young

Job Title _____

Address 2600 SW 56th Ave

Phone 438 066 0752

Street

West Park Florida 33023

Email yonneyoung@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing Dignity Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

02/18/2020
Meeting Date

SB 352
Bill Number (if applicable)

Topic Tammy Jackson Act

Amendment Barcode (if applicable)

Name Michelle Eckels

Job Title

Address 4375 Confederate Pt. Rd. #11E

Phone 904.862.4695

Street

Jacksonville Florida 32210

Email integrity0780@yahoo.com

City

State

Zip

Speaking: For Against Information

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

Representing Dignity Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/2020
Meeting Date

SB852/HB1259
Bill Number (if applicable)

Topic TAMMY JACKSON Act

Amendment Barcode (if applicable)

Name Rosemary McCoy

Job Title _____

Address 1418 Manotok Point Dr UNIT #105

Phone 904-681-713-1570

Street

Jacksonville

FL

32210

City

State

Zip

Email McCoy4real.3W1@gmail.com

Speaking: For Against Information

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

Representing DINIRI FL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

07/18/2020
Meeting Date

852
Bill Number (if applicable)

Topic Tammy Jackson Act

Amendment Barcode (if applicable)

Name Sheila Singleton

Job Title _____

Address 6594 Winding Greens Drive
Street
Jacksonville Florida 32241
City State Zip

Phone 904 343 5639

Email Sheilasingleton7755@yahoo.com

Speaking: For Against Information

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

Representing Dignity FL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/18/20

Meeting Date

852

Bill Number (if applicable)

Topic INCARCERATED Women

Amendment Barcode (if applicable)

Name BONNY McKINNON

Job Title

Address 3952 Atlantic Blvd Apt # E11

Phone (904) 440-4005

Street

Jacksonville

City

Florida

State

32207

Zip

Email

Speaking: [] For [] Against [] Information

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

Representing DIGNITY COALITION

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

Lobbyist registered with Legislature: [] Yes [X] No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/18/20
Meeting Date

SB 852

Bill Number (if applicable)

Topic Tammy Jackson Act

Amendment Barcode (if applicable)

Name Mike Todd

Job Title Organizer

Address 5708 Welby St

Phone 904 465 1336

Street

Jacksonville

FL

32207

City

State

Zip

Email michael@newfloridamajority.org

Speaking: For Against Information

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

Representing DIGNITY FL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/20
Meeting Date

852
Bill Number (if applicable)

Topic Tammy Jackson Act

Amendment Barcode (if applicable)

Name Nubian Roberts

Job Title Criminal Justice Organizer

Address 1934 Thelma St

Phone 904-258-8915

Jacksonville FL 32206
City State Zip

Email nubian@new-florida.org

Speaking: For Against Information

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

Representing Dignity Coalition

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Feb. 18, 2020
Meeting Date

SB 852
Bill Number (if applicable)

Topic Tammy Jackson Act

Amendment Barcode (if applicable)

Name Jermerica Jones

Job Title _____

Address 2001 Bellvue Way Apt. E-105
Street

Phone (850) 661-3100

Tallahassee FL 32304
City State Zip

Email Jermerica1978@yahoo.com

Speaking: For Against Information

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

Representing Dignity Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

02/17/2020
Meeting Date

SB 852
Bill Number (if applicable)

Topic Tammy Jackson Act

Amendment Barcode (if applicable)

Name Francesca Menes

Job Title Florida State Coordinator

Address 10800 Biscayne Blvd.
Street

Phone 776 346 1646

Miami FL 33161
City State Zip

Email _____

Speaking: For Against Information

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

Representing Center for Popular Democracy / Local Progress

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/2020

Meeting Date

SB 852

Bill Number (if applicable)

Topic Tammy Jackson Act

Amendment Barcode (if applicable)

Name Destanie Norman

Job Title _____

Address 10800 Biscayne Blvd.

Phone _____

Street

Miami

City

FL

State

33161

Zip

Email _____

Speaking: For Against Information

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

Representing Dignity Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/20
Meeting Date

852
Bill Number (if applicable)

Topic INCARCERATED Women

Amendment Barcode (if applicable)

Name Arvon Hollis

Job Title _____

Address 2339 Porshing #4
Street

Phone 504 702-9224

Hollywood FL 33020
City State Zip

Email _____

Speaking: For Against Information

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

Representing DIGNITY COALITION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/18/20
Meeting Date

852
Bill Number (if applicable)

Topic TAMMIE JACKSON Act

Amendment Barcode (if applicable)

Name MARQUITA JAMES

Job Title D

Address 19 W 6 Str

Phone

Street

Jax

FLA

32206

City

State

Zip

Email morekeblanco@gmail

Speaking: For Against Information

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

Representing DIGNITY FL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

0 2/18/20
Meeting Date

852
Bill Number (if applicable)

Topic DIGNITY - TAMMY JACKSON ACT
Name Shirley A. Nixon (mother of Tammy)

Amendment Barcode (if applicable)

Job Title _____

Address 10800 BISCAYNE BLVD Phone 754-244-7207

Street
Miami FL 33161
City State Zip

Email snixon7511@gmail.com

Speaking: For Against Information

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

Representing DIGNITY FL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2.18.20

Meeting Date

SB 852

Bill Number (if applicable)

Topic Incarcerated Pregnant Women

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legislative Director

Address 4343 West Flagler St.

Phone 786-363-4436

Street

Miami

FL

33134

Email kgross@aclufl.org

City

State

Zip

Speaking: For Against Information

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

Representing American Civil Liberties Union of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Feb 18, 2020
Meeting Date

SB 852
Bill Number (if applicable)

Topic INCARCERATED WOMEN

Amendment Barcode (if applicable)

Name Walker, Marilyn E

Job Title Dignity Steering Committee Member

Address 9785 S.W. 181st #103

Phone (781) 474-2267

Street City State Zip
Palmetto Bay FL 33157

Email mwalker

Speaking: For Against Information

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

Representing DIGNITY COALITION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/18/2020

Meeting Date

852

Bill Number (if applicable)

Topic Incarcerated Pregnant Women

Amendment Barcode (if applicable)

Name Kim Porteous

Job Title President of FL NOW

Address 6616 Crenshaw Dr.

Phone 706-669-8192

Orlando FL 32835

Email Kim4FLNOW@gmail.com

Speaking: For Against Information

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

Representing Volunteer for FL NOW

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/20
Meeting Date

852
Bill Number (if applicable)

Topic Tammy Jackson Act

Amendment Barcode (if applicable)

Name Waynesha Pye

Job Title Billing Specialist - Tallahassee Dodge Chrysler Jeep

Address 1555 Delaney Drive Apt 1605
Street

Phone 850-519-2227

Tallahassee
City

FL
State

32309
Zip

Email neshajax@gmail.com

Speaking: For Against Information

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

Representing DIGNITY Coalition

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date

Bill Number (if applicable)

Topic Tammy Jackson

Amendment Barcode (if applicable)

Name Rep. Dianne Harsh

Job Title Rep

Address 2912 N. 26th St

Phone 813-748-0952

Street

TP

City

FL

State

Zip

Email dharshconsulting@yahoo.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

By the Committee on Criminal Justice; and Senator Pizzo

591-02249-20

2020852c1

1 A bill to be entitled
2 An act relating to incarcerated pregnant women;
3 amending s. 944.241, F.S.; amending the short title;
4 redefining the term "extraordinary circumstance";
5 defining the terms "invasive body cavity search" and
6 "restrictive housing"; revising the circumstances
7 under which a prisoner who is known to be pregnant may
8 not be restrained; specifying conditions under which
9 restraints may be used; requiring that invasive body
10 cavity searches on a pregnant prisoner be conducted by
11 a medical professional; providing an exception;
12 prohibiting the involuntary placement of pregnant
13 prisoners in restrictive housing; providing
14 exceptions; requiring corrections officials to write a
15 specified report if an extraordinary circumstance
16 necessitates placing a pregnant prisoner in
17 restrictive housing; providing requirements for the
18 report; requiring corrections officials to review such
19 reports at specified intervals; requiring a copy of
20 such reports and reviews to be provided to pregnant
21 prisoners in restrictive housing; providing
22 requirements for the treatment of pregnant prisoners
23 placed in restrictive housing; requiring pregnant
24 prisoners to be admitted to the infirmary under
25 certain circumstances; providing certain rights for
26 pregnant prisoners admitted to the infirmary;
27 providing an effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:

591-02249-20

2020852c1

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Section 1. Section 944.241, Florida Statutes, is amended to read:

944.241 ~~Shackling of~~ Incarcerated pregnant women.—

(1) SHORT TITLE.—This section may be cited as the "Tammy Jackson Healthy Pregnancies for Incarcerated Women Act."

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

(a) "Correctional institution" means any facility under the authority of the department or the Department of Juvenile Justice, a county or municipal detention facility, or a detention facility operated by a private entity.

(b) "Corrections official" means the official who is responsible for oversight of a correctional institution, or his or her designee.

(c) "Department" means the Department of Corrections.

(d) "Extraordinary circumstance" means a substantial flight risk or some other extraordinary medical or security circumstance that dictates restraints or restrictive housing be used to ensure the safety and security of the prisoner, the staff of the correctional institution or medical facility, other prisoners, or the public.

(e) "Invasive body cavity search" means a search that involves a manual inspection using touch, insertion, or probing of the openings, cavities, and orifices of the human body, including, but not limited to the genitals, buttocks, anus, or breasts that is not conducted for a medical purpose.

(f) ~~(e)~~ "Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and

591-02249-20

2020852c1

59 progressive dilation of the cervix.

60 (g)~~(f)~~ "Postpartum recovery" means, as determined by her
61 physician, the period immediately following delivery, including
62 the recovery period when a woman is in the hospital or infirmary
63 following birth, up to 24 hours after delivery unless the
64 physician after consultation with the department or correctional
65 institution recommends a longer period of time.

66 (h)~~(g)~~ "Prisoner" means any person incarcerated or detained
67 in any correctional institution who is accused of, convicted of,
68 sentenced for, or adjudicated delinquent for a violation of
69 criminal law or the terms and conditions of parole, probation,
70 community control, pretrial release, or a diversionary program.
71 For purposes of this section, the term includes any woman
72 detained under the immigration laws of the United States at any
73 correctional institution.

74 (i)~~(h)~~ "Restraints" means any physical restraint or
75 mechanical device used to control the movement of a prisoner's
76 body or limbs, including, but not limited to, flex cuffs, soft
77 restraints, hard metal handcuffs, a black box, chubb cuffs, leg
78 irons, belly chains, a security or tether chain, or a convex
79 shield.

80 (j) "Restrictive housing" means the placement of pregnant
81 prisoners separately from the general population of a
82 correctional institution and imposing restrictions on their
83 movement, behavior, and privileges solely based on the condition
84 of being pregnant. The term includes placing the prisoner in
85 medical isolation or in the infirmary.

86 (3) RESTRAINT OF PRISONERS.—

87 (a) Except as provided in paragraph (b), restraints may not

591-02249-20

2020852c1

88 be used on a prisoner who is known to be pregnant:

89 1. If any doctor, nurse, or other health professional
90 treating the prisoner in labor, in delivery, or in postpartum
91 recovery requests that restraints not be used due to a
92 documentable medical purpose. If the doctor, nurse, or other
93 health professional makes such a request, the correctional
94 officer or other law enforcement officer accompanying the
95 prisoner must immediately remove all restraints.

96 2. During transport, labor, delivery, or and postpartum
97 recovery, unless the corrections official makes an
98 individualized determination that the prisoner presents an
99 extraordinary circumstance., except that:

100 ~~1. The physician may request that restraints not be used~~
101 ~~for documentable medical purposes. The correctional officer,~~
102 ~~correctional institution employee, or other officer accompanying~~
103 ~~the pregnant prisoner may consult with the medical staff;~~
104 ~~however,~~ If the corrections official officer determines there is
105 an extraordinary public safety risk, the official may officer is
106 authorized to apply restraints as limited by paragraph (b)
107 subparagraph 2.

108 (b) A restraint may be used on a prisoner who is known to
109 be pregnant or in postpartum recovery only if all of the
110 following apply:

111 1. The corrections official makes an individualized
112 determination that the prisoner presents an extraordinary
113 circumstance.

114 2. The restraints used are the least restrictive necessary.

115 3. If wrist restraints are used, the restraints are applied
116 in the front of the prisoner so that she may protect herself in

591-02249-20

2020852c1

117 the event of a forward fall.

118 ~~4.2. Under no circumstances shall Leg, ankle, or waist~~
119 ~~restraints are not be used on any pregnant prisoner who is in~~
120 ~~labor or delivery.~~

121 ~~(b) If restraints are used on a pregnant prisoner pursuant~~
122 ~~to paragraph (a):~~

123 ~~1. The type of restraint applied and the application of the~~
124 ~~restraint must be done in the least restrictive manner~~
125 ~~necessary; and~~

126 ~~(c)2. The corrections official shall make written findings~~
127 ~~within 10 days after the use of restraints as to the~~
128 ~~extraordinary circumstance that dictated the use of the~~
129 ~~restraints. These findings shall be kept on file by the~~
130 ~~department or correctional institution for at least 5 years.~~

131 ~~(d) A pregnant prisoner who is transported by a~~
132 ~~correctional institution must be transported using a restraint~~
133 ~~that is the least restrictive necessary. A correctional~~
134 ~~institution that uses restraints on a pregnant prisoner during~~
135 ~~transport must comply with the written findings required in~~
136 ~~paragraph (c).~~

137 ~~(e) During the third trimester of pregnancy or when~~
138 ~~requested by the physician treating a pregnant prisoner, unless~~
139 ~~there are significant documentable security reasons noted by the~~
140 ~~department or correctional institution to the contrary that~~
141 ~~would threaten the safety of the prisoner, the unborn child, or~~
142 ~~the public in general:~~

143 ~~1. Leg, ankle, and waist restraints may not be used; and~~

144 ~~2. If wrist restraints are used, they must be applied in~~
145 ~~the front so the pregnant prisoner is able to protect herself in~~

591-02249-20

2020852c1

146 ~~the event of a forward fall.~~

147 ~~(d) In addition to the specific requirements of paragraphs~~
148 ~~(a)-(c), any restraint of a prisoner who is known to be pregnant~~
149 ~~must be done in the least restrictive manner necessary in order~~
150 ~~to mitigate the possibility of adverse clinical consequences.~~

151 (4) INVASIVE BODY CAVITY SEARCHES.—

152 (a) Except as provided under paragraph (b), an invasive
153 body cavity search of a pregnant prisoner may be conducted only
154 by a medical professional.

155 (b) A correctional officer may conduct an invasive body
156 cavity search of a pregnant prisoner only if the officer has a
157 reasonable belief that the prisoner is concealing contraband. An
158 officer who conducts an invasive body cavity search must submit
159 a written report to the corrections official within 72 hours
160 after the search. The report must:

- 161 1. Explain the reasons for the search; and
- 162 2. Identify any contraband recovered in the search.

163 (5) RESTRICTIVE HOUSING.—

164 (a) Except as provided in paragraph (b), a pregnant
165 prisoner may not be involuntarily placed in restrictive housing.
166 This subsection does not prohibit a corrections official from
167 placing a pregnant prisoner in restrictive housing for
168 disciplinary violations or to address security risks to the
169 pregnant prisoner, other prisoners, or staff directly related to
170 the pregnant prisoner provided the corrections official complies
171 with the reporting requirements of subparagraph (b)1.

172 (b) A pregnant prisoner may be involuntarily placed in
173 restrictive housing only if the corrections official of the
174 correctional institution, in consultation with the medical staff

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175 overseeing prenatal care and medical treatment at the
176 correctional institution, determines that an extraordinary
177 circumstance exists such that restrictive housing is necessary
178 and that there are no less restrictive means available.

179 1. The corrections official shall, before placing a
180 prisoner in restrictive housing, write a report that states:

181 a. The extraordinary circumstance that is present; and

182 b. The reason less restrictive means are not available.

183 2. The corrections official shall review the report at
184 least every 24 hours to confirm that the extraordinary
185 circumstance cited in the report still exist. A copy of the
186 report and each review must be provided to the pregnant
187 prisoner.

188 (c) A pregnant prisoner who is placed in restrictive
189 housing under this section shall be:

190 1. Examined at least every 8 hours by the medical staff
191 overseeing prenatal care and medical treatment in the facility;

192 2. Housed in the least restrictive setting consistent with
193 the health and safety of the pregnant prisoner; and

194 3. Given an intensive treatment plan developed and approved
195 by the medical staff overseeing prenatal care and medical
196 treatment at the facility.

197 (d) If a pregnant prisoner needs infirmary care, an
198 authorized medical staff must provide an order for the pregnant
199 prisoner to be admitted to the infirmary. If the pregnant
200 prisoner has passed her due date, she must be admitted to the
201 infirmary until labor begins or until other housing arrangements
202 are made. A pregnant prisoner who has been placed in the
203 infirmary shall be provided:

591-02249-20

2020852c1

204 1. The same access to outdoor recreation, visitation, mail,
205 and telephone calls as other prisoners; and

206 2. The ability to continue to participate in other
207 privileges and classes granted to the general population.

208 (6) ~~(4)~~ ENFORCEMENT.—

209 (a) Notwithstanding any relief or claims afforded by
210 federal or state law, any prisoner who is restrained in
211 violation of this section may file a grievance with the
212 correctional institution, and be granted a 45-day extension if
213 requested in writing pursuant to rules promulgated by the
214 correctional institution.

215 (b) This section does not prevent a woman harmed through
216 the use of restraints under this section from filing a complaint
217 under any other relevant provision of federal or state law.

218 (7) ~~(5)~~ NOTICE TO PRISONERS.—

219 (a) ~~By September 1, 2012,~~ The department and the Department
220 of Juvenile Justice shall adopt rules pursuant to ss. 120.536(1)
221 and 120.54 to administer this section.

222 (b) Each correctional institution shall inform female
223 prisoners of the rules developed pursuant to paragraph (a) upon
224 admission to the correctional institution, including the
225 policies and practices in the prisoner handbook, and post the
226 policies and practices in locations in the correctional
227 institution where such notices are commonly posted and will be
228 seen by female prisoners, including common housing areas and
229 medical care facilities.

230 Section 2. This act shall take effect July 1, 2020.

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/SB 884 (571032)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice; and Senators Hooper and Perry

SUBJECT: Law Enforcement and Correctional Officers

DATE: February 20, 2020 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wagoner</u>	<u>Jones</u>	<u>CJ</u>	Favorable
2.	<u>Jameson</u>	<u>Jameson</u>	<u>ACJ</u>	Recommend: Fav/CS
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

I. Summary:

PCS/SB 884 revises the definition of “law enforcement officer” and “correctional officer” to include those officers employed *part time* for the purposes of misconduct review proceedings under part VI of chapter 112, Florida Statutes. Part VI of chapter 112, Florida Statutes, is commonly referred to as the Law Enforcement Officers’ (LEO) Bill of Rights and affords certain rights and privileges for law enforcement officers and correctional officers.

The bill clarifies that *regardless of the allegation’s origin*, if the investigation of an allegation is not completed within 180 days after the date the agency receives notice of the allegation, an agency may not undertake any disciplinary action against a law enforcement officer or correctional officer. The bill also clarifies that *regardless of the allegation’s origin*, if the agency determines that disciplinary action is appropriate, it must give notice to the law enforcement officer or correctional officer within 180 days after the agency received notice of the alleged misconduct. The bill removes language that limited the 180-day period provision to external complaints.

The bill will have a significant negative fiscal impact on the Department of Corrections and may have a negative fiscal impact on other law enforcement and correctional agencies. See Section V.

The bill is effective July 1, 2020.

II. Present Situation:

Law Enforcement Officers' Bill of Rights; Generally

Section 112.532, F.S., commonly known as the Law Enforcement Officers' (LEO) Bill of Rights,¹ affords law enforcement officers and correctional officers various rights and privileges when a law enforcement officer or a correctional officer is under investigation and subject to interrogation for a reason which could lead to disciplinary action, suspension, demotion, or dismissal. In general, the LEO Bill of Rights includes:

- The right to be informed of the nature of the investigation and the evidence against the law enforcement officer or correctional officer before any interrogation;
- The right to counsel during any interrogation;
- The right to be notified of the reasons for any disciplinary action before it is imposed;
- The right to a transcript of any interrogation;
- The right to a complete copy of the investigatory file; and
- The right to address the findings in the investigatory report with the agency before the disciplinary action is imposed.²

Additionally, the LEO Bill of Rights prescribes the conditions under which any interrogation of the officer must be conducted, including limitations on the time, place, manner, and length of the interrogation, and restrictions on the interrogation techniques.³

Section 112.531(1), F.S., defines "law enforcement officer" as any person, other than a chief of police, who is employed full time by any municipality or the state or any political subdivision thereof and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state. The term includes any person who is appointed by the sheriff as a deputy sheriff.

Section 112.531(2), F.S., defines "correctional officer" as any person, other than a warden, who is appointed or employed full time by the state or any political subdivision thereof whose primary responsibility is the supervision, protection, care, custody, or control of inmates within a correctional institution. The term includes correctional probation officers. The term does not include any secretarial, clerical, or professionally trained personnel.

Limitations Period for Disciplinary Actions

Section 112.532(6), F.S., provides that disciplinary action, suspension, demotion, or dismissal may not be undertaken by an agency against a law enforcement officer or correctional officer for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within 180 days after the date the agency receives notice of the allegation by a person authorized by the agency to initiate an investigation of the misconduct.

In *Fraternal Order of Police, Gator Lodge 67 v. City of Gainesville*, the First District Court of Appeals reviewed an agency's disciplinary action against a law enforcement officer where the

¹ *Fraternal Order of Police, Gator Lodge 67 v. City of Gainesville*, 148 So.3d 798 (Fla. 1st DCA 2014).

² Section 112.532(1)(d), (1)(g), (1)(i), (4)(a), and (4)(b), F.S.

³ Section 112.532(1)(a), (1)(b), (1)(c), (1)(e), and (1)(f), F.S.

investigation exceeded 180 days after an internal complaint was made.⁴ The court found the current language of the 180-day period provision excludes those complaints that originate internally.⁵ The court adopted its prior interpretation of the statute, reasoning that because the period is triggered by the agency's receipt of a complaint, the complaint would need to come from a person outside the agency for the 180-day provision to apply.⁶

If the agency determines that disciplinary action is appropriate, it must complete its investigation and give notice in writing to the law enforcement officer or correctional officer of its intent to proceed with disciplinary action. Notice to the officer must be provided within 180 days after the date the agency received notice of the alleged misconduct. The running of the limitations period may be tolled or extended under certain circumstances.⁷

Compliance Review Procedures

Section 112.534, F.S., provides review procedures and remedial measures if any law enforcement agency or correctional agency, including investigators in its internal affairs or professional standards division, or an assigned investigating supervisor, intentionally fails to comply with the requirements of the LEO Bill of Rights. The law enforcement officer or correctional officer⁸ is required to advise the investigator of the intentional violation of the LEO Bill of Rights alleged.⁹ If the investigator fails to cure the violation or continues the violation after being notified by the officer, the officer must request the agency head or his or her designee be informed of the alleged intentional violation.¹⁰ Once this request is made, the interview of the officer must cease.¹¹ Thereafter, a written notice of violation and request for a compliance review hearing must be filed within 3 working days with the agency head or designee which must contain sufficient information to identify the alleged intentional violation of the LEO Bill of Rights.¹²

Unless otherwise remedied by the agency before the hearing, a compliance review hearing must be conducted within 10 working days after the request for a compliance review hearing is filed.¹³

⁴ *Supra* n. 1.

⁵ *Id.*

⁶ *Id.* See *McQuade v. Department of Corrections*, 51 So.3d 489 (Fla. 1st DCA 2010). See also *Migliore v. City of Lauderhill*, 415 So.2d 62 (Fla. 4th DCA 1982), *approved*, 431 So.2d 986 (Fla. 1983).

⁷ The running limitations period may be tolled for a period specified in a written waiver of the limitation by the law enforcement officer or correctional officer; must be tolled during the time that any criminal investigation or prosecution is pending in connection with the act, omission, or other allegation of misconduct; must be tolled if the investigation involves an officer who is incapacitated or otherwise unavailable; may be extended during a multijurisdictional investigation to facilitate coordination with other agencies involved; may be tolled for certain emergencies or natural disasters; and must be tolled during the time that the officer's compliance hearing proceeding is continuing beginning with the filing of the notice of violation and a request for a hearing and ending with the written determination of the compliance review panel or upon the violation being remedied by the agency. Section 112.532(6), F.S.

⁸ For purposes of s. 112.534, F.S., "law enforcement officer" and "correctional officer" includes the officer's representative or legal counsel until such point that a compliance review hearing is commenced. Section 112.534(1), F.S.

⁹ Section 112.534(1)(a), F.S.

¹⁰ Section 112.534(1)(b), F.S.

¹¹ *Id.* Refusal to respond to investigative questions by the officer does not constitute insubordination or any similar type of policy violation.

¹² Section 112.534(1)(c), F.S.

¹³ An alternate date may be chosen by mutual agreement of the officer and agency or for extraordinary reasons. Section 112.534(1)(d), F.S.

An officer under investigation for a disciplinary matter is entitled to a compliance review hearing to review alleged violations of the LEO Bill of Rights, regardless of the source of the complaint that led to the investigation.¹⁴ The compliance review panel¹⁵ reviews the circumstances and facts surrounding the alleged intentional violation and must determine whether or not the investigator or agency intentionally violated the requirements of the LEO Bill of Rights.¹⁶

A compliance review hearing is not available to review violations occurring after the investigation is complete.¹⁷ If an alleged violation is sustained by the compliance review panel, s. 112.534(1)(g), F.S., provides for a limited remedial measure of such violation: the agency head must immediately remove the investigator from any further involvements with the investigation of the office.^{18, 19}

III. Effect of Proposed Changes:

The bill revises the definition of “law enforcement officer” and “correctional officer” to include those officers employed *part time* for the purposes of misconduct review proceedings under part VI of ch. 112, F.S.

Currently, complaints that originate internally are not subject to the provision that requires investigations to be completed within the 180-day time period. The bill clarifies that *regardless of the origin of the allegation or complaint*, if the investigation of an allegation or complaint is not completed within 180 days after the date the agency receives notice of the allegation or complaint, an agency may not undertake any disciplinary action against a law enforcement officer or correctional officer. The bill also clarifies that *regardless of the origin of the allegation or complaint*, if the agency determines that disciplinary action is appropriate, it must give notice to the law enforcement officer or correctional officer within 180 days after the agency received notice of the alleged misconduct. The bill changes language that limited the 180-day period provision to external complaints.

The bill is effective July 1, 2020.

¹⁴ *Supra* n. 1.

¹⁵ The compliance review panel is made up of three members: one member selected by the agency head, one member selected by the officer filing the request, and a third member to be selected by the other two members. These members must be active law enforcement or correctional officers from the same law enforcement discipline as the officer filing the request. The panel may be selected from any state, county, or municipal agency within the county in which the officer works. Section 112.534(1)(d), F.S.

¹⁶ Section 112.534(1)(e), F.S.

¹⁷ *Supra* n. 1.

¹⁸ Additionally, the agency head must direct an investigation to be initiated against the investigator determined to have intentionally violated the agency disciplinary action procedures under this part. If that investigation is sustained, the sustained allegations against the investigator shall be forwarded to the Criminal Justice Standards and Training Commission for review as an act of official misconduct or misuse of position. Section 112.534(1)(g), F.S.

¹⁹ *Supra* n. 1. In *Fraternal Order of Police*, the First District Court of Appeal described the exclusive purpose of the compliance review hearing as a remedy to violations of the LEO Bill of Rights occurring during the investigation, not a name-clearing hearing, by relying on this limited remedy.

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 expands the requirement for all law enforcement and correctional agencies to comply with the LEO Bill of Rights to include part time law enforcement officers and correctional officers under investigation and subject to interrogation that could lead to disciplinary action. The bill also requires investigations of allegations or complaints raised internally and externally to be completed within 180 days; currently only externally-generated allegations must be investigated within 180 days. The fiscal impact on these agencies will vary based on the number of part time officers employed and frequency of complaints raised internally.

The Department of Highway Safety and Motor Vehicles reports that the bill does not appear to have any fiscal impact on the department.²⁰

²⁰ The DHSMV, *2020 Agency Analysis for SB 884*, p. 3, December 18, 2019 (on file with the Senate Criminal Justice Committee).

The Department of Corrections reports that most allegations against correctional officers are raised internally. Therefore, the bill will significantly impact the resources necessary to conduct the investigations within the required timeframe.²¹ The DOC indicates that this bill will require a 43 percent increase in investigative staff within their Office of Inspector General as follows:²²

Class Title	Salary & Benefits	FTE	Year 1 Annual Costs
Inspector - DC	\$68,145	37	\$2,521,365
Operations & Mgmt Const I-SES	\$60,657	2	\$121,314
Human Resources Consultant-SES	\$79,650	1	\$79,650
Human Resource Analyst-SES	\$72,692	2	\$145,384
Human Resource Specialist-SES	\$ 62,256	2	\$124,512
Total Salaries & Benefits		44	\$2,992,225
Expense and Other			
Recurring expense-Professional	\$3,378		\$148,632
Non-recurring expense-Professional	\$4,429		\$194,876
Human Resource Services	\$329		\$14,476
Salary incentive (if applicable)	\$1,128		\$41,736
Total Expense and Other			\$399,720
Total		44	\$3,391,945
Recurring GR	\$3,197,069		
Non-recurring	\$194,876		

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

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

²¹ E-mail received from the Department of Corrections, to committee staff (January 10, 2020) (on file with the Senate Criminal Justice Committee).

²² The DOC, *2020 Agency Analysis for SB 884*, p. 4, January 13, 2020.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on February 18, 2020:

The committee substitute removed the provision that allowed a law enforcement officer or correctional officer to file for injunctive relief in certain situations. The provision amended s. 112.534, F.S., to require the action for injunctive relief be filed in the circuit court where the agency is located, and specified that clear and convincing evidence that an agency violated part VI of chapter 112, F.S., constitutes irreparable harm for purposes of injunctive relief.

B. Amendments:

None.



460020

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2020	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Hooper) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 112.531, Florida Statutes, is reordered
and amended to read:

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

(2)~~(1)~~ "Law enforcement officer" means any person, other
than a chief of police, who is employed full time or part time
by any municipality or the state or any political subdivision



460020

11 thereof and whose primary responsibility is the prevention and
12 detection of crime or the enforcement of the penal, traffic, or
13 highway laws of this state; and includes any person who is
14 appointed by the sheriff as a deputy sheriff under ~~pursuant to~~
15 s. 30.07.

16 (1)~~(2)~~ "Correctional officer" means any person, other than
17 a warden, who is appointed or employed full time or part time by
18 the state or any political subdivision thereof whose primary
19 responsibility is the supervision, protection, care, custody, or
20 control of inmates within a correctional institution; and
21 includes correctional probation officers, as defined in s.
22 943.10(3). However, the term "correctional officer" does not
23 include any secretarial, clerical, or professionally trained
24 personnel.

25 Section 2. Paragraph (a) of subsection (6) of section
26 112.532, Florida Statutes, is amended to read:

27 112.532 Law enforcement officers' and correctional
28 officers' rights.—All law enforcement officers and correctional
29 officers employed by or appointed to a law enforcement agency or
30 a correctional agency shall have the following rights and
31 privileges:

32 (6) LIMITATIONS PERIOD FOR DISCIPLINARY ACTIONS.—

33 (a) Except as provided in this subsection, disciplinary
34 action, suspension, demotion, or dismissal may not be undertaken
35 by an agency against a law enforcement officer or correctional
36 officer for any act, omission, or other allegation or complaint
37 of misconduct, regardless of the origin of the allegation or
38 complaint, if the investigation of the allegation or complaint
39 is not completed within 180 days after the date the agency



460020

40 receives notice of the allegation or complaint by a person
41 authorized by the agency to initiate an investigation of the
42 misconduct. If the agency determines that disciplinary action is
43 appropriate, it shall complete its investigation and give notice
44 in writing to the law enforcement officer or correctional
45 officer of its intent to proceed with disciplinary action, along
46 with a proposal of the specific action sought, including length
47 of suspension, if applicable. Notice to the officer must be
48 provided within 180 days after the date the agency received
49 notice of the alleged misconduct, regardless of the origin of
50 the allegation or complaint, except as follows:

51 1. The running of the limitations period may be tolled for
52 a period specified in a written waiver of the limitation by the
53 law enforcement officer or correctional officer.

54 2. The running of the limitations period is tolled during
55 the time that any criminal investigation or prosecution is
56 pending in connection with the act, omission, or other
57 allegation of misconduct.

58 3. If the investigation involves an officer who is
59 incapacitated or otherwise unavailable, the running of the
60 limitations period is tolled during the period of incapacitation
61 or unavailability.

62 4. In a multijurisdictional investigation, the limitations
63 period may be extended for a period of time reasonably necessary
64 to facilitate the coordination of the agencies involved.

65 5. The running of the limitations period may be tolled for
66 emergencies or natural disasters during the time period wherein
67 the Governor has declared a state of emergency within the
68 jurisdictional boundaries of the concerned agency.



460020

69 6. The running of the limitations period is tolled during
70 the time that the officer's compliance hearing proceeding is
71 continuing beginning with the filing of the notice of violation
72 and a request for a hearing and ending with the written
73 determination of the compliance review panel or upon the
74 violation being remedied by the agency.

75 Section 3. This act shall take effect July 1, 2020.

76
77 ===== T I T L E A M E N D M E N T =====

78 And the title is amended as follows:

79 Delete everything before the enacting clause
80 and insert:

81 A bill to be entitled
82 An act relating to law enforcement and correctional
83 officers; reordering and amending s. 112.531, F.S.;
84 revising definitions; amending s. 112.532, F.S.;
85 specifying that an allegation or complaint of
86 misconduct against a law enforcement officer or a
87 correctional officer may originate from any source;
88 providing an effective date.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ED HOOPER
16th District

COMMITTEES:
Governmental Oversight and Accountability, Chair
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Appropriations Subcommittee on Health and
Human Services
Health Policy
Infrastructure and Security
Joint Select Committee on Collective Bargaining,
Alternating Chair
Joint Administrative Procedures Committee

January 14th, 2020

Honorable Jeff Brandes, Chair
Appropriations Subcommittee on Criminal and Civil Justice
201 Capitol Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Brandes,

I am writing to request that SB 884, Law Enforcement and Correctional Officers, be placed on the agenda to be heard in the Appropriations Subcommittee on Criminal and Civil Justice.

I appreciate your consideration in this matter.

Sincerely,

Ed Hooper

SENT TO: CHAIRMAN
STAFF DIR. _____ STAFF _____
2020 JAN 15 AM 6:42
SENATE APPROPRIATIONS
RECEIVED

Cc: Staff Director, PK Jameson
Administrative Assistant, Lisa Roberts

REPLY TO:

- 3450 East Lake Road, Suite 305, Palm Harbor, Florida 34685-2411 (727) 771-2102
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

18 February 20

Meeting Date

884

Bill Number (if applicable)

Topic Law Enforcement & Correctional Officers

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title Lobbyist

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/2020

Meeting Date

SB 884

Bill Number (if applicable)

Topic Law Enforcement and Correctional officers
Bill of Rights

Amendment Barcode (if applicable)

Name Matt Puckett

Job Title lobbyist

Address 300 East Brevard St.

Phone _____

Street

Tallahassee

FL

32301

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Florida Police Benevolent Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

02-18-20

Meeting Date

884

Bill Number (if applicable)

Topic Bill of Rights

Amendment Barcode (if applicable)

Name Steve Zona

Job Title Jax FL Lodge 5-30 FOP President

Address 5530 Beach Blvd

Phone 904-398-7010

Street

Jax

City

FL

State

32207

Zip

Email _____

Speaking: For Against Information

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

Representing Fraternal Order of Police

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

By Senator Hooper

16-00956A-20

2020884__

1 A bill to be entitled
2 An act relating to law enforcement and correctional
3 officers; reordering and amending s. 112.531, F.S.;
4 revising the definitions of "correctional officer" and
5 "law enforcement officer" to include persons employed
6 on a part-time basis; amending s. 112.532, F.S.;
7 authorizing an agency to take disciplinary action
8 against a correctional officer or law enforcement
9 officer accused of misconduct within a specified
10 timeframe, regardless of the allegation's origin;
11 requiring an agency to provide an officer with notice
12 of alleged misconduct within a specified timeframe,
13 regardless of the allegation's origin; amending s.
14 112.534, F.S.; authorizing an officer to bring an
15 action for injunctive relief if a law enforcement or
16 correctional agency fails to comply with certain
17 requirements of part VI of ch. 112, F.S.; providing an
18 effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Section 112.531, Florida Statutes, is reordered
23 and amended to read:

24 112.531 Definitions.—As used in this part, the term:
25 (2)~~(1)~~ "Law enforcement officer" means any person, other
26 than a chief of police, who is employed full time or part time
27 by any municipality, or ~~or~~ the state, or any political subdivision
28 thereof, and whose primary responsibility is the prevention and
29 detection of crime or the enforcement of the penal, traffic, or

16-00956A-20

2020884__

30 highway laws of this state. The term,~~and~~ includes any person
31 who is appointed by the sheriff as a deputy sheriff pursuant to
32 s. 30.07.

33 (1)~~(2)~~ "Correctional officer" means any person, other than
34 a warden, who is appointed or employed full time or part time by
35 the state or any political subdivision thereof whose primary
36 responsibility is the supervision, protection, care, custody, or
37 control of inmates within a correctional institution. The term,
38 ~~and~~ includes correctional probation officers, as defined in s.
39 943.10(3). ~~However,~~ The term "~~correctional officer~~" does not
40 include any secretarial, clerical, or professionally trained
41 personnel.

42 Section 2. Paragraph (a) of subsection (6) of section
43 112.532, Florida Statutes, is amended to read:

44 112.532 Law enforcement officers' and correctional
45 officers' rights.—All law enforcement officers and correctional
46 officers employed by or appointed to a law enforcement agency or
47 a correctional agency shall have the following rights and
48 privileges:

49 (6) LIMITATIONS PERIOD FOR DISCIPLINARY ACTIONS.—

50 (a) Except as provided in this subsection, disciplinary
51 action, suspension, demotion, or dismissal may not be undertaken
52 by an agency against a law enforcement officer or correctional
53 officer for any act, omission, or other allegation of
54 misconduct, regardless of the allegation's origin, if the
55 investigation of the allegation is not completed within 180 days
56 after the date the agency receives notice of the allegation ~~by a~~
57 ~~person authorized by the agency to initiate an investigation of~~
58 ~~the misconduct.~~ If the agency determines that disciplinary

16-00956A-20

2020884__

59 action is appropriate, it shall complete its investigation and
60 give notice in writing to the law enforcement officer or
61 correctional officer of its intent to proceed with disciplinary
62 action, along with a proposal of the specific action sought,
63 including length of suspension, if applicable. Notice to the
64 officer must be provided within 180 days after the date the
65 agency received notice of the alleged misconduct, regardless of
66 the allegation's origin, except as follows:

67 1. The running of the limitations period may be tolled for
68 a period specified in a written waiver of the limitation by the
69 law enforcement officer or correctional officer.

70 2. The running of the limitations period is tolled during
71 the time that any criminal investigation or prosecution is
72 pending in connection with the act, omission, or other
73 allegation of misconduct.

74 3. If the investigation involves an officer who is
75 incapacitated or otherwise unavailable, the running of the
76 limitations period is tolled during the period of incapacitation
77 or unavailability.

78 4. In a multijurisdictional investigation, the limitations
79 period may be extended for a period of time reasonably necessary
80 to facilitate the coordination of the agencies involved.

81 5. The running of the limitations period may be tolled for
82 emergencies or natural disasters during the time period wherein
83 the Governor has declared a state of emergency within the
84 jurisdictional boundaries of the concerned agency.

85 6. The running of the limitations period is tolled during
86 the time that the officer's compliance hearing proceeding is
87 continuing beginning with the filing of the notice of violation

16-00956A-20

2020884__

88 and a request for a hearing and ending with the written
89 determination of the compliance review panel or upon the
90 violation being remedied by the agency.

91 Section 3. Present subsection (2) of section 112.534,
92 Florida Statutes, is renumbered as subsection (3), and a new
93 subsection (2) is added to that section, to read:

94 112.534 Failure to comply; official misconduct.-

95 (2) If any law enforcement agency or correctional agency,
96 including investigators in an agency's internal affairs or
97 professional standards division or an assigned investigating
98 supervisor, fails to comply with the requirements of this part,
99 or if the injury suffered by the law enforcement officer or
100 correctional officer employed by or appointed to such agency is
101 not capable of being remedied by a compliance review hearing,
102 the officer who is personally injured by such failure to comply
103 may file an action for injunctive relief in the circuit court
104 where the agency is located to enforce the requirements of this
105 part. Clear and convincing evidence that an agency violated this
106 part constitutes irreparable harm for purposes of injunctive
107 relief.

108 Section 4. This act shall take effect July 1, 2020.

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/CS/SB 1262 (455640)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice; Judiciary Committee; and Senators Bracy and Rodriguez

SUBJECT: 1920 Ocoee Election Day Riots

DATE: February 20, 2020 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Elsesser</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Dale</u>	<u>Jameson</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

PCS/CS/SB 1262 directs or encourages officials including the Commissioner of Education’s African American History Task Force, the Secretary of State, the Secretary of Environmental Protection, and district school boards to take steps to publicize the history of the Ocoee Election Day Riots in 1920.

The bill has no fiscal impact to the state.

The bill takes effect July 1, 2020.

II. Present Situation:

The November 1920 Ocoee Violence

“Racial violence in the United States during the early 1900’s was high, with the number of lynchings of African Americans increasing from 38 in 1917 to 58 in 1918.”¹ Before the presidential election in November 1920, the Ku Klux Klan Grand Master of Florida sent a letter to a politician who had been working to register African-American voters, who tended to vote

¹ Office of Program Policy Analysis and Governmental Accountability, *Ocoee Election Day Violence – November 1920*, Report No. 19-15 at 2 (<http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1915rpt.pdf>) (Last visited February 10, 2020).

Republican.² In the letter, the Ku Klux Klan Grand Master threatened that, if the politician continued his efforts to register African Americans, “there would be serious trouble.”³

“The 1920 Census reported 255 African-American residents and 560 white residents of Ocoee.”⁴ Mose Norman, an African-American resident who was not allowed to vote in the general election for failure to pay a poll tax, recorded names of others who had not been permitted to vote in his precinct.⁵ After an altercation with either the local constable or a group of white residents, Norman went to the home of July Perry, another African-American resident, before fleeing Ocoee.⁶

“Later in the day, some white Ocoee residents formed a posse and were deputized” by the Orange County sheriff and were charged with arresting Norman and Perry.⁷ The posse went to Perry’s house, wounding Perry and his 19-year-old daughter, Caretha, with gunfire; Norman had already fled Ocoee.⁸

After retreating and requesting assistance from other areas of Orange County, the posse returned to the house and captured Caretha Perry therein.⁹ July Perry was captured in a sugarcane patch near his house and taken to a hospital to treat his gunshot wounds, after which he was placed in the custody of the Orange County sheriff and was lynched, hanged, and shot by a mob.¹⁰

A mob then set fire to all African-American-owned buildings in northern Ocoee, destroying more than 20 houses, two churches, and one fraternal lodge.¹¹ Based on differing reports, between three and 60 African Americans died resulting from the violence on November 2-3, 1920.¹² In the days following this violence, the remaining African-American residents fled Ocoee, leaving their homes and property.¹³

Section 1003.42(2)(h), F.S.

Section 1003.42(2)(h), F.S., requires members of the instructional staff of Florida public schools to teach about “[t]he history of African Americans, including the history of African peoples before the political conflicts that led to the development of slavery, the passage to America, the enslavement experience, abolition, and the contributions of African Americans to society.”

² *Id.*

³ *Id.*

⁴ *Id.* at 3.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 4.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

III. Effect of Proposed Changes:

The bill directs the Commissioner of Education's African American History Task Force to examine ways in which the history of the Ocoee violence can be taught pursuant to s. 1003.42(2)(h), F.S. The task force is required to submit recommendations to the commissioner by March 1, 2021.

The bill also directs the Secretary of State to determine ways in which the Museum of Florida History and other state museums can propagate the history of the Ocoee violence and to seek such history's inclusion in the National Museum of African American History and Culture of the Smithsonian Institution.

The bill directs the Secretary of Environmental Protection to assess if any state park may be named in recognition of any victim of the Ocoee violence. The bill encourages district school boards to consider naming facilities in recognition of victims of the Ocoee violence.

The bill takes effect July 1, 2020 except as otherwise expressly provided in the bill.

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates undesignated sections of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on February 18, 2020:

The committee substitute:

- Removes language creating the Ocoee Election Day Riots Descendant Compensation Fund Program; and
- Removes the requirement of the Department of Economic Opportunity to prioritize applications from black business enterprises in areas directly impacted by the Ocoee violence.

CS by Judiciary on January 21, 2020:

The Committee Substitute differs from the underlying bill by identifying the bill number for the linked bill creating the trust fund described in SB 1264.

B. Amendments:

None.



566828

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2020	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Bracy) recommended the following:

1 **Senate Amendment (with title amendment)**

2

3 Delete lines 98 - 154.

4

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

6 And the title is amended as follows:

7 Delete lines 3 - 17.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Criminal and
Civil Justice, *Vice Chair*
Criminal Justice
Finance and Tax
Innovation, Industry, and Technology

SENATOR RANDOLPH BRACY

11th District

January 21, 2020

The Honorable Jeff Brandes
Chairman, Appropriations Subcommittee on Criminal and Civil Justice
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Brandes:

I write to respectfully request that the following bills be placed on the agenda of the Appropriations Subcommittee on Criminal and Civil Justice.

- SB 1262, 1920 Ocoee Election Day Riots: Establishes the Ocoee Election Day Riots Descendant Compensation Fund Program within the Department of Legal Affairs. It also directs the State to explore ways for the Ocoee incident to be taught in schools, incorporated into museums, and in the naming of state parks to recognize victims of violence.
- SB 1264, Ocoee Election Day Riots Descendant Compensation Trust Fund/Department of Legal Affairs: This bill creates the Ocoee Election Riots Compensation Trust Fund within the Department of Legal Affairs. It specifies the purpose and funding source of the trust fund.

Your consideration is greatly appreciated. Please do not hesitate to let me know if you have any questions or concerns regarding the agenda request.

Sincerely,

A handwritten signature in black ink that reads "Randolph Bracy".

Senator Randolph Bracy

REPLY TO:

- ☐ 6965 Piazza Grande Avenue, Suite 211, Orlando, Florida 32835 (407) 297-2045 FAX: (888) 263-3814
- ☐ 213 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/2020

Meeting Date

1262

Bill Number (if applicable)

Topic 1920 Ocoee Elections Day Rats

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title _____

Address _____

Phone _____

Street

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Organize Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

18 Feb 2020
Meeting Date

1262
Bill Number (if applicable)

Topic Election day Riots

Amendment Barcode (if applicable)

Name Melina Rayna Svanhild Farley-Barratt

Job Title Legislative Director

Address 8689 SE 69 Ter
Street

Phone 352-226-7477

Trenton F 32693
City State Zip

Email _____

Speaking: For Against Information

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

Representing FL NOW

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/18/2020

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

1262

Meeting Date

Bill Number (if applicable)

Topic 1920 Decree Election Day Riots

Amendment Barcode (if applicable)

Name Kim Porteous

Job Title FL NOW Vol. President

Address 6616 Crenshaw Dr

Phone 706-669-8192

Orlando FL 32835

Email Kim4FLNOW@gmail.com

Speaking: For Against Information

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

Representing FL NOW.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2.18.20
Meeting Date

SB 1262
Bill Number (if applicable)

Topic 1920 Ococee Election Day Riots

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legislative Director

Address 4343 West Flagler St.

Phone 786-363-4436

Street

Miami

FL

33134

Email kgross@aclufl.org

City

State

Zip

Speaking: For Against Information

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

Representing American Civil Liberties Union of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

By the Committee on Judiciary; and Senators Bracy and Rodriguez

590-02412-20

20201262c1

1 A bill to be entitled
2 An act relating to the 1920 Ocoee Election Day Riots;
3 creating s. 16.63, F.S.; establishing the Ocoee
4 Election Day Riots Descendant Compensation Fund
5 Program within the Department of Legal Affairs;
6 specifying the purpose of the program; requiring the
7 department to accept and process applications for
8 payment of claims for compensation; requiring the
9 department to provide certain notice of the program;
10 specifying procedures and requirements regarding
11 applications for compensation; requiring the
12 department to approve applications for payment if
13 certain conditions are met, subject to certain
14 limitations; providing for contingent repeal; amending
15 s. 288.7102, F.S.; requiring the Department of
16 Economic Opportunity to prioritize certain
17 applications for the Black Business Loan Program;
18 directing the Commissioner of Education's African
19 American History Task Force to determine ways in which
20 the 1920 Ocoee Election Day Riots may be included in
21 required instruction on African-American history;
22 requiring the task force to submit recommendations to
23 the commissioner and the State Board of Education by a
24 specified date; directing the Secretary of State to
25 take certain action regarding the inclusion of the
26 history of the 1920 Ocoee Election Day Riots in museum
27 exhibits; directing the Secretary of Environmental
28 Protection to assess naming opportunities for state
29 parks, or a portion of a facility therein, in

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20201262c1

30 recognizing victims of the 1920 Ocoee Election Day
31 Riots; authorizing the secretary to appoint a
32 committee to assist in assessing naming opportunities;
33 requiring the secretary to submit recommendations to
34 the Legislature under specified circumstances;
35 encouraging district school boards to assess naming
36 opportunities for school facilities in recognizing
37 victims of the 1920 Ocoee Election Day Riots;
38 providing effective dates.

39
40 WHEREAS, in the decades following the conclusion of
41 Reconstruction, Jim Crow laws were enacted throughout the
42 southern United States, including Florida, which mandated
43 segregation and imposed numerous restrictions, such as the
44 imposition of poll taxes and literacy requirements, thereby
45 suppressing the ability of African Americans to participate in
46 the democratic process, and

47 WHEREAS, throughout the country, organizations such as the
48 Ku Klux Klan staged rallies, marches, and other demonstrations
49 in an effort to intimidate African Americans and any allies from
50 organizing and attempting to exercise the right to vote, and

51 WHEREAS, as the 1920 presidential election approached,
52 efforts were undertaken in Orange County by numerous
53 organizations and individuals, including Judge John M. Cheney
54 and two prominent African-American residents of Ocoee, Julius
55 "July" Perry and Moses Norman, to register African-American
56 voters to allow for their participation in the upcoming
57 election, and

58 WHEREAS, on November 2, 1920, as several African Americans

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59 in Ocoee, including Moses Norman, unsuccessfully attempted to
60 vote on Election Day, violence ensued as a mob of approximately
61 100 white men formed and marched to Julius "July" Perry's
62 residence, and proceeded to open gunfire as Julius "July" Perry
63 attempted to defend himself along with his property and family,
64 and

65 WHEREAS, after the Perry family eventually fled the
66 residence, Julius "July" Perry was soon arrested and
67 subsequently shot and lynched after the mob gained access to his
68 jail cell with the aid of local law enforcement, and

69 WHEREAS, the violence spread throughout the African-
70 American community of Ocoee and upwards of 60 people are
71 estimated to have perished while dozens of homes, two churches,
72 and a lodge meeting hall were set ablaze and gunfire overtook
73 the community, and

74 WHEREAS, in the aftermath of the riots, nearly all African-
75 American residents of the community were forced to flee,
76 abandoning their residences and property and relocating
77 elsewhere, and

78 WHEREAS, there is no record that state or local government
79 officials took any action to prevent the tragedy that occurred
80 in Ocoee, or reasonably investigated the matter in the riot's
81 aftermath in an effort to bring the perpetrators of the incident
82 to justice or to allow the displaced African-American residents
83 to return to their homes and property, and

84 WHEREAS, in November 2018, the Ocoee City Commission
85 adopted a proclamation that acknowledged the acts of domestic
86 terror inflicted upon the African-American residents of Ocoee
87 and western Orange County on November 2, 1920, and required the

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88 installation of a historical marker in a public space describing
89 the events of that day, and

90 WHEREAS, the Florida Legislature recognizes an obligation
91 to redress the injuries, damages, infringement of civil rights,
92 and loss of life that African-American residents sustained as a
93 result of the violence and destruction that occurred in Ocoee in
94 November 1920, NOW, THEREFORE,

95

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

97

98 Section 1. If SB 1264 or similar legislation establishing
99 the Ocoee Election Day Riots Descendant Compensation Trust Fund
100 is adopted in the 2020 Regular Session or an extension thereof,
101 section 16.63, Florida Statutes, is created to read:

102 16.63 Ocoee Election Day Riots Descendant Compensation Fund
103 Program.—

104 (1) The Ocoee Election Day Riots Descendant Compensation
105 Fund Program is established in the Department of Legal Affairs.
106 The purpose of the program is to compensate direct descendants
107 of individuals who were killed, injured, or otherwise victimized
108 by the violence that took place at Ocoee, Florida, on November
109 2, 1920.

110 (2) The Department of Legal Affairs shall accept and
111 process applications for payment of claims for compensation
112 pursuant to this section. The department shall provide
113 reasonable notice of the availability of compensation, including
114 through Internet postings on the department's website.

115 (3) A claim for compensation must be on forms approved by
116 the department and must include all of the following:

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117 (a) The name and contact information of an applicant who is
118 submitting a claim for compensation.

119 (b) The name of the victim who was killed, injured, or
120 otherwise victimized as a result of the 1920 Ocoee Election Day
121 Riots for whom the applicant is seeking compensation on behalf
122 of.

123 (c) Reasonable proof establishing the applicant's lineage
124 to an individual who was killed, injured, or otherwise
125 victimized as a result of the 1920 Ocoee Election Day Riots,
126 including, but not limited to, census records.

127 (d) A statement that the applicant affirms that he or she
128 agrees not to seek a claim bill regarding the underlying
129 incident from the Legislature.

130 (4) Upon receipt and verification of a valid claim of
131 compensation, the department shall approve such application for
132 payment. The amount of compensation awarded may not exceed
133 \$150,000 per individual who was killed, injured, or otherwise
134 victimized by the violence that took place at Ocoee. If multiple
135 descendants of a single individual apply for compensation on
136 behalf of that individual, the amount of compensation shall be
137 prorated among any eligible claimants. A descendant may not
138 receive compensation for more than one individual.

139 (5) This section is repealed July 1, 2024, unless the Ocoee
140 Election Day Riots Descendant Compensation Trust Fund
141 established pursuant to s. 16.631 is re-created by such date.

142 Section 2. Subsection (2) of section 288.7102, Florida
143 Statutes, is amended to read:

144 288.7102 Black Business Loan Program.—

145 (2) The department shall establish an application and

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20201262c1

146 annual certification process for entities seeking funds to
147 participate in providing loans, loan guarantees, or investments
148 in black business enterprises pursuant to the Florida Black
149 Business Investment Act. The department shall process all
150 applications and recertifications submitted by June 1 on or
151 before July 31. The department shall prioritize any applications
152 for black business enterprises in areas directly impacted by the
153 1920 Ocoee Election Day Riots so long as such entities meet the
154 other requirements established in this section.

155 Section 3. The Commissioner of Education's African American
156 History Task Force is directed to examine ways in which the
157 history of the 1920 Ocoee Election Day Riots may be included in
158 instruction on African-American history required pursuant to s.
159 1003.42(2)(h), Florida Statutes. The task force shall submit its
160 recommendations to the Commissioner of Education and the State
161 Board of Education by March 1, 2021.

162 Section 4. The Secretary of State is directed to:

163 (1) In coordination with the Division of Cultural Affairs
164 of the Department of State, determine ways in which the Museum
165 of Florida History and other state museums may promote the
166 history of the 1920 Ocoee Election Day Riots through exhibits
167 and educational programs.

168 (2) Collaborate with the National Museum of African
169 American History and Culture of the Smithsonian Institution to
170 seek inclusion of the history of the 1920 Ocoee Election Day
171 Riots in the museum's exhibits.

172 Section 5. The Secretary of Environmental Protection is
173 directed to assess if any state park, or a portion of or a
174 facility therein, may be named in recognition of any victim of

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20201262c1

175 the 1920 Ocoee Election Day Riots. The secretary may appoint a
176 committee to assess naming opportunities. If a change to state
177 law is required in order to change the designation of a state
178 park, or a portion of or a facility therein, the secretary shall
179 submit any such recommendation to the President of the Senate
180 and the Speaker of the House of Representatives.

181 Section 6. District school boards are encouraged to assess
182 naming opportunities for school facilities in recognition of
183 victims of the 1920 Ocoee Election Day Riots.

184 Section 7. Except as otherwise expressly provided in this
185 act, this act shall take effect July 1, 2020.

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: SB 1304

INTRODUCER: Senator Brandes

SUBJECT: Sentencing

DATE: February 17, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Favorable
2.	Forbes	Jameson	ACJ	Recommend: Favorable
3.			AP	

I. Summary:

SB 1304 creates a conditional sentence for substance use and mental health offenders. An offender must be a nonviolent offender that is in need of substance use or mental health treatment and does not pose a danger to the community. The bill enumerates specified offenses that deem an offender ineligible for a conditional sentence for substance use and mental health.

The bill requires the following conditions to be part of a conditional sentence for substance use or mental health offenders:

- A term of imprisonment, which must include a custodial treatment program for substance use, mental health, or co-occurring disorders that is a minimum of 90-days of in-custody treatment and is administered by the Department of Corrections (DOC) at a DOC facility;
- Upon successful completion of the custodial treatment program, a 24 month term of special offender probation that consists of:
 - Either drug offender or mental health probation, as determined by the court at sentencing;
 - Any special conditions of probation ordered by the sentencing court; and
 - Any recommendations made by the DOC in the postrelease treatment plan for substance use or mental health aftercare services.

The bill authorizes the DOC to refuse to place an offender in the custodial treatment program for specified reasons. Following completion of the custodial treatment program, the bill provides that an offender must be transitioned into the community on drug offender or mental health probation for the last 24 months of his or her sentence.

A conditional sentence imposed by a court under the bill does not confer any right to an inmate for release from incarceration and placement on drug offender or mental health offender probation, unless such offender complies with all sentence requirements.

The DOC must develop a computerized system to track data on the recidivism and recommitment of offenders who have received such a sentence and report the findings to the Governor, President of the Senate, and Speaker of the House of Representatives.

The bill has a significant fiscal impact. See Section V.

The bill is effective October 1, 2020.

II. Present Situation:

The Criminal Punishment Code¹ (Code) applies to sentencing for felony offenses committed on or after October 1, 1998.² The permissible sentence (absent a downward departure) for an offense ranges from the calculated lowest permissible sentence as determined by the Code to the statutory maximum for the primary offense. The statutory maximum sentence for a first-degree felony is 30 years not to exceed life, for a second-degree felony is 15 years, and for a third degree felony is five years.³

The sentence imposed by the sentencing judge reflects the length of actual time to be served, lessened only by the application of gain-time,⁴ and may not be reduced in an amount that results in the defendant serving less than 85 percent of his or her term of imprisonment.⁵

Sentencing Options

The Florida Supreme Court has identified six statutory sentencing options in Florida, including a:

- Term of imprisonment, which may be served in jail or prison;
- True split sentence, which consists of a total period of confinement with a portion of the confinement period suspended and the defendant placed on probation for that suspended portion;
- Probationary split sentence, which consists of a period of confinement, none of which is suspended, followed by a period of probation;⁶
- *Villery* sentence, which consists of a period of probation preceded by a period of confinement imposed as a special condition;⁷
- Sentence of supervision, which consists of probation or community control; and
- Reverse split sentence, which consists of a period of probation followed by a period of incarceration.⁸

¹ Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

² Section 921.0022, F.S.

³ Section 775.082, F.S.

⁴ Section 944.275, F.S., provides for various types of incentive and meritorious gain-time.

⁵ Section 921.002(1)(e), F.S.

⁶ Section 948.012, F.S., provides the authority for this type of split sentence.

⁷ *Villery v. Florida Parole & Probation Com'n*, 396 So.2d 1107 (Fla. 1980).

⁸ Section 948.012(2), F.S., *Gibson v. Florida Department of Corrections*, 885 So.2d 376, 381 (Fla. 2004).

There are also existing statutes that allow a court to modify a sentence to probation terms for a youthful offender⁹ upon completion of specified custodial programming.¹⁰

After a defendant in a criminal case has been found guilty or has entered a plea of nolo contendere or guilty and prior to a sentencing hearing, any circuit court of the state may order a presentencing investigation (PSI) report in accordance with s. 921.231, F.S. The court may refer the case to the DOC for investigation and recommendation. The PSI report submitted must include specified background information on the defendant.¹¹ All information in the presentence investigation report must be factually presented and verified if reasonably possible by the preparer of the report. The preparer may be examined at the sentencing hearing and bears the burden of explaining why it was not possible to verify the challenged information. Additionally, the nonconfidential portion of the PSI must constitute the basic classification and evaluation document of the DOC and contain a recommendation to the court on the treatment program most appropriate to the diagnosed needs of the offender, based upon the offender's custody classification, rehabilitative requirements, and the utilization of treatment resources in proximity to the offender's home environment.¹²

Substance Abuse Services for Inmates

Chapter 397, F.S., provides comprehensive laws for the provision of substance abuse services to citizens throughout Florida, including licensure of substance abuse service providers and inmate substance abuse programs.

Substance use programming within the DOC institutions seeks to treat participants with histories of dependency by focusing on changing the behaviors that led to the addiction.¹³ The DOC has developed Correctional Substance Abuse Programs at its institutions and community-based sites throughout the state. The programs' principle objectives are to identify substance users, assess the severity of their drug problems, and provide the appropriate services.¹⁴ The Department of Children and Families licenses all custodial substance abuse programs.¹⁵ The Bureau of Readiness and Community Transitions within the DOC is responsible for the coordination and delivery of substance abuse program services for individuals incarcerated in a state correctional facility.¹⁶

⁹ Section 958.04(1), F.S., describes who qualifies to be sentenced as a youthful offender. A youthful offender is a person who is younger than 21 at the time of sentencing, who has not been found guilty or plead to a capital or life felony and has not previously been sentenced as a youthful offender. The court can sentence a person as a youthful offender or the DOC can classify a person as a youthful offender.

¹⁰ See ss. 958.04(2)(d) and 958.045(6), F.S.

¹¹ See s. 921.231(1)(a)-(o), F.S., for a complete list of information included in the report.

¹² Section 921.231(3)-(5), F.S.

¹³ The DOC, *Bureau of Readiness and Community Transition*, available at <http://www.dc.state.fl.us/development/readiness.html> (last visited January 13, 2020).

¹⁴ The DOC, Bureau of Readiness and Community Transition, Inmate Programs, *Substance Use Treatment, Annual Report, Fiscal Year 2016-2017*, p. 1 (hereinafter cited as "Substance Abuse Annual Report")(on file with the Senate Criminal Justice Committee).

¹⁵ Licensure is conducted in accordance with ch. 397, F.S., and Fla. Admin. Code R. 65D-30.003.

¹⁶ Substance Abuse Annual Report at p. 6.

Determining the Appropriate Services for Inmates

All inmates are screened at reception and assessed and placed into programs using the Correctional Integrated Needs Assessment System (CINAS).¹⁷ The CINAS is based on the Risk-Needs-Responsivity Principle (RNR). The RNR principle refers to predicting which inmates have a higher probability of recidivating, and treating the criminogenic needs of those higher risk inmates with appropriate programming and services based on their level of need.¹⁸

The CINAS is administered to inmates again at 42 months from release. Additionally, the DOC conducts updates every six months thereafter to evaluate the inmate's progress and ensure enrollment in needed programs. The DOC's use of the CINAS allows for development and implementation of programs that increase the likelihood of successful transition. The DOC matches factors that influence an inmate's responsiveness to different types of services with programs that are proven to be effective within an inmate population. This involves selecting services that are matched to the offender's learning characteristics and then to the offender's stage of change readiness.¹⁹

Additionally, the CINAS allows for a flow of information between the DOC's Office of Community Corrections and Office of Institutions. For instance, when an inmate is received at a Reception Center, the staff has access to detailed information about prior supervision history. Likewise, if an inmate is released to community supervision, probation officers will have access to an offender's incarceration history and relevant release information. The DOC reports that this information is to be used to better serve the offender and prepare them for successful transition back into the community.²⁰

Drug Offender and Mental Health Probation

Probation is a form of community supervision requiring specified contacts with probation officers and other conditions a court may impose.²¹ Specifically, drug offender probation is a form of intensive supervision that emphasizes treatment of drug offenders in accordance with individualized treatment plans administered by probation officers with reduced caseloads.²² Mental health probation means a form of specialized supervision that emphasizes mental health treatment and working with treatment providers to focus on underlying mental health disorders and compliance with a prescribed psychotropic medication regimen in accordance with individualized treatment plans. Mental health probation is supervised by officers with reduced caseloads who are sensitive to the unique needs of individuals with mental health disorders, and

¹⁷ The DOC, *Agency Analysis for CS/SB 1074 (2019)*, p. 2, April 2, 2019 (on file with the Senate Criminal Justice Committee) (hereinafter cited as "The DOC CS/SB 1074 (2019) Analysis"). This bill is substantially similar to CS/SB 1074 (2019).

¹⁸ The DOC reports that criminogenic needs are those factors that are associated with recidivism that can be changed (e.g. lack of education, substance abuse, criminal thinking, lack of marketable job skills, etc.). Offenders are not higher risk because they have a particular risk factor, but, rather, because they have multiple risk factors. Accordingly, a range of services and interventions are provided that target the specific crime producing needs of offenders who are higher risk. *Id.*

¹⁹ The DOC CS/SB 1074 (2019) Analysis, p. 2.

²⁰ *Id.*

²¹ Section 948.001(8), F.S.

²² Section 948.001(4), F.S.

who will work in tandem with community mental health case managers assigned to the defendant.²³

Gain-time

Gain-time awards, which result in deductions to the court-ordered sentences of specified eligible inmates, are used to encourage satisfactory prisoner behavior or to provide incentives for prisoners to participate in productive activities while incarcerated.²⁴ An inmate is not eligible to earn or receive gain-time in an amount that results in his or her release prior to serving a minimum of 85 percent of the sentence imposed.²⁵

III. Effect of Proposed Changes:

The bill creates a conditional sentence for substance use or mental health offenders. A court may sentence an offender to a conditional sentence under this section that does not confer to the offender any right to release from incarceration and placement on drug offender or mental health probation unless the offender complies with all sentence requirement.

Eligibility

An offender must be a nonviolent offender that is in need of substance use or mental health treatment and does not pose a danger to the community. The bill defines a “nonviolent offender” to mean an offender that has never been convicted of, or plead guilty or no contest to, the commission of, an attempt to commit, or a conspiracy to commit any of the following:

- Any capital, life, or first degree felony;
- Any second degree or third degree felony offense listed in s. 775.084(1)(c)1., F.S.;²⁶
- Aggravated assault as described in s. 784.021, F.S.;
- Assault or battery of a law enforcement officer and other specified persons as described in s. 784.07, F.S.;
- Abuse, aggravated abuse, and neglect of a child as described in s. 827.03, F.S.;
- Resisting an officer with violence as described in s. 843.01, F.S.;
- Any offense that requires a person to register as a sex offender under s. 943.0435, F.S.;²⁷

²³ Section 948.001(5), F.S.

²⁴ Section 944.275(1), F.S. Section 944.275(4)(f), F.S., further provides that an inmate serving a life sentence is not able to earn gain-time. Additionally, an inmate serving the portion of his or her sentence that is included in an imposed mandatory minimum sentence or whose tentative release date is the same date as he or she achieves service of 85 percent of the sentence are not eligible to earn gain-time. Section 944.275(4)(e), F.S., also prohibits inmates committed to the DOC for specified sexual offenses committed on or after October 1, 2014, from earning incentive gain-time.

²⁵ Section 944.275(4)(f), F.S.

²⁶ The offenses enumerated in s. 775.084(1)(c)1., F.S., 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, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; aggravated stalking; home invasion/robbery; carjacking; or an offense which is in violation of a law of any other jurisdiction if the elements of the offense are substantially similar to the elements of any felony offense enumerated in s. 775.084(1)(c)1., F.S., or an attempt to commit any such felony offense.

²⁷ Section 943.0435, F.S., includes the following offenses: sexual misconduct by a covered person (s. 393.135(2), F.S.); sexual misconduct by an employee; kidnapping, false imprisonment, or luring or enticing a child, where the victim is a minor; human trafficking; sexual battery, excluding s. 794.011(10), F.S.; unlawful sexual activity with certain minors; former

- Any offense for which the sentence was enhanced under s. 775.087, F.S.;²⁸ or
- Any offense committed in another jurisdiction which would be an offense described above or would have been enhanced as described above, if committed in this state.

Sentencing Requirements

The bill requires the court to order the following conditions to be part of a conditional sentence for an offender with a substance use or mental health disorder:

- A term of imprisonment, which must include a custodial treatment program for substance use, mental health, or co-occurring disorders that is a minimum of 90-days of in-custody treatment and is administered by the DOC at a DOC facility;
- Upon successful completion of the custodial treatment program, a 24 month term of special offender probation that consists of:
 - Either drug offender or mental health probation, as determined by the court at sentencing;
 - Any special conditions of probation ordered by the sentencing court; and
 - Any recommendations made by the DOC in the postrelease treatment plan for substance use or mental health aftercare services.

The court must also specify that if the DOC finds that the offender is ineligible or not appropriate for placement in a custodial treatment program for one of the enumerated reasons, or any other reason the DOC deems as good cause, the offender must serve the remainder of his or her imprisonment at a DOC facility. At sentencing, the court must determine the appropriate type of special offender probation based upon the departments' recommendation contained in the presentence investigation report.

The court may order a presentencing investigation report in accordance with s. 921.231, F.S., for any offender that the court believes may be sentenced to a conditional sentence for substance use or mental health. The presentencing report will provide the court with the appropriate information to make a determination at sentencing of whether the offender is better suited for drug offender or mental health probation.

The bill provides that a conditional sentence imposed by a court does not confer any right to an inmate for release from incarceration and placement on drug offender or mental health offender probation, unless such offender complies with all sentence requirements. However, the bill also provides some flexibility to the DOC with regard to determining placement of inmates based on availability and appropriateness of the inmate for the program, which are discussed below.

procuring person under age of 18 for prostitution; former selling or buying of minors into prostitution; lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age; video voyeurism; lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person; sexual performance by a child; prohibition of certain acts in connection with obscenity; computer pornography, excluding s. 847.0135(6), F.S.; transmission of pornography by electronic device or equipment prohibited; transmission of material harmful to minors to a minor by electronic device or equipment prohibited; selling or buying of minors; prohibited activities/RICO, if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in s. 943.0435(1)(h)1.a.(I), F.S., or at least one offense listed in s. 943.0435(1)(h)1.a.(I), F.S., with sexual intent or motive; sexual misconduct prohibited; or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in s. 943.0435(1)(h)1.a.(I), F.S.

²⁸ Section 775.087, F.S., provides for the reclassification of an offense based on the possession or use of a weapon when such use or possession is not an element of the underlying offense.

The Department of Corrections Duties

The DOC is required to administer the custodial treatment program and provide a special training program for staff members selected to implement the custodial treatment program. The DOC is authorized to enter into performance-based contracts with qualified individuals, agencies, or corporations to supply any services provided through the custodial treatment program. The bill prohibits the DOC from entering into a contract or renewing a contract for the purpose of providing services required under the act unless the contract offers a substantial savings to the DOC. Additionally, the DOC may establish a system of incentives within the custodial treatment program to promote participation in rehabilitative programs and the orderly operation of institutions and facilities.

The DOC must give written notification of the offender's admission into the custodial treatment program to the sentencing court, the state attorney, defense counsel, and any victim of the crime committed by the offender. Before an offender completes the custodial treatment program, the DOC must evaluate the offender's needs and develop a post-release treatment plan that includes substance use or mental health aftercare services.

The bill provides rulemaking authority to the DOC to implement the custodial treatment program. The DOC can refuse to place an offender in the custodial treatment program if, after evaluating the offender for custody and classification status, the DOC determines that the offender does not meet the criteria for the custodial treatment program as proscribed by rule. The DOC must notify the sentencing court, the state attorney, and the defense counsel of the inability to place the offender in the program and that the rest of the offender's sentence will be served in a DOC facility.

If, after placement in the custodial treatment program, the offender appears to be unable to participate due to medical or other reasons, he or she must be examined by qualified medical personnel or qualified nonmedical personnel appropriate for the offender's situation. After consultation with the qualified personnel that evaluated the offender, the director of the custodial treatment program must determine if the offender will continue with treatment or if the offender will be discharged from the program. If the offender is discharged from the custodial treatment program, the remaining portion of his or her sentence will be served in a DOC facility and the DOC must immediately notify the court, the state attorney, and the defense counsel that this portion of the sentence is unsuccessfully served.

If an offender, after placement in the custodial treatment program, appears to be unable to participate due to disruptive behavior or violations of any of the rules promulgated by the DOC, the director must determine if the offender will continue in treatment or be discharged from the program. If the offender is discharged from the custodial treatment program, the remaining portion of his or her sentence will be served in a DOC facility and the DOC must immediately notify the court, the state attorney, and the defense counsel that this portion of the sentence is unsuccessfully served.

If an offender violates any rules, the DOC may impose sanctions including the loss of privileges, imposition of restrictions or disciplinary confinement, forfeiture of gain-time or the right to earn

gain-time in the future, alteration of release plans, termination from the custodial treatment program, or other program modifications dependent upon the severity of the rule violation. Additionally, the bill authorizes the DOC to place a participating offender in administrative or protective confinement, as it deems necessary.

Drug Offender or Mental Health Probation Portion of Sentence

Upon completion of the custodial treatment program, an offender must be transitioned into the community to begin drug offender or mental health probation for a term of 24 months, as ordered by the court. An offender on probation is subject to:

- All standard conditions of drug offender or mental health probation; and
- Any special condition of supervision ordered by the sentencing court, which may include:
 - Participation in an aftercare substance abuse or mental health program;
 - Residence in a postrelease transitional residential halfway house; or
 - Any other appropriate form of supervision or treatment.

Additionally, an offender placed on drug offender probation who resides in a county that has established a drug court or a postadjudicatory drug court, is required to be monitored by such court as a condition of drug offender probation. Similarly, an offender placed on mental health offender probation who resides in a county that has established a mental health court must be monitored by the court as a condition of mental health offender probation.

The bill requires the DOC to collect the cost of supervision, as appropriate, from the offender. An offender who is determined to be financially able must also pay all costs of substance abuse or mental health treatment. The court may impose on the offender additional conditions such as requiring payment of restitution, court costs, and fines; community service; or compliance with other special conditions.

If an offender violates any condition of probation or order, the court may revoke the offender's probation and impose any sentence authorized by law.

The DOC must develop a computerized system to track data on the recidivism and recommitment of offenders who have been sentenced to a conditional sentence for substance use or mental health.

The bill also requires the department to submit an annual report on October 1 of every year, beginning on October 1, 2021, to the Governor, the President of the Senate, and the Speaker of the House of Representatives of the results of the recidivism and recommitment data collected by the DOC pursuant to the act.

The bill is effective on October 1, 2020.

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 authorizes the DOC to contract with qualified individuals, agencies, or corporations to supply any or all services provided for the custodial treatment program. To the extent that this increases revenues of for-profit companies that offer these services, the bill will likely have a positive (i.e. increased) fiscal impact on such entities.

C. Government Sector Impact:

Department of Corrections

The below estimated fiscal impact to the DOC is based on the 2,743 inmates who would likely meet the eligibility criteria as provided in the bill if the inmate is approved by the DOC for the in-prison treatment program, based on those in need of substance use or mental health treatment, non-violent offenders in need of substance use or mental health needs, and does not pose a danger to the community. Staffing for the mental health and substance abuse portion of the treatment, subsequent community supervision and central office classification is as follows:²⁹

²⁹ The Department of Corrections, *2020 Agency Legislative Bill Analysis* for SB 1304, (February 6, 2020), p. 5 and 6.

<i>Program Area Staff</i>	<i>FTE #</i>	<i>Unit Cost</i>	<i>Annual Cost</i>
<u>Reentry Services – Contracted Services Positions</u>			
Licensed Psychiatrist (1 for every 500 clients)	6	358,500	2,151,000
Licensed Psychologist (1 for every Master Level Practitioner)	14	142,600	1,996,400
Master’s Level Practitioner (1 for every 15-50 clients, assuming 50)	55	81,250	4,468,750
Clinical Support (1 for every Master Level Practitioner)	28	38,200	1,069,600
<u>Community Supervision</u>			
Correctional Probation Officer	62	57,687	3,576,594
<u>Classification – Central Office</u>			
Correctional Program Administrator	1	74,407	74,407
Correctional Services Consultant	2	58,584	117,168
Salary Incentive			69,936
<u>Office of Information Technology</u>			
			13920
<u>Expenses - Recurring</u>			
			555,729
<u>Expenses – Nonrecurring</u>			
			396,665
<u>Human Resource Services</u>			
			21,385
<u>Summary of Costs</u>			
Recurring			\$14,079,584
Nonrecurring			396,665
Total	168		\$14,476,249

This bill could potentially impact the DOC’s contracted aftercare, substance abuse and mental health programs and referrals to post-release transitional residential hallway houses. There would also be an increase in workload for the DOC’s Bureau of Admission and Release, classification offices, institutional release offices and probation officers.³⁰

Finally, the DOC reports that there will be a technology impact resulting from the need to create and update existing codes relating to split sentences. The impact for programming is in both Institutions and Community Corrections program areas. The DOC estimates a need of 160 programming hours at \$87 per hour for a total of \$13,920.³¹

³⁰ *Id.*

³¹ *Id.*

State Courts System

According to the courts, this bill may increase the demand for drug courts or mental health courts, which are required to monitor the offender's probation. The bill is not expected to significantly increase criminal court judicial workload generally, because the conditional sentence would be a part of the normal sentencing process. However, some additional judicial activity will be required. Also, there are likely to be more violation of probation hearings, although the potential increase cannot be determined. To the extent the treatment services and other provisions contribute to reduced recidivism among individuals with substance abuse or mental health issues, the bill may result in a reduction in judicial workload.³²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 948.0121 of the Florida Statutes.

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.

³² The Office of the State Courts Administrator *2020 Judicial Impact Statement* for SB 1304, (January 20, 2020), p. 1 and 24.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/2020
Meeting Date

1304
Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Ida V. Estamani

Job Title _____

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Organize Florida + New Florida Majority

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Feb 18, 2020
Meeting Date

1304
Bill Number (if applicable)

Topic 1304

Amendment Barcode (if applicable)

Name Robert Weissert ("Why-cent")

Job Title EVP

Address 106 N. Brumough St
Street

Phone 850-222-5052

Tallahassee, FL 32301
City State Zip

Email robert@floridatamewatch.org

Speaking: For Against Information

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

Representing Florida Tax Watch

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/2020
Meeting Date

SB
1304
Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Eric Madure

Job Title Deputy State Courts Administrator

Address 500 South Dural St.

Phone 850 488 3733

Tallahassee, FL 32399
City State Zip

Email maduree@flcourts.org

Speaking: For Against Information

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

Representing Steering Committee on Problem Solving Courts/State Courts System

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

18 February 20

Meeting Date

1304

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title Lobbyist

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2-18-20

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

SB 1304

Meeting Date

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Hon Stacy Scott

Job Title Public Defender

Address 151 SW 2nd Ave

Phone _____

Street

Gainesville FL 32605

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Florida Public Defenders

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2.18.20

Meeting Date

SB 1304

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legislative Director

Address 4343 West Flagler St.

Phone 786-363-4436

Street

Miami

FL

33134

Email kgross@aclufl.org

City

State

Zip

Speaking: For Against Information

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

Representing American Civil Liberties Union of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

By Senator Brandes

24-01476A-20

20201304__

1 A bill to be entitled
2 An act relating to sentencing; creating s. 948.0121,
3 F.S.; defining terms; creating conditional sentences
4 for substance use and mental health offenders;
5 specifying eligibility requirements; providing minimum
6 sentencing requirements; providing an exception to a
7 conditional sentence; authorizing a presentence
8 investigation report; specifying duties of the
9 Department of Corrections; authorizing the department
10 to enter into certain contracts; requiring the
11 department to provide written notice to specified
12 parties upon the offender's admission into an in-
13 prison treatment program; providing that the
14 department may find that an offender is ineligible for
15 an in-prison program under certain circumstances;
16 requiring written notice to certain parties if an
17 offender is terminated from or prevented from entering
18 an in-prison program; requiring that an offender be
19 transitioned to probation upon the completion of an
20 in-prison program; requiring an offender to comply
21 with specified terms of probation; requiring the
22 offender to pay specified costs; providing that
23 certain violations may result in revocation of
24 probation and imposition of any authorized sentence;
25 requiring the department to develop a computerized
26 tracking system; requiring the department make an
27 annual report; requiring rulemaking; providing an
28 effective date.

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20201304__

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

31
32 Section 1. Section 948.0121, Florida Statutes, is created
33 to read:

34 948.0121 Conditional sentences for substance use or mental
35 health offenders.—

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

37 (a) "Department" means the Department of Corrections.

38 (b) "Offender" means a person who is convicted of a felony
39 offense and who receives a conditional sentence for substance
40 use or a person with a mental health disorder as prescribed in
41 this section.

42 (2) CREATION.—A conditional sentence for offenders is
43 established in accordance with s. 948.012. A court may sentence
44 an offender to a conditional sentence in accordance with this
45 section. A conditional sentence imposed by a court under this
46 section does not confer to the offender any right to release
47 from incarceration and placement on drug offender or mental
48 health probation unless the offender complies with all sentence
49 requirements in accordance with this section.

50 (3) ELIGIBILITY.—For an offender to receive a conditional
51 sentence under this section, he or she must be a nonviolent
52 offender who is in need of substance use or mental health
53 treatment and who does not pose a danger to the community. As
54 used in this subsection, the term "nonviolent offender" means an
55 offender who has never been convicted of, or pled guilty or no
56 contest to, the commission of, an attempt to commit, or a
57 conspiracy to commit, any of the following:

58 (a) A capital, life, or first degree felony.

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59 (b) A second degree felony or third degree felony listed in
60 s. 775.084(1)(c)1.

61 (c) A violation of s. 784.021, s. 784.07, s. 827.03, or s.
62 843.01 or any offense that requires a person to register as a
63 sex offender in accordance with s. 943.0435.

64 (d) An offense for which the sentence was enhanced under s.
65 775.087.

66 (e) An offense in another jurisdiction which would be an
67 offense described in this subsection, or which would have been
68 enhanced under s. 775.087 if the offense had been committed in
69 this state.

70 (4) SENTENCING REQUIREMENTS.—

71 (a) As part of a conditional sentence for an offender with
72 a substance use or mental health disorder, a court must order
73 such offender, at a minimum, to:

74 1. Serve a term of imprisonment which must include an in-
75 prison treatment program for substance use, mental health, or
76 co-occurring disorders which consists of a minimum of 90 days of
77 custodial treatment and is administered by the department at a
78 department facility.

79 2. Upon successful completion of a custodial treatment
80 program, comply with a term of special offender probation for 24
81 months, which shall serve as a modification of the remainder of
82 his or her term of imprisonment, and must consist of:

83 a. Either drug offender or mental health probation, to be
84 determined by the court at the time of sentencing.

85 b. Any special conditions of probation ordered by the
86 sentencing court.

87 c. Any recommendations made by the department in a

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88 postrelease treatment plan for substance use or mental health
89 aftercare services.

90 (b) If the department finds that the offender is ineligible
91 or not appropriate for placement in a custodial treatment
92 program for the reasons prescribed in subsection (7), or for any
93 other reason the department deems as good cause then the
94 offender shall serve the remainder of his or her term of
95 imprisonment in the custody of the department.

96 (c) The appropriate type of special offender probation
97 shall be determined by the court at the time of sentencing based
98 upon the recommendation by the department in a presentence
99 investigation report.

100 (5) PRESENTENCE INVESTIGATION REPORT.—The court may order
101 the department to conduct a presentence investigation report in
102 accordance with s. 921.231 for an offender who the court
103 believes may be sentenced under this section to provide the
104 court with appropriate information to make a determination at
105 the time of sentencing of whether drug offender or mental health
106 probation is most appropriate for the offender.

107 (6) DEPARTMENT DUTIES.—The department:

108 (a) Shall administer custodial treatment programs that
109 comply with the type of treatment required in this section.

110 (b) May develop and enter into performance-based contracts
111 with qualified individuals, agencies, or corporations to provide
112 any services necessary for the custodial treatment program. Such
113 contracts may only be entered into or renewed if the contracts
114 offer a substantial savings to the department. The department
115 may establish a system of incentives in a custodial treatment
116 program to promote offender participation in rehabilitative

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117 programs and the orderly operation of institutions and
118 facilities.

119 (c) Shall provide a special training program for staff
120 members selected to administer or implement a custodial
121 treatment program.

122 (d) Shall evaluate the offender's needs and develop a
123 postrelease treatment plan that includes substance use or mental
124 health aftercare services.

125 (7) IN-PRISON TREATMENT.—

126 (a) The department shall give written notification of the
127 offender's admission into an in-prison treatment program portion
128 of the conditional sentence to the sentencing court, the state
129 attorney, the defense counsel for the offender, and any victim
130 of the offense committed by the offender.

131 (b) If, after evaluating an offender for custody and
132 classification status, the department determines at any point
133 during the term of imprisonment that an offender sentenced under
134 this section does not meet the criteria for placement in an in-
135 prison treatment program portion of the conditional sentence, as
136 determined in rule by the department, or that space is not
137 available for the offender's placement in an in-prison treatment
138 program, the department must immediately notify the court, the
139 state attorney, and the defense counsel that this portion of the
140 sentence is unsuccessfully served in accordance with paragraph
141 (4) (b).

142 (c) If, after placement in an in-prison treatment program,
143 an offender is unable to participate due to medical concerns or
144 other reasons, he or she must be examined by qualified medical
145 personnel or qualified nonmedical personnel appropriate for the

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146 offender's situation, as determined by the department. The
147 qualified personnel shall consult with the director of the in-
148 prison treatment program, and the director shall determine
149 whether the offender will continue with treatment or be
150 discharged from the program. If the director discharges the
151 offender from the treatment program, the department must
152 immediately notify the court, the state attorney, and the
153 defense counsel that this portion of the sentence is
154 unsuccessfully served in accordance with paragraph (4) (b).

155 (d) If, after placement in an in-prison treatment program,
156 an offender is unable to participate due to disruptive behavior
157 or violations of any of the rules the department adopts to
158 implement this section, the director shall determine whether the
159 offender will continue with treatment or be discharged from the
160 program. If the director discharges the offender from the
161 treatment program, the department must immediately notify the
162 court, the state attorney, and the defense counsel that this
163 portion of the sentence is unsuccessfully served in accordance
164 with paragraph (4) (b).

165 (e) An offender participating in an in-prison treatment
166 program portion of his or her sentence must comply with any
167 additional requirements placed on the participants by the
168 department in rule. If an offender violates a rule, he or she
169 may have sanctions imposed, including loss of privileges,
170 restrictions, disciplinary confinement, forfeiture of gain-time
171 or the right to earn gain-time in the future, alteration of
172 release plans, termination from the in-prison treatment program,
173 or other program modifications in keeping with the nature and
174 gravity of the rule violation. The department may place an

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175 offender participating in an in-prison treatment program in
176 administrative or protective confinement, as necessary.

177 (8) DRUG OFFENDER OR MENTAL HEALTH PROBATION.—

178 (a) Upon completion of the in-prison treatment program
179 ordered by the court, the offender shall be transitioned into
180 the community to begin his or her drug offender or mental health
181 probation for a term of 24 months, as ordered by the court at
182 the time of sentencing in accordance with subsection (4).

183 (b) An offender on drug offender or mental health probation
184 following a conditional sentence imposed under this section must
185 comply with all standard conditions of his or her probation and
186 any special condition of probation ordered by the sentencing
187 court, including participation in an aftercare substance abuse
188 or mental health program, residence in a postrelease
189 transitional residential halfway house, or any other appropriate
190 form of supervision or treatment.

191 (c)1. If an offender placed on drug offender probation
192 resides in a county that has established a drug court or a
193 postadjudicatory drug court, the offender shall be monitored by
194 the court as a condition of drug offender probation.

195 2. If an offender placed on mental health probation resides
196 in a county that has established a mental health court, the
197 offender shall be monitored by the court as a condition of
198 mental health probation.

199 (d) While on probation pursuant to this subsection, the
200 offender shall pay all appropriate costs of probation to the
201 department. An offender who is determined to be financially able
202 shall also pay all costs of substance abuse or mental health
203 treatment. The court may impose on the offender additional

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204 conditions requiring payment of restitution, court costs, fines,
205 community service, or compliance with other special conditions.

206 (e) An offender's violation of any condition or order may
207 result in revocation of probation by the court and imposition of
208 any sentence authorized under the law, with credit given for the
209 time already served in prison.

210 (9) REPORTING.—The department shall develop a computerized
211 system to track data on the recidivism and recommitment of
212 offenders who have been sentenced to a conditional sentence for
213 substance use or mental health offenders. On October 1, 2021,
214 and on each October 1 thereafter, the department shall submit an
215 annual report of the results of the collected data to the
216 Governor, the President of the Senate, and the Speaker of the
217 House of Representatives.

218 (10) RULEMAKING.—The department shall adopt rules pursuant
219 to ss. 120.536(1) and 120.54 to administer this section.

220 Section 2. This act shall take effect October 1, 2020.

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/CS/SB 1328 (754688)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice; Judiciary Committee; and Senator Wright

SUBJECT: Fines and Fees

DATE: February 20, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Dale</u>	<u>Jameson</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1328 seeks to minimize driver license suspensions initiated by clerks of court due to the failure of a person to pay fines, service charges, fees, or costs and to provide more notice of the availability of payment plans to defer payments and other measures.

The clerks of court, through their association, in consultation with the Florida Clerks of Court Operations Corporation (CCOC) are required to create a uniform payment plan form for individuals who owe fines or fees based on their ability to pay. This uniform payment plan form is required to be implemented by each clerk beginning January 1, 2021 and payments must be accepted by the clerks electronically, by mail, or in person.

A clerk of court must notify a person owing funds of the potential to enroll in a payment plan to defer the payment of the amounts owed before revoking the person's driver license. Once a payment plan is established, the clerk may provide a person who does not make a required payment with a delinquency notice and must provide a 30-day grace period before revoking the person's license. Additionally, clerks may not refer a case to collection or suspend an individual's driver license for nonpayment if the individual is still incarcerated.

The bill gives courts authority to waive, modify, or convert the outstanding amounts to community service, if the individual is indigent or due to compelling circumstances is unable to comply with a payment plan.

The bill modifies section 322.245, Florida Statutes to remove the clerk's ability to suspend an individual's driver license for non-driving related criminal offenses. A person whose driver license was suspended before July 1, 2020, for non-driving related criminal offenses solely for the nonpayment of fines, fees, or costs in a criminal case not involving operation of a motor vehicle, if otherwise eligible, may apply to have his or her license reinstated upon payment of a reinstatement fee.

The bill has a fiscal impact. See Section V.

The bill is effective July 1, 2020.

II. Present Situation:

Clerks of the Circuit Court

Each of the 67 Florida counties has a clerk of court. The clerk is an elected constitutional officer who oversees judiciary functions as the clerk of both the county and circuit courts.¹ The clerk may also serve as the ex-officio clerk of the board of county commissioners, as well as the auditor, recorder, and custodian of all county funds.

The State Constitution requires that the clerks of courts be funded from revenue generated from charges for service, court costs, filing fees, and fines from civil and criminal proceedings.² The revenue is used for court related functions as well as select costs, expenses, and salaries as provided by law.³ Court related functions include:

- Case maintenance;
- Records management;
- Court preparation and attendance;
- Collection and distribution of fines, fees, service charges, and court costs;
- Processing for the assignment, reopening, reassignment, and appeals of cases;
- Reasonable administrative support costs;
- Data collection and reporting;
- Determinations of indigent status; and
- Collection and distribution of fines, fees, service charges, and court costs.⁴

The clerk of courts statewide operating budgets vary each year depending on revenues generated. For Fiscal Year 2013-2014, the clerks had an operating budget of \$472.3 million for court-

¹ Fla. Const. Art. V, § 16

² Fla. Const. Art. V, § 14 Although the clerks of courts are funded through fines and fees through this provision of the State Constitution, courts have stated that mere operational underfunding which causes the poor performance of a clerk of court do not mean that the funding levels are unconstitutional. *See Fla. Dep't of Rev. v. Forman*, 273 So. 3d 223 (Fla. 1st DCA 2019), jurisdiction denied, No. SC19-1262, 2019 Fla. LEXIS 2153 (Fla Nov. 25, 2019).

³ *Id.*

⁴ Section 28.35(3)(a), F.S.

related functions. The Fiscal Year 2017-2018 budget was \$409.04 million, while the Fiscal Year 2018-2019 budget was \$424.8 million.⁵

Between October 1, 2017, and September 30, 2018, the Clerks statewide assessed \$1,163,151,976, in fines, and collected a total of \$863,594,314 for a collection rate of 74.25 percent statewide.⁶ Revenue collected from fines and fees are not solely budgeted toward the clerks of courts. The Legislature has provided, for example, a 5 percent surcharge for certain non-criminal traffic citations, which is deposited in the Crimes Compensation Trust Fund.⁷ Additionally, that same trust fund collects \$49 from every \$50 collected as a fine from every adjudication from any felony, misdemeanor, delinquent act, or criminal traffic offense.⁸ During fiscal year 2018-2019, the Crime Compensation Trust Fund received \$13,794,800.86 of revenue generated from the above fines and fees collected by the clerks of courts.⁹

Once fees, service charges, fines, or court costs have remained unpaid for 90 days, the clerk may forward the accounts to an attorney or collection agent if the clerk of court attempted to collect the unpaid amount through an internal process such as a collection docket.¹⁰ It is unclear how successful collection agents are at collecting the remaining fees and fines. However, some counties such as Broward¹¹ County have unpaid fines and fees totaling hundreds of millions of dollars which go back decades.

Payment Plans

Court costs, fines, and other fines related to a disposition are enforced by court order and collected by the clerks of the circuit and county courts. An indigent person may apply to the clerk of court to enter a payment plan. The monthly payments under a payment plan are presumed to correspond to the indigent person's ability to pay if it does not exceed 2 percent of the indigent person's annual net income divided by 12.¹² A person is indigent if their income is equal to or below 200 percent of the federal poverty guidelines¹³ or if the person is receiving Temporary

⁵ Gary Blankenship, *Court Clerks Get a Bit of the Budget Help they Need*, FLA. BAR NEWS, May 13, 2019, <https://www.floridabar.org/the-florida-bar-news/court-clerks-get-a-bit-of-the-budget-help-they-need/>.

⁶ Florida Court Clerks and Comptrollers, *2018 Annual Assessments and Collections Report*, https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/public_documents_/1_final_front_matter_cover_s.pdf.

⁷ Section 938.04, F.S. The Crimes Compensation Trust Fund was created for the purpose of compensating victims of crime. Section 960.21, F.S.

⁸ Section 938.03, F.S.

⁹ Memorandum, Florida Clerks of Court Operations Corporation, *CCOC Bill Analysis for SB 1328*, January 2020 (on file with the Senate Committee on Judiciary).

¹⁰ Section 28.246(6), F.S.

¹¹ Broward County has \$735.6 million in outstanding fees and fines from felony, misdemeanor, and traffic dispositions. Similarly, Palm-Beach County has \$277.5 million outstanding while Miami-Dade County has \$278 million from felony adjudications alone. Dan Sweeney, *South Florida felons owe a billion dollars in fines - and that will affect their ability to vote*, SOUTH FLORIDA SUN SENTINEL, May 31, 2019, <https://www.sun-sentinel.com/news/politics/fl-ne-felony-fines-broward-palm-beach-20190531-5hxf7mveyree5cjhk4xr7b73v4-story.html>.

¹² Section 28.26(4), F.S.

¹³ Currently, the federal poverty level is \$12,490 for individuals, with an additional \$4,420 for each additional family member in the individual's household. See: United States Department of Health and Human Services, *U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs*, <https://aspe.hhs.gov/2019-poverty-guidelines> (last visited Jan 14, 2020).

Assistance for Needy Families-Cash Assistance, poverty-related veterans' benefits, or Supplemental Security Income.¹⁴

Certain crimes in Florida have significant mandatory minimum fines. An individual convicted of trafficking cocaine, for example, must pay a fine of \$50,000, if the amount trafficked is at least 28 grams, or \$250,000 if the amount trafficked is more than 400¹⁵ grams.¹⁶ Depending on the individual's income and ability to pay, fines and fees may take decades to pay off. An individual on a payment plan in Miami-Dade, for example, is scheduled to complete her \$190,000 payment plan resulting from a grand theft conviction in 190 years.¹⁷ She pays \$100 per month under her payment plan.

Driver's License Suspension in Florida

More than 2 million of the more than 14 million driver licenses issued in Florida are currently suspended.¹⁸ A license can be suspended for a variety of different reasons, including:

- Failure to pay a fine.
- Failure to comply with or appear at a traffic summons.
- Failure to complete driver improvement school based on court order or citation.
- Unpaid citations reported by another state.
- Clearing a court financial obligation.¹⁹

III. Effect of Proposed Changes:

This bill seeks to minimize driver license suspensions initiated by clerks of court due to the failure of a person to pay fines, service charges, fees, or costs by providing more notice of the availability of payment plans to defer payments and other measures.

The bill amends s. 28.24, F.S. to revise the clerks of court's authority to impose a \$25 fee to enroll individuals in a payment plan and to spread the cost of that current fee over up to 5 months. Section 28.246, F.S. specifies that clerks may waive the one-time administrative processing service charge if an individual enrolls in an automatic electronic debit payment plan.

The bill amends s. 28.246, F.S. to:

- Require the clerks of court to accept payments electronically, by mail, or in person;
- Specify that individuals seeking to defer payment of fees, service charges, costs, or fines must enroll in a payment plan no more than 30 calendar days after the court enters an order or 30 calendar days after release if the individual was incarcerated.

¹⁴ Section 27.52(1), F.S.

¹⁵ 400 grams is the equivalent to .88 of a pound.

¹⁶ Section 893.135(1)(b)1., F.S.

¹⁷ Lawrence Mower, *Should a felon who owes \$59 million be allowed to vote? How about \$190,000?* MIAMI HERALD, Mar. 29, 2019, <https://www.miamiherald.com/news/politics-government/state-politics/article228399999.html>.

¹⁸ Wayne K. Rouston, *Florida suspends nearly 2 million driver's licenses. Help may be on way*, SOUTH FLORIDA SUN SENTINEL, Feb. 16, 2018, <https://www.sun-sentinel.com/news/transportation/fl-reg-drivers-license-suspensions-20180208-story.html>.

¹⁹ Florida Department of Highway Safety and Motor Vehicles, *Traffic Citations or Court Suspensions*, <https://www.flhsmv.gov/driver-licenses-id-cards/driver-license-suspensions-revocations/traffic-citations-court-suspensions/> (last visited Feb. 13, 2020).

- Require the clerks to enroll individuals who are seeking deferral and who have the ability, into automatic withdrawals;
- Require that clerks of court coordinate with their courts to develop a process in which persons who have been sentenced for an offense will meet with a clerk to enroll in a payment plan;
- Allow the courts to waive, modify, or convert outstanding fees, service charges, costs, or fines to community service owed by a person who is indigent or who due to compelling circumstances is unable to comply with his or her payment plan;
- Prohibit the clerks from referring a case to collection or sending notice to the Department of Highway Safety and Motor Vehicles to suspend an individual's driver license for nonpayment or failure to comply with the terms of a payment plan if the individual is still incarcerated; and
- Allow a 30 day grace period after the due date prior to seeking a suspension of a driver license.

The bill amends s. 28.42, F.S. to require the clerks of court, in consultation with the Clerks of Court Operations Corporation, develop and use a uniform payment plan form for persons seeking to enroll in a payment plan by October 1, 2020 and begin usage of said payment plan by January 1, 2021.

The bill amends s. 318.20, F.S. to require the Department of Highway Safety and Motor Vehicle's uniform traffic citation form to provide information on paying civil penalties to a clerk of court. Although, the bill does not specify what must be included in the notice, the intent may be to provide information on payment plans.

The bill amends s. 322.245, F.S. to remove the clerk's ability to suspend an individual's driver license for non-driving related criminal offenses. A person whose driver license was suspended before July 1, 2020, for non-driving related criminal offenses solely for the nonpayment of fines, fees, or costs in a criminal case not involving operation of a motor vehicle, if otherwise eligible, may apply to have his or her license reinstated upon payment of a reinstatement fee.

The bill is effective July 1, 2020.

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:

Article V, s. 14(b) of the State Constitution provides that the clerks of court are to be funded from filing fees, service charges, and costs for performing court related functions. To the extent that the bill will waive or forgive collectable amounts owed by some participants in the judicial system, the Constitution may require the imposition of increased fees, charges, and costs upon others.

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

None.

B. Private Sector Impact:

Limiting the authority of the clerks of court to suspend driver licenses may help those who would otherwise be affected drive to work to earn money to pay debts. On the other hand, the potential for having one's driver license suspended may be an incentive for some to enroll in payment plans and make timely payments to the clerks.

C. Government Sector Impact:

On February 7, 2020 the Revenue Estimating Conference (REC) Impact Conference evaluated the potential fiscal impact of CS/HB 903, which is substantially similar to PCS/CS/SB 1328.²⁰

There are several sections of the bill which have a fiscal impact:

With regards to the sections of the bill related to payment plans, considering all of the changes, the conference found that the negative impacts will likely dominate the positive ones, resulting in a net indeterminate negative impact.²¹

The bill also removes the clerk's ability to initiate driver license suspensions for criminal cases not involving the operation of a motor vehicle. For the purposes of illustrating the potential impact on the lack of payment of Article V fees, the Conference produced a low, medium, and high scenario before ultimately adopting a negative indeterminate fiscal impact. The original low, medium, high fund impacts are as follows:

Fund Impact from Fee Reductions (5%)

²⁰ Revenue Estimating Conference (REC) Impact Conference 02/07/20 Revenue Impact Results p. 366-372 http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2020/_pdf/Impact0207.pdf (Last visited February 19, 2020).

²¹ *Id.*

Total	GR	Clerks
\$ (2.5)	\$ (0.2)	\$ (2.3)

Fund Impact from Fee Reductions (10%)

Total	GR	Clerks
\$ (4.9)	\$ (0.3)	\$ (4.6)

Fund Impact from Fee Reductions (20%)

Total	GR	Clerks
\$ (9.8)	\$ (0.7)	\$ (9.2) ²²

Additionally, the revenue associated with the suspension reinstatements due to changes to s. 322.245, F.S. was estimated to be negative \$1.2 million (GR -\$0.6m, DHSMV - \$0.3m, and clerks/tax collectors - \$0.3m).

Although truly unknown, this brings the total estimated potential impact relating to the clerk’s inability to initiate driver license suspensions for criminal cases not involving the operation of a motor vehicle to \$3.7 - \$11 million. The low-end \$3.7 million estimation would impact the General Revenue Fund by \$0.8 million, the clerks and tax collectors by \$2.6 million and the DHSMV by \$0.3 million. The high-end \$11 million estimation would impact the General Revenue Fund by \$1.3 million, the clerks and tax collectors by \$9.5 million, and the DHSMV by \$0.3 million.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 27.52, 28.24, 28.246, 28.42, 57.082, 318.15, 318.20, and 322.245,

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on February 18, 2020:

The committee substitute makes several changes to the underlying bill by:

²² *Id.*

- Adding language disallowing the clerks to refer a case to collection or send a notice to suspend an individual's driver license for nonpayment or failure to comply with a payment plan if the individual is still incarcerated;
- Requiring that the clerks enroll individuals with a deposit or credit card, or with other means of automatic withdrawal, in an automatic payment plan arrangement to ensure timely payment under the plan;
- Adding permissive language that the clerks may transmit notice to the DHSMV if any payment due under a payment plan is not received within 30 days, excluding certain circumstances;
 - Currently, the bill requires that clerks send either mail or electronic notice within 5 days to an individual who fails to make a timely payment due under a payment plan. This requirement is removed via the strike-all.
- Changing the one-time administrative processing charge for setting up the payment plan from a requirement to a permissive allowance and also allowing the clerks to waive the fee for those who enroll in an automatic payment plan;
- Removing the language in the underlying bill allowing the clerks to establish a multicounty intergovernmental authority pursuant to chapter 163 for the administration of payment plans in the various participating counties.
- Requiring that payment plans set up for indigent individuals in civil proceedings contemplate fines as well as fees and all anticipated costs owed within that county.

CS by Judiciary on January 28, 2020:

The committee substitute differs from the underlying bill by:

- Allowing the clerk of courts to apply the \$25 payment plan administrative fee to individuals, including indigent clients.
- Removing the original language of the bill which allowed authorized community based organizations to collect payment plan payments on behalf of a clerk of court
- Requiring individuals requesting a payment plan to request one within 30 days after any court order assessing related fines and costs. If the individual is incarcerated, they may request a payment plan within 30 days after release.
- Allowing a court to modify, waive, or convert any outstanding fees, service charges, costs or fines to community service if the court determines that the individual is indigent or unable to comply with the payment plan due to compelling circumstances.
- Removing the original bill's requirement to waive any remaining costs and fines for individuals who make 12, 24, or 36 consecutive payments under a payment plan.
- Retaining the ability to suspend a driver license based on failure to pay a clerk of court fine or fee.
- Requiring each clerk of court to coordinate with courts to develop a process to guide individuals to the clerk upon sentencing.
- Allowing clerks of courts to establish a multicounty intergovernmental authority for the purpose of collecting payment plans from multiple counties.
- Requiring the Department of Highway Safety and Motor Vehicles to include information about the clerk of court payment plan when issuing orders to suspend an individual's driver license.
- Requiring uniform traffic citations to include information on paying the civil penalty to the clerk of court.

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	.	
02/19/2020	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Wright) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (i) of subsection (5) of section
27.52, Florida Statutes, is amended to read:

27.52 Determination of indigent status.—

(5) INDIGENT FOR COSTS.—A person who is eligible to be
represented by a public defender under s. 27.51 but who is
represented by private counsel not appointed by the court for a



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11 reasonable fee as approved by the court or on a pro bono basis,
12 or who is proceeding pro se, may move the court for a
13 determination that he or she is indigent for costs and eligible
14 for the provision of due process services, as prescribed by ss.
15 29.006 and 29.007, funded by the state.

16 (i) A defendant who is found guilty of a criminal act by a
17 court or jury or enters a plea of guilty or nolo contendere and
18 who received due process services after being found indigent for
19 costs under this subsection is liable for payment of due process
20 costs expended by the state.

21 1. The attorney representing the defendant, or the
22 defendant if he or she is proceeding pro se, shall provide an
23 accounting to the court delineating all costs paid or to be paid
24 by the state within 90 days after disposition of the case
25 notwithstanding any appeals.

26 2. The court shall issue an order determining the amount of
27 all costs paid by the state and any costs for which prepayment
28 was waived under this section or s. 57.081. The clerk shall
29 cause a certified copy of the order to be recorded in the
30 official records of the county, at no cost. The recording
31 constitutes a lien against the person in favor of the state in
32 the county in which the order is recorded. The lien may be
33 enforced in the same manner prescribed in s. 938.29.

34 3. If the attorney or the pro se defendant fails to provide
35 a complete accounting of costs expended by the state and
36 consequently costs are omitted from the lien, the attorney or
37 pro se defendant may not receive reimbursement or any other form
38 of direct or indirect payment for those costs if the state has
39 not paid the costs. The attorney or pro se defendant shall repay



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40 the state for those costs if the state has already paid the
41 costs. The clerk of the court may establish a payment plan under
42 s. 28.246 and may charge the attorney or pro se defendant a one-
43 time administrative processing charge under s. 28.24(26)(b) ~~s.~~
44 ~~28.24(26)(c)~~.

45 Section 2. Subsection (26) of section 28.24, Florida
46 Statutes, is amended to read:

47 28.24 Service charges.—The clerk of the circuit court shall
48 charge for services rendered manually or electronically by the
49 clerk’s office in recording documents and instruments and in
50 performing other specified duties. These charges may not exceed
51 those specified in this section, except as provided in s.
52 28.345.

53 (26) (a) For receiving and disbursing all restitution
54 payments, per payment: 3.50, from which the clerk shall remit
55 0.50 per payment to the Department of Revenue for deposit into
56 the General Revenue Fund.

57 ~~(b) For receiving and disbursing all partial payments,~~
58 ~~other than restitution payments, for which an administrative~~
59 ~~processing service charge is not imposed pursuant to s. 28.246,~~
60 ~~per month.....5.00~~

61 ~~(c) For setting up a payment plan, a one-time~~
62 ~~administrative processing charge of in lieu of a per month~~
63 ~~charge under paragraph (b).....25.00.~~

64 (c) A person may pay the one-time administrative processing
65 charge in paragraph (b) in no more than five equal monthly
66 payments.

67 Section 3. Subsections (4) and (5) of section 28.246,
68 Florida Statutes, are amended to read:



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69 28.246 Payment of court-related fines or other monetary
70 penalties, fees, charges, and costs; partial payments;
71 distribution of funds.—

72 (4) Each ~~The~~ clerk of the circuit court shall accept
73 scheduled partial payments for court-related fees, service
74 charges, costs, and fines electronically, by mail, or in person,
75 in accordance with the terms of an established payment plan and
76 enroll— an individual seeking to defer payment of fees, service
77 charges, costs, or fines imposed by operation of law or order of
78 the court under any provision of general law no later than 30
79 calendar days after the date the court enters the order
80 assessing fines, fees, and costs. If the individual is
81 incarcerated, the individual shall apply to the clerk for
82 enrollment in a payment plan within 30 calendar days after
83 release. The clerk of court may not refer a case to collection
84 or send notice to the department to suspend an individual's
85 driver license for nonpayment or failure to comply with the
86 terms of a payment plan if the individual is still incarcerated.
87 The clerk shall enroll individuals with a deposit or credit card
88 account, or with other means of automatic withdrawal, in an
89 automatic payment plan arrangement to ensure timely payment
90 under the plan. Each clerk shall work with the court to develop
91 a process in which the individual will meet with the clerk upon
92 disposition or as soon thereafter as practicable. If the clerk
93 enters ~~shall enter~~ into a payment plan with an individual who
94 the court determines is indigent for costs, ~~the~~—A monthly
95 payment amount shall be— calculated based upon all fees and all
96 anticipated fines, fees, costs, and service charges owed within
97 the county, and is presumed to correspond to the person's



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98 ability to pay if the amount does not exceed 2 percent of the
99 person's annual net income, as defined in s. 27.52(1), divided
100 by 12 or \$10, whichever is greater. The court may review the
101 reasonableness of the payment plan and may, on its own motion or
102 by petition, waive, modify, or convert the outstanding fines,
103 fees, costs, or service charges to community service if the
104 court determines that the individual is indigent or, due to
105 compelling circumstances, is unable to comply with the terms of
106 the payment plan.

107 (5) (a) The clerk may transmit notice to the Department of
108 Highway Safety and Motor Vehicles if any payment due under a
109 payment plan is not received within 30 days after the due date
110 unless the individual is incarcerated, brings the account
111 current, makes alternate payment arrangements, or enters into a
112 revised payment plan with the clerk before the due date. The
113 clerk may send notices, electronically or by mail, to remind an
114 individual of an upcoming or missed payment.

115 (b) When receiving partial payment of fees, service
116 charges, court costs, and fines, clerks shall distribute funds
117 according to the following order of priority:

118 1. ~~(a)~~ That portion of fees, service charges, court costs,
119 and fines to be remitted to the state for deposit into the
120 General Revenue Fund.

121 2. ~~(b)~~ That portion of fees, service charges, court costs,
122 and fines required to be retained by the clerk of the court or
123 deposited into the Clerks of the Court Trust Fund within the
124 Department of Revenue.

125 3. ~~(c)~~ That portion of fees, service charges, court costs,
126 and fines payable to state trust funds, allocated on a pro rata



127 basis among the various authorized funds if the total collection
128 amount is insufficient to fully fund all such funds as provided
129 by law.

130 4.(d) That portion of fees, service charges, court costs,
131 and fines payable to counties, municipalities, or other local
132 entities, allocated on a pro rata basis among the various
133 authorized recipients if the total collection amount is
134 insufficient to fully fund all such recipients as provided by
135 law.

136

137 To offset processing costs, clerks may impose ~~either a per-month~~
138 ~~service charge pursuant to s. 28.24(26) (b) or~~ a one-time
139 administrative processing service charge at the inception of the
140 payment plan pursuant to s. 28.24(26) (b) ~~s. 28.24(26) (e)~~. The
141 clerk of court may waive this fee for any individual who enrolls
142 in an automatic electronic debit payment plan.

143 Section 4. Section 28.42, Florida Statutes, is amended to
144 read:

145 28.42 Manual of filing fees, charges, costs, and fines;
146 uniform payment plan forms.—

147 (1) The clerks of court, through their association and in
148 consultation with the Office of the State Courts Administrator,
149 shall prepare and disseminate a manual of filing fees, service
150 charges, costs, and fines imposed pursuant to state law, for
151 each type of action and offense, and classified as mandatory or
152 discretionary. The manual also shall classify the fee, charge,
153 cost, or fine as court-related revenue or noncourt-related
154 revenue. The clerks, through their association, shall
155 disseminate this manual to the chief judge, state attorney,



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156 public defender, and court administrator in each circuit and to
157 the clerk of the court in each county. The clerks, through their
158 association and in consultation with the Office of the State
159 Courts Administrator, shall at a minimum update and disseminate
160 this manual on July 1 of each year.

161 (2) By October 1, 2020, the clerks of court, through their
162 association, in consultation with the Florida Clerks of Court
163 Operations Corporation, shall develop a uniform payment plan
164 form for use by individuals seeking to establish a payment plan
165 in accordance with s. 28.246. The form shall inform the
166 individual about the minimum payment due each month, the term of
167 the plan, acceptable payment methods, and the circumstances
168 under which a case may be sent to collections for nonpayment.

169 (3) By January 1, 2021, each clerk of the court shall use
170 the uniform payment plan form described in subsection (2) when
171 establishing payment plans.

172 Section 5. Subsection (6) of section 57.082, Florida
173 Statutes, is amended to read:

174 57.082 Determination of civil indigent status.—

175 (6) PROCESSING CHARGE; PAYMENT PLANS.—A person who the
176 clerk or the court determines is indigent for civil proceedings
177 under this section shall be enrolled in a payment plan under s.
178 28.246 and shall be charged a one-time administrative processing
179 charge under s. 28.24(26) (b) ~~s. 28.24(26) (c)~~. A monthly payment
180 amount must be ~~7~~ calculated based upon all fines, fees, and all
181 anticipated costs owed within that county and, is presumed to
182 correspond to the person's ability to pay. The monthly payment
183 plan amount shall be the greater of \$10 or if it does not exceed
184 2 percent of the person's annual net income, as defined in



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185 subsection (1), divided by 12. The person may seek review of the
186 clerk's decisions regarding a payment plan established under s.
187 28.246 in the court having jurisdiction over the matter. A case
188 may not be impeded in any way, delayed in filing, or delayed in
189 its progress, including the final hearing and order, due to
190 nonpayment of any fees or costs by an indigent person. Filing
191 fees waived from payment under s. 57.081 may not be included in
192 the calculation related to a payment plan established under this
193 section.

194 Section 6. Paragraph (a) of subsection (1) of section
195 318.15, Florida Statutes, is amended to read:

196 318.15 Failure to comply with civil penalty or to appear;
197 penalty.—

198 (1) (a) If a person who is not incarcerated fails to comply
199 with the civil penalties provided in s. 318.18 within the time
200 period specified in s. 318.14(4), fails to enter into or comply
201 with the terms of a penalty payment plan with the clerk of the
202 court in accordance with ss. 318.14 and 28.246, fails to attend
203 driver improvement school, or fails to appear at a scheduled
204 hearing, the clerk of the court may ~~shall~~ notify the Department
205 of Highway Safety and Motor Vehicles of such failure within 30
206 ~~10~~ days after such failure, except as provided herein. Upon
207 receipt of such notice, the department shall immediately issue
208 an order suspending the driver license and privilege to drive of
209 such person effective 20 days after the date the order of
210 suspension is mailed in accordance with s. 322.251(1), (2), and
211 (6). Any such suspension of the driving privilege which has not
212 been reinstated, including a similar suspension imposed outside
213 Florida, shall remain on the records of the department for a



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214 period of 7 years from the date imposed and shall be removed
215 from the records after the expiration of 7 years from the date
216 it is imposed. The department may not accept the resubmission of
217 such suspension.

218 Section 7. Section 318.20, Florida Statutes, is amended to
219 read:

220 318.20 Notification; duties of department.—The department
221 shall prepare a notification form to be appended to, or
222 incorporated as a part of, the Florida uniform traffic citation
223 issued in accordance with s. 316.650. The notification form
224 shall contain language informing persons charged with
225 infractions to which this chapter applies of the procedures
226 available to them under this chapter. Such notification shall
227 contain a statement that, if the official determines that no
228 infraction has been committed, no costs or penalties shall be
229 imposed and any costs or penalties which have been paid shall be
230 returned. A uniform traffic citation that is produced
231 electronically must also include the information required by
232 this section. The notification and the uniform traffic citation
233 must include information on paying the civil penalty to the
234 clerk of the court and information that the person may contact
235 the clerk of the court to establish a payment plan pursuant to
236 s. 28.246(4) to make partial payments for court-related fines,
237 fees, costs, and service charges.

238 Section 8. Subsections (1) and (5) of section 322.245,
239 Florida Statutes, are amended to read:

240 322.245 Suspension of license upon failure of person
241 charged with specified offense under chapter 316, chapter 320,
242 or this chapter to comply with directives ordered by traffic



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243 court or upon failure to pay child support in non-IV-D cases as
244 provided in chapter 61 or failure to pay any financial
245 obligation in any other driving-related criminal case.—

246 (1) If a person charged with a violation of any driving-
247 related ~~of the~~ criminal offenses enumerated in s. 318.17 or with
248 the commission of any driving-related offense constituting a
249 misdemeanor under chapter 320 or this chapter fails to comply
250 with all of the directives of the court, within the time
251 allotted by the court, the clerk of the traffic court shall mail
252 to the person, at the address specified on the uniform traffic
253 citation, a notice of such failure, notifying him or her that,
254 if he or she does not comply with the directives of the court
255 within 30 days after the date of the notice and pay a
256 delinquency fee of up to \$25 to the clerk, from which the clerk
257 shall remit \$10 to the Department of Revenue for deposit into
258 the General Revenue Fund, his or her driver license will be
259 suspended. The notice shall be mailed no later than 5 days after
260 such failure. The delinquency fee may be retained by the office
261 of the clerk to defray the operating costs of the office.

262 (5) (a) A person whose driver license was suspended before
263 July 1, 2020, pursuant to this section solely for the nonpayment
264 of fines, fees, or costs in a criminal case not involving
265 operation of a motor vehicle, if otherwise eligible, may apply
266 to have his or her license reinstated upon payment of a
267 reinstatement fee.

268 (b) When the department receives notice from a clerk of the
269 court that a person licensed to operate a motor vehicle in this
270 state under the provisions of this chapter has failed to pay
271 financial obligations, in full or in part under a payment plan



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272 established pursuant to s. 28.246(4), for any criminal offense
273 involving operation of a motor vehicle by the person licensed
274 ~~other than those specified in subsection (1), in full or in part~~
275 ~~under a payment plan pursuant to s. 28.246(4),~~ the department
276 shall suspend the license of the person named in the notice.

277 (c) ~~(b)~~ The department must reinstate the driving privilege
278 when the clerk of the court provides an affidavit to the
279 department stating that:

280 1. The person has satisfied the financial obligation in
281 full or made all payments currently due under a payment plan;

282 2. The person has entered into a written agreement for
283 payment of the financial obligation if not presently enrolled in
284 a payment plan; or

285 3. A court has entered an order granting relief to the
286 person ordering the reinstatement of the license.

287 (d) ~~(e)~~ The department shall not be held liable for any
288 license suspension resulting from the discharge of its duties
289 under this section.

290 Section 9. This act shall take effect July 1, 2020.

291
292 ===== T I T L E A M E N D M E N T =====

293 And the title is amended as follows:

294 Delete everything before the enacting clause
295 and insert:

296 A bill to be entitled
297 An act relating to fines and fees; amending s. 27.52,
298 F.S.; conforming a cross-reference; amending s. 28.24,
299 F.S.; providing procedures for payment plans; amending
300 s. 28.246, F.S.; revising the methods by which clerks



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301 of the circuit court must accept payments for certain
302 fees, charges, costs, and fines; providing
303 requirements for entering into payment plans;
304 authorizing a court to waive, modify, and convert
305 certain fines and fees into community service under
306 specified circumstances; authorizing clerks of court
307 to transmit and send specified notices relating to
308 payment plans; amending s. 28.42, F.S.; requiring the
309 clerks of court, in consultation with the Florida
310 Clerks of Court Operations Corporation, to develop a
311 uniform payment plan form by a specified date;
312 providing minimum criteria for the form; requiring
313 clerks of court to use such forms by a specified date;
314 amending s. 57.082, F.S.; conforming a cross-reference
315 and provisions to changes made by the act; amending s.
316 318.15, F.S.; authorizing rather than requiring clerks
317 of court to notify the Department of Highway Safety
318 and Motor Vehicles under certain circumstances;
319 extending the timeframe for issuing certain notices;
320 amending s. 318.20, F.S.; requiring that a
321 notification form and the uniform traffic citation
322 include certain information about paying a civil
323 penalty; amending s. 322.245, F.S.; authorizing
324 certain persons to apply for reinstatement of their
325 suspended licenses under certain circumstances;
326 providing an effective date.

From: Jason L. Welty <jwelty@flccoc.org>
Sent: Thursday, February 13, 2020 5:12 PM
To: Dale, Abram <Abram.Dale@LASPBS.STATE.FL.US>
Cc: John Dew <jdew@flccoc.org>; Jason Harrell <jasonharrell@flclerks.com>
Subject: Payment plans and 5-day notification

Good evening, Mr. Dale,

Based on our most recent Operation Green Light data, statewide, clerks had over 22,000 people create payment plans in October of 2019. Extrapolating that out to a yearly number of payment plans, clerks create close to 200,000 payment plans a year. Using prior data on the failure to complete payment plans and those that have already failed from the 2019 Operation Green Light, we expect about half of those 200,000 plans to fail.

If we were sending out letters to each of those 100k failed payment plans, we'd expect a postage and printing costs to be around \$75,000 plus the staff time involved.

While it likely won't take an FTE in every county, some of the larger counties with a high number of payment plans could have multiple FTE involved in sending out these notifications. For instance, Miami-Dade creates over 20,000 payment plans a year and Orange County had over 15,000 payment plans in CFY 2017-18. Conservatively, I'd say we are looking at 20-40 FTE statewide to complete these 5-day notifications, which would be \$1.2-\$2.4 million dollars in staff time to complete this task. The staff time involved would not vastly differ if using electronic notification or analogue notification. Some clerks collect emails and cell phone numbers when setting up a payment plan. I cannot guarantee all clerks collect this information, so there would be a combination of electronic and manual notification.

I hope this information is helpful for you.

Regards,

Jason



JASON L. WELTY
BUDGET AND COMMUNICATIONS DIRECTOR

PHONE 850.386.2223 | JWELTY@FLCCOC.ORG

WWW.FLCCOC.ORG    /FLCCOC



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs and Space, *Chair*
Children, Families, and Elder Affairs
Commerce and Tourism
Environment and Natural Resources

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR TOM A. WRIGHT

14th District

January 29, 2020

The Honorable Jeff Brandes
416, Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 1328 – Fines and Fees

Dear Chair Brandes:

Senate Bill 1328, relating to Fines and Fees has been referred to the Appropriations Subcommittee on Criminal and Civil Justice. I am requesting your consideration on placing SB 1328 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Tom A. Wright".

Tom A. Wright, District 14

cc: PK Jameson, Staff Director of the Appropriations Subcommittee on Criminal and Civil Justice
Lisa Roberts, Administrative Assistant of the Appropriations Subcommittee on Criminal and Civil Justice

REPLY TO:

- 4606 Clyde Morris Blvd., Suite 2-J, Port Orange, Florida 32129 (386) 304-7630
- 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/19

Meeting Date

SB 1328

Bill Number (if applicable)

385158

Amendment Barcode (if applicable)

Topic Fines + Fees - Amendment

Name Ashley Thomas

Job Title FL Director - Fines + Fees Justice Center

Address _____
Street

Phone 802-299-9059

City

State

Zip

Email athomas@finesandfeesjusticecenter.org

Speaking: For Against Information

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

Representing Fines + Fees Justice Center

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/18/20

Meeting Date

1328

Bill Number (if applicable)

Topic ~~KENNETH BOLES DRIVERS LIC~~

Amendment Barcode (if applicable)

Name KENNETH BOLES

Job Title RETIRED

Address 1723 SUMMER MEADOW AL

Phone 850-545-7970

Street

TALLAHASSEE FL 32303

City

State

Zip

Email BOLES121233@AOL.COM

Speaking: For Against Information

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

Representing VETERAN AM Leg

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/20

Meeting Date

1328

Bill Number (if applicable)

Topic Fines and Fees

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: For Against Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/10/19

Meeting Date

88 1328

Bill Number (if applicable)

Topic Fines + fees

Amendment Barcode (if applicable)

Name Ashley Thomas

Job Title FL Director - Fines + Fees Justice Center

Address _____

Street

Phone 802-299-9059

City

State

Zip

Email athomas@finesandfeesjusticecenter.org

Speaking: For Against Information

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

Representing Fines + Fees Justice Center

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-18-2020
Meeting Date

1328
Bill Number (if applicable)

Topic Fines and Fees

Amendment Barcode (if applicable)

Name ALIX MILLER

Job Title VICE PRESIDENT

Address 350 E. College Ave

Phone 850-222-9900

Tallahassee FL 32301
City State Zip

Email alix@fltrucking.org

Speaking: For Against Information

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

Representing FLORIDA TRUCKING ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

02/18/2020
Meeting Date

1328
Bill Number (if applicable)

Topic Fines & Fees

Amendment Barcode (if applicable)

Name Tom Bexley

Job Title Clerk of the Court & Comptroller, Flagler County

Address 1769 east Mary Blvd

Phone 356-237-8876

Street
Bunnell
City

FL
State

32110
Zip

Email tbexley@flaglerclerk.com

Speaking: For Against Information

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

Representing Florida Court Clerks & Comptrollers

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/2015
Meeting Date

1328
Bill Number (if applicable)

Topic Fines & Fees

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title _____

Address _____
Street

Phone _____

City _____ State _____ Zip _____

Email _____

Speaking: For Against Information

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

Representing Organize Florida + New Florida Majority

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/20
Meeting Date

1328
Bill Number (if applicable)

Topic Driver's Licence Reinstatement Fines and fees

Amendment Barcode (if applicable)

Name Gail Ernst (Gail ERNST)

Job Title _____

Address P. O. Box 802
Street

Phone 813-727-5983

HAVANA FL 32337
City State Zip

Email ernstgail@gmail.com

Speaking: For Against Information

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

Representing American Legion

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

02/18/2020
Meeting Date

1328
Bill Number (if applicable)

Topic DRIVERS LICENSE REINSTATEMENT FINES & FEES

Amendment Barcode (if applicable)

Name FRED INGLE

Job Title RETIRED: PRIOR PAROLE & PROBATION OFFICER
and LCDR USN

Address P.O. Box
Street

Phone 850 510 8134 (cell)

HAVANA
City

FL
State

32333
Zip

Email fritz439@gmail.com

Speaking: For Against Information

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

Representing Tallahassee Veterans Treatment Court
Marine Corps League
Tallahassee Veterans Legal Cons. Collaborative

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

Sen Present 1:30

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

2 17 20

Meeting Date

1328

Bill Number (if applicable)

Topic Driver's License Reinstatement Fines & Fees

Amendment Barcode (if applicable)

Name Dan Hendrickson

Job Title vol pres, TALLAHASSEE VETERANS LEGAL COLLABORATIVE

Address PO Box 1201

Phone 850 570-1967

Street

Tallahassee,

Fl

32302

Email danbhendrickson@comcast.net

City

State

Zip

Speaking: For Against Information

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

Representing TALLAHASSEE VETERANS LEGAL COLLABORATIVE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/20

Meeting Date

1328

Bill Number (if applicable)

Topic Fines and Fees

Amendment Barcode (if applicable)

Name Lauren Gallo

Job Title Lobbyist

Address 106 E college Ave

Phone (850) 224-1660

Street

Tallahassee FL 32301

Email lngallo@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing League of women voters of FL.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-18-20

Meeting Date

1328

Bill Number (if applicable)

Topic

VETERANS REINSTATEMENT OF DRIVER LICENSE

Amendment Barcode (if applicable)

Name

ROBERT DAVID

Job Title

VICE COMMANDER, AMERICAN LEGION

Address

2306 ALDER DR

Phone

850-385-8529

Street

TALLAHASSEE FL 32303

City

State

Zip

Email

WARDLGMAN@HOTMAIL.COM

Speaking:

For Against Information

Waive Speaking:

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

Representing

AMERICAN LEGION

Appearing at request of Chair:

Yes No

Lobbyist registered with Legislature:

Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-18-20

Meeting Date

1328

Bill Number (if applicable)

Topic DRIVER LICENSE REINSTATEMENT

Amendment Barcode (if applicable)

Name LARRY D. CRUMBIE, SR

Job Title DISABLE VETERAN

Address 1616 McCASKILL AVE #A112

Phone 850-848-7498

Street

TALL

City

FL

State

32310

Zip

Email LARRYCRUMBIE@YAHOO.COM

Speaking: For Against Information

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

Representing DISABLE VETERAN

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2/18/20

Meeting Date

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

1328

Bill Number (if applicable)

Topic Drivers License Reinstatement

Amendment Barcode (if applicable)

Name Richard Junnier

Job Title Junnier Law & Research

Address 113 South Monroe

Phone 850-201-7141

Street

Tallahassee

City

FL

State

32301

Zip

Email _____

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/20
Meeting Date

1328
Bill Number (if applicable)

Topic DRIVERS License Reinstatement

Amendment Barcode (if applicable)

Name Kevin Williams

Job Title VLC mentor

Address 1616 McCaskill Ave

Phone (850) 321-4274

Tallahassee FL 32310
City State Zip

Email kbw2497@gmail.com

Speaking: For Against Information

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

Representing Veteran's Treatment Court Mentor

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/2020
Meeting Date

SB 1328
Bill Number (if applicable)

Topic Fines + fees

Amendment Barcode (if applicable)

Name Lauren Storch

Job Title Government Affairs

Address 601 E. Kennedy Blvd.
Street

Phone 813-274-6831

Tampa FL 33602
City State Zip

Email storchla@HCFI.gov.net

Speaking: For Against Information

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

Representing Hillsborough County

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/2020
Meeting Date

1328
Bill Number (if applicable)

Topic Fines + Fees

Amendment Barcode (if applicable)

Name MarKevia Williams

Job Title Admin. Asst.

Address 9033 NE 20th Ter

Phone 352-239-4638

Anthony Fl 32617
City State Zip

Email greatfulness69@gmail.com

Speaking: For Against Information

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

Representing ~~South~~ Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

1:30

2/18/20

Meeting Date

1328

Bill Number (if applicable)

Topic DRIVERS LICENSE REINSTATEMENT FINES & FEES

Amendment Barcode (if applicable)

Name CHARLES STANFORD

Job Title COMMANDER MOPH CHAPTER 758

Address PO Box 180824
Street

Phone 850-443-6373

TALLAHASSEE FL 32318
City State Zip

Email RICKSTANFORD46@GMAIL.COM

Speaking: For Against Information

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

Representing MILITARY ORDER OF THE PURPLE HEART

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/2020
Meeting Date

1328
Bill Number (if applicable)

Topic DRIVERS LICENSES REINSTATEMENT

Amendment Barcode (if applicable)

Name MIKE FORD

Job Title MILITARY ORDER OF PURPLE

Address 3053 KILLEARN PT CT.
Street

Phone _____

TALLAHASSEE, FL. 32312
City State Zip

Email MWF1946@gmail.com

Speaking: For Against Information

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

Representing PEOPLE HEART

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/2020

Meeting Date

1328

Bill Number (if applicable)

Topic Fines & Fees

Amendment Barcode (if applicable)

Name Dana Parker

Job Title _____

Address PO Box 1475

Phone (352) 572-8567

Street

Belleview FL 34421

Email dparker@loveinheart

City

State

Zip

of Florida.org

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1328

Meeting Date

Bill Number (if applicable)

Topic Fines and Fee

Amendment Barcode (if applicable)

Name Galan Juan

Job Title ~~5342 Regal Oak Dr~~

Address 5342 Regal Oak Dr

Phone 754-801-0482

Street Orlando, Fla 32810
City State Zip

Email

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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2/14/20

Meeting Date

1328

Bill Number (if applicable)

Topic Fines + Fees

Amendment Barcode (if applicable)

Name Bishop James Cotic

Job Title President of Prisoners of Hope

Address 4180 E 1st

Phone

Street

W Dunwoody FL 34215

Email

City

State

Zip

Speaking: For Against Information

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

Representing Smith self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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2/18/2020
Meeting Date

SB 1328
Bill Number (if applicable)

Topic FINES AND FEES

Amendment Barcode (if applicable)

Name STARLA BROWN

Job Title Deputy State Director

Address _____

Phone _____

Street Delray Beach
City _____ State _____ Zip _____

Email _____

Speaking: For Against Information

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

Representing Americans for Prosperity

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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2/18/20

Meeting Date

1328

Bill Number (if applicable)

Topic Fines and Fees

Amendment Barcode (if applicable)

Name Carey Haughwout

Job Title Public Defender, 15th Judicial Circuit

Address 421 3d St.

Phone 561-355-7500

Street

West Palm Beach

FL

33401

Email CareyPD@pd15.state.fl.us

City

State

Zip

Speaking: For Against Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Feb. 13 2020
Meeting Date

1328
Bill Number (if applicable)

Topic Fines + Fees

Amendment Barcode (if applicable)

Name Grace Lovett

Job Title VP Government Affairs

Address 227 S. Adams St.

Phone 850 222 4082

Street

Tallahassee FL 32301

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Florida Retail Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2.18.20

Meeting Date

SB 1328

Bill Number (if applicable)

Topic Fines and Fees

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legislative Director

Address 4343 West Flagler St.

Phone 786-363-4436

Street

Miami

FL

33134

Email kgross@aclufl.org

City

State

Zip

Speaking: For Against Information

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

Representing American Civil Liberties Union of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/18/2020

Meeting Date

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

1328

Bill Number (if applicable)

Topic Fines & Fees - Removing

Amendment Barcode (if applicable)

Name Kim Porteous

Job Title President of FLNOW

Address 6616 Crenshaw Dr.

Phone 706-669-8192

Street

Orlando

City

FL

State

32835

Zip

Email KIM@FLNOW.org

Speaking: For Against Information

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

Representing FL NOW

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

02/18/20

Meeting Date

1328

Bill Number (if applicable)

Topic Fines & fees

Amendment Barcode (if applicable)

Name Tacnona Marc

Job Title Policy Analyst

Address 1001 N Orange Ave, Orlando FL

Phone 954-647-7937

Street

City

State

32801

Zip

Email marc@floridapolicy.org

Speaking: For Against Information

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

Representing Florida Policy Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

By the Committee on Judiciary; and Senator Wright

590-02776-20

20201328c1

1 A bill to be entitled
2 An act relating to fines and fees; amending s. 28.24,
3 F.S.; removing the option for a monthly processing
4 charge for certain payment plans established with the
5 clerk of the circuit court; authorizing certain
6 persons to make partial payments of an existing
7 administrative processing charge; amending s. 28.246
8 F.S.; revising the methods by which the clerk of the
9 circuit court may accept payments for certain fees,
10 charges, costs, and fines; requiring certain persons
11 to apply to the clerk to enroll in a payment plan
12 within a specified timeframe; requiring clerks to
13 coordinate with courts to develop a specified process;
14 providing requirements and court procedures for the
15 payment plan; conforming a cross-reference;
16 authorizing clerks of court to establish multicounty
17 governmental authorities to administer payment plans;
18 amending s. 28.42, F.S.; requiring the clerks of
19 court, in consultation with the Florida Clerks of
20 Court Operations Corporation, to develop a uniform
21 payment plan form by a specified date; providing
22 requirements for such form; requiring clerks of court,
23 beginning on a specified date, to utilize such forms
24 when establishing payment plans; amending s. 318.15,
25 F.S.; expanding requirements for specified orders
26 issued by the Department of Highway Safety and Motor
27 Vehicles to include information related to a person's
28 option to enter into a certain payment plan; amending
29 s. 318.20, F.S.; requiring that a notification form

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30 and the uniform traffic citation include certain
 31 information about paying a civil penalty; amending s.
 32 322.245, F.S.; expanding requirements for specified
 33 notices issued by the clerks of court to the
 34 Department of Highway Safety and Motor Vehicles to
 35 include information related to a person's option to
 36 enter into a certain payment plan; amending ss. 27.52,
 37 34.191, and 57.082, F.S.; conforming cross-references;
 38 providing an effective date.

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

42 Section 1. Subsection (26) of section 28.24, Florida
 43 Statutes, is amended to read:

44 28.24 Service charges.—The clerk of the circuit court shall
 45 charge for services rendered manually or electronically by the
 46 clerk's office in recording documents and instruments and in
 47 performing other specified duties. These charges may not exceed
 48 those specified in this section, except as provided in s.
 49 28.345.

50 (26) (a) For receiving and disbursing all restitution
 51 payments, per payment: 3.50, from which the clerk shall remit
 52 0.50 per payment to the Department of Revenue for deposit into
 53 the General Revenue Fund.

54 ~~(b) For receiving and disbursing all partial payments,~~
 55 ~~other than restitution payments, for which an administrative~~
 56 ~~processing service charge is not imposed pursuant to s. 28.246,~~
 57 ~~per month.....5.00~~

58 ~~(c) For setting up a payment plan, a one-time~~

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59 administrative processing charge ~~in lieu of a per month charge~~
60 ~~under paragraph (b)~~.....25.00

61 (c) A person may pay the one-time administrative charge in
62 paragraph (b) in no more than five equal monthly payments.

63 Section 2. Present subsections (5) and (6) of section
64 28.246, Florida Statutes, are redesignated as subsections (6)
65 and (7), respectively, a new subsection (5) is added to that
66 section, subsection (4) and present subsection (5) of that
67 section are amended, and subsection (8) is added to that
68 section, to read:

69 28.246 Payment of court-related fines or other monetary
70 penalties, fees, charges, and costs; partial payments;
71 distribution of funds.-

72 (4) Each ~~The~~ clerk of the circuit court shall accept
73 scheduled ~~partial~~ payments for court-related fees, service
74 charges, costs, and fines electronically, by mail, or in person,
75 in accordance with the terms of an established payment plan and
76 shall enroll- an individual seeking to defer payment of fees,
77 service charges, costs, or fines imposed by operation of law or
78 order of the court under any provision of general law shall
79 apply to the clerk for enrollment in a payment plan no later
80 than 30 calendar days after the date the court enters the order
81 assessing fines, service charges, fees, and costs. If the
82 individual is incarcerated, he or she shall apply to the clerk
83 for enrollment in a payment plan within 30 calendar days after
84 release. Each clerk shall coordinate with the court to develop a
85 process in which the individual will meet with the clerk upon
86 sentencing or as soon as thereafter as practical. If the clerk
87 enters ~~shall enter~~ into a payment plan with an individual who

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88 the court determines is indigent for costs, ~~the~~. A monthly
89 payment amount, calculated based upon all fees and all
90 anticipated fines, service charges, fees, and costs, is presumed
91 to correspond to the person's ability to pay if the amount does
92 not exceed 2 percent of the person's annual net income, as
93 defined in s. 27.52(1), divided by 12 or \$10, whichever is
94 greater. The clerk shall establish all payment plan terms other
95 than the total amount due and the court may review the
96 reasonableness of the payment plan and may, on its own or by
97 petition, waive, modify, or convert the outstanding fees,
98 service charges, costs, or fines to community service if the
99 court determines that the individual is indigent or due to
100 compelling circumstances is unable to comply with the terms of
101 the payment plan.

102 (5) The clerk shall send notice within 5 days to an
103 individual who fails to make a timely payment due under a
104 payment plan. Such notice may be made by mail or electronically.
105 The clerk shall transmit notice to the Department of Highway
106 Safety and Motor Vehicles if any payment due under a payment
107 plan is not received within 30 days after the due date unless
108 the individual makes alternate payment arrangements or enters
109 into a revised payment plan with the clerk before such date.

110 (6) ~~(5)~~ When receiving partial payment of fees, service
111 charges, court costs, and fines, clerks shall distribute funds
112 according to the following order of priority:

113 (a) That portion of fees, service charges, court costs, and
114 fines to be remitted to the state for deposit into the General
115 Revenue Fund.

116 (b) That portion of fees, service charges, court costs, and

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117 fines required to be retained by the clerk of the court or
118 deposited into the Clerks of the Court Trust Fund within the
119 Department of Revenue.

120 (c) That portion of fees, service charges, court costs, and
121 fines payable to state trust funds, allocated on a pro rata
122 basis among the various authorized funds if the total collection
123 amount is insufficient to fully fund all such funds as provided
124 by law.

125 (d) That portion of fees, service charges, court costs, and
126 fines payable to counties, municipalities, or other local
127 entities, allocated on a pro rata basis among the various
128 authorized recipients if the total collection amount is
129 insufficient to fully fund all such recipients as provided by
130 law.

131
132 To offset processing costs, clerks shall impose ~~may impose~~
133 ~~either a per-month service charge pursuant to s. 28.24(26)(b) or~~
134 a one-time administrative processing service charge at the
135 inception of the payment plan pursuant to s. 28.24(26)(b) ~~s.~~
136 ~~28.24(26)(c)~~.

137 (8) A clerk of court may establish a multicounty
138 intergovernmental authority pursuant to chapter 163 for the
139 administration of payment plans in the various participating
140 counties.

141 Section 3. Section 28.42, Florida Statutes, is amended to
142 read:

143 28.42 Manual of filing fees, charges, costs, and fines;
144 uniform payment plan forms.-

145 (1) The clerks of court, through their association and in

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146 consultation with the Office of the State Courts Administrator,
147 shall prepare and disseminate a manual of filing fees, service
148 charges, costs, and fines imposed pursuant to state law, for
149 each type of action and offense, and classified as mandatory or
150 discretionary. The manual also shall classify the fee, charge,
151 cost, or fine as court-related revenue or noncourt-related
152 revenue. The clerks, through their association, shall
153 disseminate this manual to the chief judge, state attorney,
154 public defender, and court administrator in each circuit and to
155 the clerk of the court in each county. The clerks, through their
156 association and in consultation with the Office of the State
157 Courts Administrator, shall at a minimum update and disseminate
158 this manual on July 1 of each year.

159 (2) By October 1, 2020, the clerks of court, through their
160 association, in consultation with the Florida Clerks of Court
161 Operations Corporation, shall develop a uniform payment plan
162 form for use by persons seeking to establish a payment plan in
163 accordance with s. 28.246. The form shall inform the person
164 about the minimum payment due each month, the term of the plan,
165 acceptable payment methods, and the circumstances under which a
166 case may be sent to collections for nonpayment.

167 (3) Beginning on January 1, 2021, each clerk of the court
168 shall utilize the uniform payment plan form described in
169 subsection (2) when establishing payment plans.

170 Section 4. Paragraph (a) of subsection (1) of section
171 318.15, Florida Statutes, is amended to read:

172 318.15 Failure to comply with civil penalty or to appear;
173 penalty.—

174 (1) (a) If a person fails to comply with the civil penalties

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175 provided in s. 318.18 within the time period specified in s.
176 318.14(4), fails to enter into or comply with the terms of a
177 penalty payment plan with the clerk of the court in accordance
178 with ss. 318.14 and 28.246, fails to attend driver improvement
179 school, or fails to appear at a scheduled hearing, the clerk of
180 the court shall notify the Department of Highway Safety and
181 Motor Vehicles of such failure within 10 days after such
182 failure, except as provided herein. Upon receipt of such notice,
183 the department shall immediately issue an order suspending the
184 driver license and privilege to drive of such person effective
185 20 days after the date the order of suspension is mailed in
186 accordance with s. 322.251(1), (2), and (6). The order must also
187 contain information that the person may contact the clerk of the
188 court to establish a payment plan pursuant to s. 28.246(4) to
189 make partial payments for court-related fees, service charges,
190 costs, and fines. Any such suspension of the driving privilege
191 which has not been reinstated, including a similar suspension
192 imposed outside Florida, shall remain on the records of the
193 department for a period of 7 years from the date imposed and
194 shall be removed from the records after the expiration of 7
195 years from the date it is imposed. The department may not accept
196 the resubmission of such suspension.

197 Section 5. Section 318.20, Florida Statutes, is amended to
198 read:

199 318.20 Notification; duties of department.—The department
200 shall prepare a notification form to be appended to, or
201 incorporated as a part of, the Florida uniform traffic citation
202 issued in accordance with s. 316.650. The notification form
203 shall contain language informing persons charged with

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204 infractions to which this chapter applies of the procedures
205 available to them under this chapter. Such notification shall
206 contain a statement that, if the official determines that no
207 infraction has been committed, no costs or penalties shall be
208 imposed and any costs or penalties which have been paid shall be
209 returned. A uniform traffic citation that is produced
210 electronically must also include the information required by
211 this section. The notification form and the uniform traffic
212 citation must include information on paying the civil penalty to
213 the clerk of the court.

214 Section 6. Subsection (1) and paragraph (a) of subsection
215 (5) of section 322.245, Florida Statutes, are amended to read:

216 322.245 Suspension of license upon failure of person
217 charged with specified offense under chapter 316, chapter 320,
218 or this chapter to comply with directives ordered by traffic
219 court or upon failure to pay child support in non-IV-D cases as
220 provided in chapter 61 or failure to pay any financial
221 obligation in any other criminal case.—

222 (1) If a person charged with a violation of any of the
223 criminal offenses enumerated in s. 318.17 or with the commission
224 of any offense constituting a misdemeanor under chapter 320 or
225 this chapter fails to comply with all of the directives of the
226 court within the time allotted by the court, the clerk of the
227 traffic court shall mail to the person, at the address specified
228 on the uniform traffic citation, a notice of such failure,
229 notifying him or her that, if he or she does not comply with the
230 directives of the court within 30 days after the date of the
231 notice and pay a delinquency fee of up to \$25 to the clerk, from
232 which the clerk shall remit \$10 to the Department of Revenue for

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233 deposit into the General Revenue Fund, his or her driver license
234 will be suspended. The notice shall be mailed no later than 5
235 days after such failure, except as provided herein. The
236 delinquency fee may be retained by the office of the clerk to
237 defray the operating costs of the office.

238 (5) (a) When the department receives notice from a clerk of
239 the court that a person licensed to operate a motor vehicle in
240 this state under the provisions of this chapter has failed to
241 pay financial obligations for any criminal offense other than
242 those specified in subsection (1), in full or in part under a
243 payment plan pursuant to s. 28.246(4), the department shall
244 suspend the license of the person named in the notice. The
245 notice must also contain information that the person may contact
246 the clerk of the court to establish a payment plan pursuant to
247 s. 28.246(4) to make partial payments for court-related fees,
248 service charges, costs, and fines.

249 Section 7. Paragraph (i) of subsection (5) of section
250 27.52, Florida Statutes, is amended to read:

251 27.52 Determination of indigent status.—

252 (5) INDIGENT FOR COSTS.—A person who is eligible to be
253 represented by a public defender under s. 27.51 but who is
254 represented by private counsel not appointed by the court for a
255 reasonable fee as approved by the court or on a pro bono basis,
256 or who is proceeding pro se, may move the court for a
257 determination that he or she is indigent for costs and eligible
258 for the provision of due process services, as prescribed by ss.
259 29.006 and 29.007, funded by the state.

260 (i) A defendant who is found guilty of a criminal act by a
261 court or jury or enters a plea of guilty or nolo contendere and

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262 who received due process services after being found indigent for
263 costs under this subsection is liable for payment of due process
264 costs expended by the state.

265 1. The attorney representing the defendant, or the
266 defendant if he or she is proceeding pro se, shall provide an
267 accounting to the court delineating all costs paid or to be paid
268 by the state within 90 days after disposition of the case
269 notwithstanding any appeals.

270 2. The court shall issue an order determining the amount of
271 all costs paid by the state and any costs for which prepayment
272 was waived under this section or s. 57.081. The clerk shall
273 cause a certified copy of the order to be recorded in the
274 official records of the county, at no cost. The recording
275 constitutes a lien against the person in favor of the state in
276 the county in which the order is recorded. The lien may be
277 enforced in the same manner prescribed in s. 938.29.

278 3. If the attorney or the pro se defendant fails to provide
279 a complete accounting of costs expended by the state and
280 consequently costs are omitted from the lien, the attorney or
281 pro se defendant may not receive reimbursement or any other form
282 of direct or indirect payment for those costs if the state has
283 not paid the costs. The attorney or pro se defendant shall repay
284 the state for those costs if the state has already paid the
285 costs. The clerk of the court may establish a payment plan under
286 s. 28.246 and may charge the attorney or pro se defendant a one-
287 time administrative processing charge under s. 28.24(26)(b) ~~s.~~
288 ~~28.24(26)(e)~~.

289 Section 8. Subsection (1) of section 34.191, Florida
290 Statutes, is amended to read:

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291 34.191 Fines and forfeitures; dispositions.—

292 (1) All fines and forfeitures arising from offenses tried
293 in the county court shall be collected and accounted for by the
294 clerk of the court and, other than the charge provided in s.
295 318.1215, disbursed in accordance with ss. 28.2402, 34.045,
296 142.01, and 142.03 and subject to the provisions of s. 28.246(6)
297 and (7) ~~s. 28.246(5) and (6)~~. Notwithstanding the provisions of
298 this section, all fines and forfeitures arising from operation
299 of the provisions of s. 318.1215 shall be disbursed in
300 accordance with that section.

301 Section 9. Subsection (6) of section 57.082, Florida
302 Statutes, is amended to read:

303 57.082 Determination of civil indigent status.—

304 (6) PROCESSING CHARGE; PAYMENT PLANS.—A person who the
305 clerk or the court determines is indigent for civil proceedings
306 under this section shall be enrolled in a payment plan under s.
307 28.246 and shall be charged a one-time administrative processing
308 charge under s. 28.24(26)(b) ~~s. 28.24(26)(c)~~. A monthly payment
309 amount, calculated based upon all fees and all anticipated
310 costs, is presumed to correspond to the person's ability to pay
311 if it does not exceed 2 percent of the person's annual net
312 income, as defined in subsection (1), divided by 12. The person
313 may seek review of the clerk's decisions regarding a payment
314 plan established under s. 28.246 in the court having
315 jurisdiction over the matter. A case may not be impeded in any
316 way, delayed in filing, or delayed in its progress, including
317 the final hearing and order, due to nonpayment of any fees or
318 costs by an indigent person. Filing fees waived from payment
319 under s. 57.081 may not be included in the calculation related

590-02776-20

20201328c1

320 to a payment plan established under this section.

321 Section 10. This act shall take effect July 1, 2020.

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 1396

INTRODUCER: Criminal Justice Committee and Senator Simmons

SUBJECT: Driving Under the Influence

DATE: February 17, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	Fav/CS
2.	Dale	Jameson	ACJ	Recommend: Favorable
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1396 creates section 316.19395, Florida Statutes, which provides that a Driving Under the Influence Diversion Pilot Program (pilot program) must be established in each judicial circuit. The purpose of the pilot program is to offer a person charged with a first offense of driving under the influence (DUI), pursuant to section 316.193, Florida Statutes, an opportunity to avoid a criminal history record associated with a DUI, while ensuring the person receives substance abuse treatment if necessary.

Additionally, this bill provides for the eligibility requirements for participation in the pilot program, and the requirements for successful completion of the pilot program. Successful completion of the pilot program must result in a plea offer for the offense of reckless driving, pursuant to section 316.192, Florida Statutes. If the person accepts the offer, the court must withhold adjudication.

This bill also requires the state attorney from each judicial circuit to annually report the results of the pilot program to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

This bill requires the Department of Highway Safety and Motor Vehicles (DHSMV) to establish a statewide database of participants of the pilot program by July 1, 2023.

The bill has a fiscal impact. See Section V.

This bill is effective July 1, 2020.

II. Present Situation:

There are multiple pre-trial diversion programs that are intended to divert individuals charged with crimes from the traditional criminal justice system. While some diversion programs are provided in statute, other programs may vary depending upon what judicial circuit they are established in. Some diversion programs that are included in statute include, the prison diversion program,¹ the state attorney bad check diversion program,² and the pretrial intervention program.³

Counties, including Miami-Dade,⁴ Orange,⁵ Sarasota, Manatee, DeSoto,⁶ and Palm Beach⁷ all have DUI diversion programs. There is no uniform standard for DUI diversion programs.⁸ One example, Palm Beach County's DUI Offender Program, permits eligible participants to complete program requirements within two months in order to obtain a plea offer to reckless driving. The program requirements include 20 hours of community service, successful completion of DUI School, successful completion of the Victim Impact Panel, and successful installation of the Ignition Interlock alcohol monitoring device.⁹

There were 43,725 criminal violations for DUI in 2018.¹⁰ According to the American Addiction Centers, drunk driving may be a behavioral sign of alcohol abuse.¹¹

¹ Section 921.00241, F.S., provides that a court may divert an offender from the state correctional system, who would otherwise be sentenced to a state facility, by sentencing the offender to a nonstate prison sanction if the offender meets certain criteria.

² Section 832.08, F.S., provides that the state attorney may divert offenders who have issued a bad check from prosecution.

³ Section 948.08, F.S., provides that any first offender, or an offender who does not have more than one nonviolent misdemeanor, and who is charged with any misdemeanor or third degree felony is eligible to participate in a pretrial intervention program upon consent of the victim, the state attorney, and the judge. The offender may have his or her charges dismissed upon successful completion of the pretrial intervention program.

⁴ Miami-Dade State Attorney Katherine Fernandez Rundle, *Diversion Programs*, available at <http://www.miamisao.com/services/diversion-programs/> (last visited February 13, 2020).

⁵ Office of the State Attorney Aramis D. Ayala, *Diversion Programs*, available at <https://www.sao9.net/diversion-programs.html> (last visited February 13, 2020).

⁶ Office of the State Attorney Ed Brodsky, *Driver Enhanced Treatment Education Rehabilitation (DETER)*, available at <https://www.sao12.org/divisions/driver-enhanced-treatment-education-rehabilitation> (last visited February 13, 2020).

⁷ Office of the State Attorney Dave Aronberg, *Palm Beach County 1st Time DUI Offender Program*, available at <http://www.sa15.state.fl.us/stateattorney/ResourceInformation/Content/DUI/DUIFirstTimeOffenderProgram-2020.pdf> (last visited February 13, 2020).

⁸ Email on file from Jack Campbell, State Attorney, 2nd Judicial Circuit dated Feb. 14, 2020 on file with the Appropriations Subcommittee on Criminal and Civil Justice, The total breakdown of State Attorney Offices which do or do not have some form of DUI Diversion Program are as follows:

Circuits: 1, 2, 3, 4, 5, 6, 10, 14, 17, 19, and 20 do not have a DUI Diversion Program

Circuits: 7, 8, 9, 11, 12, 15, 16, and 18 do have varying DUI Diversion Programs

Circuit 13 does not have a program per se but has a policy on how to handle first-time DUIs

⁹ See *supra* note 7.

¹⁰ Florida Department of Highway Safety and Motor Vehicles, *Annual Uniform Traffic Citation Report*, available at <https://services.flhsmv.gov/SpecialtyPlates/UniformTrafficCitationReport> (last visited February 13, 2020).

¹¹ American Addiction Centers, *Alcoholism: Symptoms and Signs*, June 8, 2019, available at <https://americanaddictioncenters.org/alcoholism-treatment/symptoms-and-signs> (last visited February 13, 2020).

Driving Under the Influence

A person is guilty of DUI if he or she drives or is in actual physical control of a vehicle and he or she:

- Is under the influence of alcoholic beverages, any controlled substance set forth in s. 877.111, F.S., or any substance controlled under ch. 893, F.S., to the extent that the person's normal faculties are impaired;
- Has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
- Has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.¹²

The criminal penalties for DUI vary depending on numerous factors such as the number of prior convictions, the length of time between convictions, and the defendant's blood alcohol level.¹³

The penalties for a first time DUI offense are punishable by:

- A period of probation not exceeding one year;
- A fine of not less than \$500 or more than \$1,000;
- Imprisonment for not more than six months;
- A mandatory 50 hours of community service; and
- A mandatory ten-day vehicle impoundment.¹⁴

The court must place all offenders convicted of violating this section on monthly reporting probation, and as a condition of probation, must require:

- Completion of a substance abuse course conducted by a DUI program licensed by the Department of Highway Safety and Motor Vehicles (DHSMV) under s. 322.292, F.S., which must include a psychosocial evaluation.
- Completion of substance abuse treatment, if the offender is referred to such treatment.¹⁵

Section 316.656, F.S., prohibits a court from withholding adjudication of guilt for any violation of s. 316.193, F.S., the offense of DUI. This means the court must order the person adjudicated guilty. A conviction for the offense of DUI may have long lasting repercussions even if it is the person's only offense. For example, an adjudication of guilt for DUI prevents a person from petitioning the court for expunction.¹⁶

Section 316.656, F.S., also prohibits the court from accepting a plea of guilty to a lesser offense from a person who has been given a breath or blood test to determine blood or breath alcohol content by weight of 0.15 percent or more. The offense of reckless driving, contrary to s. 316.192, F.S., is not a lesser included offense of DUI.¹⁷

Ignition Interlock Device

An ignition interlock device is a dashboard-mounted breathalyzer that requires a driver to blow in the breathalyzer in order to operate the motor vehicle. The driver must breathe into the device

¹² Section 316.193(1), F.S.

¹³ Section 316.193, F.S.

¹⁴ Section 316.193(2) and (6)(a), F.S.

¹⁵ Section 316.193(5), F.S.

¹⁶ Section 943.0585, F.S.

¹⁷ See Fla. Std. Jury Inst. (Crim.) 28.1; *Anguille v. State*, 243 So. 3d 410, 413 (Fla. 4th DCA 2018).

approximately every 30 minutes.¹⁸ Section 316.193, F.S., requires an ignition interlock device to be installed on the vehicles of persons convicted of certain DUI offenses. For a first DUI offense, the court may order the placement of an ignition interlock device for at least six continuous months.¹⁹

Section 316.1937, F.S., provides that a court must determine the defendant's ability to pay for the installation of the ignition interlock device if he or she claims inability to pay. If the court determines that the defendant is unable to pay for the installation of the device, the court can order that any portion of a fine paid for violating s. 316.193, F.S., be allocated to defray the costs of installing the ignition interlock device.²⁰

The table below summarizes when an ignition interlock device is required in Florida.²¹

DUI conviction	Ignition interlock device required
1st conviction	If court orders for at least 6 continuous months
1st conviction if blood-alcohol level is \geq 0.15, or minor in car	Mandatory for at least 6 continuous months
2nd conviction	Mandatory for at least 1 year
2nd conviction if blood-alcohol level is \geq 0.15, or minor in car	Mandatory for at least 2 continuous years
3rd conviction	Mandatory for at least 2 years

The DHSMV contracts with vendors to provide ignition interlock devices for offenders in Florida. The devices must meet or exceed the current standards of the National Highway Traffic Safety Administration.²² The DHSMV oversees and monitors the ignition interlock devices and must adopt rules for the implementation of ignition interlock devices.²³

The Florida Legislature's Office of Program Policy Analysis and Government Accountability conducted a study researching ignition interlock devices and DUI offense recidivism rates. The research showed that ignition interlock devices, while installed, were more effective at reducing re-arrest rates for alcohol-impaired driving when compared to other sanctions, such as license suspensions.²⁴

¹⁸ DMV Florida, *Florida Ignition Interlock*, available at <https://www.dmvflorida.org/florida-traffic-laws/ignition-interlock> (last visited February 13, 2020).

¹⁹ Section 316.193(2)(c), F.S.

²⁰ Section 316.1937(2)(d), F.S.

²¹ Section 316.193, F.S.

²² Section 316.1938, F.S.

²³ Sections 316.1938 and 316.193(11), F.S.

²⁴ Office of Program Policy Analysis & Government Accountability, *Ignition Interlock Devices and DUI Recidivism Rates*, Report No. 14-14, (December 2014) available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1414rpt.pdf> (last visited February 13, 2020).

The study also found the six month recidivism rate for first-time DUI offenders that were not required to install an ignition interlock device was 1.74 percent compared to the recidivism rate for first-time offenders required to use the ignition interlock device which was less with a rate of 0.34 percent.²⁵ However, only 49 percent of Florida's DUI offenders installed an ignition interlock device, as required, after completing their period of license revocation.²⁶

Reckless Driving

A person is guilty of reckless driving if he or she drives a vehicle in a willful or wanton disregard for the safety of persons or property. Fleeing a law enforcement officer in a motor vehicle is reckless driving *per se*.²⁷

A first conviction of reckless driving may be punished:

- By a term of imprisonment not exceeding 90 days; or
- By a fine, not less than \$25 nor more than \$500; or
- By both fine and imprisonment.

If the court has reasonable cause to believe the use of alcohol, chemical substances as set forth in s. 877.111, F.S., or controlled substances under ch. 893, F.S., contributed to the violation, the court must direct the person to complete a DUI program substance abuse education course and evaluation as provided in s. 316.193(5), F.S.

III. Effect of Proposed Changes:

This bill creates s. 316.19395, F.S., which provides that a Driving Under the Influence Diversion Pilot Program must be established in each judicial circuit. The purpose of the pilot program is to offer a person charged with a first offense of DUI, pursuant to s. 316.193, F.S., an opportunity to avoid a criminal history record associated with a DUI, while ensuring the person receives substance abuse treatment if necessary.

The state attorney in each judicial circuit must develop policies and procedures for the pilot program, including program implementation and operation and the selection of approved program providers. The state attorney must consult with local law enforcement, county probation, the public defender, and local program providers to develop the policies and procedures of the pilot program.

A person charged with DUI is eligible for the pilot program if he or she:

- Has not been charged with a prior alcohol-related or drug-related criminal traffic offense, regardless of disposition.
- Does not have a prior or pending felony conviction.
- Has no more than two prior misdemeanor convictions.
- Was not involved in a motor vehicle crash or accident relating to the charge of DUI.

²⁵ *Id.* at 8.

²⁶ *Id.* at 4-5.

²⁷ Section 316.192(1), F.S.

- Was not, at the time of the offense, accompanied in the vehicle by a person under 18 years of age.
- Did not, at the time of the offense, have a blood-alcohol level or breath-alcohol level of 0.20 or higher.
- Has not previously participated in the pilot program.
- Waives speedy trial.

Additionally, this bill provides for program requirements. A person who participates in the pilot program must:

- Participate for 12 months, during which period he or she may not possess or consume alcohol, or any controlled substance as set forth in ch. 893, F.S., unless the controlled substance was lawfully obtained from a or pursuant to a valid prescription. He or she must complete the following as administered by an approved program provider:
 - Fifty hours of community service if, at the time of the offense, the person had a blood-alcohol level of 0.15 or less grams of alcohol per 100 milliliters of blood; or a breath-alcohol level of 0.15 or less grams of alcohol per 210 liters of breath.
 - Seventy-five hours of community service if, at the time of the offense, the person had a blood-alcohol level more than 0.15, but less than 0.20 grams of alcohol per 100 milliliters of blood; or breath-alcohol level more than 0.15, but less than 0.20 grams of alcohol per 210 liters of breath; or did not provide a blood or breath sample.
 - A substance abuse course conducted by a DUI program licensed by the DHSMV under s. 322.292, F.S., which must include a psychosocial evaluation of the person, and any substance abuse treatment required by such program.
 - A victim's impact panel session, if such panel exists within the judicial circuit, or a victim's impact class.
- Pay all fines and standard costs imposed by the judicial circuit.
- Have all motor vehicles that are individually or jointly leased or owned and routinely operated by the person impounded or immobilized for a period of 10 days.
- After the impoundment or immobilization of the vehicle, install and use an ignition interlock device approved by the department in accordance with s. 316.1938, F.S., for a period of:
 - Ninety days if, at the time of the offense, the person had a blood-alcohol level of 0.15 or lower, grams of alcohol per 100 milliliters of blood; or breath-alcohol level of 0.15 or lower, grams of alcohol per 210 liters of breath.
 - One hundred eighty days if, at the time of the offense, the person had a blood-alcohol level more than 0.15, but less than 0.20 grams of alcohol per 100 milliliters of blood; or breath-alcohol level more than 0.15, but less than 0.20 grams of alcohol per 210 liters of breath; or did not provide a blood or breath sample.

The bill provides a formula for determining whether the person has the ability to pay for the ignition interlock. If the person claims they have an inability to pay for an ignition interlock device, and the court finds that they are unable to pay, the monthly leasing fee will be discounted by 50 or 25 percent, depending upon the person's income. A person who qualifies for a discount is not required to pay the cost of installation or deinstallation.

Successful completion of the pilot program must result in a plea offer for the offense of reckless driving, contrary to s. 316.192, F.S. If the person accepts the offer, the court must withhold

adjudication. If the person fails to successfully complete the pilot program, the state attorney may discharge the person from the pilot program and pursue prosecution for the offense of DUI.

This bill also requires the state attorney from each judicial circuit to report the results of the pilot program to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Each judicial circuit must provide the number of:

- Cases diverted from prosecution of DUI.
- Persons who successfully completed the pilot program.
- Persons who failed to successfully complete the pilot program and were discharged from the program.
- Persons who successfully completed the pilot program who were later charged with another alcohol-related or drug-related traffic offense.

Additionally the DHSMV must establish a statewide database of participants of the pilot program by July 1, 2023. Each judicial circuit must provide monthly reports of the number of participants in the program.

This bill is effective July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill relates to the prosecution and punishment for certain DUI offenses and criminal laws are exempt from the requirement of Article VII, Section 18 of the Florida Constitution, relating to unfunded mandates.

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:

As outlined in the table in Section II, courts can require the use of an interlock device for up to 6 months as part of a 1st conviction for DUI, and it is mandatory for 6 months if blood-alcohol level is ≥ 0.15 , or a minor is in the vehicle. Under the terms of the bill and in order to participate in the DUI Diversion Program, a person must install an ignition interlock device on all vehicles they drive for 90 to 180 days, depending on the blood or breath-alcohol level and whether a sample was provided. This would increase the number of 1st time offenders required to use ignition interlock devices.

Additionally, the existing DUI diversion programs vary in terms of interlock device requirements. For example, the State Attorney Office, 8th Judicial Circuit does not require ignition interlock devices.²⁸ Conversely, the State Attorney in the 15th Judicial Circuit requires interlock devices for 3-6 months depending on the blood / breath alcohol level.

Mothers Against Drunk Driving (MADD) estimates it costs approximately \$70 to \$150 to install this type of device and around \$60 to \$80 per month for device monitoring and calibration.²⁹ Reduced rates are available to those claiming inability to pay in certain circumstances.³⁰

C. Government Sector Impact:**State Attorneys**

Implementation of a DUI Diversion Program by each State Attorney Office (SAO) would have varying costs depending on many factors such as the size, population of the judicial circuit, and how many of the processes the circuit currently employs. Eight SAOs currently provide some form of DUI diversion program.³¹ Generally, the workload costs associated with screening applicants for eligibility for diversion are offset by avoiding court time litigating cases. However, as explained by the State Attorney in the 8th Judicial Circuit, there is a significant increase in workload for support staff once a person is admitted to the program. Depending on how the program is structured, support staff can essentially be like acting probation officers monitoring compliance and dealing with defendants and their questions and problems.³²

SB 2500, the Senate's General Appropriations Bill for Fiscal Year 2020-2021, does not include funding to implement this bill.

²⁸ Telephone conversation with William "Bill" Cervone with Abram Dale on February 13, 2020.

²⁹ LifeSaver Ignition Interlock Costs (<https://www.lifesaver.com/ignition-interlock-cost/>) (Last visited February 14, 2020)

³⁰ Office of the State Attorney Dave Aronberg, *Palm Beach County 1st Time DUI Offender Program*, available at <http://www.sa15.state.fl.us/stateattorney/ResourceInformation/Content/DUI/DUIFirstTimeOffenderProgram-2020.pdf> (last visited February 13, 2020).

³¹ Email from Jack Campbell, State Attorney 2nd Judicial Circuit received February 14, 2020 (on file with the Appropriations Subcommittee on Criminal and Civil Justice).

³² Email from William "Bill" Cervone received February 14, 2020 (on file with the Appropriations Subcommittee on Criminal and Civil Justice).

Criminal Justice Impact Conference (CJIC)

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates this bill will have a “negative insignificant” prison bed impact (a decrease of 10 or fewer prison beds).³³

The CJIC provides the following information relevant to its estimate.³⁴

Given that three or more DUI’s result in felonies, it is possible that some of those diverted under this program would either take longer to reach that number due to the first offense not being a DUI or no longer drive under the influence due to the program when they would have reached that number without it. Per [Department of Corrections], in Fiscal Year 2018-2019, there were 152 new commitments to prison who were convicted of a DUI three or more times.

State Courts System

The State Courts System has indicated that the bill has the potential to significantly reduce judicial workload in county courts in those circuits that do not already have a DUI diversion program. However, the amount of the decrease in judicial workload is speculative because it is not clear how many offenders would satisfy the eligibility criteria.³⁵

The Florida Department of Highway Safety and Motor Vehicles (DHSMV)

The bill may have an indeterminate negative fiscal impact on the DHSMV because they must establish a statewide database of persons who participate in the pilot program. The DHSMV is still developing a cost estimate for the development of the database.³⁶

VI. Technical Deficiencies:

Lines 103-104, which reference fines and standard costs may need clarification. It is unclear whether the state attorney must establish fines and standard costs associated with the program, or if the intent is to impose the same or similar fines and standard costs associated with s. 316.193, F.S.

VII. Related Issues:

None.

³³ CJIC SB 1396-Driving Under the Influence (Identical HB 1145), January 27, 2020, on file with the Senate Committee on Criminal Justice.

³⁴ *Id.*

³⁵ State Courts System, Bill Analysis for SB 1396 dated February 1, 202 (on file with the Appropriations Subcommittee on Criminal and Civil Justice).

³⁶ Telephone conversation with Suzie Carey at the Department of Highway Safety and Motor Vehicles on February 14, 2020

VIII. Statutes Affected:

This bill creates section 316.19395 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 February 4, 2020:

The committee substitute:

- Makes technical changes to provide the appropriate cross reference to ch. 893, F.S. Additionally it provides language that is consistent with s. 316.193, F.S.
- Specifies that a pilot program participant must waive speedy trial as a requirement to participate in the program.
- Adds “county probation” as an entity that the state attorney must consult with in developing the program. The state attorney must also consult with local law enforcement, the public defender, and local program providers.

- B. **Amendments:**

None.

Roberts, Lisa

From: Dale, Abram
Sent: Monday, February 17, 2020 10:24 AM
To: Roberts, Lisa
Subject: FW: Possible DUI Diversion
Attachments: Diversion 2018.pdf; Diversion Program for the Second Judicial Circuit.docx; Civil Citation Letter.docx

From: Jack Campbell <CampbellJ@leoncountyfl.gov>
Sent: Friday, February 14, 2020 2:18 PM
To: Dale, Abram <Abram.Dale@LASPBS.STATE.FL.US>
Subject: Possible DUI Diversion

Hey Abram,

I enjoyed speaking with you. Please call on me anytime when you have an assignment where I may have information. I attach both the numbers for the DUI Diversion as some of my paperwork concerning our establishment of a general diversion program. I have sought and received two positions to staff that program. So has Bill in the 8th Circuit. We handle about 3% of the cases in the State so you can have some idea on the workload needed. However, the programs that are currently being suggested would require far more intensive levels of supervision, that I would have to outsource or would need a lot more funding. There is a problem with one office being both a prosecutor, a judge, and a probation officer and a fee collector. This creates ethical dilemmas. No one wants cash register justice, but when we are deciding cases and violation based on folks ability and willingness to pay, we will at least create the impression of that. Poor people should have the same access to diversion as rich. And with the social inequality realities, the poor are often minorities who are under educated and have a host of other social impediments. If we want to use more creative, wrap around judicial interventions, we must fund them with case management and treatment. Many Circuits have spent lots of effort working around these issues. However, they are unique to communities we serve. As we discussed, rural counties simply do not have the resources of metropolitan cities. Transportation is a major concern there. Generally, DUI is an indication of some type of substance abuse. The diagnosis of the extent of this problem, and the needed treatment for it, are costly and prone to high levels of relapse. This is particularly troubling when we require costly interventions like interlocks, transdermal alcohol testing, and inpatient treatment. While they are great at reducing recidivism, they should be equally available to all. Otherwise, we lose the tenet of a fair justice system.

I hope this helps and let me know if I can provide anything further.

Jack

- Diversion programs
 - 1, 2,3,4,5,6,10,14,17,19,20 do not have DUI Diversion
 - 7,8,9,11,12,15,16,18 Do have dui diversion
 - 13th has no program but a policy for how to handle 1st DUI

Jack

In 2018 SAO received 6579 Misd/Traffic Cases

***860 of those cases included a count of Misd. Possession of Cannabis (13% of the 6579);**

***519 of those cannabis cases were sent to Misdemeanor Diversion (60%)**

2018 PRE-ARREST PROGRAM

206 Referrals from:

157 from TPD

34 from LCSO

11 from FHP

4 from other

***32 cases included a Misd. Possession of Cannabis charge (15%)**

175 Completed successfully (85%)

31 failed to complete and were filed with Clerk (15%)- of those:

9 pending

9 pled

1 NP

12 completed Regular Diversion

2018 REGULAR MISDEMEANOR DIVERSION PROGRAM

1946 Cases successfully completed Regular Misd. Diversion in 2018

***487 cases included a Misd. Possession of Cannabis Charge (25%)**

463 failed to complete -(19%)

(645 minus 182 that completed DIV after they were kicked out-prior to new court date)

178 still pending in court (135 are in FTA status)

285 pled in court

2018 Arrest:

325 Felony cases had a Misd. Possession of Cannabis count attached

66 Juvenile cases had a Misd. Possession of Cannabis count attached

First two years of keeping track

2017

No Info	733	7.00%
Nolle Pros	1,710	11.00%
Plea	8,257	55.00%
Transfers	443	2.00%
Trials	235	2.00%
Diversion	2,238	18%
*Other	571	5%
Sub Total	14,187	100%
VOPS	4,809	
TOTAL	18,996	

2018

No Info	966	7.00%
Nolle Prose	1806	13.00%
Plea	7542	52.00%
Transfers/DI	493	3.00%
Trials	234	2.00%
Diversion	2740	19%
*Other	607	4%
Sub Total	14388	
VOPS	3408	
TOTAL	17796	

Pre-Arrest Diversion Program



206 referrals received in 2018



168 completed



16 of the 206 remaining pending



22 failed to completed and referred to Court



89% success rate



41 cases currently in the Pre-Arrest Program

Diversion Program for the Second Judicial Circuit of Florida

Intent:

In order to better address minor offenses through making strong interventions without unintended lasting collateral consequences, the Office of the State Attorney for the Second Judicial Circuit is establishing the following diversion program. This process is in partnership with all local governments, law enforcement agencies, and human service providers. The intent of this program to give prosecutors and law enforcement additional options when interdicting criminal behavior, but in no way does this program supplant or otherwise limit the traditional criminal justice options held by all sworn law enforcement, the State Attorney, or the Courts.

Eligibility:

Diversion is reserved for criminal behavior that would otherwise be characterized as misdemeanors or violations of municipal ordinance. Prior participants may be eligible, or may be denied, at the discretion of the Office of the State Attorney. Actions constituting felonies are not eligible. Pre-arrest diversion is not eligible for those with prior criminal history. Crimes involving victims are only eligible if the victim's rights are insured consistent with those in traditional court proceedings.

The following are NOT generally eligible for the program:

Battery or other Violence

Violation of Injunction

Loitering and Prowling

Stalking

DUI

Animal Cruelty

Partners:

The signees are specific partners in this effort and agree and adopt its implementation as a program. However, cases made by non-partner organizations are eligible.

Procedures:

Law enforcement will perform their traditional duties of discovering, investigating, and dissuading criminal behavior. If a law enforcement officer determines a person has committed a crime, he can take any traditional lawful action he feels appropriate. This includes making an on

view arrest, issuing a notice to appear, preparing a probable cause affidavit for potential judicial review, or creating a regular police report.

Under the diversion program, the law enforcement officer can additionally indicate in their probable cause affidavit or sworn report that they feel the offender should be granted diversion rather than criminal arrest. If the LEO does this, he will tell the offender of his intent and provide the offender with an information sheet referring them to the Office of the State Attorney in that county. The offender is then told to appear at the office within four weeks. The law enforcement officer then will forward his probable cause or sworn report and recommendation to the local Office of the State Attorney.

The Office of the State Attorney will review all cases forwarded by law enforcement. This will include those where the officer did not effect an arrest. In all cases, the assigned prosecutor will decide whether diversion is an appropriate intervention based on the facts of the case, criminal history of the offender, and any other information that the prosecutor is able to ascertain. If the prosecutor determines that diversion is not appropriate, he will file an information for the charge supported by the probable cause or sworn report and request a court date at which the defendant will be required to appear with a notice to be sent out by the Clerk.

If the prosecutor determines that diversion is appropriate, he will refer the case to the diversion coordinator. The Office of the State Attorney will mail notice of eligibility to all qualified offenders and attempt to notify any offenders at arraignment. Offenders who were not arrested will be notified upon their arrival at the Office of the State Attorney.

The Office of the State Attorney will staff the administration of the program. In addition to notice of eligibility, each offender will be provided written notice of the requirements of the diversion program. This will include all financial requirements, counseling and treatment requirements and costs, and any additional sanctions possible. He will also be notified of their legal rights that are subject to waiver including those of speedy trial. They will be afforded an opportunity to retain counsel and be given notice of their consequences for failure to successfully complete the program. They will also be given the option to have the case transferred for a traditional prosecution by the Office of the State Attorney. Upon successful completion of the program, the Office of the State Attorney will file a no information if an arrest or notice to appear was filed. They will also notify the referring or arresting agency of the resolution of the case whether an arrest was made or not.

Program Requirements:

In all cases:

1. No additional criminal activity during the pendency of the diversion. This will last a minimum of 3 months and a maximum of 12.

2. Pay cost of prosecution of \$100 to the Office of the State Attorney within 3 months from date of entry into program.
3. Community Service hours.

The Office of the State Attorney will make such conditions a part of the diversion when the prosecutor feels they are appropriate based on the crimes, criminal history, or other information available at the time of review.

1. Pay any restitution at time of entry.
2. Evaluation and follow recommendation of treatment provider. (Anger Management, Mental Health, Substance Abuse Evaluation, Theft Class, Hunter Safety Course) Cost to be borne by offender and payable to vendor.
3. Get a valid driver's license.

All monies paid to the Office of the State Attorney are in the form of money orders. The monies are non-refundable.

Treatment providers can be through any qualified provider. A non-exclusive list of providers and their costs will be provided prior to the offender entry into the program. The offender must provide proof of evaluation and treatment plan to the Office of the State Attorney in the form of a letter on official letterhead capable of independent review.

Community Service Hours can be completed through any charitable organization that is eligible for tax free status pursuant to the IRS. The offender is required to provide proof through documentation on official letterhead capable of independent review.

Driver's License. The offender is required to show their valid driver's license to the Office of the State Attorney or otherwise provide documentation on their inability to gain such a license despite their efforts.

Scholarship:

1. If possible, monies will be secured from local governments to cover the costs associated with this program for those who are indigent. If such funding is available, the offender will request such a scholarship and provide proof of eligibility for the Office of the Public Defender. If funds are available, they will cover the costs of both the Office of the State Attorney and private vendor fees. In exchange for such a scholarship, the offender will additionally be required to complete one day on the County Work Camp to repay the debt and provide proof of successful completion to Office of the State Attorney.

Sealing and Expungement:

1. Upon successful completion of the program, forms will be provided to the offender to allow them to proceed with sealing or expungment.

Dear Community Partners,

I am writing concerning the Leon County Pre-Arrest Adult Civil Citation and Diversion Program (hereinafter “the Program”). As you know, I took office in January and am continuing to establish working relationships throughout the Second Judicial Circuit. As such, I have been familiarizing myself with many memoranda of understandings including those regarding the Program.

My understanding of the goal of the Program is to allow persons who have committed crimes to be punished while avoiding the long-term consequences of being criminally prosecuted. Namely, offenders who successfully complete the Program have the ability to deny that they have ever been arrested. I recognize that the stigma of arrest is a negative consequence that can last for years and frustrate future education and employment. It is because of these severe consequences that the State Attorney’s Office employs an extensive post-arrest diversion program which allows offenders who complete the program to have their cases dismissed. Qualifying offenders can also pursue sealing and/or expunction of their records.

Where appropriate, I support alternative resolutions in criminal cases. One of my favorite aspects of practicing law is the limitless options we can construct to respond to criminal behavior. I have adopted a mission statement that specifically encourages our prosecutors to work toward justice for both offenders and victims with the aim of lessening recidivism. I think that pre and post-arrest diversion and civil citation programs are good tools and have a place in our arsenal. However, I am also equally concerned with equality under the law as justice is lost if it is not consistently enforced.

Generally, the State Attorney’s Office is not consulted in any manner when the Adult Civil Citation Program is used. The offender is directed to DISC Village and the State Attorney’s Office is none the wiser until and unless the offender breaches the contract. Law enforcement then seeks an arrest warrant and the case is referred to this office for prosecution of the original crime. This has happened 14 times since January, 2017. Unfortunately, the way the Program is being implemented has created ethical concerns for me.

The September 10, 2012 memorandum creating the Program lists Tom Olk, CEO of DISC Village, and Court Administrator Grant Slayton as signatories. While the memorandum lists the City of Tallahassee, Leon County Sheriff Office, Disc Village Inc, and Office of the State Attorney as community partners, the agreement does not specifically define what is expected of these entities. This is of great concern to me as I want to be a good partner to the community and to each of you. But the State Attorney’s Office cannot be used to resolve civil disputes. The Florida Bar specifically prohibits the use or threat of criminal sanctions to resolve civil disputes by any attorney. This is further problematic in my role as State Attorney as prosecutors are guided by heightened ethical constraints to ensure that both the State and the defendant are

treated appropriately and equally. While I have great faith in each of you, I cannot overlook some issues that arise from the way the Program is currently being implemented.

First, there is an economic concern. The Program costs more than both traditional court fees and the post-arrest diversion program. Eleven of the fourteen cases referred to this office this year were for petit theft. Many of these cases involved an offender stealing food. I have no way to know whether the offender's noncompliance with the Program was the result of poverty; but the evidence suggests that inability to pay may be a factor in the decision as to which offenders benefit from the Program and which offenders are referred to the State Attorney's Office for criminal prosecution.

Second, there is an absence of due process in the Program. For example, there is no vehicle for offenders who have failed out to appeal their discharge from the Program. As State Attorney, I am required to ensure due process under the law for each offender. Furthermore, the initial contract which offenders sign upon entry into the Program is legally untenable as it requires them to waive their constitutional rights, confess, and agree to future actions and payments under pain of future arrest. All of this is done on scene where the offender's sobriety and mental status are unknown, they have not been afforded the opportunity to confer with counsel, and they are told that if they don't agree they will be immediately arrested. None of this could ever pass constitutional muster.

Third, the Program creates inequalities due to impermissible factors. We recently had a felony arrest where the officer specifically indicated that he would have given the offender a civil citation had he not lived outside Leon County. This is particularly troubling to me as I represent five surrounding counties. Where someone lives should not be a deciding factor as to whether or not they are criminally prosecuted. However, there is an even more dramatic inequality due to wide variances in implementation by law enforcement. Some agencies are requiring their officers to use civil citation whenever possible, while others are prohibiting their officers from using the program altogether. While individual discretion should always be left to the officers on scene, these blanket variances result in arbitrary application.

Finally, the implementation of the Program misrepresents the criminal justice situation in Leon County. I am currently working to better track and quantify crimes, arrests, dispositions, and recidivism. This will allow our community to better analyze areas of concerns and successful interventions and strategies. However, these numbers are irreparably skewed by an alternative prosecution system operating outside my knowledge or control. As the State Attorney, I am ultimately responsible to our community for whether prosecutions are being handled consistently and appropriately. Under the current procedures, these statistics will only reflect the "failures" of the Program, and there will be no record of the "successfully" diverted offenses. Significant resources are spent on the Program and the only way to demonstrate its success or failure is to count and compare the successes of the Program to those cases handled traditionally. Furthermore, the entry into the Program must be consistently applied to render valid results.

Some statistics have labeled us as both a violent and racially segregated community. If this is true, I want to see the numbers and be able to address the problem. If it is not, I want to be able to rebuke these labels with accurate data. I know we all need to have accurate information to be effective in our interventions and resolutions of cases.

In conclusion, for the reasons stated above I am temporarily suspending prosecutions of offenders who fail to successfully complete the Program. I am not taking any such action with the juvenile system at this time. My understanding is that there is legislation pending concerning Adult Civil Citation and this will obviously influence these issues in the near future. My suggestion is that we wait for the Legislature to act, and then convene to discuss how we can work together to implement this useful tool in a way that is fair and equitable. Please feel free to contact me if I can be of further assistance or if you have any questions.

-----Original Message-----

From: William Cervone <cervone@SAO8.ORG>

Sent: Friday, February 14, 2020 6:36 AM

To: Dale, Abram <Abram.Dale@LASPBS.STATE.FL.US>

Subject:

Abram, I totally screwed up last night when we talked and there is no LBR issue for DUI Diversion - I wasn't thinking straight and got confused with our pre-arrest misdemeanor diversion project. That's what the LBR issues addressed for the last couple of years for my office and SAO2. Sorry but don't waste any time looking for that.

Here's what I'd suggest based on what I do with DUI Diversion. My existing traffic attorneys screen virtually all first offender DUI cases for diversion. Most often this is at the request of a defense attorney but some cases are pro se. If qualified under criteria we have set those cases come to me from my lawyers for final approval. If defense attorneys disagree with my attorneys rejecting diversion those cases also come to me for review and a final decision. This process is really a part of normal case evaluation and doesn't involve anything extra in terms of work for us so I couldn't say that it has a big fiscal impact. Only with the occasional pro se defendant do we expend any extra time on a case dealing directly with the defendant explaining and executing paperwork; mostly that gets done through defense counsel.

The impact comes after a defendant is approved and enters the program. I have an administrative staffer who is essentially acting as a probation officer monitoring compliance and dealing with defendants and their questions and problems. This requires someone with significant experience and people skills for a lot of reasons. I would estimate that the employee who is assigned to this spends maybe 25% of her time on it and she is roughly a \$50-55,000 a year employee. At any given time I may have 150-175 defendants in the program who she is monitoring, those being spread out over our six counties. That number has sometimes been significantly higher, now and then as high as 250-275 active cases. In addition to her, my secretary is responsible for preparation of all legal documents throughout the process. She is similarly or slightly higher salaried and I'd estimate that 10% of her time goes to that.

Bottom line is that the fiscal impact on attorney time is minimal and largely balanced out by the extra time screening cases being compensated for by the time saved in avoiding court time litigating cases when they go into diversion. The fiscal impact on support staff time is significant and depending on how different offices structure their programs would be greater for larger offices in bigger circuits dealing with more cases. I suspect that some offices may use outside sources to monitor their programs but don't know that to be so and don't think it's an especially desirable alternative. Others might disagree. In all fairness there is also some degree of set off from cost of prosecution fees assessed for these cases as they would be for any case but that's not even close to a wash.

I apologize for confusing things. Hopefully I realized my mistake before you went off on a wild goose chase. At least I figured out now what was nagging at me all night and keeping me awake. I can send you any of the program criteria and stats specific to my circuit that you might like and I will try to get you the list of circuits who have a DUI Diversion program this morning but time constraints being what you described there's little chance of quickly canvassing them all to see how they run things and how that would impact fiscal projections. I'll still plan to call you late morning or early afternoon when I finish the local Bar presentation I have to do today.

Sent from my iPad

OFFICE OF THE STATE COURTS ADMINISTRATOR
2020 JUDICIAL IMPACT STATEMENT

BILL NUMBER: SB 1396

DATE: February 1, 2020

SPONSOR(S): Senator Simmons

STATUTE(S) AFFECTED: Creates s. 316.19395, F.S.

COMPANION BILL(S): HB 1145

AGENCY CONTACT: Sean M. Burnfin

TELEPHONE: (850) 922-0358

ASSIGNED OSCA STAFF: BNS

- I. **SUMMARY:** The bill creates s. 316.19395, F.S., which requires the state attorney of each judicial circuit to establish and operate a Driving Under the Influence Diversion Pilot Program for first-time DUI offenders (along with some other eligibility criteria, such as the breath-alcohol level was under .20 and offender had no more than two prior misdemeanors). The bill authorizes the state attorney to discharge a person who fails to complete the pilot program and to pursue regular prosecution. However, successful completion of the diversion program would lead to a withhold of adjudication for the crime of reckless driving.
- II. **EFFECT OF PROPOSED CHANGES:** The bill would divert many first-time DUI cases away from regular prosecution, but there would be a plea and sentence in court for reckless driving upon successful completion of the diversion program.
- III. **ANTICIPATED JUDICIAL OR COURT WORKLOAD IMPACT:** The bill has the potential to significantly reduce judicial workload in county courts in those circuits that do not already have a DUI diversion program. However, the amount of the decrease in judicial workload is speculative because it is not clear how many offenders would satisfy the eligibility criteria.
- IV. **IMPACT TO COURT RULES/JURY INSTRUCTIONS:** N/A
- V. **ESTIMATED FISCAL IMPACTS ON THE JUDICIARY:**
 - A. **Revenues:** None
 - B. **Expenditures:** The fiscal impact of this legislation cannot be accurately determined due to the unavailability of data needed to quantifiably establish the effects on judicial workload resulting from the proposed diversion program as discussed in Section III, above.



The Florida Senate

Committee Agenda Request

To: Senator Jeff Brandes, Chair
Appropriations Subcommittee on Criminal and Civil Justice

Subject: Committee Agenda Request

Date: February 5, 2020

I respectfully request that **Senate Bill 1396**, relating to Driving Under the Influence, be placed on the:

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

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

Senator David Simmons
Florida Senate, District 9

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/20

Meeting Date

1396

Bill Number (if applicable)

Topic

DUI

Amendment Barcode (if applicable)

Name

Phil Archer

Job Title

State Attorney

Address

2725 Judge Jamieson Way

Phone

(321) 687-5575

Street

Vienna

Fl.

32940

Email

City

State

Zip

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

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

Representing

Fla. Prosecuting Attorneys Assoc.

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

Approp Comm Chair

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

2 16 20

Meeting Date

1396

Bill Number (if applicable)

Topic DUI DIVERSION PROGRAMS

Amendment Barcode (if applicable)

Name Dan Hendrickson

Job Title vol pres, TALLAHASSEE VETERANS LEGAL COLLABORATIVE

Address PO Box 1201

Phone 850 570-1967

Street

Tallahassee,

FL

32302

Email danbhendrickson@comcast.net

City

State

Zip

Speaking: For Against Information

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

Representing TALLAHASSEE VETERANS LEGAL COLLABORATIVE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Tues

Meeting Date

1396

Bill Number (if applicable)

Topic DUI Diversion

Amendment Barcode (if applicable)

Name Doug Mannheim

Job Title Attorney

Address 215 S. Monroe St. #400

Phone 850 519 1716

City

Tallahassee FL

State

32301

Zip

Email

Speaking: For Against Information

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

Representing Alcohol Countermeasure Systems

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/20

Meeting Date

1396

Bill Number (if applicable)

Topic DUI Diversion Programs

Amendment Barcode (if applicable)

Name Carey Haughwout

Job Title Public Defender, 15th Judicial Circuit

Address 421 3d St.

Phone 561-355-7500

Street

West Palm Beach

FL

33401

Email CareyPD@pd15.state.fl.us

City

State

Zip

Speaking: For Against Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

By the Committee on Criminal Justice; and Senator Simmons

591-03074-20

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1 A bill to be entitled
2 An act relating to driving under the influence;
3 creating s. 316.19395, F.S.; requiring each judicial
4 circuit to establish a Driving Under the Influence
5 Diversion Pilot Program; providing the purpose of the
6 pilot program; requiring the state attorney of each
7 judicial circuit to develop and operate the pilot
8 program; requiring the policies and procedures of the
9 pilot program to be published on the website of the
10 office of the state attorney; providing eligibility
11 requirements; defining the term "conviction";
12 providing pilot program requirements; requiring that a
13 person who completes the pilot program be offered a
14 certain plea agreement; providing for withholding of
15 adjudication; authorizing the state attorney to
16 discharge a person who fails to complete the pilot
17 program and pursue prosecution of driving under the
18 influence; requiring state attorneys to annually
19 report certain information to the Governor and the
20 Legislature, by a specified date; requiring the
21 Department of Highway Safety and Motor Vehicles to
22 establish a certain statewide database, by a certain
23 date; requiring judicial circuits to provide a certain
24 monthly report to the department; providing an
25 effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Section 316.19395, Florida Statutes, is created

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30 to read:

31 316.19395 Driving Under the Influence Diversion Pilot
32 Program.-

33 (1) DEVELOPMENT; IMPLEMENTATION; OPERATION.-A Driving Under
34 the Influence Diversion Pilot Program shall be established in
35 each judicial circuit for the purpose of offering a person
36 charged with a first offense of driving under the influence as
37 provided in s. 316.193 the opportunity to avoid a conviction for
38 the offense while ensuring the person receives substance abuse
39 treatment if necessary. The state attorney of the judicial
40 circuit shall develop policies and procedures of the pilot
41 program, including program implementation and operation and the
42 selection of approved program providers. In developing such
43 policies and procedures, the state attorney shall consult local
44 law enforcement agency representatives, county probation
45 officers, the public defender, and local program providers. The
46 state attorney of each judicial circuit shall operate that
47 circuit's pilot program. Each judicial circuit shall publish the
48 terms and conditions of the pilot program on the website of the
49 office of the state attorney.

50 (2) ELIGIBILITY REQUIREMENTS.-

51 (a) A person charged with driving under the influence, in
52 violation of s. 316.193, is eligible for participation in the
53 pilot program if he or she:

54 1. Has not been charged with a prior alcohol-related or
55 drug-related criminal traffic offense, regardless of
56 disposition.

57 2. Does not have a pending felony or prior felony
58 conviction.

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59 3. Has no more than two prior misdemeanor convictions.

60 4. Was not involved in a motor vehicle crash or accident
61 relating to the charge of driving under the influence.

62 5. Was not, at the time of the offense, accompanied in the
63 vehicle by a person under 18 years of age.

64 6. Did not, at the time of the offense, have a blood-
65 alcohol level of 0.20 or more grams of alcohol per 100
66 milliliters of blood; or a breath-alcohol level of 0.20 or more
67 grams of alcohol per 210 liters of breath.

68 7. Has not previously participated in the pilot program.

69 8. Waives the speedy trial period. The speedy trial period
70 is tolled immediately upon entry into the pilot program until
71 the participant completes all terms and enters a plea pursuant
72 to subsection (4) or the participant is discharged from the
73 pilot program pursuant to subsection (5).

74 (b) For purposes of this subsection, the term "conviction"
75 means a determination of guilt which is the result of a plea or
76 trial, regardless of whether adjudication is withheld or a plea
77 of nolo contendere is entered.

78 (3) PILOT PROGRAM REQUIREMENTS.—

79 (a) A person must participate in the pilot program for 12
80 months, during which period he or she may not possess or consume
81 alcohol, or any controlled substance as set forth in chapter
82 893, unless the controlled substance was lawfully obtained from
83 a practitioner or pursuant to a valid prescription, and must
84 complete the following as administered by an approved program
85 provider:

86 1. Fifty hours of community service if, at the time of the
87 offense, the person had a blood-alcohol level of 0.15 or less

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88 grams of alcohol per 100 milliliters of blood; or a breath-
89 alcohol level of 0.15 or less grams of alcohol per 210 liters of
90 breath.

91 2. Seventy-five hours of community service if, at the time
92 of the offense, the person had a blood-alcohol level of more
93 than 0.15, but less than 0.20 grams of alcohol per 100
94 milliliters of blood; or a breath-alcohol level of more than
95 0.15, but less than 0.20 grams of alcohol per 210 liters of
96 breath; or did not provide a blood or breath sample.

97 3. A substance abuse course conducted by a DUI program
98 licensed by the department under s. 322.292, which shall include
99 a psychosocial evaluation of the person, and any substance abuse
100 treatment recommendations by such program.

101 4. A victim's impact panel session, if such a panel exists
102 within the judicial circuit, or a victim's impact class.

103 (b) A person who participates in the pilot program must pay
104 all fines and standard costs imposed by the judicial circuit.

105 (c) Upon commencement of the person's participation in the
106 pilot program, all motor vehicles that are individually or
107 jointly leased or owned and routinely operated by the person
108 shall be impounded or immobilized for a period of 10 days.

109 (d)1. After the impoundment or immobilization period
110 required by paragraph (c), the person shall have installed on
111 all such vehicles, and must successfully use, an ignition
112 interlock device approved by the department in accordance with
113 s. 316.1938 for a period of:

114 a. Ninety days if, at the time of the offense, the person
115 had a blood-alcohol level of 0.15 or less grams of alcohol per
116 100 milliliters of blood; or a breath-alcohol level of 0.15 or

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117 less grams of alcohol per 210 liters of breath.

118 b. One hundred eighty days if, at the time of the offense,
119 the person had a blood-alcohol level of more than 0.15, but less
120 than 0.20 grams of alcohol per 100 milliliters of blood; or a
121 breath-alcohol level more than 0.15, but less than 0.20 grams of
122 alcohol per 210 liters of breath; or did not provide a blood or
123 breath sample.

124 2. If the person claims inability to pay for an ignition
125 interlock device and:

126 a. The person's family income is at or below 100 percent of
127 the federal poverty level as documented by written order of the
128 court, the regular monthly leasing fee charged to all customers
129 by the ignition interlock device provider shall be discounted
130 for that person by 50 percent.

131 b. The person's family income is greater than 100 percent
132 but at or below 149 percent of the federal poverty level as
133 documented by written order of the court, the regular monthly
134 leasing fee charged to all customers by the ignition interlock
135 device provider shall be discounted for that person by 25
136 percent.

137 3. A person who qualifies for a discounted monthly leasing
138 fee pursuant to subparagraph 2. is not required to pay the cost
139 of installation or deinstallation of the ignition interlock
140 device.

141 (4) COMPLETION OF PILOT PROGRAM.—If a person complies with
142 this section and successfully completes the pilot program, he or
143 she shall be offered an agreement providing for a plea of guilty
144 or nolo contendere to the offense of reckless driving as
145 provided in s. 316.192. A person who accepts such plea agreement

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146 is not subject to the provisions of this chapter relating to the
147 offense of driving under the influence, and the trial judge
148 shall withhold adjudication for reckless driving notwithstanding
149 s. 316.656.

150 (5) FAILURE TO COMPLETE PILOT PROGRAM.—If a person does not
151 comply with this section and fails to successfully complete the
152 pilot program, the state attorney operating the pilot program
153 may discharge the person from the program and pursue prosecution
154 of the offense of driving under the influence.

155 (6) ANNUAL REPORT.—By October 1 of each year, beginning in
156 2021, the state attorney of each judicial circuit shall report
157 the results of the pilot program to the Governor, the President
158 of the Senate, and the Speaker of the House of Representatives.
159 The report shall include:

160 (a) The number of cases diverted from prosecution of
161 driving under the influence.

162 (b) The number of persons who successfully completed the
163 pilot program.

164 (c) The number of persons who failed to successfully
165 complete the pilot program and were discharged from the program.

166 (d) The number of persons who successfully completed the
167 pilot program who were later charged with another alcohol-
168 related or drug-related criminal traffic offense.

169 (e) The number of persons who failed to successfully
170 complete the pilot program who were later charged with another
171 alcohol-related or drug-related criminal traffic offense.

172 (7) STATEWIDE DATABASE.—By July 1, 2023, the department
173 shall establish a statewide database of persons who participate
174 in the pilot program. Each judicial circuit must provide monthly

591-03074-20

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175 reports to the department of the number of persons who have
176 elected to participate in the pilot program.

177 Section 2. This act shall take effect July 1, 2020.

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/CS/SB 1450 (594336)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice; Environment and Natural Resources Committee; and Senator Gruters

SUBJECT: Environmental Enforcement

DATE: February 20, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schreiber</u>	<u>Rogers</u>	<u>EN</u>	<u>Fav/CS</u>
2.	<u>Dale</u>	<u>Jameson</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1450 makes numerous changes to the penalties for violating Florida's environmental laws. The bill increases required or maximum environmental penalties in various sections of the Florida Statutes. Most of the changes increase a penalty by 50 percent.

The bill changes the duration that several penalties may run, so that each day during any portion of which certain violations occur constitutes a separate offense. For civil penalties imposed under chapter 403, Florida Statutes., the bill provides that, if the violation is an unauthorized discharge of domestic wastewater, each day the cause of the violation is not addressed constitutes a separate offense until the violation is resolved by order or judgement.

The bill would have an indeterminate positive impact on the various revenue streams impacted by the bill. See Section V.

The bill is effective July 1, 2020.

II. Present Situation:

Environmental Violations

The Department of Environmental Protection (DEP) is Florida's lead agency for environmental management and stewardship, implementing many programs to protect the state's air, water, and land.¹ In accordance with the state's numerous environmental laws, the DEP's responsibilities include the compliance and enforcement process.² Violations of Florida's environmental laws can result in damages and administrative, civil, and/or criminal penalties.

Damages

In environmental enforcement, damages should compensate the state for the value of the loss to natural resources caused by the violation.³ The DEP may institute a civil action in court or an administrative proceeding in the Division of Administrative Hearings (DOAH) to recover damages for any injury to the air, waters, or property, including animal, plant, and aquatic life, of the state caused by any violation.⁴ Damages can cover the cost of remediating the damage done to the environment, and/or costs incurred by the state in responding to the damage, such as tracing the source, controlling and abating the source, and restoring the environmental resources to their former condition.⁵

Penalties

In addition to damages, a violator can be liable for penalties. Penalties differ from damages in that they are designed to punish the wrongdoer rather than to address the harm caused by the violation.⁶ In environmental enforcement, penalties should create incentives to bring immediate compliance and curb future violations.⁷

Administrative penalties can be levied directly by the agency or in a proceeding in DOAH.⁸ The formal administrative enforcement process is typically initiated by serving a notice of violation, and is finalized through entry of a consent order or final order.⁹ In most administrative proceedings, the DEP has the final decision.¹⁰ An administrative law judge has the final decision for administrative proceedings involving the Environmental Litigation Reform Act, codified in s. 403.121, F.S., which is the primary statute addressing the DEP's administrative penalties.¹¹

¹ DEP, *About DEP*, <https://floridadep.gov/about-dep> (last visited February 10, 2020); s. 20.255, F.S.

² See DEP, *Enforcement Manual, Chapter One: DEP Regulatory Enforcement Organization* (2017), available at <https://floridadep.gov/sites/default/files/Chapter%201%20October%202017.pdf> (Last visited February 10, 2020).

³ DEP, *Enforcement Manual, Chapter 6: Judicial Process and Remedies, Collections, and Bankruptcies*, 89 (2014), available at <https://floridadep.gov/sites/default/files/chapter6.pdf> (Last visited February 10, 2020).

⁴ See s. 403.121, F.S.

⁵ See ss. 403.121 and 403.141, F.S.

⁶ See BLACK'S LAW DICTIONARY 1247 (9th ed. 2009).

⁷ DEP, *Enforcement Manual, Chapter 6: Judicial Process and Remedies, Collections, and Bankruptcies*, 89 (2014), available at <https://floridadep.gov/sites/default/files/chapter6.pdf> (Last visited February 10, 2020).

⁸ See ch. 120, F.S. The administrative process is formalized in the Administrative Procedure Act.

⁹ DEP, *Enforcement Manual, Chapter Five: The Administrative Process and Remedies*, 58 (2014), available at https://floridadep.gov/sites/default/files/chapter5_0.pdf (Last visited February 10, 2020).

¹⁰ *Id.*

¹¹ *Id.* at 58-59, 66-70; Ch. 2001-258, Laws of Fla.

Compared to the judicial process, the administrative process is generally considered less expensive, faster and less time consuming, and more conducive to negotiated settlement.¹² However, if the DEP is seeking immediate injunctive relief, which compels a party to act or stop acting, an order must be obtained from a court.¹³

The DEP must proceed administratively in cases in which the DEP seeks administrative penalties that do not exceed \$10,000 per assessment.¹⁴ The DEP is prohibited from imposing administrative penalties in excess of \$10,000 in a notice of violation.¹⁵ The DEP may not have more than one notice of violation pending against a party unless the violations occurred at a different site or the violations were discovered by the DEP subsequent to the filing of a previous notice of violation.¹⁶

Civil penalties are noncriminal fines that are generally levied by a court, and which agencies may be authorized to impose.¹⁷ The DEP may pursue two forms of action in state court: a petition to enforce an order previously entered through the administrative process, or a complaint for violations of statutes or rules.¹⁸ Under both forms, the DEP may seek injunctive relief, civil penalties, damages, and costs and expenses.¹⁹ For judicially imposed civil penalties, the DEP is authorized to recover up to \$10,000 per offense, with each day during any portion of which a violation occurs constituting a separate offense.²⁰

A court or an administrative law judge may receive evidence in mitigation, which may result in the decrease or elimination of penalties.²¹

Criminal penalties can include jail/prison time, a criminal fine, or both. Florida law imposes criminal penalties for certain violations of environmental law.²² Punishments for such violations may vary based on standards of intent, such as willful, reckless indifference, or gross careless disregard.²³

This present situation describes the DEP's general authority to levy penalties, largely pursuant to ch. 403, F.S. the DEP derives enforcement authority from several different chapters of Florida law based on subject matter, so the DEP has additional enforcement authority for programs not covered in ch. 403, F.S. Additionally, the Department of Legal Affairs, any political subdivision

¹² DEP, *Enforcement Manual, Chapter Five: The Administrative Process and Remedies*, 59 (2014).

¹³ *Id.* at 59-60.

¹⁴ Section 403.121(2)(b), F.S.; DEP, *Enforcement Manual, Chapter Five: The Administrative Process and Remedies*, 66-67 (2014). This requirement does not apply to underground injection, hazardous waste, or asbestos programs.

¹⁵ Section 403.121(2)(b), F.S.

¹⁶ *Id.*

¹⁷ The Environmental Litigation Reform Act allows DEP to seek civil penalties of up to \$10,000 through the administrative process for most environmental violations. The Act may not be used if penalties exceed \$10,000.

¹⁸ DEP, *Enforcement Manual, Chapter Six: Judicial Process and Remedies, Collections, and Bankruptcies*, 86 (2014), available at <https://floridadep.gov/sites/default/files/chapter6.pdf> (Last visited February 10, 2020).

¹⁹ *Id.*

²⁰ Section 403.121(1)(b), F.S.

²¹ Section 403.121, F.S.

²² Section 403.161, F.S.

²³ *Id.*

or municipality of the state, or a citizen of the state may maintain an action for injunctive relief against the government entity charged with enforcing environmental laws or the violator of the laws.²⁴

Dredge and Fill Permitting Program

In 2018, the Legislature authorized the DEP to assume responsibility for the federal dredge and fill permitting program under the Clean Water Act, to regulate the discharge of dredged or fill material into Florida's navigable waters.²⁵ Currently, in Florida, the program is jointly implemented by the United States Environmental Protection Agency (EPA) and the United States Army Corps of Engineers (USACE).²⁶ Assumption of the dredge and fill permitting program requires EPA approval. The DEP may adopt any federal requirements, criteria, or regulations necessary to obtain assumption.²⁷ Prior to assuming the program, the DEP must submit various materials to the EPA, including a complete program description, a memorandum of understanding between the state and EPA, a memorandum of understanding between the state and USACE, copies of all applicable statutes and regulations, and more.²⁸ The DEP is still in the process of developing the elements of the program for submission to the EPA.

Regarding enforcement authority, federal regulations require the state to have authority to carry out certain enforcement actions. For example, to assume the program, the DEP must have authority to seek criminal fines of at least \$5,000 per violation against any person who:

- Knowingly makes false statements or representation in any document required under the Clean Water Act, federal regulations, or the state program; or
- Falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under a permit.²⁹

The approved maximum criminal fine must be assessable for each violation and, if the violation is continuous, must be assessable in that maximum amount for each day of violation.³⁰ The burden of proof and degree of knowledge or intent required under state law for establishing violations may not be greater than the burden of proof or degree of knowledge or intent EPA must bear when it brings an action under the Clean Water Act.³¹

Florida law provides that it is a violation of part IV of ch. 373, F.S., and ch. 403, F.S., to:

- Knowingly make any false statement or representation in documents required by state law; or
- Falsify, tamper with, or knowingly render inaccurate any monitoring device or method required by state law, rule, or permit.³²

²⁴ Section 403.412, F.S.

²⁵ Chapter 2018-88, Laws of Fla.; s. 373.4146, F.S.; 33 U.S.C. s. 1344(g).

²⁶ 33 U.S.C. s. 1344(a) and (b).

²⁷ Section 373.4146(2) and (5), F.S.

²⁸ 40 C.F.R. ss. 233.10-233.16.

²⁹ 40 C.F.R. s. 233.41(a)(3)(iii).

³⁰ 40 C.F.R. s. 233.41(b)(1).

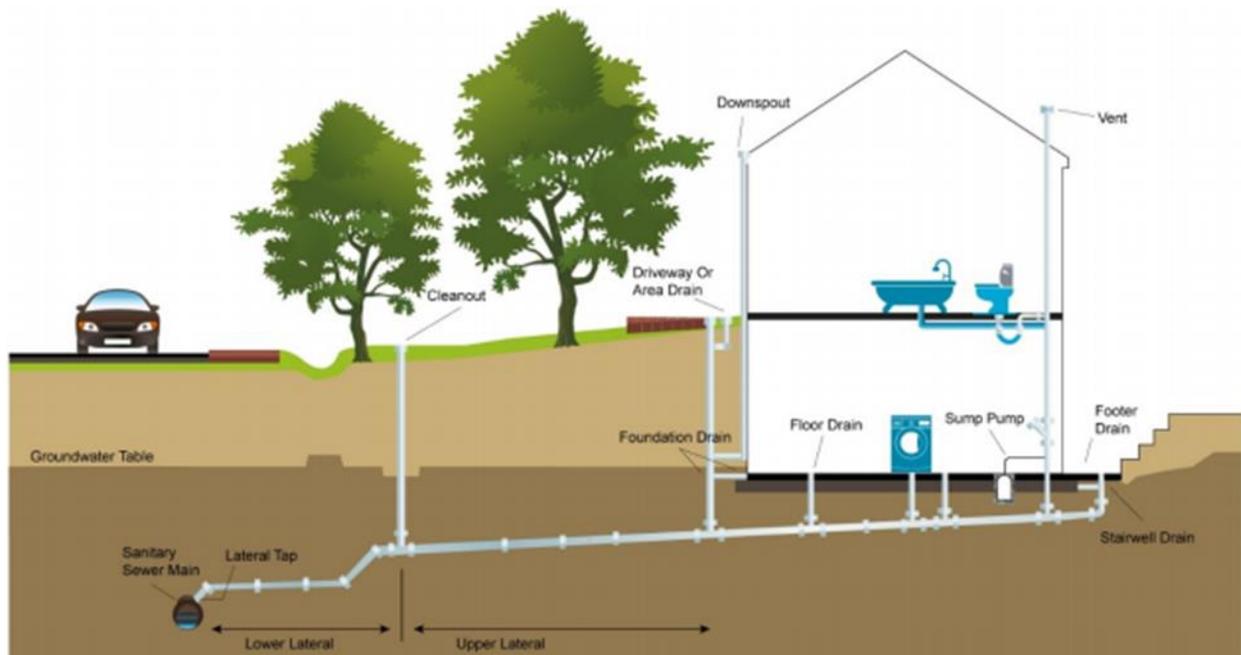
³¹ 40 C.F.R. s. 233.41(b)(2).

³² Sections 373.430(1)(c) and (5) and 403.161(1)(c) and (5), F.S.

The criminal penalties for these violations are fines of up to \$10,000, 6 months in jail, or both.³³ However, the penalty provisions in Florida law apply to “[a]ny person who willfully” commits the violations.³⁴ This application of the “willfully” standard of intent in the state penalties is inconsistent with the requirements in the federal regulations, which do not contain such a standard.

Sanitary Sewer Laterals

A sanitary sewer lateral is the portion of the sewer network connecting individual and private properties to the public sewer system.³⁵ The diagram below shows an example of a sanitary sewer lateral configuration.³⁶



Sanitary sewer laterals are often in poor condition and defects can occur due to aging systems, structural failure, lack of maintenance, or poor construction and design practices.³⁷ Problems in sanitary sewer laterals can have a significant impact on the performance of the sewer system and treatment plan. Private laterals are estimated to contribute to about 40 percent of a system’s infiltration and inflow to sanitary sewers.³⁸ Cracked or broken laterals can allow groundwater

³³ Sections 373.403(5) and 403.161(5), F.S.

³⁴ *Id.*

³⁵ U.S. Environmental Protection Agency, *Private Sewer Laterals* (June 2014), available at <https://www3.epa.gov/region1/sso/pdfs/PrivateSewerLaterals.pdf>.

³⁶ Water Environment Federation, *Sanitary Sewer Rehabilitation*, 2 (2016), available at <https://www.wef.org/globalassets/assets-wef/direct-download-library/public/03---resources/wsec-2017-fs-009---csc---sewer-rehabilitation---final---9.27.17.pdf>.

³⁷ *Id.* at 1-2.

³⁸ U.S. Environmental Protection Agency, *Private Sewer Laterals*, 2 (June 2014), available at <https://www3.epa.gov/region1/sso/pdfs/PrivateSewerLaterals.pdf>.

and infiltrating rainwater to enter into the sewer system which, at high levels, can cause problems at the treatment facility or overload the sewers and cause sanitary sewer overflows.³⁹

The Florida Building Code requires that every building in which plumbing fixtures are installed and premises having drainage piping be connected to a publicly owned or investor-owned sewage system, when available, or an approved onsite sewage treatment and disposal system in accordance with the standards for Onsite Sewage Treatment and Disposal Systems found in Chapter 64E-6, Florida Administrative Code.⁴⁰ A building that has plumbing fixtures installed and is intended for human habitation, occupancy, or use on premises abutting on a street, alley, or easement in which there is a public sewer is required to have a separate connection with the sewer.⁴¹

State law is silent on who is responsible for maintaining or replacing defective sanitary sewer laterals. However, certain municipalities, such as Orlando and Tarpon Springs, require that property owners be responsible for the maintenance, operation, or repair of sanitary sewer laterals in their city ordinances.⁴²

Most homeowners lack knowledge and awareness of potential structural issues with their sanitary sewer laterals.⁴³ Sanitary sewer lateral maintenance issues are the leading cause of backups and overflows into municipality-owned collection systems.⁴⁴ Some municipalities have enacted policies to address the matter. For example, the City of Gulfport has implemented rebate or replacement incentives to their citizens. The City of Gulfport's rebate program offers citizens 50 percent of the costs of the replacement up to \$3,500.⁴⁵ The City of St. Petersburg is also looking into a rebate program within a potential city ordinance addressing sanitary sewer laterals in response to the 2015-2016 sewage crisis that released up to one billion gallons of sewage, 200 million gallons of which ended up in Tampa Bay.⁴⁶

Required Disclosures for a Contract for Sale in Florida

Florida law requires sellers to disclose certain information as part of a sale to a prospective buyer before closing, including:

- A sinkhole claim;⁴⁷

³⁹ *Id.* at 4.

⁴⁰ Ch. 7, s. 701.2 Florida Building Code – Plumbing, 6th edition (Jul. 2017).

⁴¹ Ch. 7, s. 701.3, Florida Building Code – Plumbing, 6th edition (Jul. 2017).

⁴² Ch. 30.02, s. 4.2(k), City of Orlando Code of Ordinances; Chapter 20, article IX, s. 20-110(d), City of Tarpon Springs Code of Ordinances.

⁴³ See U.S. Environmental Protection Agency, *Private Sewer Laterals* (June 2014), available at <https://www3.epa.gov/region1/sso/pdfs/PrivateSewerLaterals.pdf>.

⁴⁴ U.S. Environmental Protection Agency, *Do You Know the Condition of Your Sewer System* (Oct. 2013) available at <https://www3.epa.gov/region1/sso/pdfs/EPAConditionFactSheetOct2013.pdf>.

⁴⁵ City of Gulfport, *Private Sewer Lateral Replacement Rebate Program* (Apr. 2018), <https://mygulfport.us/lateralrebate/> (last visited Feb. 19, 2020).

⁴⁶ The Tampa Bay Times, *St. Petersburg to Homeowners: Fix Your Broken Sewer Pipes* (Oct. 2019), <https://www.tampabay.com/news/st-petersburg/2019/10/08/st-petersburg-to-homeowners-fix-your-broken-sewer-pipes/> (last visited Oct. 8, 2019).

⁴⁷ Section 627.7073(2)(c), F.S.

- The potential for coastal erosion;⁴⁸
- Mandatory membership in a homeowner’s association;⁴⁹
- Radon gas having been found in buildings in Florida;⁵⁰
- That the buyer should not rely on the seller’s current property taxes;⁵¹ and
- Whether subsurface rights have been or will be severed or retained.⁵²

The Florida Statutes do not expressly require sellers of real property to disclose sewer lateral defects, although Florida tort law requires sellers to disclose to buyers known latent material defects that materially affect the property value.⁵³ Notably, sellers must only disclose defects actually known, but not those constructively known, i.e. those that could have been discovered through reasonable inspection.⁵⁴

In Florida, sellers can use the “Seller’s Property Disclosure Form”⁵⁵ created by the Florida Association of Realtors, but there is no statutory obligation requiring that the form be completed. Also, a seller is not required to retain a home inspector to discover problems that the seller may not be aware of.

III. Effect of Proposed Changes:

Sections 1 through 21 amend sections of the Florida Statutes containing various penalties for violations of environmental laws. In general, the bill increases the required or maximum penalties in the provisions listed below. In most cases, the penalties are increased by 50 percent.

Several places in existing law impose a penalty for each offense, with each day during any portion of which a violation occurs constituting a separate offense. The bill adds this standard to certain sections, as shown below.

The table below summarizes existing penalties and the penalties as revised by the bill. All penalties are levied by the Department of Environmental Protection (DEP) unless otherwise specified.

Florida Statutes	Violations	Existing Penalties	Changes in PCS/CS/SB 1450
161.054 (1), F.S.	Violating statutes, rules or orders regarding coastal	An administrative fine for each offense of up to \$10,000.	An administrative fine for each offense of up to \$15,000.

⁴⁸ Section 161.57(2), F.S.

⁴⁹ Section 720.401(1), F.S.

⁵⁰ Section 404.056(5), F.S.

⁵¹ Section 689.261, F.S.

⁵² Section 689.29, F.S.

⁵³ *Johnson v. Davis*, 480 So. 2d 625, 629 (Fla. 1985).

⁵⁴ *See id.*; *see also Jensen v. Bailey*, 76 So. 3d 980, 983-984 (Fla. 2d DCA 2011).

⁵⁵ Florida Realtors, *Seller’s Property Disclosure- Residential* (2016), available at <http://www.unlimitedmls.com/forms/Property-Disclosure-Form.pdf> (last visited Sept. 13, 2019).

Florida Statutes	Violations	Existing Penalties	Changes in PCS/CS/SB 1450
	construction or activities		
258.397 (7), F.S.	Violating a statute or rules regarding Biscayne Bay Aquatic Preserve	Authorizes the Department of Legal Affairs to bring an action for civil penalties of \$5,000 per day.	Authorizes the Department of Legal Affairs to bring an action for civil penalties of \$7,500 per day. Each day during any portion of which a violation occurs constitutes a separate offense.
258.46, F.S.	Violating the Florida Aquatic Preserve Act or related rules	A civil penalty of not less than \$500 per day and not more than \$5,000 per day of a violation.	A civil penalty of not less than \$750 per day and not more than \$7,500 per day of a violation. Each day during any portion of which a violation occurs constitutes a separate offense.
373.129 (5), F.S.	Violating ch. 373, F.S., relating to water resources	Authorizes the DEP, any water management district, any local board, or certain local governments ⁵⁶ to recover a civil penalty for each offense, in an amount not to exceed \$10,000 per offense.	Authorizes the DEP, any water management district, any local board, or certain local governments to recover a civil penalty for each offense, in an amount not to exceed \$15,000 per offense.
373.209 (3)(b), F.S.	Violating a statute regarding artesian wells	A civil penalty of \$100 per day for each day of a violation and each act of a violation.	A civil penalty of \$150 per day for each day of a violation and each act of a violation.
373.430 (4) and (5), F.S.	Violating statutes regarding surface waters by causing pollution due to reckless indifference or gross careless disregard	A fine of not more than \$5,000 or 60 days in jail, or both, for each offense: causing certain pollution. A fine of not more than \$10,000, 6 months in jail, or both for willfully committing the following violation: knowingly falsifying required documentation	A fine of not more than \$10,000 or 60 days in jail, or both, for each offense: causing certain pollution; failing to obtain any permit; or violating or failing to comply with any rule, regulation, order, or permit. A fine of not more than \$10,000, 6 months in jail, or both for committing the following violation: knowingly falsifying required documentation or

⁵⁶ Section 373.103(8), F.S. Under certain circumstances, the DEP may authorize a water management district to delegate to a local government by rule or agreement the power and duty to administer and enforce any of the statutes, rules, or regulations relating to stormwater permitting or surface water management which the district is authorized or required to administer.

Florida Statutes	Violations	Existing Penalties	Changes in PCS/CS/SB 1450
		or falsifying, tampering with, or rendering inaccurate required monitoring devices or methods.	falsifying, tampering with, or rendering inaccurate required monitoring devices or methods.
376.065 (5)(a) and (e), F.S.	Violating a statute regarding terminal facility certifications	<p>A civil penalty of \$500 for any violation of the section or a certification.</p> <p>A civil penalty of \$500 imposed by a county court if commission of the infraction is proved.</p>	<p>A civil penalty of \$750 for any violation of the section or a certification.</p> <p>A civil penalty of \$750 imposed by a county court if commission of the infraction is proved.</p>
376.071 (2)(a) and (e), F.S.	Violations regarding discharge contingency plans for vessels	<p>A civil penalty of \$5,000 for each infraction.</p> <p>A civil penalty of \$5,000 imposed by a county court if commission of the infraction is proved.</p>	<p>A civil penalty of \$7,500 for each infraction.</p> <p>A civil penalty of \$7,500 imposed by a county court if commission of the infraction is proved.</p>
376.16 (1), F.S.	Violating the Pollutant Discharge Prevention and Control Act or the DEP rules or orders	A civil penalty of up to \$50,000 per violation per day.	A civil penalty of up to \$75,000 per violation per day.
376.16 (2), (3), (7), and (8), F.S.	Violating the Pollutant Discharge Prevention and Control Act or the DEP rules or orders	<p>In addition to the penalty in subsection (1), for persons responsible for two or more discharges within a 12-month period at the same facility, the statute provides the following penalties:</p> <ul style="list-style-type: none"> • Gasoline/diesel over 5 gallons - a civil penalty of \$500 for the second discharge and \$1,000 for each subsequent discharge within a 12-month period. • Other pollutants - a civil penalty of \$2,500 for the second discharge and \$5,000 for each subsequent discharge within a 12-month period. <p>For persons responsible for two or more discharges within a 12-</p>	<p>In addition to the penalty in subsection (1), for persons responsible for two or more discharges within a 12-month period at the same facility, the statute provides the following penalties:</p> <ul style="list-style-type: none"> • Gasoline/diesel over 5 gallons - a civil penalty of \$750 for the second discharge and \$1,500 for each subsequent discharge within a 12-month period. • Other pollutants - a civil penalty of \$3,750 for the second discharge and \$7,500 for each subsequent discharge within a 12-month period. <p>For persons responsible for two or more discharges within a 12-</p>

Florida Statutes	Violations	Existing Penalties	Changes in PCS/CS/SB 1450
		<p>month period at the same facility, the statute provides the following penalties:</p> <ul style="list-style-type: none"> • Gasoline/diesel equal to or less than 5 gallons - a civil penalty of \$50 for each discharge subsequent to the first. • Other pollutants equal to or less than 5 gallons - a civil penalty of \$100 for each discharge subsequent to the first. <p>Authorizes the county court to impose the following civil penalties if the commission of an infraction is proved: up to \$500 for the second discharge of gasoline/diesel and up to \$1,000 for each subsequent discharge of gasoline/diesel within a 12-month period; up to \$5,000 for the second discharge of other pollutants and up to \$10,000 for each subsequent discharge within a 12-month period.</p>	<p>month period at the same facility, the statute provides the following penalties:</p> <ul style="list-style-type: none"> • Gasoline/diesel equal to or less than 5 gallons - a civil penalty of \$75 for each discharge subsequent to the first; • Other pollutants equal to or less than 5 gallons - a civil penalty of \$150 for each discharge subsequent to the first. <p>Authorizes the county court to impose the following civil penalties if the commission of an infraction is proved: up to \$750 for the second discharge of gasoline/diesel and up to \$1,500 for each subsequent discharge of gasoline/diesel within a 12-month period; up to \$7,500 for the second discharge of other pollutants and up to \$15,000 for each subsequent discharge within a 12-month period.</p>
376.25 (6)(a), F.S.	Violating a statute regarding gambling vessels	A civil penalty of not more than \$50,000 for each violation.	<p>A civil penalty of not more than \$75,000 for each violation.</p> <p>Each day during any portion of which a violation occurs constitutes a separate offense.</p>
377.37 (1)(a), F.S.	Violating statutory provisions, rules, orders or permits regarding oil and gas resources	A civil penalty of not more than \$10,000 for each offense.	A civil penalty of not more than \$15,000 for each offense.
378.211 (2), F.S.	Violating statutes, rules, or orders	A civil penalty of \$100 per violation of a minor or technical nature; \$1,000 per major violation by an operator on which a penalty	A civil penalty of \$150 per violation of a minor or technical nature; \$1,500 per major violation by an operator on which a penalty

Florida Statutes	Violations	Existing Penalties	Changes in PCS/CS/SB 1450
	regarding land reclamation	has not been imposed during the 5 previous years; and \$5,000 per major violation not otherwise covered.	has not been imposed during the 5 previous years; and \$7,500 per major violation not otherwise covered.
403.086 (2), F.S.	Violating orders regarding sanitary sewage disposal	A civil penalty of \$500 for each 24-hour day or fraction thereof that the failure is allowed to continue.	A civil penalty of \$750 for each 24-hour day or fraction thereof that the failure is allowed to continue.
403.121 (1)(b), F.S.	Violating ch. 403, F.S., regarding environmental control	For judicial remedies - authorizes the DEP to judicially pursue and recover a civil penalty of not more than \$10,000 per offense.	For judicial remedies - authorizes the DEP to judicially pursue and recover a civil penalty of not more than \$15,000 per offense.
403.121 (2)(b) and (g) F.S.	Violating ch. 403, F.S., regarding environmental control	<p>For administrative remedies - (except for violations involving hazardous wastes, asbestos, or underground injection) the DEP must proceed administratively when seeking administrative penalties not exceeding \$10,000 per assessment.</p> <p>The DEP may not impose penalties in excess of \$10,000 in a notice of violation.</p> <p>The DEP retains the authority to judicially pursue penalties in excess of \$10,000 for violations not included in the penalty schedule, or for multiple or multiday violations alleged to exceed a total of \$10,000.</p> <p>Any case filed in state court because it is alleged to exceed a total of \$10,000 in penalties may be settled in the court action for less than \$10,000.</p>	<p>For administrative remedies - (except for violations involving hazardous wastes, asbestos, or underground injection) the DEP must proceed administratively when seeking administrative penalties not exceeding \$50,000 per assessment.</p> <p>The DEP may not impose penalties in excess of \$50,000 in a notice of violation.</p> <p>The DEP retains the authority to judicially pursue penalties in excess of \$50,000 for violations not included in the penalty schedule, or for multiple or multiday violations alleged to exceed a total of \$50,000.</p> <p>Any case filed in state court because it is alleged to exceed a total of \$50,000 in penalties may be settled in the court action for less than \$50,000.</p>
403.121	Administrative penalty schedule: violations	\$2,000 for a Maximum Containment Level violation; plus \$1,000 for a primary, inorganic, organic, or radiological Maximum	\$3,000 for a Maximum Containment Level violation; plus \$1,500 for a primary, inorganic, organic, or radiological Maximum

Florida Statutes	Violations	Existing Penalties	Changes in PCS/CS/SB 1450
(3)(a), F.S. ⁵⁷	regarding drinking water contamination	Contaminant Level or fecal coliform bacteria violation; plus \$1,000 if the violation occurs at a community water system; plus \$1,000 if any Maximum Contaminant Level is exceeded by more than 100 percent. \$3,000 for failure to obtain a clearance letter before placing an ineligible drinking water system into service.	Contaminant Level or fecal coliform bacteria violation; plus \$1,500 if the violation occurs at a community water system; plus \$1,500 if any Maximum Contaminant Level is exceeded by more than 100 percent. \$4,500 for failure to obtain a clearance letter before placing an ineligible drinking water system into service.
403.121 (3)(b), F.S.	Administrative penalty schedule: violations regarding wastewater	\$1,000 for failure to obtain a required wastewater permit (other than a permit for surface water discharge). \$2,000 for an unlawful discharge or exceedance resulting in a domestic or industrial wastewater violation (not involving a surface water or groundwater quality violation). \$5,000 for an unlawful discharge or exceedance resulting in a surface water or groundwater quality violation.	\$1,500 for failure to obtain a required wastewater permit (other than a permit for surface water discharge). \$3,000 for an unlawful discharge or exceedance resulting in a domestic or industrial wastewater violation (not involving a surface water or groundwater quality violation). \$7,500 for an unlawful discharge or exceedance resulting in a surface water or groundwater quality violation. Each day the cause of an unauthorized discharge of domestic wastewater is not addressed constitutes a separate offense.
403.121 (3)(c), F.S.	Administrative penalty schedule: violations regarding dredge and fill or stormwater	\$1,000 for an unlawful dredging, filling, or construction of a stormwater management system; plus \$2,000 if the dredging or filling occurs in an aquatic preserve, an Outstanding Florida water, a conservation easement, or a Class I or Class II surface water;	\$1,500 for an unlawful dredging, filling, or construction of a stormwater management system; plus \$3,000 if the dredging or filling occurs in an aquatic preserve, an Outstanding Florida water, a conservation easement, or a Class I or Class II surface water;

⁵⁷ Section 403.121(3), F.S. The administrative penalties in subsection (3) do not apply to hazardous waste, asbestos, or underground injection.

Florida Statutes	Violations	Existing Penalties	Changes in PCS/CS/SB 1450
		<p>plus \$1,000 if the area dredged or filled is greater than .25 acres but less than or equal to .5 acres; plus \$1,000 if the area dredged or filled is greater than .5 acres but less than or equal to 1 acre.</p> <p>\$3,000 for failure to complete required mitigation, record a required conservation easement, or for a water quality violation resulting from dredging and filling activities, stormwater construction activities or failure of a stormwater treatment facility.</p> <p>\$2,000 (stormwater systems serving less than 5 acres) for failure to properly or timely construct a stormwater management system.</p> <p>\$5,000 per violation, in addition to the above penalties, for conducting unlawful dredging or filling.</p>	<p>plus \$1,500 if the area dredged or filled is greater than .25 acres but less than or equal to .5 acres; plus \$1,500 if the area dredged or filled is greater than .5 acres but less than or equal to 1 acre.</p> <p>\$4,500 for failure to complete required mitigation, record a required conservation easement, or for a water quality violation resulting from dredging and filling activities, stormwater construction activities or failure of a stormwater treatment facility.</p> <p>\$3,000 (stormwater systems serving less than 5 acres) for failure to properly or timely construct a stormwater management system.</p> <p>\$7,500 per violation, in addition to the above penalties, for conducting unlawful dredging or filling.</p>
<p>403.121 (3)(d), F.S.</p>	<p>Administrative penalty schedule: violations regarding mangrove trimming</p>	<p>\$5,000 per violation for conducting mangrove trimming or alterations without a permit.</p>	<p>\$7,500 per violation for conducting mangrove trimming or alterations without a permit.</p>
<p>403.121 (3)(e), F.S.</p>	<p>Administrative penalty schedule: violations regarding solid waste</p>	<p>\$2,000 for unlawful disposal or storage of solid waste; plus \$1,000 for Class I or III or construction and demolition debris in excess of 20 cubic yards; plus \$1,000 if the waste is disposed of or stored in a waterbody or within 500 feet of a potable water well; plus \$1,000 if the waste contains certain amounts of PCB, untreated biomedical waste, friable</p>	<p>\$3,000 for unlawful disposal or storage of solid waste; plus \$1,000 for Class I or III or construction and demolition debris in excess of 20 cubic yards; plus \$1,500 if the waste is disposed of or stored in a waterbody or within 500 feet of a potable water well; plus \$1,500 if the waste contains certain amounts of PCB, untreated biomedical waste, friable</p>

Florida Statutes	Violations	Existing Penalties	Changes in PCS/CS/SB 1450
		<p>asbestos, used oil, or lead acid batteries.</p> <p>\$3,000 for failure to maintain leachate control, unauthorized burning, failure to have a trained spotter on duty, or failure to provide access control for three consecutive inspections.</p> <p>\$2,000 for failure to construct or maintain a required stormwater management system.</p>	<p>asbestos, used oil, or lead acid batteries.</p> <p>\$4,500 for failure to maintain leachate control, unauthorized burning, failure to have a trained spotter on duty, or failure to provide access control for three consecutive inspections.</p> <p>\$3,000 for failure to construct or maintain a required stormwater management system.</p>
<p>403.121 (3)(f), F.S.</p>	<p>Administrative penalty schedule: violations regarding air emissions</p>	<p>\$1,000 for an unlawful air emission or exceedance; plus \$1,000 if the emission results in an air quality violation; plus \$3,000 for emissions from the major source of the violating pollutant; plus \$1,000 if over 150% of the allowable level.</p>	<p>\$1,500 for an unlawful air emission or exceedance; plus \$4,500 for emissions from the major source of the violating pollutant; plus \$1,500 if over 150% of the allowable level.</p>
<p>403.121 (3)(g), F.S.</p>	<p>Administrative penalty schedule: violations regarding storage tank system and petroleum contamination</p>	<p>\$5,000 for failure to empty a damaged storage system as necessary to ensure a release does not occur until repairs are completed, when a release has occurred, failure to timely recover free product, or failure to conduct remediation or monitoring activities until a no-further-action or site-rehabilitation completion order has been issued.</p> <p>\$3,000 for failure to timely upgrade a storage tank system.</p> <p>\$2,000 for failure to conduct or maintain required release detection, failure to timely investigate a suspected release, depositing motor fuel into an unregistered storage tank system, failure to timely assess or</p>	<p>\$7,500 for failure to empty a damaged storage system as necessary to ensure a release does not occur until repairs are completed, when a release has occurred, failure to timely recover free product, or failure to conduct remediation or monitoring activities until a no-further-action or site-rehabilitation completion order has been issued.</p> <p>\$4,500 for failure to timely upgrade a storage tank system.</p> <p>\$3,000 for failure to conduct or maintain required release detection, failure to timely investigate a suspected release, depositing motor fuel into an unregistered storage tank system, failure to timely assess or</p>

Florida Statutes	Violations	Existing Penalties	Changes in PCS/CS/SB 1450
		remediate petroleum contamination, or failure to properly install a storage tank system. \$1,000 for failure to properly operate, maintain, or close a storage tank system.	remediate petroleum contamination, or failure to properly install a storage tank system. \$1,500 for failure to properly operate, maintain, or close a storage tank system.
403.121 (4), F.S.	Violating ch. 403, F.S., regarding environmental control	In administrative proceedings, in addition to penalties assessed under subsection (3): <ul style="list-style-type: none"> • \$5,000 for failure to satisfy financial responsibility requirements or for oil and gas pollution violations. • \$4,000 for failure to install, maintain, or use a required pollution control system or device. • \$3,000 for failure to obtain a required permit before construction or modification. • \$2,000 for failure to conduct required monitoring or testing, conduct required release detection, or construct in compliance with a permit. • \$1,000 for failure to maintain required staff to respond to emergencies, failure to conduct required training, failure to prepare, maintain, or update required contingency plans, failure to adequately respond to emergencies to bring an emergency situation under control, or failure to submit required notification to the DEP. • \$500 for failure to prepare, submit, maintain, or use required reports or documentation. 	In administrative proceedings, in addition to penalties assessed under subsection (3): <ul style="list-style-type: none"> • \$7,500 for failure to satisfy financial responsibility requirements or for oil and gas pollution violations. • \$6,000 for failure to install, maintain, or use a required pollution control system or device. • \$4,500 for failure to obtain a required permit before construction or modification. • \$3,000 for failure to conduct required monitoring or testing, conduct required release detection, or construct in compliance with a permit. • \$1,500 for failure to maintain required staff to respond to emergencies, failure to conduct required training, failure to prepare, maintain, or update required contingency plans, failure to adequately respond to emergencies to bring an emergency situation under control, or failure to submit required notification to the DEP. • \$750 for failure to prepare, submit, maintain, or use required reports or documentation.

Florida Statutes	Violations	Existing Penalties	Changes in PCS/CS/SB 1450
403.121 (5), (7), (8), and (9), F.S.	Violating ch. 403, F.S., regarding environmental control	<p>A penalty of \$500 for failure to comply with any other department regulatory statute or rule.</p> <p>A violator’s history of noncompliance for any previous violation found in an executed consent order finding violation, or resulting in a final order or judgment involving the imposition of \$2,000 or more must be taken into consideration in a manner specified in statute.</p> <p>The total administrative penalty, including direct economic benefit gained by the violator that is added to the scheduled administrative penalty, may not exceed \$10,000.</p> <p>The administrative penalties for a particular violation that are assessed against any one violator may not exceed \$5,000, unless there is a history of noncompliance, the economic benefit exceeds \$5,000, or there are multiday violations. Total administrative penalties may not exceed \$10,000 per assessment for all violations attributable to a specific person in a notice of violation.</p>	<p>A penalty of \$1,000 for failure to comply with any other department regulatory statute or rule.</p> <p>A violator’s history of noncompliance for any previous violation found in an executed consent order finding violation, or resulting in a final order or judgment involving the imposition of \$3,000 or more must be taken into consideration in a manner specified in statute.</p> <p>The total administrative penalty, including direct economic benefit gained by the violator that is added to the scheduled administrative penalty, may not exceed \$15,000.</p> <p>The administrative penalties for a particular violation that are assessed against any one violator may not exceed \$7,500, unless there is a history of noncompliance, the economic benefit exceeds \$7,500, or there are multiday violations. Total administrative penalties may not exceed \$50,000 per assessment for all violations attributable to a specific person in a notice of violation.</p>
403.141 (1), F.S.	Violating ch. 403, F.S., regarding environmental control, by committing prohibited acts	A civil penalty for each offense in an amount not to exceed \$10,000.	<p>A civil penalty for each offense in an amount not to exceed \$15,000.</p> <p>If a violation is an unauthorized discharge of domestic wastewater, each day the cause of the violation is not addressed constitutes a separate offense until the violation is resolved by order or judgement.</p>

Florida Statutes	Violations	Existing Penalties	Changes in PCS/CS/SB 1450
403.161 (4), F.S.	Violating ch. 403, F.S., regarding environmental control, by committing prohibited acts specified in the statute	A violation causing pollution due to reckless indifference or gross careless disregard is punishable by a fine of not more than \$5,000, 60 days in jail, or both, for each offense.	A violation causing pollution; failure to obtain a permit required under Ch. 403, F.S., or rules; or violating any rule, order, permit or certification adopted or issued by the DEP due to reckless indifference or gross careless disregard is punishable by a fine of not more than \$10,000, 60 days in jail, or both, for each offense.
403.161 (5), F.S.	Violating ch. 403, F.S., regarding environmental control, by willfully causing pollution	A fine of not more than \$10,000, 6 months in jail, or both for willfully committing the following violation: knowingly falsifying required documentation or falsifying, tampering with, or rendering inaccurate required monitoring devices or methods.	A fine of not more than \$10,000, 6 months in jail, or both for committing the following violation: knowingly falsifying required documentation or falsifying, tampering with, or rendering inaccurate required monitoring devices or methods.
403.413 (6)(a), F.S.	Dumping litter	A civil penalty of \$100 for dumping litter (not for commercial purposes) not exceeding 15 pounds or 27 cubic feet.	A civil penalty of \$150 for dumping litter (not for commercial purposes) not exceeding 15 pounds or 27 cubic feet.
403.7234 (5), F.S.	Violations involving small quantity generators	A fine of between \$50 and \$100 per day for a maximum of 100 days for a noncompliant small quantity generator.	A fine of between \$75 and \$150 per day for a maximum of 100 days for a noncompliant small quantity generator.
403.726 (3), F.S.	Violations regarding hazardous waste creating an imminent hazard	Authorizes the DEP to institute action to abate an imminent hazard and may recover a civil penalty of not more than \$25,000 for each day of continued violation.	Authorizes the DEP to institute action to abate an imminent hazard and may recover a civil penalty of not more than \$37,500 for each day of continued violation.
403.727 (3)(a), F.S.	Violations regarding hazardous waste	A civil penalty of not more than \$50,000 for each day of continued violation.	A civil penalty of not more than \$75,000 for each day of continued violation.
403.93345 (8)(a)-(c) and (g), F.S.	Civil penalty schedule: violating the Florida Coral Reef Protection Act	Damage to a coral reef less than or equal to 1 square meter: \$150; additional \$150 with aggravating circumstances; additional \$150 if occurring within a state park or aquatic preserve.	Damage to a coral reef less than or equal to 1 square meter: \$225; additional \$225 with aggravating circumstances; additional \$225 if occurring within a state park or aquatic preserve.

Florida Statutes	Violations	Existing Penalties	Changes in PCS/CS/SB 1450
		<p>Damage to a coral reef of more than 1 square meter but less than or equal to 10 square meters: \$300 per square meter; additional \$300 per square meter with aggravating circumstances; additional \$300 per square meter if occurring within a state park or aquatic preserve.</p> <p>Damage exceeding an area of 10 square meters: \$1,000 per square meter; additional \$1,000 per square meter with aggravating circumstances; additional \$1,000 per square meter if occurring within a state park or aquatic preserve.</p> <p>The total penalties levied may not exceed \$250,000 per occurrence.</p>	<p>Damage to a coral reef of more than 1 square meter but less than or equal to 10 square meters: \$450 per square meter; additional \$450 per square meter with aggravating circumstances; additional \$450 per square meter if occurring within a state park or aquatic preserve.</p> <p>Damage exceeding an area of 10 square meters: \$1,500 per square meter; additional \$1,500 per square meter with aggravating circumstances; additional \$1,500 per square meter if occurring within a state park or aquatic preserve.</p> <p>The total penalties levied may not exceed \$375,000 per occurrence.</p>

Section 22 creates s. 125.569, F.S., titled “Sanitary sewer lateral inspection program.”

The bill defines the term “sanitary sewer lateral,” as used in s. 125.569, F.S., to mean “a privately owned pipeline connecting a property to the main sewer line which is maintained and repaired by the property owner.”

The bill encourages counties, by July 1, 2022, to establish an evaluation and rehabilitation program for sanitary sewer laterals on residential and commercial properties within the county’s jurisdiction to identify and reduce extraneous flow from leaking sanitary sewer laterals. At a minimum, the program may do all of the following:

- Establish a system to identify defective, damaged, or deteriorated sanitary sewer laterals on residential and commercial properties within the jurisdiction of the county.
- Consider economical methods for a property owner to repair or replace a defective, damaged, or deteriorated sanitary sewer lateral.
- Establish and maintain a publicly accessible database to store information concerning properties where a defective, damaged, or deteriorated sanitary sewer lateral has been identified. For each property, the database must include, but is not limited to, the address of the property, the names of any persons the county notified concerning the faulty sanitary sewer lateral, and the date and method of such notification.

Section 23 creates s. 166.0481, F.S., titled “Sanitary sewer lateral inspection program.”

The bill defines the term “sanitary sewer lateral,” as used in s. 166.0481, F.S., to mean “a privately owned pipeline connecting a property to the main sewer line which is maintained and repaired by the property owner.”

The bill encourages municipalities, by July 1, 2022, to establish an evaluation and rehabilitation program for sanitary sewer laterals on residential and commercial properties within the municipality’s jurisdiction to identify and reduce extraneous flow from leaking sanitary sewer laterals. At a minimum, the program may do all of the following:

- Establish a system to identify defective, damaged, or deteriorated sanitary sewer laterals on residential and commercial properties within the jurisdiction of the municipality.
- Consider economical methods for a property owner to repair or replace a defective, damaged, or deteriorated sanitary sewer lateral.
- Establish and maintain a publicly accessible database to store information concerning properties where a defective, damaged, or deteriorated sanitary sewer lateral has been identified. For each property, the database must include, but is not limited to, the address of the property, the names of any persons the municipality notified concerning the faulty sanitary sewer lateral, and the date and method of such notification.

Section 24 creates s. 689.301, F.S., titled “Disclosure of known defects in sanitary sewer laterals to prospective purchaser.”

The bill defines the term “sanitary sewer lateral,” as used in s. 689.301, F.S., to mean “the privately owned pipeline connecting a property to the main sewer line.”

The bill requires a seller of real property, before executing a contract for sale, to disclose to a prospective purchaser any defects in the property’s sanitary sewer lateral which are known to the seller.

Sections 25 through 29 reenact ss. 823.11(5); 403.077(5); 403.131(2); 403.4154(3)(d); 403.860(5); 403.708(10); 403.7191(7); 403.811; 403.7255(2); and 403.7186(8), F.S. This reenactment is done for the purpose of incorporating certain amendments made by the bill, as the reenacted provisions reference sections of law that are amended by the bill.

Section 30 states that the bill takes effect July 1, 2020.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill increases numerous penalties for violations of environmental laws. In some instances, the bill also expands the potential time period when each passing day may constitute a separate offense. Overall, the bill increases the penalties that the private sector must pay for violations of environmental laws.

C. Government Sector Impact:

The bill increases the amounts of numerous penalties. Such penalties may apply to government entities, such as local governments. The bill may cause government entities to be responsible for increased costs when they are required to pay such penalties.

The bill increases the amounts of numerous penalties. If imposed, the funds from such penalties would increase revenue to the state. Therefore, the bill may have a positive, indeterminate impact on the government sector.

The bill may have an indeterminate negative fiscal impact on local governments that own and operate wastewater treatment facilities because the bill increases a number of penalties associated with the violation of environmental laws, including permit violations for wastewater treatment facilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 161.054, 258.397, 258.46, 373.129, 373.209, 373.430, 376.065, 376.071, 376.16, 376.25, 377.37, 378.211, 403.086, 403.121, 403.141, 403.161, 403.413, 403.7234, 403.726, 403.727, and 403.93345.

This bill creates the following sections of the Florida Statutes: 125.569, 166.0481, and 689.301.

This bill reenacts the following sections of the Florida Statutes: 403.077, 403.131, 403.4154, 403.708, 403.7186, 403.7191, 403.7255, 403.811, 403.86, and 823.11.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on February 18, 2020:

The committee substitute:

- Removes the following language, or substantially similar language, from anywhere it appears in the bill: “[u]ntil a violation is resolved by order or judgement, each day during any portion of which such violation occurs or is not remediated constitutes a separate offense.”
- Returns what constitutes a separate offense to the existing “[e]ach during any portion of which such violation occurs constitutes a separate offense” in several sections, including those on the following topics: coastal construction and activities, water resources, regulation of oil and gas resources, phosphate land reclamation, hazardous waste, criminal penalties for discharges of pollutants, and civil and criminal penalties in ch. 403, F.S.
- Adds the standard “[e]ach day during any portion of which such violation occurs constitutes a separate offense” to sections on the following topics: Biscayne Bay Aquatic Preserve, aquatic preserves, and gambling vessels.
- Adds to the administrative penalties in s. 403.121, F.S., that each day the cause of an unauthorized discharge of domestic wastewater is not addressed constitutes a separate offense.
- Adds to civil penalties in s. 403.141, F.S., that each day the cause of an unauthorized discharge of domestic wastewater is not addressed constitutes a separate offense until the violation is resolved by order or judgement.

CS by Environment and Natural Resources on January 27, 2020:

- Removes the “willfully” standard of intent from applying to criminal penalties in two sections of Florida’s environmental statutes. The penalties apply to violations of knowingly falsifying documents or tampering with required monitoring. The DEP’s authority to seek criminal fines for such falsification or tampering is required by the federal regulations for state assumption of the 404 dredge and fill program. Applying a “willfully” standard to the penalties is not consistent with the federal regulations, so the bill removes the standard.

- Revises the title of the bill to more accurately describe the contents of the bill.

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	.	
02/19/2020	.	
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	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (1) of section 161.054, Florida
Statutes, is amended to read:

161.054 Administrative fines; liability for damage; liens.—

(1) In addition to the penalties provided for in ss.
161.052, 161.053, and 161.121, any person, firm, corporation, or
governmental agency, or agent thereof, refusing to comply with



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11 or willfully violating ~~any of the provisions of~~ s. 161.041, s.
12 161.052, or s. 161.053, or any rule or order prescribed by the
13 department thereunder, shall incur a fine for each offense in an
14 amount up to \$15,000 ~~\$10,000~~ to be fixed, imposed, and collected
15 by the department. Each day during any portion of which such
16 violation occurs constitutes a separate offense.

17 Section 2. Subsection (7) of section 258.397, Florida
18 Statutes, is amended to read:

19 258.397 Biscayne Bay Aquatic Preserve.—

20 (7) ENFORCEMENT. ~~The provisions of~~ This section may be
21 enforced in accordance with ~~the provisions of~~ s. 403.412. In
22 addition, the Department of Legal Affairs may ~~is authorized to~~
23 bring an action for civil penalties of \$7,500 ~~\$5,000~~ per day
24 against any person, natural or corporate, who violates ~~the~~
25 ~~provisions of~~ this section or any rule or regulation issued
26 hereunder. Each day during any portion of which such violation
27 occurs constitutes a separate offense. Enforcement of applicable
28 state regulations shall be supplemented by the Miami-Dade County
29 Department of Environmental Resources Management through the
30 creation of a full-time enforcement presence along the Miami
31 River.

32 Section 3. Section 258.46, Florida Statutes, is amended to
33 read:

34 258.46 Enforcement; violations; penalty. ~~The provisions of~~
35 This act may be enforced by the Board of Trustees of the
36 Internal Improvement Trust Fund or in accordance with ~~the~~
37 ~~provisions of~~ s. 403.412. However, any violation by any person,
38 natural or corporate, of ~~the provisions of~~ this act or any rule
39 or regulation issued hereunder is ~~shall be~~ further punishable by



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40 a civil penalty of not less than \$750 ~~\$500~~ per day or more than
41 \$7,500 ~~\$5,000~~ per day of such violation. Each day during any
42 portion of which such violation occurs constitutes a separate
43 offense.

44 Section 4. Subsections (5) and (7) of section 373.129,
45 Florida Statutes, are amended to read:

46 373.129 Maintenance of actions.—The department, the
47 governing board of any water management district, any local
48 board, or a local government to which authority has been
49 delegated pursuant to s. 373.103(8), is authorized to commence
50 and maintain proper and necessary actions and proceedings in any
51 court of competent jurisdiction for any of the following
52 purposes:

53 (5) To recover a civil penalty for each offense in an
54 amount not to exceed \$15,000 ~~\$10,000~~ per offense. Each date
55 during which such violation occurs constitutes a separate
56 offense.

57 (a) A civil penalty recovered by a water management
58 district pursuant to this subsection shall be retained and used
59 exclusively by the water management district that collected the
60 money. A civil penalty recovered by the department pursuant to
61 this subsection must be deposited into the Water Quality
62 Assurance Trust Fund established under s. 376.307.

63 (b) A local government that is delegated authority pursuant
64 to s. 373.103(8) may deposit a civil penalty recovered pursuant
65 to this subsection into a local water pollution control program
66 trust fund, notwithstanding ~~the provisions of~~ paragraph (a).
67 However, civil penalties that are deposited in a local water
68 pollution control program trust fund and that are recovered for



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69 violations of state water quality standards may be used only to
70 restore water quality in the area that was the subject of the
71 action, and civil penalties that are deposited in a local water
72 pollution control program trust fund and that are recovered for
73 violation of requirements relating to water quantity may be used
74 only to purchase lands and make capital improvements associated
75 with surface water management, or other purposes consistent with
76 the requirements of this chapter for the management and storage
77 of surface water.

78 (7) To enforce ~~the provisions of~~ part IV of this chapter in
79 the same manner and to the same extent as provided in ss.
80 373.430, 403.121(1) and (2), 403.131, 403.141, and 403.161.

81 Section 5. Subsection (3) of section 373.209, Florida
82 Statutes, is amended to read:

83 373.209 Artesian wells; penalties for violation.—

84 (3) Any person who violates ~~any provision of~~ this section
85 is shall be subject to either:

86 (a) The remedial measures provided for in s. 373.436; or

87 (b) A civil penalty of \$150 ~~\$100~~ a day for each and every
88 day of such violation and for each and every act of violation.

89 The civil penalty may be recovered by the water management board
90 of the water management district in which the well is located or
91 by the department in a suit in a court of competent jurisdiction
92 in the county where the defendant resides, in the county of
93 residence of any defendant if there is more than one defendant,
94 or in the county where the violation took place. The place of
95 suit shall be selected by the board or department, and the suit,
96 by direction of the board or department, shall be instituted and
97 conducted in the name of the board or department by appropriate



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98 counsel. The payment of any such damages does not impair or
99 abridge any cause of action which any person may have against
100 the person violating ~~any provision of~~ this section.

101 Section 6. Subsections (2) through (5) of section 373.430,
102 Florida Statutes, are amended to read:

103 373.430 Prohibitions, violation, penalty, intent.—

104 (2) A person who ~~Whoever~~ commits a violation specified in
105 subsection (1) is liable for any damage caused and for civil
106 penalties as provided in s. 373.129.

107 (3) A ~~Any~~ person who willfully commits a violation
108 specified in paragraph (1)(a) commits ~~is guilty of~~ a felony of
109 the third degree, punishable as provided in ss. 775.082(3)(e)
110 and 775.083(1)(g), by a fine of not more than \$50,000 or by
111 imprisonment for 5 years, or by both, for each offense. Each day
112 during any portion of which such violation occurs constitutes a
113 separate offense.

114 (4) A ~~Any~~ person who commits a violation specified in
115 paragraph (1)(a) or paragraph (1)(b) due to reckless
116 indifference or gross careless disregard commits ~~is guilty of~~ a
117 misdemeanor of the second degree, punishable as provided in ss.
118 775.082(4)(b) and 775.083(1)(g), by a fine of not more than
119 \$10,000 ~~\$5,000~~ or 60 days in jail, or by both, for each offense.

120 (5) A ~~Any~~ person who willfully commits a violation
121 specified in paragraph (1)(b) or who commits a violation
122 specified in paragraph (1)(c) commits ~~is guilty of~~ a misdemeanor
123 of the first degree, punishable as provided in ss. 775.082(4)(a)
124 and 775.083(1)(g), by a fine of not more than \$10,000 or by 6
125 months in jail, or by both, for each offense.

126 Section 7. Paragraphs (a) and (e) of subsection (5) of



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127 section 376.065, Florida Statutes, are amended to read:

128 376.065 Operation of terminal facility without discharge
129 prevention and response certificate prohibited; penalty.—

130 (5) (a) A person who violates this section or the terms and
131 requirements of such certification commits a noncriminal
132 infraction. The civil penalty for any such infraction shall be
133 \$750 ~~\$500~~, except as otherwise provided in this section.

134 (e) A person who elects to appear before the county court
135 or who is required to so appear waives the limitations of the
136 civil penalty specified in paragraph (a). The court, after a
137 hearing, shall make a determination as to whether an infraction
138 has been committed. If the commission of the infraction is
139 proved, the court shall impose a civil penalty of \$750 ~~\$500~~.

140 Section 8. Paragraphs (a) and (e) of subsection (2) of
141 section 376.071, Florida Statutes, are amended to read:

142 376.071 Discharge contingency plan for vessels.—

143 (2) (a) A master of a vessel that violates subsection (1)
144 commits a noncriminal infraction and shall be cited for such
145 infraction. The civil penalty for such an infraction shall be
146 \$7,500 ~~\$5,000~~, except as otherwise provided in this subsection.

147 (e) A person who elects to appear before the county court
148 or who is required to appear waives the limitations of the civil
149 penalty specified in paragraph (a). The court, after a hearing,
150 shall make a determination as to whether an infraction has been
151 committed. If the commission of the infraction is proved, the
152 court shall impose a civil penalty of \$7,500 ~~\$5,000~~.

153 Section 9. Section 376.16, Florida Statutes, is amended to
154 read:

155 376.16 Enforcement and penalties.—



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156 (1) It is unlawful for any person to violate ~~any provision~~
157 ~~of~~ ss. 376.011-376.21 or any rule or order of the department
158 made pursuant to this act. A violation is ~~shall be~~ punishable by
159 a civil penalty of up to \$75,000 ~~\$50,000~~ per violation per day
160 to be assessed by the department. Each day during any portion of
161 which the violation occurs constitutes a separate offense. The
162 penalty provisions of this subsection do ~~shall~~ not apply to any
163 discharge promptly reported and removed by a person responsible,
164 in accordance with the rules and orders of the department, or to
165 any discharge of pollutants equal to or less than 5 gallons.

166 (2) In addition to the penalty provisions which may apply
167 under subsection (1), a person responsible for two or more
168 discharges of any pollutant reported pursuant to s. 376.12
169 within a 12-month period at the same facility commits a
170 noncriminal infraction and shall be cited by the department for
171 such infraction.

172 (a) For discharges of gasoline or diesel over 5 gallons,
173 the civil penalty for the second discharge shall be \$750 ~~\$500~~
174 and the civil penalty for each subsequent discharge within a 12-
175 month period shall be \$1,500 ~~\$1,000~~, except as otherwise
176 provided in this section.

177 (b) For discharges of any pollutant other than gasoline or
178 diesel, the civil penalty for a second discharge shall be \$3,750
179 ~~\$2,500~~ and the civil penalty for each subsequent discharge
180 within a 12-month period shall be \$7,500 ~~\$5,000~~, except as
181 otherwise provided in this section.

182 (3) A person responsible for two or more discharges of any
183 pollutant reported pursuant to s. 376.12 within a 12-month
184 period at the same facility commits a noncriminal infraction and



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185 shall be cited by the department for such infraction.

186 (a) For discharges of gasoline or diesel equal to or less
187 than 5 gallons, the civil penalty shall be \$75 ~~\$50~~ for each
188 discharge subsequent to the first.

189 (b) For discharges of pollutants other than gasoline or
190 diesel equal to or less than 5 gallons, the civil penalty shall
191 be \$150 ~~\$100~~ for each discharge subsequent to the first.

192 (4) A person charged with a noncriminal infraction pursuant
193 to subsection (2) or subsection (3) may:

194 (a) Pay the civil penalty;

195 (b) Post a bond equal to the amount of the applicable civil
196 penalty; or

197 (c) Sign and accept a citation indicating a promise to
198 appear before the county court.

199

200 The department employee authorized to issue these citations may
201 indicate on the citation the time and location of the scheduled
202 hearing and shall indicate the applicable civil penalty.

203 (5) Any person who willfully refuses to post bond or accept
204 and sign a citation commits a misdemeanor of the second degree,
205 punishable as provided in s. 775.082 or s. 775.083.

206 (6) After compliance with paragraph (4)(b) or paragraph
207 (4)(c), any person charged with a noncriminal infraction under
208 subsection (2) or subsection (3) may:

209 (a) Pay the civil penalty, either by mail or in person,
210 within 30 days after the date of receiving the citation; or

211 (b) If the person has posted bond, forfeit the bond by not
212 appearing at the designated time and location.

213



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214 A person cited for an infraction under this section who pays the
215 civil penalty or forfeits the bond has admitted the infraction
216 and waives the right to a hearing on the issue of commission of
217 the infraction. Such admission may not be used as evidence in
218 any other proceeding.

219 (7) Any person who elects to appear before the county court
220 or who is required to appear waives the limitations of the civil
221 penalties specified in subsection (2). The court, after a
222 hearing, shall make a determination as to whether an infraction
223 has been committed. If the commission of an infraction is
224 proved, the court may impose a civil penalty up to, but not
225 exceeding, \$750 ~~\$500~~ for the second discharge of gasoline or
226 diesel and a civil penalty up to, but not exceeding, \$1,500
227 ~~\$1,000~~ for each subsequent discharge of gasoline or diesel
228 within a 12-month period.

229 (8) Any person who elects to appear before the county court
230 or who is required to appear waives the limitations of the civil
231 penalties specified in subsection (2) or subsection (3). The
232 court, after a hearing, shall make a determination as to whether
233 an infraction has been committed. If the commission of an
234 infraction is proved, the court may impose a civil penalty up
235 to, but not exceeding, \$7,500 ~~\$5,000~~ for the second discharge of
236 pollutants other than gasoline or diesel and a civil penalty up
237 to, but not exceeding, \$15,000 ~~\$10,000~~ for each subsequent
238 discharge of pollutants other than gasoline or diesel within a
239 12-month period.

240 (9) At a hearing under this section, the commission of a
241 charged offense must be proved by the greater weight of the
242 evidence.



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243 (10) A person who is found by a hearing official to have
244 committed an infraction may appeal that finding to the circuit
245 court.

246 (11) Any person who has not posted bond and who neither
247 pays the applicable civil penalty, as specified in subsection
248 (2) or subsection (3) within 30 days of receipt of the citation
249 nor appears before the court commits a misdemeanor of the second
250 degree, punishable as provided in s. 775.082 or s. 775.083.

251 (12) Any person who makes or causes to be made a false
252 statement that ~~which~~ the person does not believe to be true in
253 response to requirements of ~~the provisions of~~ ss. 376.011-376.21
254 commits a felony of the second degree, punishable as provided in
255 s. 775.082, s. 775.083, or s. 775.084.

256 Section 10. Paragraph (a) of subsection (6) of section
257 376.25, Florida Statutes, is amended to read:

258 376.25 Gambling vessels; registration; required and
259 prohibited releases.-

260 (6) PENALTIES.-

261 (a) A person who violates this section is subject to a
262 civil penalty of not more than \$75,000 ~~\$50,000~~ for each
263 violation. Each day during any portion of which such violation
264 occurs constitutes a separate offense.

265 Section 11. Paragraph (a) of subsection (1) of section
266 377.37, Florida Statutes, is amended to read:

267 377.37 Penalties.-

268 (1) (a) Any person who violates ~~any provision of~~ this law or
269 any rule, regulation, or order of the division made under this
270 chapter or who violates the terms of any permit to drill for or
271 produce oil, gas, or other petroleum products referred to in s.



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272 377.242(1) or to store gas in a natural gas storage facility, or
273 any lessee, permitholder, or operator of equipment or facilities
274 used in the exploration for, drilling for, or production of oil,
275 gas, or other petroleum products, or storage of gas in a natural
276 gas storage facility, who refuses inspection by the division as
277 provided in this chapter, is liable to the state for any damage
278 caused to the air, waters, or property, including animal, plant,
279 or aquatic life, of the state and for reasonable costs and
280 expenses of the state in tracing the source of the discharge, in
281 controlling and abating the source and the pollutants, and in
282 restoring the air, waters, and property, including animal,
283 plant, and aquatic life, of the state. Furthermore, such person,
284 lessee, permitholder, or operator is subject to the judicial
285 imposition of a civil penalty in an amount of not more than
286 \$15,000 ~~\$10,000~~ for each offense. However, the court may receive
287 evidence in mitigation. Each day during any portion of which
288 such violation occurs constitutes a separate offense. This
289 section does not ~~Nothing herein shall~~ give the department the
290 right to bring an action on behalf of any private person.

291 Section 12. Subsection (2) of section 378.211, Florida
292 Statutes, is amended to read:

293 378.211 Violations; damages; penalties.—

294 (2) The department may institute a civil action in a court
295 of competent jurisdiction to impose and recover a civil penalty
296 for violation of this part or of any rule adopted or order
297 issued pursuant to this part. The penalty may ~~shall~~ not exceed
298 the following amounts, and the court shall consider evidence in
299 mitigation:

300 (a) For violations of a minor or technical nature, \$150



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301 ~~\$100~~ per violation.

302 (b) For major violations by an operator on which a penalty
303 has not been imposed under this paragraph during the previous 5
304 years, \$1,500 ~~\$1,000~~ per violation.

305 (c) For major violations not covered by paragraph (b),
306 \$7,500 ~~\$5,000~~ per violation.

307
308 Subject to ~~the provisions of~~ subsection (4), each day or any
309 portion thereof in which the violation continues shall
310 constitute a separate violation.

311 Section 13. Subsection (2) of section 403.086, Florida
312 Statutes, is amended to read:

313 403.086 Sewage disposal facilities; advanced and secondary
314 waste treatment.—

315 (2) Any facilities for sanitary sewage disposal shall
316 provide for secondary waste treatment and, in addition thereto,
317 advanced waste treatment as deemed necessary and ordered by the
318 Department of Environmental Protection. Failure to conform shall
319 be punishable by a civil penalty of \$750 ~~\$500~~ for each 24-hour
320 day or fraction thereof that such failure is allowed to continue
321 thereafter.

322 Section 14. Section 403.121, Florida Statutes, is amended
323 to read:

324 403.121 Enforcement; procedure; remedies.—The department
325 shall have the following judicial and administrative remedies
326 available to it for violations of this chapter, as specified in
327 s. 403.161(1).

328 (1) Judicial remedies:

329 (a) The department may institute a civil action in a court



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330 of competent jurisdiction to establish liability and to recover
331 damages for any injury to the air, waters, or property,
332 including animal, plant, and aquatic life, of the state caused
333 by any violation.

334 (b) The department may institute a civil action in a court
335 of competent jurisdiction to impose and to recover a civil
336 penalty for each violation in an amount of not more than \$15,000
337 ~~\$10,000~~ per offense. However, the court may receive evidence in
338 mitigation. Each day during any portion of which such violation
339 occurs constitutes a separate offense.

340 (c) Except as provided in paragraph (2)(c), it is ~~shall~~ not
341 ~~be~~ a defense to, or ground for dismissal of, these judicial
342 remedies for damages and civil penalties that the department has
343 failed to exhaust its administrative remedies, has failed to
344 serve a notice of violation, or has failed to hold an
345 administrative hearing prior to the institution of a civil
346 action.

347 (2) Administrative remedies:

348 (a) The department may institute an administrative
349 proceeding to establish liability and to recover damages for any
350 injury to the air, waters, or property, including animal, plant,
351 or aquatic life, of the state caused by any violation. The
352 department may order that the violator pay a specified sum as
353 damages to the state. Judgment for the amount of damages
354 determined by the department may be entered in any court having
355 jurisdiction thereof and may be enforced as any other judgment.

356 (b) If the department has reason to believe a violation has
357 occurred, it may institute an administrative proceeding to order
358 the prevention, abatement, or control of the conditions creating



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359 the violation or other appropriate corrective action. Except for
360 violations involving hazardous wastes, asbestos, or underground
361 injection, the department shall proceed administratively in all
362 cases in which the department seeks administrative penalties
363 that do not exceed \$50,000 ~~\$10,000~~ per assessment as calculated
364 in accordance with subsections (3), (4), (5), (6), and (7).
365 Pursuant to 42 U.S.C. s. 300g-2, the administrative penalty
366 assessed pursuant to subsection (3), subsection (4), or
367 subsection (5) against a public water system serving a
368 population of more than 10,000 shall be not less than \$1,000 per
369 day per violation. The department may ~~shall~~ not impose
370 administrative penalties in excess of \$50,000 ~~\$10,000~~ in a
371 notice of violation. The department may ~~shall~~ not have more than
372 one notice of violation seeking administrative penalties pending
373 against the same party at the same time unless the violations
374 occurred at a different site or the violations were discovered
375 by the department subsequent to the filing of a previous notice
376 of violation.

377 (c) An administrative proceeding shall be instituted by the
378 department's serving of a written notice of violation upon the
379 alleged violator by certified mail. If the department is unable
380 to effect service by certified mail, the notice of violation may
381 be hand delivered or personally served in accordance with
382 chapter 48. The notice shall specify the ~~provision of the law,~~
383 rule, regulation, permit, certification, or order of the
384 department alleged to be violated and the facts alleged to
385 constitute a violation thereof. An order for corrective action,
386 penalty assessment, or damages may be included with the notice.
387 When the department is seeking to impose an administrative



388 penalty for any violation by issuing a notice of violation, any
389 corrective action needed to correct the violation or damages
390 caused by the violation must be pursued in the notice of
391 violation or they are waived. However, an ~~no~~ order is not ~~shall~~
392 ~~become~~ effective until after service and an administrative
393 hearing, if requested within 20 days after service. Failure to
394 request an administrative hearing within this time period
395 constitutes ~~shall constitute~~ a waiver thereof, unless the
396 respondent files a written notice with the department within
397 this time period opting out of the administrative process
398 initiated by the department to impose administrative penalties.
399 Any respondent choosing to opt out of the administrative process
400 initiated by the department in an action that seeks the
401 imposition of administrative penalties must file a written
402 notice with the department within 20 days after service of the
403 notice of violation opting out of the administrative process. A
404 respondent's decision to opt out of the administrative process
405 does not preclude the department from initiating a state court
406 action seeking injunctive relief, damages, and the judicial
407 imposition of civil penalties.

408 (d) If a person timely files a petition challenging a
409 notice of violation, that person will thereafter be referred to
410 as the respondent. The hearing requested by the respondent shall
411 be held within 180 days after the department has referred the
412 initial petition to the Division of Administrative Hearings
413 unless the parties agree to a later date. The department has the
414 burden of proving with the preponderance of the evidence that
415 the respondent is responsible for the violation. ~~No~~
416 Administrative penalties should not be imposed unless the



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417 department satisfies that burden. Following the close of the
418 hearing, the administrative law judge shall issue a final order
419 on all matters, including the imposition of an administrative
420 penalty. When the department seeks to enforce that portion of a
421 final order imposing administrative penalties pursuant to s.
422 120.69, the respondent may ~~shall~~ not assert as a defense the
423 inappropriateness of the administrative remedy. The department
424 retains its final-order authority in all administrative actions
425 that do not request the imposition of administrative penalties.

426 (e) After filing a petition requesting a formal hearing in
427 response to a notice of violation in which the department
428 imposes an administrative penalty, a respondent may request that
429 a private mediator be appointed to mediate the dispute by
430 contacting the Florida Conflict Resolution Consortium within 10
431 days after receipt of the initial order from the administrative
432 law judge. The Florida Conflict Resolution Consortium shall pay
433 all of the costs of the mediator and for up to 8 hours of the
434 mediator's time per case at \$150 per hour. Upon notice from the
435 respondent, the Florida Conflict Resolution Consortium shall
436 provide to the respondent a panel of possible mediators from the
437 area in which the hearing on the petition would be heard. The
438 respondent shall select the mediator and notify the Florida
439 Conflict Resolution Consortium of the selection within 15 days
440 of receipt of the proposed panel of mediators. The Florida
441 Conflict Resolution Consortium shall provide all of the
442 administrative support for the mediation process. The mediation
443 must be completed at least 15 days before the final hearing date
444 set by the administrative law judge.

445 (f) In any administrative proceeding brought by the



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446 department, the prevailing party shall recover all costs as
447 provided in ss. 57.041 and 57.071. The costs must be included in
448 the final order. The respondent is the prevailing party when an
449 order is entered awarding no penalties to the department and
450 such order has not been reversed on appeal or the time for
451 seeking judicial review has expired. The respondent is ~~shall be~~
452 entitled to an award of attorney's fees if the administrative
453 law judge determines that the notice of violation issued by the
454 department seeking the imposition of administrative penalties
455 was not substantially justified as defined in s. 57.111(3)(e).
456 An ~~No~~ award of attorney's fees as provided by this subsection
457 may not ~~shall~~ exceed \$15,000.

458 (g) Nothing herein shall be construed as preventing any
459 other legal or administrative action in accordance with law.
460 Nothing in this subsection shall limit the department's
461 authority provided in ss. 403.131, 403.141, and this section to
462 judicially pursue injunctive relief. When the department
463 exercises its authority to judicially pursue injunctive relief,
464 penalties in any amount up to the statutory maximum sought by
465 the department must be pursued as part of the state court action
466 and not by initiating a separate administrative proceeding. The
467 department retains the authority to judicially pursue penalties
468 in excess of \$50,000 ~~\$10,000~~ for violations not specifically
469 included in the administrative penalty schedule, or for multiple
470 or multiday violations alleged to exceed a total of \$50,000
471 ~~\$10,000~~. The department also retains the authority provided in
472 ss. 403.131, 403.141, and this section to judicially pursue
473 injunctive relief and damages, if a notice of violation seeking
474 the imposition of administrative penalties has not been issued.



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475 The department has the authority to enter into a settlement,
476 either before or after initiating a notice of violation, and the
477 settlement may include a penalty amount different from the
478 administrative penalty schedule. Any case filed in state court
479 because it is alleged to exceed a total of \$50,000 ~~\$10,000~~ in
480 penalties may be settled in the court action for less than
481 \$50,000 ~~\$10,000~~.

482 (h) Chapter 120 applies ~~shall apply~~ to any administrative
483 action taken by the department or any delegated program pursuing
484 administrative penalties in accordance with this section.

485 (3) Except for violations involving hazardous wastes,
486 asbestos, or underground injection, administrative penalties
487 must be calculated according to the following schedule:

488 (a) For a drinking water contamination violation, the
489 department shall assess a penalty of \$3,000 ~~\$2,000~~ for a Maximum
490 Containment Level (MCL) violation; plus \$1,500 ~~\$1,000~~ if the
491 violation is for a primary inorganic, organic, or radiological
492 Maximum Contaminant Level or it is a fecal coliform bacteria
493 violation; plus \$1,500 ~~\$1,000~~ if the violation occurs at a
494 community water system; and plus \$1,500 ~~\$1,000~~ if any Maximum
495 Contaminant Level is exceeded by more than 100 percent. For
496 failure to obtain a clearance letter prior to placing a drinking
497 water system into service when the system would not have been
498 eligible for clearance, the department shall assess a penalty of
499 \$4,500 ~~\$3,000~~.

500 (b) For failure to obtain a required wastewater permit,
501 other than a permit required for surface water discharge, the
502 department shall assess a penalty of \$1,500 ~~\$1,000~~. For a
503 domestic or industrial wastewater violation not involving a



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504 surface water or groundwater quality violation, the department
505 shall assess a penalty of \$3,000 ~~\$2,000~~ for an unpermitted or
506 unauthorized discharge or effluent-limitation exceedance. For an
507 unpermitted or unauthorized discharge or effluent-limitation
508 exceedance that resulted in a surface water or groundwater
509 quality violation, the department shall assess a penalty of
510 \$7,500 ~~\$5,000~~. Each day the cause of an unauthorized discharge
511 of domestic wastewater is not addressed constitutes a separate
512 offense.

513 (c) For a dredge and fill or stormwater violation, the
514 department shall assess a penalty of \$1,500 ~~\$1,000~~ for
515 unpermitted or unauthorized dredging or filling or unauthorized
516 construction of a stormwater management system against the
517 person or persons responsible for the illegal dredging or
518 filling, or unauthorized construction of a stormwater management
519 system plus \$3,000 ~~\$2,000~~ if the dredging or filling occurs in
520 an aquatic preserve, an Outstanding Florida Water, a
521 conservation easement, or a Class I or Class II surface water,
522 plus \$1,500 ~~\$1,000~~ if the area dredged or filled is greater than
523 one-quarter acre but less than or equal to one-half acre, and
524 plus \$1,500 ~~\$1,000~~ if the area dredged or filled is greater than
525 one-half acre but less than or equal to one acre. The
526 administrative penalty schedule does ~~shall~~ not apply to a dredge
527 and fill violation if the area dredged or filled exceeds one
528 acre. The department retains the authority to seek the judicial
529 imposition of civil penalties for all dredge and fill violations
530 involving more than one acre. The department shall assess a
531 penalty of \$4,500 ~~\$3,000~~ for the failure to complete required
532 mitigation, failure to record a required conservation easement,



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533 or for a water quality violation resulting from dredging or
534 filling activities, stormwater construction activities or
535 failure of a stormwater treatment facility. For stormwater
536 management systems serving less than 5 acres, the department
537 shall assess a penalty of \$3,000 ~~\$2,000~~ for the failure to
538 properly or timely construct a stormwater management system. In
539 addition to the penalties authorized in this subsection, the
540 department shall assess a penalty of \$7,500 ~~\$5,000~~ per violation
541 against the contractor or agent of the owner or tenant that
542 conducts unpermitted or unauthorized dredging or filling. For
543 purposes of this paragraph, the preparation or signing of a
544 permit application by a person currently licensed under chapter
545 471 to practice as a professional engineer does ~~shall~~ not make
546 that person an agent of the owner or tenant.

547 (d) For mangrove trimming or alteration violations, the
548 department shall assess a penalty of \$7,500 ~~\$5,000~~ per violation
549 against the contractor or agent of the owner or tenant that
550 conducts mangrove trimming or alteration without a permit as
551 required by s. 403.9328. For purposes of this paragraph, the
552 preparation or signing of a permit application by a person
553 currently licensed under chapter 471 to practice as a
554 professional engineer does ~~shall~~ not make that person an agent
555 of the owner or tenant.

556 (e) For solid waste violations, the department shall assess
557 a penalty of \$3,000 ~~\$2,000~~ for the unpermitted or unauthorized
558 disposal or storage of solid waste; plus \$1,000 if the solid
559 waste is Class I or Class III (excluding yard trash) or if the
560 solid waste is construction and demolition debris in excess of
561 20 cubic yards, plus \$1,500 ~~\$1,000~~ if the waste is disposed of



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562 or stored in any natural or artificial body of water or within
563 500 feet of a potable water well, plus \$1,500 ~~\$1,000~~ if the
564 waste contains PCB at a concentration of 50 parts per million or
565 greater; untreated biomedical waste; friable asbestos greater
566 than 1 cubic meter which is not wetted, bagged, and covered;
567 used oil greater than 25 gallons; or 10 or more lead acid
568 batteries. The department shall assess a penalty of \$4,500
569 ~~\$3,000~~ for failure to properly maintain leachate control;
570 unauthorized burning; failure to have a trained spotter on duty
571 at the working face when accepting waste; or failure to provide
572 access control for three consecutive inspections. The department
573 shall assess a penalty of \$3,000 ~~\$2,000~~ for failure to construct
574 or maintain a required stormwater management system.

575 (f) For an air emission violation, the department shall
576 assess a penalty of \$1,500 ~~\$1,000~~ for an unpermitted or
577 unauthorized air emission or an air-emission-permit exceedance,
578 ~~plus \$1,000 if the emission results in an air quality violation,~~
579 plus \$4,500 ~~\$3,000~~ if the emission was from a major source and
580 the source was major for the pollutant in violation; plus \$1,500
581 ~~\$1,000~~ if the emission was more than 150 percent of the
582 allowable level.

583 (g) For storage tank system and petroleum contamination
584 violations, the department shall assess a penalty of \$7,500
585 ~~\$5,000~~ for failure to empty a damaged storage system as
586 necessary to ensure that a release does not occur until repairs
587 to the storage system are completed; when a release has occurred
588 from that storage tank system; for failure to timely recover
589 free product; or for failure to conduct remediation or
590 monitoring activities until a no-further-action or site-



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591 rehabilitation completion order has been issued. The department
592 shall assess a penalty of \$4,500 ~~\$3,000~~ for failure to timely
593 upgrade a storage tank system. The department shall assess a
594 penalty of \$3,000 ~~\$2,000~~ for failure to conduct or maintain
595 required release detection; failure to timely investigate a
596 suspected release from a storage system; depositing motor fuel
597 into an unregistered storage tank system; failure to timely
598 assess or remediate petroleum contamination; or failure to
599 properly install a storage tank system. The department shall
600 assess a penalty of \$1,500 ~~\$1,000~~ for failure to properly
601 operate, maintain, or close a storage tank system.

602 (4) In an administrative proceeding, in addition to the
603 penalties that may be assessed under subsection (3), the
604 department shall assess administrative penalties according to
605 the following schedule:

606 (a) For failure to satisfy financial responsibility
607 requirements or for violation of s. 377.371(1), \$7,500 ~~\$5,000~~.

608 (b) For failure to install, maintain, or use a required
609 pollution control system or device, \$6,000 ~~\$4,000~~.

610 (c) For failure to obtain a required permit before
611 construction or modification, \$4,500 ~~\$3,000~~.

612 (d) For failure to conduct required monitoring or testing;
613 failure to conduct required release detection; or failure to
614 construct in compliance with a permit, \$3,000 ~~\$2,000~~.

615 (e) For failure to maintain required staff to respond to
616 emergencies; failure to conduct required training; failure to
617 prepare, maintain, or update required contingency plans; failure
618 to adequately respond to emergencies to bring an emergency
619 situation under control; or failure to submit required



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620 notification to the department, \$1,500 ~~\$1,000~~.

621 (f) Except as provided in subsection (2) with respect to
622 public water systems serving a population of more than 10,000,
623 for failure to prepare, submit, maintain, or use required
624 reports or other required documentation, \$750 ~~\$500~~.

625 (5) Except as provided in subsection (2) with respect to
626 public water systems serving a population of more than 10,000,
627 for failure to comply with any other departmental regulatory
628 statute or rule requirement not otherwise identified in this
629 section, the department may assess a penalty of \$1,000 ~~\$500~~.

630 (6) For each additional day during which a violation
631 occurs, the administrative penalties in subsections ~~subsection~~
632 (3), ~~subsection~~ (4), and ~~subsection~~ (5) may be assessed per day
633 per violation.

634 (7) The history of noncompliance of the violator for any
635 previous violation resulting in an executed consent order, but
636 not including a consent order entered into without a finding of
637 violation, or resulting in a final order or judgment after the
638 effective date of this law involving the imposition of \$3,000
639 ~~\$2,000~~ or more in penalties shall be taken into consideration in
640 the following manner:

641 (a) One previous such violation within 5 years prior to the
642 filing of the notice of violation will result in a 25-percent
643 per day increase in the scheduled administrative penalty.

644 (b) Two previous such violations within 5 years prior to
645 the filing of the notice of violation will result in a 50-
646 percent per day increase in the scheduled administrative
647 penalty.

648 (c) Three or more previous such violations within 5 years



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649 prior to the filing of the notice of violation will result in a
650 100-percent per day increase in the scheduled administrative
651 penalty.

652 (8) The direct economic benefit gained by the violator from
653 the violation, where consideration of economic benefit is
654 provided by Florida law or required by federal law as part of a
655 federally delegated or approved program, shall be added to the
656 scheduled administrative penalty. The total administrative
657 penalty, including any economic benefit added to the scheduled
658 administrative penalty, may ~~shall~~ not exceed \$15,000 ~~\$10,000~~.

659 (9) The administrative penalties assessed for any
660 particular violation may ~~shall~~ not exceed \$7,500 ~~\$5,000~~ against
661 any one violator, unless the violator has a history of
662 noncompliance, the economic benefit of the violation as
663 described in subsection (8) exceeds \$7,500 ~~\$5,000~~, or there are
664 multiday violations. The total administrative penalties may
665 ~~shall~~ not exceed \$50,000 ~~\$10,000~~ per assessment for all
666 violations attributable to a specific person in the notice of
667 violation.

668 (10) The administrative law judge may receive evidence in
669 mitigation. The penalties identified in subsections ~~subsection~~
670 (3), ~~subsection~~ (4), and ~~subsection~~ (5) may be reduced up to 50
671 percent by the administrative law judge for mitigating
672 circumstances, including good faith efforts to comply prior to
673 or after discovery of the violations by the department. Upon an
674 affirmative finding that the violation was caused by
675 circumstances beyond the reasonable control of the respondent
676 and could not have been prevented by respondent's due diligence,
677 the administrative law judge may further reduce the penalty.



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678 (11) Penalties collected pursuant to this section shall be
679 deposited into the Water Quality Assurance Trust Fund or other
680 trust fund designated by statute and shall be used to fund the
681 restoration of ecosystems, or polluted areas of the state, as
682 defined by the department, to their condition before pollution
683 occurred. The Florida Conflict Resolution Consortium may use a
684 portion of the fund to administer the mediation process provided
685 in paragraph (2)(e) and to contract with private mediators for
686 administrative penalty cases.

687 (12) The purpose of the administrative penalty schedule and
688 process is to provide a more predictable and efficient manner
689 for individuals and businesses to resolve relatively minor
690 environmental disputes. Subsections (3)-(7) may ~~Subsection (3),~~
691 ~~subsection (4), subsection (5), subsection (6), or subsection~~
692 ~~(7) shall~~ not be construed as limiting a state court in the
693 assessment of damages. The administrative penalty schedule does
694 not apply to the judicial imposition of civil penalties in state
695 court as provided in this section.

696 Section 15. Subsection (1) of section 403.141, Florida
697 Statutes, is amended to read:

698 403.141 Civil liability; joint and several liability.—

699 (1) A person who ~~Whoever~~ commits a violation specified in
700 s. 403.161(1) is liable to the state for any damage caused to
701 the air, waters, or property, including animal, plant, or
702 aquatic life, of the state and for reasonable costs and expenses
703 of the state in tracing the source of the discharge, in
704 controlling and abating the source and the pollutants, and in
705 restoring the air, waters, and property, including animal,
706 plant, and aquatic life, of the state to their former condition,



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707 and furthermore is subject to the judicial imposition of a civil
708 penalty for each offense in an amount of not more than \$15,000
709 ~~\$10,000~~ per offense. However, the court may receive evidence in
710 mitigation. Each day during any portion of which such violation
711 occurs constitutes a separate offense. If a violation is an
712 unauthorized discharge of domestic wastewater, each day the
713 cause of the violation is not addressed constitutes a separate
714 offense until the violation is resolved by order or judgment.
715 Nothing herein gives ~~shall give~~ the department the right to
716 bring an action on behalf of any private person.

717 Section 16. Subsections (2) through (5) of section 403.161,
718 Florida Statutes, are amended to read:

719 403.161 Prohibitions, violation, penalty, intent.—

720 (2) A person who ~~Whoever~~ commits a violation specified in
721 subsection (1) is liable to the state for any damage caused and
722 for civil penalties as provided in s. 403.141.

723 (3) A ~~Any~~ person who willfully commits a violation
724 specified in paragraph (1)(a) commits ~~is guilty of~~ a felony of
725 the third degree, punishable as provided in ss. 775.082(3)(e)
726 and 775.083(1)(g) by a fine of not more than \$50,000 or by
727 imprisonment for 5 years, or by both, for each offense. Each day
728 during any portion of which such violation occurs constitutes a
729 separate offense.

730 (4) A ~~Any~~ person who commits a violation specified in
731 paragraph (1)(a) or paragraph (1)(b) due to reckless
732 indifference or gross careless disregard commits ~~is guilty of~~ a
733 misdemeanor of the second degree, punishable as provided in ss.
734 775.082(4)(b) and 775.083(1)(g) by a fine of not more than
735 \$10,000 ~~\$5,000~~ or by 60 days in jail, or by both, for each



255866

736 offense.

737 (5) A ~~Any~~ person who willfully commits a violation
738 specified in paragraph (1)(b) or who commits a violation
739 specified in paragraph (1)(c) commits ~~is guilty of~~ a misdemeanor
740 of the first degree punishable as provided in ss. 775.082(4)(a)
741 and 775.083(1)(g) by a fine of not more than \$10,000 or by 6
742 months in jail, or by both for each offense.

743 Section 17. Paragraph (a) of subsection (6) of section
744 403.413, Florida Statutes, is amended to read:

745 403.413 Florida Litter Law.—

746 (6) PENALTIES; ENFORCEMENT.—

747 (a) Any person who dumps litter in violation of subsection
748 (4) in an amount not exceeding 15 pounds in weight or 27 cubic
749 feet in volume and not for commercial purposes commits ~~is guilty~~
750 ~~of~~ a noncriminal infraction, punishable by a civil penalty of
751 \$150 ~~\$100~~, from which \$50 shall be deposited into the Solid
752 Waste Management Trust Fund to be used for the solid waste
753 management grant program pursuant to s. 403.7095. In addition,
754 the court may require the violator to pick up litter or perform
755 other labor commensurate with the offense committed.

756 Section 18. Subsection (5) of section 403.7234, Florida
757 Statutes, is amended to read:

758 403.7234 Small quantity generator notification and
759 verification program.—

760 (5) Any small quantity generator who does not comply with
761 the requirements of subsection (4) and who has received a
762 notification and survey in person or through one certified
763 letter from the county is subject to a fine of between \$75 ~~\$50~~
764 and \$150 ~~\$100~~ per day for a maximum of 100 days. The county may



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765 collect such fines and deposit them in its general revenue fund.
766 Fines collected by the county shall be used to carry out the
767 notification and verification procedure established in this
768 section. If there are excess funds after the notification and
769 verification procedures have been completed, such funds shall be
770 used for hazardous and solid waste management purposes only.

771 Section 19. Subsection (3) of section 403.726, Florida
772 Statutes, is amended to read:

773 403.726 Abatement of imminent hazard caused by hazardous
774 substance.—

775 (3) An imminent hazard exists if any hazardous substance
776 creates an immediate and substantial danger to human health,
777 safety, or welfare or to the environment. The department may
778 institute action in its own name, using the procedures and
779 remedies of s. 403.121 or s. 403.131, to abate an imminent
780 hazard. However, the department is authorized to recover a civil
781 penalty of not more than \$37,500 ~~\$25,000~~ for each day of
782 continued violation. Whenever serious harm to human health,
783 safety, and welfare; the environment; or private or public
784 property may occur prior to completion of an administrative
785 hearing or other formal proceeding that which might be initiated
786 to abate the risk of serious harm, the department may obtain, ex
787 parte, an injunction without paying filing and service fees
788 prior to the filing and service of process.

789 Section 20. Paragraph (a) of subsection (3) of section
790 403.727, Florida Statutes, is amended to read:

791 403.727 Violations; defenses, penalties, and remedies.—

792 (3) Violations of the provisions of this act are punishable
793 as follows:



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794 (a) Any person who violates ~~the provisions of~~ this act, the
795 rules or orders of the department, or the conditions of a permit
796 is liable to the state for any damages specified in s. 403.141
797 and for a civil penalty of not more than \$75,000 ~~\$50,000~~ for
798 each day of continued violation, except as otherwise provided
799 herein. The department may revoke any permit issued to the
800 violator. In any action by the department against a small
801 hazardous waste generator for the improper disposal of hazardous
802 wastes, a rebuttable presumption of improper disposal shall be
803 created if the generator was notified pursuant to s. 403.7234;
804 the generator shall then have the burden of proving that the
805 disposal was proper. If the generator was not so notified, the
806 burden of proving improper disposal shall be placed upon the
807 department.

808 Section 21. Subsection (8) of section 403.93345, Florida
809 Statutes, is amended to read:

810 403.93345 Coral reef protection.—

811 (8) In addition to the compensation described in subsection
812 (5), the department may assess, per occurrence, civil penalties
813 according to the following schedule:

814 (a) For any anchoring of a vessel on a coral reef or for
815 any other damage to a coral reef totaling less than or equal to
816 an area of 1 square meter, \$225 ~~\$150~~, provided that a
817 responsible party who has anchored a recreational vessel as
818 defined in s. 327.02 which is lawfully registered or exempt from
819 registration pursuant to chapter 328 is issued, at least once, a
820 warning letter in lieu of penalty; with aggravating
821 circumstances, an additional \$225 ~~\$150~~; occurring within a state
822 park or aquatic preserve, an additional \$225 ~~\$150~~.



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823 (b) For damage totaling more than an area of 1 square meter
824 but less than or equal to an area of 10 square meters, \$450 ~~\$300~~
825 per square meter; with aggravating circumstances, an additional
826 \$450 ~~\$300~~ per square meter; occurring within a state park or
827 aquatic preserve, an additional \$450 ~~\$300~~ per square meter.

828 (c) For damage exceeding an area of 10 square meters,
829 \$1,500 ~~\$1,000~~ per square meter; with aggravating circumstances,
830 an additional \$1,500 ~~\$1,000~~ per square meter; occurring within a
831 state park or aquatic preserve, an additional \$1,500 ~~\$1,000~~ per
832 square meter.

833 (d) For a second violation, the total penalty may be
834 doubled.

835 (e) For a third violation, the total penalty may be
836 tripled.

837 (f) For any violation after a third violation, the total
838 penalty may be quadrupled.

839 (g) The total of penalties levied may not exceed \$375,000
840 ~~\$250,000~~ per occurrence.

841 Section 22. Subsection (5) of s. 823.11, Florida Statutes,
842 is reenacted for the purpose of incorporating the amendment made
843 by this act to s. 376.16, Florida Statutes, in a reference
844 thereto.

845 Section 23. Subsection (5) of s. 403.077, subsection (2) of
846 s. 403.131, paragraph (d) of subsection (3) of s. 403.4154, and
847 subsection (5) of s. 403.860, Florida Statutes, are reenacted
848 for the purpose of incorporating the amendment made by this act
849 to s. 403.121, Florida Statutes, in references thereto.

850 Section 24. Subsection (10) of s. 403.708, subsection (7)
851 of s. 403.7191, and s. 403.811, Florida Statutes, are reenacted



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852 for the purpose of incorporating the amendment made by this act
853 to s. 403.141, Florida Statutes, in references thereto.

854 Section 25. Subsection (2) of s. 403.7255, Florida
855 Statutes, is reenacted for the purpose of incorporating the
856 amendment made by this act to s. 403.161, Florida Statutes, in a
857 reference thereto.

858 Section 26. Subsection (8) of s. 403.7186, Florida
859 Statutes, is reenacted for the purpose of incorporating the
860 amendments made by this act to ss. 403.141 and 403.161, Florida
861 Statutes, in references thereto.

862 Section 27. This act shall take effect July 1, 2020.

863

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

865 And the title is amended as follows:

866 Delete everything before the enacting clause
867 and insert:

868 A bill to be entitled
869 An act relating to environmental enforcement; amending
870 s. 161.054, F.S.; revising administrative penalties
871 for violations of certain provisions relating to beach
872 and shore construction and activities; making
873 technical changes; amending ss. 258.397, 258.46, and
874 376.25, F.S.; revising civil penalties for violations
875 of certain provisions relating to the Biscayne Bay
876 Aquatic Preserve, aquatic preserves, and the Clean
877 Ocean Act, respectively; providing that each day that
878 certain violations occur constitutes a separate
879 offense; making technical changes; amending ss.
880 373.129, 373.209, 376.065, 376.071, 376.16, 377.37,



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881 378.211, 403.086, 403.413, 403.7234, and 403.93345,
882 F.S.; revising civil penalties for violations of
883 certain provisions relating to water resources,
884 artesian wells, terminal facilities, discharge
885 contingency plans for vessels, the Pollutant Discharge
886 Prevention and Control Act, regulation of oil and gas
887 resources, the Phosphate Land Reclamation Act, sewage
888 disposal facilities, dumping litter, small quantity
889 generators, and coral reef protection, respectively;
890 making technical changes; amending ss. 373.430 and
891 403.161, F.S.; revising criminal penalties for
892 violations of certain provisions relating to pollution
893 and the environment; making technical changes;
894 amending s. 403.121, F.S.; revising civil and
895 administrative penalties for violations of certain
896 provisions relating to pollution and the environment;
897 providing that each day that certain violations occur
898 constitutes a separate offense; increasing the amount
899 of penalties that can be assessed administratively;
900 making technical changes; amending s. 403.141, F.S.;
901 revising civil penalties for violations of certain
902 provisions relating to pollution and the environment;
903 providing that each day that the cause of unauthorized
904 discharges of domestic wastewater is not addressed
905 constitutes a separate offense until the violation is
906 resolved by order or judgment; amending ss. 403.726
907 and 403.727, F.S.; revising civil penalties for
908 violations of certain provisions relating to hazardous
909 waste; making technical changes; reenacting s.



255866

910 823.11(5), F.S., to incorporate the amendment made to
911 s. 376.16, F.S., in a reference thereto; reenacting
912 ss. 403.077(5), 403.131(2), 403.4154(3)(d), and
913 403.860(5), F.S., to incorporate the amendment made to
914 s. 403.121, F.S., in a reference thereto; reenacting
915 ss. 403.708(10), 403.7191(7), and 403.811, F.S., to
916 incorporate the amendment made to s. 403.141, F.S., in
917 a reference thereto; reenacting s. 403.7255(2), F.S.,
918 to incorporate the amendment made to s. 403.161, F.S.,
919 in a reference thereto; reenacting s. 403.7186(8),
920 F.S., to incorporate the amendments made to ss.
921 403.141 and 403.161, F.S., in references thereto;
922 providing an effective date.



676938

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2020	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Brandes) recommended the following:

Senate Amendment to Amendment (255866) (with title amendment)

Between lines 840 and 841
insert:

Section 22. Section 125.569, Florida Statutes, is created
to read:

125.569 Sanitary sewer lateral inspection program.—

(1) As used in this section, the term "sanitary sewer lateral" means a privately owned pipeline connecting a property



676938

11 to the main sewer line which is maintained and repaired by the
12 property owner.

13 (2) By July 1, 2022, counties are encouraged to establish
14 an evaluation and rehabilitation program for sanitary sewer
15 laterals on residential and commercial properties within the
16 county's jurisdiction to identify and reduce extraneous flow
17 from leaking sanitary sewer laterals. At a minimum, the program
18 may do all of the following:

19 (a) Establish a system to identify defective, damaged, or
20 deteriorated sanitary sewer laterals on residential and
21 commercial properties within the jurisdiction of the county.

22 (b) Consider economical methods for a property owner to
23 repair or replace a defective, damaged, or deteriorated sanitary
24 sewer lateral.

25 (c) Establish and maintain a publicly accessible database
26 to store information concerning properties where a defective,
27 damaged, or deteriorated sanitary sewer lateral has been
28 identified. For each property, the database must include, but is
29 not limited to, the address of the property, the names of any
30 persons the county notified concerning the faulty sanitary sewer
31 lateral, and the date and method of such notification.

32 Section 23. Section 166.0481, Florida Statutes, is created
33 to read:

34 166.0481 Sanitary sewer lateral inspection program.-

35 (1) As used in this section, the term "sanitary sewer
36 lateral" means a privately owned pipeline connecting a property
37 to the main sewer line which is maintained and repaired by the
38 property owner.

39 (2) By July 1, 2022, municipalities are encouraged to



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40 establish an evaluation and rehabilitation program for sanitary
41 sewer laterals on residential and commercial properties within
42 the municipality's jurisdiction to identify and reduce
43 extraneous flow from leaking sanitary sewer laterals. At a
44 minimum, the program may do all of the following:

45 (a) Establish a system to identify defective, damaged, or
46 deteriorated sanitary sewer laterals on residential and
47 commercial properties within the jurisdiction of the
48 municipality.

49 (b) Consider economical methods for a property owner to
50 repair or replace a defective, damaged, or deteriorated sanitary
51 sewer lateral.

52 (c) Establish and maintain a publicly accessible database
53 to store information concerning properties where a defective,
54 damaged, or deteriorated sanitary sewer lateral has been
55 identified. For each property, the database must include, but is
56 not limited to, the address of the property, the names of any
57 persons the municipality notified concerning the faulty sanitary
58 sewer lateral, and the date and method of such notification.

59 Section 24. Section 689.301, Florida Statutes, is created
60 to read:

61 689.301 Disclosure of known defects in sanitary sewer
62 laterals to prospective purchaser.—Before executing a contract
63 for sale, a seller of real property shall disclose to a
64 prospective purchaser any defects in the property's sanitary
65 sewer lateral which are known to the seller. As used in this
66 section, the term "sanitary sewer lateral" means the privately
67 owned pipeline connecting a property to the main sewer line.
68



676938

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

70 And the title is amended as follows:

71 Delete line 909

72 and insert:

73 waste; making technical changes; creating ss. 125.569
74 and 166.0481, F.S.; defining the term "sanitary sewer
75 lateral"; encouraging counties and municipalities,
76 respectively, to establish a sanitary sewer lateral
77 inspection program by a specified date; providing
78 parameters for such a program; creating s. 689.301,
79 F.S.; requiring a seller of real property to disclose
80 any known defects in the property's sanitary sewer
81 lateral; defining the term "sanitary sewer lateral";
82 reenacting s.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Commerce and Tourism, *Chair*
Finance and Tax, *Vice Chair*
Appropriations Subcommittee on Criminal
and Civil Justice
Banking and Insurance

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR JOE GRUTERS

23rd District

January 30, 2020

The Honorable Jeff Brandes, Chair
Appropriations Subcommittee on Criminal and Civil Justice
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Brandes:

I am writing to request that Senate Bill 1450, Environmental Enforcement be placed on the agenda of the next Appropriations Subcommittee on Criminal and Civil Justice meeting.

Should you have any questions regarding this bill, please do not hesitate to reach out to me. Thank you for your time and consideration.

Warm regards,

A handwritten signature in black ink that reads "Joe Gruters". The signature is written in a cursive, flowing style.

Joe Gruters

cc: PK Jameson, Staff Director
Lisa Roberts, Committee Administrative Assistant

REPLY TO:

- 381 Interstate Boulevard, Sarasota, Florida 34240 (941) 378-6309
- 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/20
Meeting Date

1450
Bill Number (if applicable)

8 2558660
Amendment Barcode (if applicable)

Topic SB 1450

Name Alex Bickley

Job Title Director of Leg Affairs

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing FL Dept of Environmental Protection

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/20

Meeting Date

1450

Bill Number (if applicable)

Topic Environmental Enforcement

Amendment Barcode (if applicable)

Name Adrian Moore

Job Title Vice President

Address 1132 Crescent St

Phone 661/477-3107

Street

Sarasota

FL

State

34242

Zip

Email adrianmoore@reason.org

Speaking: For Against Information

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

Representing Reason Foundation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/20
Meeting Date

1450
Bill Number (if applicable)

Topic SB 1450

Amendment Barcode (if applicable)

Name Alex Bickley

Job Title Director of Legislative Affairs

Address _____
Street

Phone _____

City _____ State _____ Zip _____

Email _____

Speaking: For Against Information

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

Representing FL Dept. of Environmental Protection

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

CSA 37 503

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/18/20
Meeting Date

1450
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title _____

Address 104-2 CREST ST
Street

Phone 941-323-2407

TCM FL 32301
City State Zip

Email cullen@senate.fl.gov

Speaking: For Against Information

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

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-18-20

Meeting Date

SB 1450

Bill Number (if applicable)

Topic Environmental Enforcement

Amendment Barcode (if applicable)

Name Jane West

Job Title Policy + Planning Director

Address 24 Cathedral Place

Phone 904-671-4008

St. Aug FL 32084
City State Zip

Email jwest@1000ofut.org

Speaking: For Against Information

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

Representing 1000 Friends of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/2020

Meeting Date

1450

Bill Number (if applicable)

Topic Env. Enforcement

255966

Amendment Barcode (if applicable)

Name Jim Spratt

Job Title _____

Address PO Box 10011

Phone 850 278 1296

Street

TLH

FL

32302

Email jspratt@senator.gov

City

State

Zip

Speaking: For Against Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

By the Committee on Environment and Natural Resources; and
Senator Gruters

592-02656A-20

20201450c1

1 A bill to be entitled
2 An act relating to environmental enforcement; amending
3 s. 161.054, F.S.; revising administrative penalties
4 for violations of certain provisions relating to beach
5 and shore construction and activities; providing that
6 each day that certain violations occur or are not
7 remediated constitutes a separate offense until such
8 violations are resolved by order or judgment; making
9 technical changes; amending ss. 258.397, 258.46,
10 373.129, 376.16, 376.25, 377.37, 378.211, and 403.141,
11 F.S.; revising civil penalties for violations of
12 certain provisions relating to the Biscayne Bay
13 Aquatic Preserve, aquatic preserves, water resources,
14 the Pollutant Discharge Prevention and Control Act,
15 the Clean Ocean Act, regulation of oil and gas
16 resources, the Phosphate Land Reclamation Act, and
17 other provisions relating to pollution and the
18 environment, respectively; providing that each day
19 that certain violations occur or are not remediated
20 constitutes a separate offense until such violations
21 are resolved by order or judgment; making technical
22 changes; amending ss. 373.209, 376.065, 376.071,
23 403.086, 403.413, 403.7234, and 403.93345, F.S.;
24 revising civil penalties for violations of certain
25 provisions relating to artesian wells, terminal
26 facilities, discharge contingency plans for vessels,
27 sewage disposal facilities, dumping litter, small
28 quantity generators, and coral reef protection,
29 respectively; making technical changes; amending ss.

592-02656A-20

20201450c1

30 373.430 and 403.161, F.S.; revising criminal penalties
31 for violations of certain provisions relating to
32 pollution and the environment; providing that each day
33 that certain violations occur or are not remediated
34 constitutes a separate offense until such violations
35 are resolved by order or judgment; making technical
36 changes; amending s. 403.121, F.S.; revising civil and
37 administrative penalties for violations of certain
38 provisions relating to pollution and the environment;
39 providing that each day that certain violations occur
40 or are not remediated constitutes a separate offense
41 until such violations are resolved by order or
42 judgment; increasing the amount of penalties that can
43 be assessed administratively; making technical
44 changes; amending ss. 403.726 and 403.727, F.S.;
45 revising civil penalties for violations of certain
46 provisions relating to hazardous waste for each day
47 that certain violations occur and are not resolved by
48 order or judgment; making technical changes;
49 reenacting s. 823.11(5), F.S., to incorporate the
50 amendment made to s. 376.16, F.S., in a reference
51 thereto; reenacting ss. 403.077(5), 403.131(2),
52 403.4154(3)(d), and 403.860(5), F.S., to incorporate
53 the amendment made to s. 403.121, F.S., in a reference
54 thereto; reenacting ss. 403.708(10), 403.7191(7), and
55 403.811, F.S., to incorporate the amendment made to s.
56 403.141, F.S., in a reference thereto; reenacting s.
57 403.7255(2), F.S., to incorporate the amendment made
58 to s. 403.161, F.S., in a reference thereto;

592-02656A-20

20201450c1

59 reenacting s. 403.7186(8), F.S., to incorporate the
60 amendment made to ss. 403.141 and 403.161, F.S., in
61 references thereto; providing an effective date.
62

63 Be It Enacted by the Legislature of the State of Florida:
64

65 Section 1. Subsection (1) of section 161.054, Florida
66 Statutes, is amended to read:

67 161.054 Administrative fines; liability for damage; liens.-

68 (1) In addition to the penalties provided for in ss.
69 161.052, 161.053, and 161.121, any person, firm, corporation, or
70 governmental agency, or agent thereof, refusing to comply with
71 or willfully violating ~~any of the provisions of~~ s. 161.041, s.
72 161.052, or s. 161.053, or any rule or order prescribed by the
73 department thereunder, shall incur a fine for each offense in an
74 amount up to \$15,000 ~~\$10,000~~ to be fixed, imposed, and collected
75 by the department. Until a violation is resolved by order or
76 judgment, each day during any portion of which such violation
77 occurs or is not remediated constitutes a separate offense.

78 Section 2. Subsection (7) of section 258.397, Florida
79 Statutes, is amended to read:

80 258.397 Biscayne Bay Aquatic Preserve.-

81 (7) ENFORCEMENT. ~~The provisions of~~ This section may be
82 enforced in accordance with ~~the provisions of~~ s. 403.412. In
83 addition, the Department of Legal Affairs may ~~is authorized to~~
84 bring an action for civil penalties of \$7,500 ~~\$5,000~~ per day
85 against any person, natural or corporate, who violates ~~the~~
86 ~~provisions of~~ this section or any rule or regulation issued
87 hereunder. Until a violation is resolved by order or judgment,

592-02656A-20

20201450c1

88 each day during any portion of which such violation occurs or is
89 not remediated constitutes a separate offense. Enforcement of
90 applicable state regulations shall be supplemented by the Miami-
91 Dade County Department of Environmental Resources Management
92 through the creation of a full-time enforcement presence along
93 the Miami River.

94 Section 3. Section 258.46, Florida Statutes, is amended to
95 read:

96 258.46 Enforcement; violations; penalty. ~~The provisions of~~
97 This act may be enforced by the Board of Trustees of the
98 Internal Improvement Trust Fund or in accordance with ~~the~~
99 ~~provisions of~~ s. 403.412. However, any violation by any person,
100 natural or corporate, of ~~the provisions of~~ this act or any rule
101 or regulation issued hereunder is shall be further punishable by
102 a civil penalty of not less than \$750 ~~\$500~~ per day or more than
103 \$7,500 ~~\$5,000~~ per day of such violation. Until a violation is
104 resolved by order or judgment, each day during any portion of
105 which such violation occurs or is not remediated constitutes a
106 separate offense.

107 Section 4. Subsections (5) and (7) of section 373.129,
108 Florida Statutes, are amended to read:

109 373.129 Maintenance of actions.—The department, the
110 governing board of any water management district, any local
111 board, or a local government to which authority has been
112 delegated pursuant to s. 373.103(8), is authorized to commence
113 and maintain proper and necessary actions and proceedings in any
114 court of competent jurisdiction for any of the following
115 purposes:

116 (5) To recover a civil penalty for each offense in an

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117 amount not to exceed \$15,000 ~~\$10,000~~ per offense. Until a
118 violation is resolved by order or judgment, each date during any
119 portion of which such violation occurs or is not remediated
120 constitutes a separate offense.

121 (a) A civil penalty recovered by a water management
122 district pursuant to this subsection shall be retained and used
123 exclusively by the water management district that collected the
124 money. A civil penalty recovered by the department pursuant to
125 this subsection must be deposited into the Water Quality
126 Assurance Trust Fund established under s. 376.307.

127 (b) A local government that is delegated authority pursuant
128 to s. 373.103(8) may deposit a civil penalty recovered pursuant
129 to this subsection into a local water pollution control program
130 trust fund, notwithstanding ~~the provisions of~~ paragraph (a).
131 However, civil penalties that are deposited in a local water
132 pollution control program trust fund and that are recovered for
133 violations of state water quality standards may be used only to
134 restore water quality in the area that was the subject of the
135 action, and civil penalties that are deposited in a local water
136 pollution control program trust fund and that are recovered for
137 violation of requirements relating to water quantity may be used
138 only to purchase lands and make capital improvements associated
139 with surface water management, or other purposes consistent with
140 the requirements of this chapter for the management and storage
141 of surface water.

142 (7) To ~~enforce the provisions of~~ part IV of this chapter in
143 the same manner and to the same extent as provided in ss.
144 373.430, 403.121(1) and (2), 403.131, 403.141, and 403.161.

145 Section 5. Subsection (3) of section 373.209, Florida

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146 Statutes, is amended to read:

147 373.209 Artesian wells; penalties for violation.—

148 (3) Any person who violates ~~any provision of~~ this section
149 is ~~shall be~~ subject to either:

150 (a) The remedial measures provided for in s. 373.436; or

151 (b) A civil penalty of \$150 ~~\$100~~ a day for each and every
152 day of such violation and for each and every act of violation.

153 The civil penalty may be recovered by the water management board
154 of the water management district in which the well is located or
155 by the department in a suit in a court of competent jurisdiction
156 in the county where the defendant resides, in the county of
157 residence of any defendant if there is more than one defendant,
158 or in the county where the violation took place. The place of
159 suit shall be selected by the board or department, and the suit,
160 by direction of the board or department, shall be instituted and
161 conducted in the name of the board or department by appropriate
162 counsel. The payment of any such damages does not impair or
163 abridge any cause of action which any person may have against
164 the person violating ~~any provision of~~ this section.

165 Section 6. Subsections (2) through (5) of section 373.430,
166 Florida Statutes, are amended to read:

167 373.430 Prohibitions, violation, penalty, intent.—

168 (2) A person who ~~Whoever~~ commits a violation specified in
169 subsection (1) is liable for any damage caused and for civil
170 penalties as provided in s. 373.129.

171 (3) A ~~Any~~ person who willfully commits a violation
172 specified in paragraph (1)(a) commits ~~is guilty of~~ a felony of
173 the third degree, punishable as provided in ss. 775.082(3)(e)
174 and 775.083(1)(g), by a fine of not more than \$50,000 or by

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175 imprisonment for 5 years, or by both, for each offense. Until a
176 violation is resolved by order or judgment, each day during any
177 portion of which such violation occurs or is not remediated
178 constitutes a separate offense.

179 (4) A ~~Any~~ person who commits a violation specified in
180 paragraph (1) (a) or paragraph (1) (b) due to reckless
181 indifference or gross careless disregard commits ~~is guilty of~~ a
182 misdemeanor of the second degree, punishable as provided in ss.
183 775.082 (4) (b) and 775.083 (1) (g), by a fine of not more than
184 \$10,000 ~~\$5,000~~ or 60 days in jail, or by both, for each offense.

185 (5) A ~~Any~~ person who willfully commits a violation
186 specified in paragraph (1) (b) or who commits a violation
187 specified in paragraph (1) (c) commits ~~is guilty of~~ a misdemeanor
188 of the first degree, punishable as provided in ss. 775.082 (4) (a)
189 and 775.083 (1) (g), by a fine of not more than \$10,000 or by 6
190 months in jail, or by both, for each offense.

191 Section 7. Paragraphs (a) and (e) of subsection (5) of
192 section 376.065, Florida Statutes, are amended to read:

193 376.065 Operation of terminal facility without discharge
194 prevention and response certificate prohibited; penalty.—

195 (5) (a) A person who violates this section or the terms and
196 requirements of such certification commits a noncriminal
197 infraction. The civil penalty for any such infraction shall be
198 \$750 ~~\$500~~, except as otherwise provided in this section.

199 (e) A person who elects to appear before the county court
200 or who is required to so appear waives the limitations of the
201 civil penalty specified in paragraph (a). The court, after a
202 hearing, shall make a determination as to whether an infraction
203 has been committed. If the commission of the infraction is

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204 proved, the court shall impose a civil penalty of \$750 ~~\$500~~.

205 Section 8. Paragraphs (a) and (e) of subsection (2) of
206 section 376.071, Florida Statutes, are amended to read:

207 376.071 Discharge contingency plan for vessels.—

208 (2) (a) A master of a vessel that violates subsection (1)
209 commits a noncriminal infraction and shall be cited for such
210 infraction. The civil penalty for such an infraction shall be
211 \$7,500 ~~\$5,000~~, except as otherwise provided in this subsection.

212 (e) A person who elects to appear before the county court
213 or who is required to appear waives the limitations of the civil
214 penalty specified in paragraph (a). The court, after a hearing,
215 shall make a determination as to whether an infraction has been
216 committed. If the commission of the infraction is proved, the
217 court shall impose a civil penalty of \$7,500 ~~\$5,000~~.

218 Section 9. Section 376.16, Florida Statutes, is amended to
219 read:

220 376.16 Enforcement and penalties.—

221 (1) It is unlawful for any person to violate ~~any provision~~
222 ~~of~~ ss. 376.011-376.21 or any rule or order of the department
223 made pursuant to this act. A violation is ~~shall be~~ punishable by
224 a civil penalty of up to \$75,000 ~~\$50,000~~ per violation per day
225 to be assessed by the department. Until a violation is resolved
226 by order or judgment, each day during any portion of which the
227 violation occurs or is not remediated constitutes a separate
228 offense. The penalty provisions of this subsection do ~~shall~~ not
229 apply to any discharge promptly reported and removed by a person
230 responsible, in accordance with the rules and orders of the
231 department, or to any discharge of pollutants equal to or less
232 than 5 gallons.

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233 (2) In addition to the penalty provisions which may apply
234 under subsection (1), a person responsible for two or more
235 discharges of any pollutant reported pursuant to s. 376.12
236 within a 12-month period at the same facility commits a
237 noncriminal infraction and shall be cited by the department for
238 such infraction.

239 (a) For discharges of gasoline or diesel over 5 gallons,
240 the civil penalty for the second discharge shall be \$750 ~~\$500~~
241 and the civil penalty for each subsequent discharge within a 12-
242 month period shall be \$1,500 ~~\$1,000~~, except as otherwise
243 provided in this section.

244 (b) For discharges of any pollutant other than gasoline or
245 diesel, the civil penalty for a second discharge shall be \$3,750
246 ~~\$2,500~~ and the civil penalty for each subsequent discharge
247 within a 12-month period shall be \$7,500 ~~\$5,000~~, except as
248 otherwise provided in this section.

249 (3) A person responsible for two or more discharges of any
250 pollutant reported pursuant to s. 376.12 within a 12-month
251 period at the same facility commits a noncriminal infraction and
252 shall be cited by the department for such infraction.

253 (a) For discharges of gasoline or diesel equal to or less
254 than 5 gallons, the civil penalty shall be \$75 ~~\$50~~ for each
255 discharge subsequent to the first.

256 (b) For discharges of pollutants other than gasoline or
257 diesel equal to or less than 5 gallons, the civil penalty shall
258 be \$150 ~~\$100~~ for each discharge subsequent to the first.

259 (4) A person charged with a noncriminal infraction pursuant
260 to subsection (2) or subsection (3) may:

261 (a) Pay the civil penalty;

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262 (b) Post a bond equal to the amount of the applicable civil
263 penalty; or

264 (c) Sign and accept a citation indicating a promise to
265 appear before the county court.

266
267 The department employee authorized to issue these citations may
268 indicate on the citation the time and location of the scheduled
269 hearing and shall indicate the applicable civil penalty.

270 (5) Any person who willfully refuses to post bond or accept
271 and sign a citation commits a misdemeanor of the second degree,
272 punishable as provided in s. 775.082 or s. 775.083.

273 (6) After compliance with paragraph (4) (b) or paragraph
274 (4) (c), any person charged with a noncriminal infraction under
275 subsection (2) or subsection (3) may:

276 (a) Pay the civil penalty, either by mail or in person,
277 within 30 days after the date of receiving the citation; or

278 (b) If the person has posted bond, forfeit the bond by not
279 appearing at the designated time and location.

280
281 A person cited for an infraction under this section who pays the
282 civil penalty or forfeits the bond has admitted the infraction
283 and waives the right to a hearing on the issue of commission of
284 the infraction. Such admission may not be used as evidence in
285 any other proceeding.

286 (7) Any person who elects to appear before the county court
287 or who is required to appear waives the limitations of the civil
288 penalties specified in subsection (2). The court, after a
289 hearing, shall make a determination as to whether an infraction
290 has been committed. If the commission of an infraction is

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291 proved, the court may impose a civil penalty up to, but not
292 exceeding, \$750 ~~\$500~~ for the second discharge of gasoline or
293 diesel and a civil penalty up to, but not exceeding, \$1,500
294 ~~\$1,000~~ for each subsequent discharge of gasoline or diesel
295 within a 12-month period.

296 (8) Any person who elects to appear before the county court
297 or who is required to appear waives the limitations of the civil
298 penalties specified in subsection (2) or subsection (3). The
299 court, after a hearing, shall make a determination as to whether
300 an infraction has been committed. If the commission of an
301 infraction is proved, the court may impose a civil penalty up
302 to, but not exceeding, \$7,500 ~~\$5,000~~ for the second discharge of
303 pollutants other than gasoline or diesel and a civil penalty up
304 to, but not exceeding, \$15,000 ~~\$10,000~~ for each subsequent
305 discharge of pollutants other than gasoline or diesel within a
306 12-month period.

307 (9) At a hearing under this section, the commission of a
308 charged offense must be proved by the greater weight of the
309 evidence.

310 (10) A person who is found by a hearing official to have
311 committed an infraction may appeal that finding to the circuit
312 court.

313 (11) Any person who has not posted bond and who neither
314 pays the applicable civil penalty, as specified in subsection
315 (2) or subsection (3) within 30 days of receipt of the citation
316 nor appears before the court commits a misdemeanor of the second
317 degree, punishable as provided in s. 775.082 or s. 775.083.

318 (12) Any person who makes or causes to be made a false
319 statement that ~~which~~ the person does not believe to be true in

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320 response to requirements of ~~the provisions of~~ ss. 376.011-376.21
321 commits a felony of the second degree, punishable as provided in
322 s. 775.082, s. 775.083, or s. 775.084.

323 Section 10. Paragraph (a) of subsection (6) of section
324 376.25, Florida Statutes, is amended to read:

325 376.25 Gambling vessels; registration; required and
326 prohibited releases.-

327 (6) PENALTIES.-

328 (a) A person who violates this section is subject to a
329 civil penalty of not more than \$75,000 ~~\$50,000~~ for each
330 violation. Until a violation is resolved by order or judgment,
331 each day during any portion of which such violation occurs or is
332 not remediated constitutes a separate offense.

333 Section 11. Paragraph (a) of subsection (1) of section
334 377.37, Florida Statutes, is amended to read:

335 377.37 Penalties.-

336 (1) (a) Any person who violates ~~any provision of~~ this law or
337 any rule, regulation, or order of the division made under this
338 chapter or who violates the terms of any permit to drill for or
339 produce oil, gas, or other petroleum products referred to in s.
340 377.242(1) or to store gas in a natural gas storage facility, or
341 any lessee, permitholder, or operator of equipment or facilities
342 used in the exploration for, drilling for, or production of oil,
343 gas, or other petroleum products, or storage of gas in a natural
344 gas storage facility, who refuses inspection by the division as
345 provided in this chapter, is liable to the state for any damage
346 caused to the air, waters, or property, including animal, plant,
347 or aquatic life, of the state and for reasonable costs and
348 expenses of the state in tracing the source of the discharge, in

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349 controlling and abating the source and the pollutants, and in
350 restoring the air, waters, and property, including animal,
351 plant, and aquatic life, of the state. Furthermore, such person,
352 lessee, permitholder, or operator is subject to the judicial
353 imposition of a civil penalty in an amount of not more than
354 \$15,000 ~~\$10,000~~ for each offense. However, the court may receive
355 evidence in mitigation. Until a violation is resolved by order
356 or judgment, each day during any portion of which such violation
357 occurs or is not remediated constitutes a separate offense. This
358 section does not ~~Nothing herein shall~~ give the department the
359 right to bring an action on behalf of any private person.

360 Section 12. Subsection (2) of section 378.211, Florida
361 Statutes, is amended to read:

362 378.211 Violations; damages; penalties.—

363 (2) The department may institute a civil action in a court
364 of competent jurisdiction to impose and recover a civil penalty
365 for violation of this part or of any rule adopted or order
366 issued pursuant to this part. The penalty may ~~shall~~ not exceed
367 the following amounts, and the court shall consider evidence in
368 mitigation:

369 (a) For violations of a minor or technical nature, \$150
370 ~~\$100~~ per violation.

371 (b) For major violations by an operator on which a penalty
372 has not been imposed under this paragraph during the previous 5
373 years, \$1,500 ~~\$1,000~~ per violation.

374 (c) For major violations not covered by paragraph (b),
375 \$7,500 ~~\$5,000~~ per violation.

376
377 Subject to ~~the provisions of~~ subsection (4), until a violation

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378 is resolved by order or judgment, each day or any portion
379 thereof in which the violation continues or is not remediated
380 shall constitute a separate violation.

381 Section 13. Subsection (2) of section 403.086, Florida
382 Statutes, is amended to read:

383 403.086 Sewage disposal facilities; advanced and secondary
384 waste treatment.—

385 (2) Any facilities for sanitary sewage disposal shall
386 provide for secondary waste treatment and, in addition thereto,
387 advanced waste treatment as deemed necessary and ordered by the
388 Department of Environmental Protection. Failure to conform shall
389 be punishable by a civil penalty of \$750 ~~\$500~~ for each 24-hour
390 day or fraction thereof that such failure is allowed to continue
391 thereafter.

392 Section 14. Section 403.121, Florida Statutes, is amended
393 to read:

394 403.121 Enforcement; procedure; remedies.—The department
395 shall have the following judicial and administrative remedies
396 available to it for violations of this chapter, as specified in
397 s. 403.161(1).

398 (1) Judicial remedies:

399 (a) The department may institute a civil action in a court
400 of competent jurisdiction to establish liability and to recover
401 damages for any injury to the air, waters, or property,
402 including animal, plant, and aquatic life, of the state caused
403 by any violation.

404 (b) The department may institute a civil action in a court
405 of competent jurisdiction to impose and to recover a civil
406 penalty for each violation in an amount of not more than \$15,000

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407 \$10,000 per offense. However, the court may receive evidence in
408 mitigation. Until a violation is resolved by order or judgment,
409 each day during any portion of which such violation occurs or is
410 not remediated constitutes a separate offense.

411 (c) Except as provided in paragraph (2)(c), it is ~~shall~~ not
412 ~~be~~ a defense to, or ground for dismissal of, these judicial
413 remedies for damages and civil penalties that the department has
414 failed to exhaust its administrative remedies, has failed to
415 serve a notice of violation, or has failed to hold an
416 administrative hearing prior to the institution of a civil
417 action.

418 (2) Administrative remedies:

419 (a) The department may institute an administrative
420 proceeding to establish liability and to recover damages for any
421 injury to the air, waters, or property, including animal, plant,
422 or aquatic life, of the state caused by any violation. The
423 department may order that the violator pay a specified sum as
424 damages to the state. Judgment for the amount of damages
425 determined by the department may be entered in any court having
426 jurisdiction thereof and may be enforced as any other judgment.

427 (b) If the department has reason to believe a violation has
428 occurred, it may institute an administrative proceeding to order
429 the prevention, abatement, or control of the conditions creating
430 the violation or other appropriate corrective action. Except for
431 violations involving hazardous wastes, asbestos, or underground
432 injection, the department shall proceed administratively in all
433 cases in which the department seeks administrative penalties
434 that do not exceed \$50,000 ~~\$10,000~~ per assessment as calculated
435 in accordance with subsections (3), (4), (5), (6), and (7).

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436 Pursuant to 42 U.S.C. s. 300g-2, the administrative penalty
437 assessed pursuant to subsection (3), subsection (4), or
438 subsection (5) against a public water system serving a
439 population of more than 10,000 shall be not less than \$1,000 per
440 day per violation. The department may ~~shall~~ not impose
441 administrative penalties in excess of \$50,000 ~~\$10,000~~ in a
442 notice of violation. The department may ~~shall~~ not have more than
443 one notice of violation seeking administrative penalties pending
444 against the same party at the same time unless the violations
445 occurred at a different site or the violations were discovered
446 by the department subsequent to the filing of a previous notice
447 of violation.

448 (c) An administrative proceeding shall be instituted by the
449 department's serving of a written notice of violation upon the
450 alleged violator by certified mail. If the department is unable
451 to effect service by certified mail, the notice of violation may
452 be hand delivered or personally served in accordance with
453 chapter 48. The notice shall specify the ~~provision of the law,~~
454 rule, regulation, permit, certification, or order of the
455 department alleged to be violated and the facts alleged to
456 constitute a violation thereof. An order for corrective action,
457 penalty assessment, or damages may be included with the notice.
458 When the department is seeking to impose an administrative
459 penalty for any violation by issuing a notice of violation, any
460 corrective action needed to correct the violation or damages
461 caused by the violation must be pursued in the notice of
462 violation or they are waived. However, an ~~no~~ order is not ~~shall~~
463 ~~become~~ effective until after service and an administrative
464 hearing, if requested within 20 days after service. Failure to

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465 request an administrative hearing within this time period
466 constitutes ~~shall constitute~~ a waiver thereof, unless the
467 respondent files a written notice with the department within
468 this time period opting out of the administrative process
469 initiated by the department to impose administrative penalties.
470 Any respondent choosing to opt out of the administrative process
471 initiated by the department in an action that seeks the
472 imposition of administrative penalties must file a written
473 notice with the department within 20 days after service of the
474 notice of violation opting out of the administrative process. A
475 respondent's decision to opt out of the administrative process
476 does not preclude the department from initiating a state court
477 action seeking injunctive relief, damages, and the judicial
478 imposition of civil penalties.

479 (d) If a person timely files a petition challenging a
480 notice of violation, that person will thereafter be referred to
481 as the respondent. The hearing requested by the respondent shall
482 be held within 180 days after the department has referred the
483 initial petition to the Division of Administrative Hearings
484 unless the parties agree to a later date. The department has the
485 burden of proving with the preponderance of the evidence that
486 the respondent is responsible for the violation. ~~No~~
487 Administrative penalties should not be imposed unless the
488 department satisfies that burden. Following the close of the
489 hearing, the administrative law judge shall issue a final order
490 on all matters, including the imposition of an administrative
491 penalty. When the department seeks to enforce that portion of a
492 final order imposing administrative penalties pursuant to s.
493 120.69, the respondent may ~~shall~~ not assert as a defense the

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494 inappropriateness of the administrative remedy. The department
495 retains its final-order authority in all administrative actions
496 that do not request the imposition of administrative penalties.

497 (e) After filing a petition requesting a formal hearing in
498 response to a notice of violation in which the department
499 imposes an administrative penalty, a respondent may request that
500 a private mediator be appointed to mediate the dispute by
501 contacting the Florida Conflict Resolution Consortium within 10
502 days after receipt of the initial order from the administrative
503 law judge. The Florida Conflict Resolution Consortium shall pay
504 all of the costs of the mediator and for up to 8 hours of the
505 mediator's time per case at \$150 per hour. Upon notice from the
506 respondent, the Florida Conflict Resolution Consortium shall
507 provide to the respondent a panel of possible mediators from the
508 area in which the hearing on the petition would be heard. The
509 respondent shall select the mediator and notify the Florida
510 Conflict Resolution Consortium of the selection within 15 days
511 of receipt of the proposed panel of mediators. The Florida
512 Conflict Resolution Consortium shall provide all of the
513 administrative support for the mediation process. The mediation
514 must be completed at least 15 days before the final hearing date
515 set by the administrative law judge.

516 (f) In any administrative proceeding brought by the
517 department, the prevailing party shall recover all costs as
518 provided in ss. 57.041 and 57.071. The costs must be included in
519 the final order. The respondent is the prevailing party when an
520 order is entered awarding no penalties to the department and
521 such order has not been reversed on appeal or the time for
522 seeking judicial review has expired. The respondent is ~~shall be~~

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523 entitled to an award of attorney's fees if the administrative
524 law judge determines that the notice of violation issued by the
525 department seeking the imposition of administrative penalties
526 was not substantially justified as defined in s. 57.111(3)(e).
527 An ~~no~~ award of attorney's fees as provided by this subsection
528 may not ~~shall~~ exceed \$15,000.

529 (g) Nothing herein shall be construed as preventing any
530 other legal or administrative action in accordance with law.
531 Nothing in this subsection shall limit the department's
532 authority provided in ss. 403.131, 403.141, and this section to
533 judicially pursue injunctive relief. When the department
534 exercises its authority to judicially pursue injunctive relief,
535 penalties in any amount up to the statutory maximum sought by
536 the department must be pursued as part of the state court action
537 and not by initiating a separate administrative proceeding. The
538 department retains the authority to judicially pursue penalties
539 in excess of \$50,000 ~~\$10,000~~ for violations not specifically
540 included in the administrative penalty schedule, or for multiple
541 or multiday violations alleged to exceed a total of \$50,000
542 ~~\$10,000~~. The department also retains the authority provided in
543 ss. 403.131, 403.141, and this section to judicially pursue
544 injunctive relief and damages, if a notice of violation seeking
545 the imposition of administrative penalties has not been issued.
546 The department has the authority to enter into a settlement,
547 either before or after initiating a notice of violation, and the
548 settlement may include a penalty amount different from the
549 administrative penalty schedule. Any case filed in state court
550 because it is alleged to exceed a total of \$50,000 ~~\$10,000~~ in
551 penalties may be settled in the court action for less than

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552 \$50,000 ~~\$10,000~~.

553 (h) Chapter 120 applies ~~shall apply~~ to any administrative
554 action taken by the department or any delegated program pursuing
555 administrative penalties in accordance with this section.

556 (3) Except for violations involving hazardous wastes,
557 asbestos, or underground injection, administrative penalties
558 must be calculated according to the following schedule:

559 (a) For a drinking water contamination violation, the
560 department shall assess a penalty of \$3,000 ~~\$2,000~~ for a Maximum
561 Containment Level (MCL) violation; plus \$1,500 ~~\$1,000~~ if the
562 violation is for a primary inorganic, organic, or radiological
563 Maximum Contaminant Level or it is a fecal coliform bacteria
564 violation; plus \$1,500 ~~\$1,000~~ if the violation occurs at a
565 community water system; and plus \$1,500 ~~\$1,000~~ if any Maximum
566 Contaminant Level is exceeded by more than 100 percent. For
567 failure to obtain a clearance letter prior to placing a drinking
568 water system into service when the system would not have been
569 eligible for clearance, the department shall assess a penalty of
570 \$4,500 ~~\$3,000~~.

571 (b) For failure to obtain a required wastewater permit,
572 other than a permit required for surface water discharge, the
573 department shall assess a penalty of \$1,500 ~~\$1,000~~. For a
574 domestic or industrial wastewater violation not involving a
575 surface water or groundwater quality violation, the department
576 shall assess a penalty of \$3,000 ~~\$2,000~~ for an unpermitted or
577 unauthorized discharge or effluent-limitation exceedance. For an
578 unpermitted or unauthorized discharge or effluent-limitation
579 exceedance that resulted in a surface water or groundwater
580 quality violation, the department shall assess a penalty of

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581 \$7,500 ~~\$5,000~~.

582 (c) For a dredge and fill or stormwater violation, the
583 department shall assess a penalty of \$1,500 ~~\$1,000~~ for
584 unpermitted or unauthorized dredging or filling or unauthorized
585 construction of a stormwater management system against the
586 person or persons responsible for the illegal dredging or
587 filling, or unauthorized construction of a stormwater management
588 system plus \$3,000 ~~\$2,000~~ if the dredging or filling occurs in
589 an aquatic preserve, an Outstanding Florida Water, a
590 conservation easement, or a Class I or Class II surface water,
591 plus \$1,500 ~~\$1,000~~ if the area dredged or filled is greater than
592 one-quarter acre but less than or equal to one-half acre, and
593 plus \$1,500 ~~\$1,000~~ if the area dredged or filled is greater than
594 one-half acre but less than or equal to one acre. The
595 administrative penalty schedule does ~~shall~~ not apply to a dredge
596 and fill violation if the area dredged or filled exceeds one
597 acre. The department retains the authority to seek the judicial
598 imposition of civil penalties for all dredge and fill violations
599 involving more than one acre. The department shall assess a
600 penalty of \$4,500 ~~\$3,000~~ for the failure to complete required
601 mitigation, failure to record a required conservation easement,
602 or for a water quality violation resulting from dredging or
603 filling activities, stormwater construction activities or
604 failure of a stormwater treatment facility. For stormwater
605 management systems serving less than 5 acres, the department
606 shall assess a penalty of \$3,000 ~~\$2,000~~ for the failure to
607 properly or timely construct a stormwater management system. In
608 addition to the penalties authorized in this subsection, the
609 department shall assess a penalty of \$7,500 ~~\$5,000~~ per violation

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610 against the contractor or agent of the owner or tenant that
611 conducts unpermitted or unauthorized dredging or filling. For
612 purposes of this paragraph, the preparation or signing of a
613 permit application by a person currently licensed under chapter
614 471 to practice as a professional engineer does ~~shall~~ not make
615 that person an agent of the owner or tenant.

616 (d) For mangrove trimming or alteration violations, the
617 department shall assess a penalty of \$7,500 ~~\$5,000~~ per violation
618 against the contractor or agent of the owner or tenant that
619 conducts mangrove trimming or alteration without a permit as
620 required by s. 403.9328. For purposes of this paragraph, the
621 preparation or signing of a permit application by a person
622 currently licensed under chapter 471 to practice as a
623 professional engineer does ~~shall~~ not make that person an agent
624 of the owner or tenant.

625 (e) For solid waste violations, the department shall assess
626 a penalty of \$3,000 ~~\$2,000~~ for the unpermitted or unauthorized
627 disposal or storage of solid waste; plus \$1,000 if the solid
628 waste is Class I or Class III (excluding yard trash) or if the
629 solid waste is construction and demolition debris in excess of
630 20 cubic yards, plus \$1,500 ~~\$1,000~~ if the waste is disposed of
631 or stored in any natural or artificial body of water or within
632 500 feet of a potable water well, plus \$1,500 ~~\$1,000~~ if the
633 waste contains PCB at a concentration of 50 parts per million or
634 greater; untreated biomedical waste; friable asbestos greater
635 than 1 cubic meter which is not wetted, bagged, and covered;
636 used oil greater than 25 gallons; or 10 or more lead acid
637 batteries. The department shall assess a penalty of \$4,500
638 ~~\$3,000~~ for failure to properly maintain leachate control;

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639 unauthorized burning; failure to have a trained spotter on duty
640 at the working face when accepting waste; or failure to provide
641 access control for three consecutive inspections. The department
642 shall assess a penalty of \$3,000 ~~\$2,000~~ for failure to construct
643 or maintain a required stormwater management system.

644 (f) For an air emission violation, the department shall
645 assess a penalty of \$1,500 ~~\$1,000~~ for an unpermitted or
646 unauthorized air emission or an air-emission-permit exceedance,
647 ~~plus \$1,000 if the emission results in an air quality violation,~~
648 plus \$4,500 ~~\$3,000~~ if the emission was from a major source and
649 the source was major for the pollutant in violation; plus \$1,500
650 ~~\$1,000~~ if the emission was more than 150 percent of the
651 allowable level.

652 (g) For storage tank system and petroleum contamination
653 violations, the department shall assess a penalty of \$7,500
654 ~~\$5,000~~ for failure to empty a damaged storage system as
655 necessary to ensure that a release does not occur until repairs
656 to the storage system are completed; when a release has occurred
657 from that storage tank system; for failure to timely recover
658 free product; or for failure to conduct remediation or
659 monitoring activities until a no-further-action or site-
660 rehabilitation completion order has been issued. The department
661 shall assess a penalty of \$4,500 ~~\$3,000~~ for failure to timely
662 upgrade a storage tank system. The department shall assess a
663 penalty of \$3,000 ~~\$2,000~~ for failure to conduct or maintain
664 required release detection; failure to timely investigate a
665 suspected release from a storage system; depositing motor fuel
666 into an unregistered storage tank system; failure to timely
667 assess or remediate petroleum contamination; or failure to

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668 properly install a storage tank system. The department shall
669 assess a penalty of \$1,500 ~~\$1,000~~ for failure to properly
670 operate, maintain, or close a storage tank system.

671 (4) In an administrative proceeding, in addition to the
672 penalties that may be assessed under subsection (3), the
673 department shall assess administrative penalties according to
674 the following schedule:

675 (a) For failure to satisfy financial responsibility
676 requirements or for violation of s. 377.371(1), \$7,500 ~~\$5,000~~.

677 (b) For failure to install, maintain, or use a required
678 pollution control system or device, \$6,000 ~~\$4,000~~.

679 (c) For failure to obtain a required permit before
680 construction or modification, \$4,500 ~~\$3,000~~.

681 (d) For failure to conduct required monitoring or testing;
682 failure to conduct required release detection; or failure to
683 construct in compliance with a permit, \$3,000 ~~\$2,000~~.

684 (e) For failure to maintain required staff to respond to
685 emergencies; failure to conduct required training; failure to
686 prepare, maintain, or update required contingency plans; failure
687 to adequately respond to emergencies to bring an emergency
688 situation under control; or failure to submit required
689 notification to the department, \$1,500 ~~\$1,000~~.

690 (f) Except as provided in subsection (2) with respect to
691 public water systems serving a population of more than 10,000,
692 for failure to prepare, submit, maintain, or use required
693 reports or other required documentation, \$750 ~~\$500~~.

694 (5) Except as provided in subsection (2) with respect to
695 public water systems serving a population of more than 10,000,
696 for failure to comply with any other departmental regulatory

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697 statute or rule requirement not otherwise identified in this
698 section, the department may assess a penalty of \$1,000 ~~\$500~~.

699 (6) For each additional day during which a violation
700 occurs, the administrative penalties in subsections ~~subsection~~
701 (3), ~~subsection~~ (4), and ~~subsection~~ (5) may be assessed per day
702 per violation.

703 (7) The history of noncompliance of the violator for any
704 previous violation resulting in an executed consent order, but
705 not including a consent order entered into without a finding of
706 violation, or resulting in a final order or judgment after the
707 effective date of this law involving the imposition of \$3,000
708 ~~\$2,000~~ or more in penalties shall be taken into consideration in
709 the following manner:

710 (a) One previous such violation within 5 years prior to the
711 filing of the notice of violation will result in a 25-percent
712 per day increase in the scheduled administrative penalty.

713 (b) Two previous such violations within 5 years prior to
714 the filing of the notice of violation will result in a 50-
715 percent per day increase in the scheduled administrative
716 penalty.

717 (c) Three or more previous such violations within 5 years
718 prior to the filing of the notice of violation will result in a
719 100-percent per day increase in the scheduled administrative
720 penalty.

721 (8) The direct economic benefit gained by the violator from
722 the violation, where consideration of economic benefit is
723 provided by Florida law or required by federal law as part of a
724 federally delegated or approved program, shall be added to the
725 scheduled administrative penalty. The total administrative

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726 penalty, including any economic benefit added to the scheduled
727 administrative penalty, may ~~shall~~ not exceed \$15,000 ~~\$10,000~~.

728 (9) The administrative penalties assessed for any
729 particular violation may ~~shall~~ not exceed \$7,500 ~~\$5,000~~ against
730 any one violator, unless the violator has a history of
731 noncompliance, the economic benefit of the violation as
732 described in subsection (8) exceeds \$7,500 ~~\$5,000~~, or there are
733 multiday violations. The total administrative penalties may
734 ~~shall~~ not exceed \$50,000 ~~\$10,000~~ per assessment for all
735 violations attributable to a specific person in the notice of
736 violation.

737 (10) The administrative law judge may receive evidence in
738 mitigation. The penalties identified in subsections ~~subsection~~
739 (3), ~~subsection~~ (4), and ~~subsection~~ (5) may be reduced up to 50
740 percent by the administrative law judge for mitigating
741 circumstances, including good faith efforts to comply prior to
742 or after discovery of the violations by the department. Upon an
743 affirmative finding that the violation was caused by
744 circumstances beyond the reasonable control of the respondent
745 and could not have been prevented by respondent's due diligence,
746 the administrative law judge may further reduce the penalty.

747 (11) Penalties collected pursuant to this section shall be
748 deposited into the Water Quality Assurance Trust Fund or other
749 trust fund designated by statute and shall be used to fund the
750 restoration of ecosystems, or polluted areas of the state, as
751 defined by the department, to their condition before pollution
752 occurred. The Florida Conflict Resolution Consortium may use a
753 portion of the fund to administer the mediation process provided
754 in paragraph (2) (e) and to contract with private mediators for

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755 administrative penalty cases.

756 (12) The purpose of the administrative penalty schedule and
757 process is to provide a more predictable and efficient manner
758 for individuals and businesses to resolve relatively minor
759 environmental disputes. Subsections (3)-(7) may ~~Subsection (3),~~
760 ~~subsection (4), subsection (5), subsection (6), or subsection~~
761 ~~(7) shall~~ not be construed as limiting a state court in the
762 assessment of damages. The administrative penalty schedule does
763 not apply to the judicial imposition of civil penalties in state
764 court as provided in this section.

765 Section 15. Subsection (1) of section 403.141, Florida
766 Statutes, is amended to read:

767 403.141 Civil liability; joint and several liability.—

768 (1) A person who ~~Whoever~~ commits a violation specified in
769 s. 403.161(1) is liable to the state for any damage caused to
770 the air, waters, or property, including animal, plant, or
771 aquatic life, of the state and for reasonable costs and expenses
772 of the state in tracing the source of the discharge, in
773 controlling and abating the source and the pollutants, and in
774 restoring the air, waters, and property, including animal,
775 plant, and aquatic life, of the state to their former condition,
776 and furthermore is subject to the judicial imposition of a civil
777 penalty for each offense in an amount of not more than \$15,000
778 ~~\$10,000~~ per offense. However, the court may receive evidence in
779 mitigation. Until a violation is resolved by order or judgment,
780 each day during any portion of which such violation occurs or is
781 not remediated constitutes a separate offense. Nothing herein
782 gives ~~shall give~~ the department the right to bring an action on
783 behalf of any private person.

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784 Section 16. Subsections (2) through (5) of section 403.161,
785 Florida Statutes, are amended to read:

786 403.161 Prohibitions, violation, penalty, intent.—

787 (2) A person who ~~Whoever~~ commits a violation specified in
788 subsection (1) is liable to the state for any damage caused and
789 for civil penalties as provided in s. 403.141.

790 (3) A ~~Any~~ person who willfully commits a violation
791 specified in paragraph (1)(a) commits ~~is guilty of~~ a felony of
792 the third degree, punishable as provided in ss. 775.082(3)(e)
793 and 775.083(1)(g) by a fine of not more than \$50,000 or by
794 imprisonment for 5 years, or by both, for each offense. Until a
795 violation is resolved by order or judgment, each day during any
796 portion of which such violation occurs or is not remediated
797 constitutes a separate offense.

798 (4) A ~~Any~~ person who commits a violation specified in
799 paragraph (1)(a) or paragraph (1)(b) due to reckless
800 indifference or gross careless disregard commits ~~is guilty of~~ a
801 misdemeanor of the second degree, punishable as provided in ss.
802 775.082(4)(b) and 775.083(1)(g) by a fine of not more than
803 \$10,000 ~~\$5,000~~ or by 60 days in jail, or by both, for each
804 offense.

805 (5) A ~~Any~~ person who willfully commits a violation
806 specified in paragraph (1)(b) or who commits a violation
807 specified in paragraph (1)(c) commits ~~is guilty of~~ a misdemeanor
808 of the first degree punishable as provided in ss. 775.082(4)(a)
809 and 775.083(1)(g) by a fine of not more than \$10,000 or by 6
810 months in jail, or by both for each offense.

811 Section 17. Paragraph (a) of subsection (6) of section
812 403.413, Florida Statutes, is amended to read:

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813 403.413 Florida Litter Law.—

814 (6) PENALTIES; ENFORCEMENT.—

815 (a) Any person who dumps litter in violation of subsection
816 (4) in an amount not exceeding 15 pounds in weight or 27 cubic
817 feet in volume and not for commercial purposes commits ~~is guilty~~
818 ~~of~~ a noncriminal infraction, punishable by a civil penalty of
819 \$150 ~~\$100~~, from which \$50 shall be deposited into the Solid
820 Waste Management Trust Fund to be used for the solid waste
821 management grant program pursuant to s. 403.7095. In addition,
822 the court may require the violator to pick up litter or perform
823 other labor commensurate with the offense committed.

824 Section 18. Subsection (5) of section 403.7234, Florida
825 Statutes, is amended to read:

826 403.7234 Small quantity generator notification and
827 verification program.—

828 (5) Any small quantity generator who does not comply with
829 the requirements of subsection (4) and who has received a
830 notification and survey in person or through one certified
831 letter from the county is subject to a fine of between \$75 ~~\$50~~
832 and \$150 ~~\$100~~ per day for a maximum of 100 days. The county may
833 collect such fines and deposit them in its general revenue fund.
834 Fines collected by the county shall be used to carry out the
835 notification and verification procedure established in this
836 section. If there are excess funds after the notification and
837 verification procedures have been completed, such funds shall be
838 used for hazardous and solid waste management purposes only.

839 Section 19. Subsection (3) of section 403.726, Florida
840 Statutes, is amended to read:

841 403.726 Abatement of imminent hazard caused by hazardous

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842 substance.—

843 (3) An imminent hazard exists if any hazardous substance
844 creates an immediate and substantial danger to human health,
845 safety, or welfare or to the environment. The department may
846 institute action in its own name, using the procedures and
847 remedies of s. 403.121 or s. 403.131, to abate an imminent
848 hazard. However, the department is authorized to recover a civil
849 penalty of not more than \$37,500 ~~\$25,000~~ for each day until a ~~of~~
850 ~~continued~~ violation is resolved by order or judgment. Whenever
851 serious harm to human health, safety, and welfare; the
852 environment; or private or public property may occur prior to
853 completion of an administrative hearing or other formal
854 proceeding that which might be initiated to abate the risk of
855 serious harm, the department may obtain, ex parte, an injunction
856 without paying filing and service fees prior to the filing and
857 service of process.

858 Section 20. Paragraph (a) of subsection (3) of section
859 403.727, Florida Statutes, is amended to read:

860 403.727 Violations; defenses, penalties, and remedies.—

861 (3) Violations of the provisions of this act are punishable
862 as follows:

863 (a) Any person who violates ~~the provisions of~~ this act, the
864 rules or orders of the department, or the conditions of a permit
865 is liable to the state for any damages specified in s. 403.141
866 and for a civil penalty of not more than \$75,000 ~~\$50,000~~ for
867 each day of continued violation or until a violation is resolved
868 by order or judgment, except as otherwise provided herein. The
869 department may revoke any permit issued to the violator. In any
870 action by the department against a small hazardous waste

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871 generator for the improper disposal of hazardous wastes, a
872 rebuttable presumption of improper disposal shall be created if
873 the generator was notified pursuant to s. 403.7234; the
874 generator shall then have the burden of proving that the
875 disposal was proper. If the generator was not so notified, the
876 burden of proving improper disposal shall be placed upon the
877 department.

878 Section 21. Subsection (8) of section 403.93345, Florida
879 Statutes, is amended to read:

880 403.93345 Coral reef protection.—

881 (8) In addition to the compensation described in subsection
882 (5), the department may assess, per occurrence, civil penalties
883 according to the following schedule:

884 (a) For any anchoring of a vessel on a coral reef or for
885 any other damage to a coral reef totaling less than or equal to
886 an area of 1 square meter, \$225 ~~\$150~~, provided that a
887 responsible party who has anchored a recreational vessel as
888 defined in s. 327.02 which is lawfully registered or exempt from
889 registration pursuant to chapter 328 is issued, at least once, a
890 warning letter in lieu of penalty; with aggravating
891 circumstances, an additional \$225 ~~\$150~~; occurring within a state
892 park or aquatic preserve, an additional \$225 ~~\$150~~.

893 (b) For damage totaling more than an area of 1 square meter
894 but less than or equal to an area of 10 square meters, \$450 ~~\$300~~
895 per square meter; with aggravating circumstances, an additional
896 \$450 ~~\$300~~ per square meter; occurring within a state park or
897 aquatic preserve, an additional \$450 ~~\$300~~ per square meter.

898 (c) For damage exceeding an area of 10 square meters,
899 \$1,500 ~~\$1,000~~ per square meter; with aggravating circumstances,

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900 an additional \$1,500 ~~\$1,000~~ per square meter; occurring within a
901 state park or aquatic preserve, an additional \$1,500 ~~\$1,000~~ per
902 square meter.

903 (d) For a second violation, the total penalty may be
904 doubled.

905 (e) For a third violation, the total penalty may be
906 tripled.

907 (f) For any violation after a third violation, the total
908 penalty may be quadrupled.

909 (g) The total of penalties levied may not exceed \$375,000
910 ~~\$250,000~~ per occurrence.

911 Section 22. Subsection (5) of s. 823.11, Florida Statutes,
912 is reenacted for the purpose of incorporating the amendment made
913 by this act to s. 376.16, Florida Statutes, in a reference
914 thereto.

915 Section 23. Subsection (5) of s. 403.077, subsection (2) of
916 s. 403.131, paragraph (d) of subsection (3) of s. 403.4154, and
917 subsection (5) of s. 403.860, Florida Statutes, are reenacted
918 for the purpose of incorporating the amendment made by this act
919 to s. 403.121, Florida Statutes, in references thereto.

920 Section 24. Subsection (10) of s. 403.708, subsection (7)
921 of s. 403.7191, and s. 403.811, Florida Statutes, are reenacted
922 for the purpose of incorporating the amendment made by this act
923 to s. 403.141, Florida Statutes, in references thereto.

924 Section 25. Subsection (2) of s. 403.7255, Florida
925 Statutes, is reenacted for the purpose of incorporating the
926 amendment made by this act to s. 403.161, Florida Statutes, in a
927 reference thereto.

928 Section 26. Subsection (8) of s. 403.7186, Florida

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929 Statutes, is reenacted for the purpose of incorporating the
930 amendments made by this act to ss. 403.141 and 403.161, Florida
931 Statutes, in references thereto.

932 Section 27. This act shall take effect July 1, 2020.

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/CS/SB 1510 (836136)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice; Judiciary Committee; and Senator Brandes

SUBJECT: Jurisdiction of Courts

DATE: February 20, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cibula</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Dale</u>	<u>Jameson</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1510 transfers the jurisdiction of circuit courts to hear appeals of county court civil and criminal cases to the district courts of appeal. The bill is based on the recommendations of a recent report by the Supreme Court’s Judicial Management Council’s Workgroup on Appellate Review of County Court Decisions.

The bill has a fiscal impact. See Section V.

The effective date of the bill is January 1, 2021.

II. Present Situation:

The State Constitution establishes a four-level court system consisting of a Supreme Court, five district courts of appeal, 20 circuit courts, and 67 county courts. The circuit courts and county courts primarily serve as trial courts, but the circuit courts also hear appeals from county courts involving many different types of cases and appeals from administrative bodies.

The Constitution also permits the Legislature to substantially define the jurisdictions of the circuit courts and county courts by statute.¹ As defined by statute, the circuit courts have

¹ Article V, s. 6(b) states that “[t]he county courts shall exercise the jurisdiction prescribed by general law.” Under Article V, s. 5(b), the jurisdiction the circuit courts includes “original jurisdiction not vested in the county courts, and jurisdiction of

exclusive jurisdiction over several case types, including felony cases and probate matters, but the primary distinction between the jurisdictions of the courts is a monetary threshold.²

Recent Legislative Changes to Trial Court Jurisdiction

During the 2019 Legislative Session, the Legislature increased the monetary threshold in a way that expands the jurisdiction of the county courts. Since 1995, this threshold had been set at \$15,000.³ Claims exceeding \$15,000 were to be filed in the circuit court, and county courts had jurisdiction to hear claims valued up to that amount. With the 2019 legislation, effective January 1, 2020, the threshold became \$30,000. The threshold increases again, effective January 1, 2023, to \$50,000.

Although the 2019 legislation increased the value of claims that could be litigated in a county court, the legislation did not similarly or contemporaneously increase the jurisdiction of circuit courts to hear appeals from county courts. “Appeals of county court orders or judgments where the amount in controversy is greater than \$15,000,” according to the 2019 legislation, will continue to be heard by a district court of appeal until January 1, 2023.⁴ Appeals of county court orders or judgments involving amounts of \$15,000 or less will continue to be heard by a circuit court.

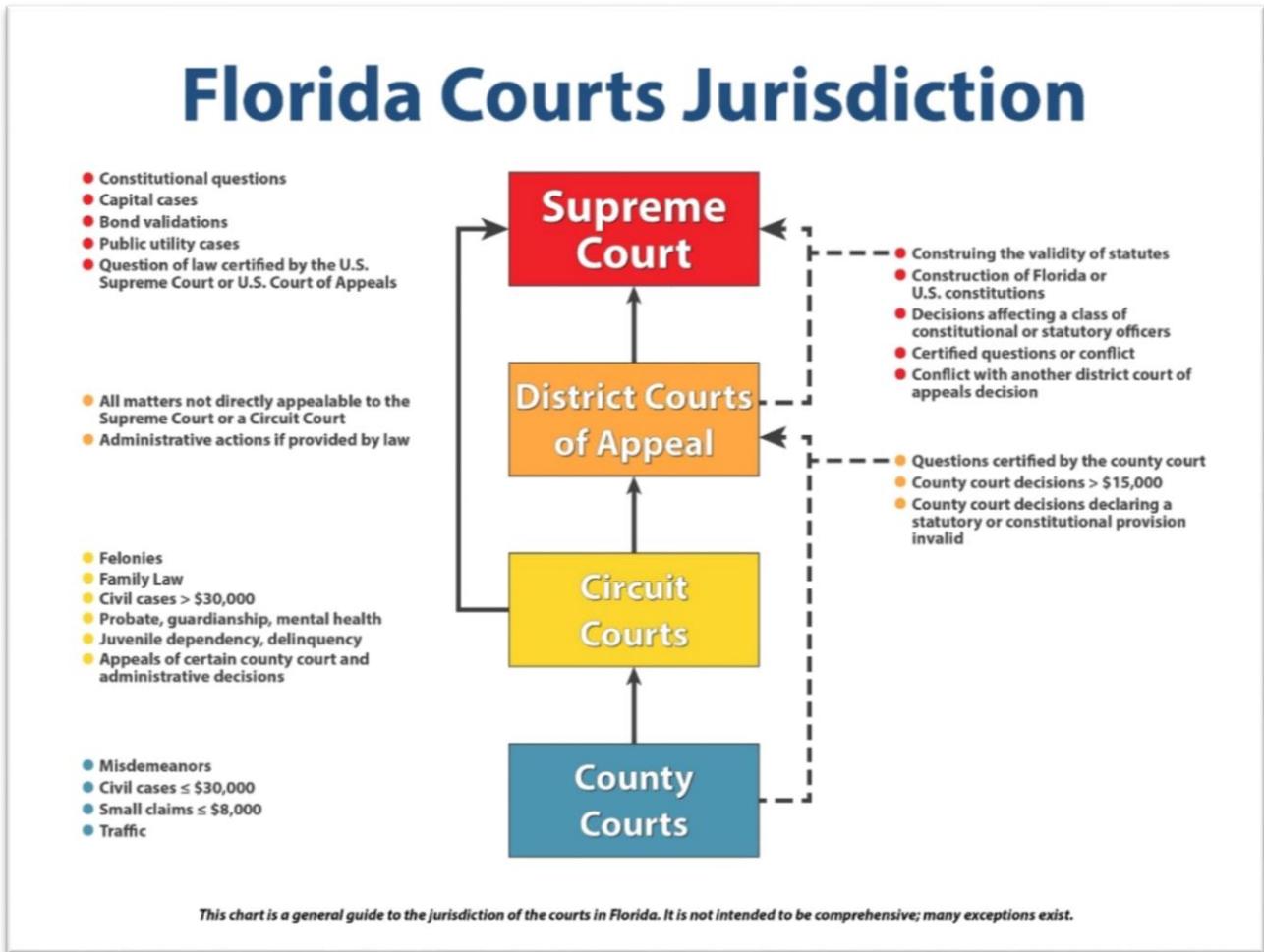
appeals when provided by general law.” Circuit courts also “shall have the power of direct review of administrative action prescribed by general law.” *Id.*

² Section 26.012, F.S. (defining the jurisdiction of the circuit courts) and s. 34.01, F.S. (defining the jurisdiction of the county courts).

³ Chapter 2019-58, ss. 1 and 9, Laws of Fla.

⁴ Chapter 2019-58, s. 1, Laws of Fla., amending s. 26.012(1), F.S., provides that limitation on the appellate jurisdiction of circuit courts to matters where the amount in controversy is \$15,000 or less is repealed on January 1, 2023.

The Florida Supreme Court has described the jurisdictions of Florida’s courts as shown.⁵



Recommended Changes to Appellate Court Jurisdiction

About the same time the 2019 legislation was filed increasing the monetary jurisdictional threshold, the Chief Justice of the Florida Supreme Court issued an administrative order directing the Workgroup on Appellate Review of County Court Decisions to:

1. Study whether the circuit courts should be uniformly required to hear appeals in panels and propose appropriate amendments to the Rules of Judicial Administration or the Rules of Appellate Procedure if the Workgroup determines that such amendments are necessary.
2. Review the following recommendation made by the Judicial Management Council’s Work Group on County Court Jurisdiction, and propose appropriate

⁵ The chart is a duplicate of Diagram of the State Courts System effective 1/1/2020 by the Supreme Court of Florida. The diagram is available on the Supreme Court’s website at <https://www.floridasupremecourt.org/content/download/543675/6126128/Florida-Courts-Jurisdiction-Chart-2020.pdf>.

amendments to law or rule if the Workgroup determines that such amendments are necessary:

2.3 The Work Group recommends that any modification to the [county court] jurisdictional amount include a provision allowing intra- and intercircuit conflicts in circuit court appellate decisions within the same district to be certified to the district court of appeal for that district.

3. Consider whether other changes to the process for appellate review of county court decisions would improve the administration of justice. If so, the Workgroup may propose any revisions in the law and rules necessary to implement such recommended changes.⁶

In October 2019, the Workgroup issued a report containing its recommendations. The Workgroup's primary recommendation was that the Supreme Court:

Approve the proposal of statutory amendments to transfer the circuit courts' appellate and related extraordinary writ authority to the DCAs in county civil cases, including non-criminal violations, county, criminal cases, and administrative cases. If the new law is adopted during the 2021 Regular Legislative Session, an effective date of January 1, 2022, is recommended to allow time to make operational changes for the court system and to adopt conforming amendments to the Florida Rules of Court.⁷

The Supreme Court agreed with the recommendation, but supported more expeditious changes:

The Supreme Court supports the Legislature's consideration of proposed legislation during the 2020 Regular Session to transfer the referenced circuit court appellate and related extraordinary writ authority to the DCAs. Further, the Supreme Court supports an effective date for the legislation that is no earlier than January 1, 2021, to allow adequate time for implementation.⁸

Authority to Define Appellate Court Jurisdiction

Although the Legislature has broad authority to define the jurisdiction of the circuit and county courts, its authority to define the jurisdiction of the district courts of appeal is more limited. Under Article V, s. (4)(b)(1) and (2) of the State Constitution:

(1) District courts of appeal shall have jurisdiction to hear appeals, that may be taken as a matter of right, from final judgments or orders of trial courts, including

⁶ Supreme Court of Florida, In Re: Workgroup on Appellate Review of County Court Decisions, Administrative Order No. AOSC19-3, (Jan. 4, 2019), <https://www.floridasupremecourt.org/content/download/425765/4589231/AOSC19-3.pdf>.

⁷ Supreme Court of Florida, Judicial Management Council, *Workgroup on Appellate Review of County Court Decisions: Final Report*, Oct. 10, 2019.

⁸ *Id.*

those entered on review of administrative action, not directly appealable to the supreme court or a circuit court. They may review interlocutory orders in such cases to the extent provided by rules adopted by the supreme court.

(2) District courts of appeal shall have the power of direct review of administrative action, as prescribed by general law.

These provisions mean that a litigant has a right to only one appeal. As such, a litigant may appeal a final order of a county court or an administrative entity to a circuit court, but the litigant has no right to further appeal to a district court of appeal.⁹ The order may be reviewed by a district court only by a writ of certiorari, which means that the district court has the discretion to hear the case.¹⁰ Moreover, a review by certiorari is much more limited in scope than a review by appeal.¹¹

The certiorari jurisdiction of the district courts is defined, not by statute, but by the Florida Rules of Appellate Procedure.¹² Similarly, the authority for a district court to hear the appeal of an interlocutory order, which is a non-final order from a lower tribunal, is defined by court rules and not by statutes.

Because the Constitution divides the authority to define the appellate jurisdiction of the courts between the Supreme Court and the Legislature, expanding the appellate jurisdiction of the district courts of appeal while reducing the appellate jurisdiction of the circuit courts requires cooperation between the judiciary and the Legislature. The Legislature must make some statutory changes, and the Supreme Court must make changes to the Florida Rules of Appellate Procedure.

For example, the Legislature, in many cases, can provide for the appeal of a final order of a county court to a district court of appeal by eliminating the statutory authority for the appeal to be heard by a circuit court. By default, the appeal would have to be heard by a district court of appeal. However, without changes to the court rules, interlocutory appeals from a county court case would continue to be heard by a circuit court that would not have jurisdiction to hear the appeal of a final order from the case.¹³ This result would seem to be inefficient.

⁹ *City of Deerfield Beach v. Valliant*, 419 So. 2d 624, 625 (Fla. 1982).

¹⁰ *Id.*

¹¹ When a matter is appealed “all errors below may be corrected: jurisdictional, procedural, and substantive.” *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, n.3. (Fla. 1995). In contrast, “[c]ertiorari review is ‘intended to fill the interstices between direct appeal and the other prerogative writs’ and allow a court to reach down and halt a miscarriage of justice where no other remedy exists; it ‘was never intended to redress mere legal error.’” *Broward County v. G.B.V. Int’l, Ltd.*, 787 So. 2d 838, 842 (Fla. 2001).

¹² Fla. R. Civ. P. 9.030(b)(2).

¹³ Similarly, the State Constitution does not allow the Legislature to authorize a party to take an interlocutory appeal of an order of a circuit court to a district court of appeal.

Any statute purporting to grant the right to take an interlocutory appeal is merely a declaration of legislative policy and is ineffective to accomplish its purpose; only if the Florida Supreme Court incorporates the statutory language into the appellate rules can appellate jurisdiction be broadened.

Osceola County v. Best Diversified, Inc., 830 So. 2d 139, 140-41 (Fla. 3d DCA 2002) (citing *State v. Gaines*, 770 So. 2d 1221 (Fla. 2000); *State v. Smith*, 260 So. 2d 489 (Fla. 1972)).

Problem of Conflicting Circuit Court Appellate Decisions

Decisions of circuit courts in their appellate capacity are binding on all county courts within their circuit.¹⁴ However, circuit courts are not bound by decisions of other courts within their circuits. As a result, conflicting appellate decisions within a circuit court create instability in the law. County court judges and non-parties to the prior litigation do not know how or which appellate decisions to follow.¹⁵

When conflicting decisions are rendered by different panels of judges within the same district court of appeal, the Florida Rules of Appellate Procedure permit the court to conduct an en banc proceeding.¹⁶ These proceedings allow the full court to reconcile its potentially conflicting decisions.¹⁷ In contrast, judicial circuits have no similar mechanism that enables them to reconcile their intra-circuit conflicting opinions. Moreover, a circuit court is not authorized to certify intra-circuit court conflicting opinions to a district court of appeal for review.¹⁸

Appellate Filing Fees

For **appeals from the county to the circuit court**, the clerk of the circuit court may collect up to \$280 of which, \$260 is retained by the clerk of the court and \$20 is remitted to the Department of Revenue for deposit into the General Revenue Fund.¹⁹

For appeals to the **district court of appeal**, the circuit court charges a \$100 fee for filing a notice of appeal,²⁰ and the clerk of the district court of appeal collects a filing fee of \$300 for each case docketed.²¹ Of the \$100 circuit court fee, \$80 is retained by the clerk and \$20 is deposited into the General Revenue Fund.²² Of the district court filing fee, \$50 is deposited into the State Courts Revenue Trust Fund and the remaining \$250 is deposited into the State Treasury to be credited to the General Revenue Fund.²³

III. Effect of Proposed Changes:

This bill transfers to the district courts of appeal the jurisdiction to hear appeals of decisions of county courts in civil and criminal cases. Under current law, these appeals are heard by circuit courts. The bill is based on the recommendations of a recent report by the Judicial Management

¹⁴ See *Fieselman v. State*, 566 So. 2d 768, 770 (Fla. 1990).

¹⁵ See Sebastien Rogers, *The Chasm in Florida Appellate Law: Intra-Circuit Conflicting Appellate Decisions*, Vol. 92, No. 4 FLA. BAR J. 52 (Apr. 2008).

¹⁶ Fla. R. Civ. P. 9.331.

¹⁷ *Id.*

¹⁸ Rogers, *supra* n. 15.

¹⁹ Section 28.241(2), F.S.

²⁰ *Id.*

²¹ Section 35.22(2)(a), F.S.

²² Page 11 Lines 124-126 Court Clerks and Comptrollers 2019 Distribution Schedule

https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/advisories/advisories_2019/19bull113_Attach_2_2019_Dist.pdf (last visited February 6, 2020).

²³ Section 35.22(5), F.S. The clerk of the district court of appeal also collects \$295 for cross-appeals or additional parties, and this fee is remitted entirely to the DOR for deposit into the General Revenue fund. Section 35.255(2)(b), F.S.

Council's Workgroup on Appellate Review of County Court Decisions. The specific changes made by each section of the bill are described below.

Section 1. Jurisdiction of the circuit court (s. 26.012, F.S.)

The changes made by section 1 broadly eliminate the authority of the circuit courts to hear appeals from county courts in civil and criminal cases. Circuit courts, however, retain jurisdiction to hear appeals from final administrative orders of local code enforcement boards and to hear appeals and review other matters as expressly provided by law. By operation of Article V, s. 4(b)(1) of the State Constitution, the district courts of appeal will have jurisdiction on appeals from final orders of county courts in civil and criminal cases by default.

Section 2. Certification of questions to district court of appeal (s. 34.017, F.S.)

Currently s. 34.017, F.S., authorizes a county court to certify important questions to a district court of appeal in a final judgment. The district court has absolute discretion to answer the certified question or transfer the case back to the circuit court having appellate jurisdiction.

As amended by the bill, s. 34.017, F.S., a county court may certify important questions to a district court of appeal only in a final judgment that is appealable to a circuit court. This conforming change recognizes that there is no need for a county court to certify questions relating to matters that a litigant may appeal to a district court as a matter of right.

Section 3. Review of judgment or order certified by county court to be of great public importance (s. 35.065, F.S.)

Currently s. 35.065, F.S., allows a district court of appeal to review any order or judgment of a county court which is certified by the county court to be of great public importance.

As amended by the bill, s. 35.065, F.S., a district court of appeal may review an order or judgment of a county court that is certified to be of great public importance only in an order or judgment that is appealable to a circuit court. This conforming change recognizes that there is no need for a county court to certify questions relating to matters that a litigant may appeal to a district court as a matter of right.

Section 4. Courts of appeal (s. 924.08, F.S.)

This section repeals a statute that gives jurisdiction to circuit courts to hear appeals of judgments in misdemeanor cases.

Effective Date

The bill takes effect January 1, 2021.

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:

This bill may affect the private sector to the extent that it will necessitate changes in the filing fees for appeals.

C. Government Sector Impact:

Revenue / Fee Impact

The revenue impact to various funds based on the differences in the appellate filing fees described in the “Present Situation” are expected to result in a negative revenue impact to the Clerks of Court Trust Fund and a positive impact to the State Courts Revenue Trust Fund and the General Revenue Fund.²⁴

²⁴ Office of State Courts Administrator, *2020 Judicial Impact Statement for CS/SB 1510* (Feb. 6, 2020) (on file with the Senate Appropriations Subcommittee on Criminal and Civil Justice).

**Estimated Impact in Filing Fee Revenue Generated by
Changing the County Court Appellate Process**

	Fee Distribution	Revenue Impact Based on 1,836 Appellate Cases
Revenue Generating Appellate Cases Filed in District Court of Appeal		
Clerks of Court	\$80.00	\$146,896
State Courts Revenue Trust Fund	\$50.00	\$91,810
General Revenue	\$270.00	\$495,775
Total	\$400.00	\$734,482
Revenue Generating Appellate Cases Filed in Circuit Court		
Clerks of Court	\$260.00	\$477,413
State Courts Revenue Trust Fund	\$1.00	\$1,836
General Revenue	\$20.00	\$36,724
Total	\$281.00	\$515,973
Difference		
Clerks of Court		-\$330,517
State Courts Revenue Trust Fund		\$89,974
General Revenue		\$459,051
Total		\$218,508

These estimates were derived based on the following FY 2018-19 eligible filings currently appealed to a circuit court. This is likely a worse-case estimate. Also, as more issues become settled in the district courts, the number of appeals are expected to trend downward.

FY 2018-2019 Eligible Filings Appealed to a Circuit Court			
Threshold	Criminal (501 cases less 27.48% of cases filed by an indigent person)	Civil (1,609 cases less 8.46% of cases filed by an indigent person)	Criminal and Civil Appeals FY 2019-19
County Civil and Criminal Cases Up to \$15,000 (current law in FY 2018-19)	363	1,473	1,836

Workload Impact

Courts

The jurisdictional changes in the bill will result in some level of increased workload for the DCAs. Assuming the number of appeals remains the same, at least in the beginning of the jurisdictional change, the courts indicated a need for Other Personal Services (OPS) staff as follows:

12-Month Funding Need

Six OPS Positions (five appellate staff attorneys and one deputy clerk III)
Salaries & Benefits: \$417,421
HR Services: \$1,218
Total: \$418,639 (recurring)

However, the bill will also lead to a decrease in the workloads of the circuit courts. Additionally, conforming amendments to the Florida Rules of Civil Procedure, Appellate Procedure, Judicial Administration, and other rules of court would be required upon passage.

Public Defenders

The public defenders do not anticipate the need for additional resources at this time. A realignment of resources may be required at a later date between the trial and appellate entities.

State Attorneys and the Department of Legal Affairs

The state attorneys are responsible for handling appeals of county court decisions in criminal cases to circuit courts. Pursuant to Section 16.01(4), Fla. Stat. the Criminal Appeals Division of the Office of the Attorney General is the sole government entity that handles all criminal appeals arising from judgments and sentences entered by the state trial courts. Because the bill provides for the appeals from county courts to bypass circuit courts, the bill will increase the appellate workload of the Department of Legal Affairs (DLA). The DLA believes that their Criminal Appeals Division could initially absorb a yearly increase of 500 cases generated from the changes to the appellate court jurisdictions. However, if the numbers of appeals increase based on more recent data and additions to the types of cases or increases in certified cases to the district courts caseloads, reconsideration of personnel needs could be required. To minimize this workload shift, the Legislature may wish to consider whether state attorneys should remain responsible for some or all of the appeals originating from county courts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 26.012, 34.017, and 35.065.

This bill repeals section 924.08 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.)

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on February 18, 2020:

The committee substitute incorporates two technical changes to clarify the appellate cases which go to Public Defender Appellate Entities and the Offices of Criminal Conflict and Civil Regional Counsels as a result of the jurisdictional changes in the underlying bill.

CS by Judiciary on January 21, 2020:

The committee substitute is narrower in scope than the underlying bill. The underlying bill would have given district courts of appeal jurisdiction to hear appeals of decisions of county courts in criminal and civil cases and to hear appeals relating to a variety of administrative decisions and noncriminal infractions. The committee substitute does not transfer to the district courts of appeal the appellate jurisdiction of circuit courts to hear administrative decisions and appeals relating to noncriminal infractions.

- B. **Amendments:**

None.



533428

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/19/2020	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Brandes) recommended the following:

Senate Amendment (with title amendment)

Between lines 64 and 65

insert:

Section 2. Subsection (4) of section 27.51, Florida
Statutes, is amended to read:

27.51 Duties of public defender.—

(4) The public defender for the judicial circuit specified
in this subsection shall, after the record on appeal is
transmitted to the appellate court by the office of the public



533428

11 defender which handled the trial and if requested by any public
12 defender within the indicated appellate district, handle all
13 circuit court and county court criminal appeals within the state
14 courts system and any authorized appeals to the federal courts
15 required of the official making such request:

16 (a) Public defender of the second judicial circuit, on
17 behalf of any public defender within the district comprising the
18 First District Court of Appeal.

19 (b) Public defender of the tenth judicial circuit, on
20 behalf of any public defender within the district comprising the
21 Second District Court of Appeal.

22 (c) Public defender of the eleventh judicial circuit, on
23 behalf of any public defender within the district comprising the
24 Third District Court of Appeal.

25 (d) Public defender of the fifteenth judicial circuit, on
26 behalf of any public defender within the district comprising the
27 Fourth District Court of Appeal.

28 (e) Public defender of the seventh judicial circuit, on
29 behalf of any public defender within the district comprising the
30 Fifth District Court of Appeal.

31 Section 3. Subsection (8) of section 27.511, Florida
32 Statutes, is amended to read:

33 27.511 Offices of criminal conflict and civil regional
34 counsel; legislative intent; qualifications; appointment;
35 duties.—

36 (8) The public defender for the judicial circuit specified
37 in s. 27.51(4) shall, after the record on appeal is transmitted
38 to the appellate court by the office of criminal conflict and
39 civil regional counsel which handled the trial and if requested



533428

40 by the regional counsel for the indicated appellate district,
41 handle all circuit court and county court criminal appeals
42 authorized pursuant to paragraph (5)(f) within the state courts
43 system and any authorized appeals to the federal courts required
44 of the official making the request. If the public defender
45 certifies to the court that the public defender has a conflict
46 consistent with the criteria prescribed in s. 27.5303 and moves
47 to withdraw, the regional counsel shall handle the appeal,
48 unless the regional counsel has a conflict, in which case the
49 court shall appoint private counsel pursuant to s. 27.40.

50

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

52 And the title is amended as follows:

53 Delete line 7

54 and insert:

55 provided by law; amending ss. 27.51 and 27.511, F.S.;

56 revising the duties of the public defender and office

57 of criminal conflict and civil regional counsel,

58 respectively, regarding the handling of appeals to

59 conform to changes made by the act; amending s.

60 34.017, F.S.; authorizing



669174

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2020	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Brandes) recommended the following:

1 **Senate Substitute for Amendment (533428) (with title**
2 **amendment)**

3
4 Between lines 64 and 65
5 insert:

6 Section 2. Subsection (4) of section 27.51, Florida
7 Statutes, is amended to read:

8 27.51 Duties of public defender.—

9 (4) The public defender for the judicial circuit specified
10 in this subsection shall, after the record on appeal is



669174

11 transmitted to the appellate court by the office of the public
12 defender which handled the trial and if requested by any public
13 defender within the indicated appellate district, handle all
14 circuit court and county court appeals within the state courts
15 system and any authorized appeals to the federal courts required
16 of the official making such request:

17 (a) Public defender of the second judicial circuit, on
18 behalf of any public defender within the district comprising the
19 First District Court of Appeal.

20 (b) Public defender of the tenth judicial circuit, on
21 behalf of any public defender within the district comprising the
22 Second District Court of Appeal.

23 (c) Public defender of the eleventh judicial circuit, on
24 behalf of any public defender within the district comprising the
25 Third District Court of Appeal.

26 (d) Public defender of the fifteenth judicial circuit, on
27 behalf of any public defender within the district comprising the
28 Fourth District Court of Appeal.

29 (e) Public defender of the seventh judicial circuit, on
30 behalf of any public defender within the district comprising the
31 Fifth District Court of Appeal.

32 Section 3. Subsection (8) of section 27.511, Florida
33 Statutes, is amended to read:

34 27.511 Offices of criminal conflict and civil regional
35 counsel; legislative intent; qualifications; appointment;
36 duties.—

37 (8) The public defender for the judicial circuit specified
38 in s. 27.51(4) shall, after the record on appeal is transmitted
39 to the appellate court by the office of criminal conflict and



669174

40 civil regional counsel which handled the trial and if requested
41 by the regional counsel for the indicated appellate district,
42 handle all circuit court and county court appeals authorized
43 pursuant to paragraph (5) (f) within the state courts system and
44 any authorized appeals to the federal courts required of the
45 official making the request. If the public defender certifies to
46 the court that the public defender has a conflict consistent
47 with the criteria prescribed in s. 27.5303 and moves to
48 withdraw, the regional counsel shall handle the appeal, unless
49 the regional counsel has a conflict, in which case the court
50 shall appoint private counsel pursuant to s. 27.40.

51

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

53 And the title is amended as follows:

54 Delete line 7

55 and insert:

56 provided by law; amending ss. 27.51 and 27.511, F.S.;

57 revising the duties of the public defender and office

58 of criminal conflict and civil regional counsel,

59 respectively, regarding the handling of appeals to

60 conform to changes made by the act; amending s.

61 34.017, F.S.; authorizing



486692

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/19/2020	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 65 - 96

and insert:

Section 2. Subsection (4) of section 27.51, Florida
Statutes, is amended to read:

27.51 Duties of public defender.—

(4) The public defender for the judicial circuit specified
in this subsection shall, after the record on appeal is
transmitted to the appellate court by the office of the public



486692

11 defender which handled the trial and if requested by any public
12 defender within the indicated appellate district, handle all
13 circuit court and county court misdemeanor and criminal appeals
14 within the state courts system and any authorized appeals to the
15 federal courts required of the official making such request:

16 (a) Public defender of the second judicial circuit, on
17 behalf of any public defender within the district comprising the
18 First District Court of Appeal.

19 (b) Public defender of the tenth judicial circuit, on
20 behalf of any public defender within the district comprising the
21 Second District Court of Appeal.

22 (c) Public defender of the eleventh judicial circuit, on
23 behalf of any public defender within the district comprising the
24 Third District Court of Appeal.

25 (d) Public defender of the fifteenth judicial circuit, on
26 behalf of any public defender within the district comprising the
27 Fourth District Court of Appeal.

28 (e) Public defender of the seventh judicial circuit, on
29 behalf of any public defender within the district comprising the
30 Fifth District Court of Appeal.

31 Section 3. Section 34.017, Florida Statutes, is amended to
32 read:

33 34.017 Certification of questions to district court of
34 appeal.—

35 (1) A county court may ~~is permitted to~~ certify a question
36 to the district court of appeal in a final judgment that is
37 appealable to the circuit court if the question may have
38 statewide application, and:

39 (a) Is of great public importance; or



486692

40 (b) Will affect the uniform administration of justice.

41 (2) In the final judgment, the trial court shall:

42 (a) Make findings of fact and conclusions of law; and

43 (b) State concisely the question to be certified.

44 (3) The decision to certify the question to the district
45 court of appeal is within the sole discretion of the county
46 court.

47 (4) The district court of appeal has absolute discretion as
48 to whether to answer a question certified by the county court.

49 (a) If the district court agrees to answer the certified
50 question, it shall decide all appealable issues that have been
51 raised from the final judgment.

52 (b) If the district court declines to answer the certified
53 question, the case shall be transferred to the circuit court
54 which has appellate jurisdiction.

55 Section 4. Section 35.065, Florida Statutes, is amended to
56 read:

57 35.065 Review of judgment or order certified by county
58 court to be of great public importance.—Pursuant to s. 34.017, a
59 district court of appeal may review any order or judgment of a
60 county court which is certified by the county court to be of
61 great public importance.

62 Section 5. Section 924.08, Florida Statutes, is amended to
63 read:

64 924.08 Courts of appeal.—Appeals from final judgments in
65 misdemeanor cases tried by county courts shall be to the
66 district court of appeal ~~circuit court.~~

67
68 ===== T I T L E A M E N D M E N T =====



486692

69 And the title is amended as follows:

70 Delete lines 7 - 15

71 and insert:

72 provided by law; amending s. 27.51, F.S.; revising the
73 duties of the public defender regarding the handling
74 of appeals to conform to changes made by the act;
75 amending s. 34.017, F.S.; authorizing a county court
76 to certify a question to a district court of appeal in
77 a final judgment that is appealable to a circuit
78 court; amending s. 35.065, F.S.; authorizing a
79 district court of appeal to review certain questions
80 certified by a county court; amending s. 924.08, F.S.;
81 specifying that final judgments of misdemeanor cases
82 tried in county court are appealable to the district
83 court of appeal; providing an

OFFICE OF THE STATE COURTS ADMINISTRATOR
2020 JUDICIAL IMPACT STATEMENT

BILL NUMBER: CS for SB 1510

DATE: January 29, 2020

SPONSOR(S): Senator Brandes

STATUTE(S) AFFECTED: ss. 26.012, 34.017, 35.065, and 924.08 F.S.

COMPANION BILL(S): PCB JDC 20-02

AGENCY CONTACT: Sean Burnfin

TELEPHONE: (850) 922-0358

ASSIGNED OSCA STAFF: Tina White, Andrew Johns, and Melissa Hamilton

I. SUMMARY: Committee Substitute for Senate Bill 1510 repeals the circuit courts' general statutory authority to hear appeals from county court final orders and judgments. As a result of these amendments, the district courts of appeal (DCAs) will have jurisdiction to hear the appeals pursuant to Article V, § 4(b)(1), Fla. Const., stating that the DCAs shall have jurisdiction to hear appeals that may be taken as a matter of right from final judgments or orders of trial courts that are not directly appealable to the circuit court or supreme court. Under existing statutes not amended by the bill, the circuit courts will continue to have appellate jurisdiction for certain administrative decisions and for certain county court decisions entered in noncriminal violation, noncriminal infraction, and other cases. The bill provides an effective date of January 1, 2021.

In January 2019, the Florida Supreme Court established the Workgroup on Appellate Review of County Court Decisions (Workgroup) to review circuit court appellate practices (AOSC19-3). As a result of this review, the Workgroup recommended, and the supreme court approved, the proposal of statutory amendments to transfer the circuit courts' appellate and related extraordinary writ authority to the DCAs in county court civil cases, including non-criminal violations, county court criminal cases, and administrative cases.

II. EFFECT OF PROPOSED CHANGES:

Present Situation

Circuit Court Appellate Jurisdiction Generally: With respect to appellate jurisdiction, the State Constitution authorizes circuit courts to review appeals and administrative actions as established by general law and petitions for extraordinary writs for cases in which the circuit courts have

appellate jurisdiction.¹ Pursuant § 26.012(1), F.S., circuit courts are generally granted jurisdiction over appeals from county court orders or judgments subject to three exceptions that are discussed below. Further, § 924.08, F.S., specifically provides that circuit courts shall hear “[a]ppeals from final judgments in misdemeanor cases tried by county courts.”² Finally, numerous other statutes specifically authorize circuit court review of decisions such as those entered in certain administrative actions³ and by the county court in certain “noncriminal violation,” “noncriminal infraction,” and other cases.^{4, 5}

Circuit Court Appellate Jurisdiction for County Court Cases: County courts have jurisdiction to hear at least the case types listed below. According to the Florida Civil Practice guide, “Statutes relating to specific subjects may also contain separate provisions that establish the jurisdiction of the county courts as to those subjects.”⁶ County courts may hear:

- Actions at law, except those within the exclusive jurisdiction of the circuit courts, with an amount in controversy up to \$30,000, exclusive of interest, costs, and attorney fees.⁷
- Certain dissolution cases.
- Certain proceedings relating to the right of possession of real property and to the forcible or unlawful detention of lands and tenements.
- Violations of municipal and county ordinances.
- Misdemeanor cases not cognizable by the circuit courts.⁸

¹ Circuit courts “shall have ... jurisdiction of appeals when provided by general law. ... They shall have the power of direct review of administrative action prescribed by general law.” Article V, § 5(b), Fla. Const. Circuit courts “shall have the power to issue writs of mandamus, quo warranto, certiorari, prohibition and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction.” *Id.*; see Wovas v. Touse Homes, Inc., 940 So. 2d 1166, 1167 (Fla. 2d DCA 2006) (stating “A circuit court may issue an extraordinary writ only where it has original or appellate jurisdiction.”); Philip J. Padovano, Fla. Appellate Practice § 5.6.

² Circuit courts have jurisdiction of appeals from final judgments, and appeals by the state of certain nonfinal orders, in misdemeanor cases. §§ 924.07, 924.071, and 924.08, Fla. Stat.; State v. Ratner, 948 So. 2d 700, 704 (Fla. 2007).

³ State statutes do not generally confer appellate jurisdiction to the circuit courts over administrative actions; instead, they grant such authority based on the type of action or entity taking action. For example, §§ 26.012(1) and 162.11, Fla. Stat., authorize appeals of final administrative orders entered by local government code enforcement boards.

⁴ The term “noncriminal violation” means “any offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by no other penalty than a fine, forfeiture, or other civil penalty. A noncriminal violation does not constitute a crime, and conviction for a noncriminal violation shall not give rise to any legal disability based on a criminal offense. The term ‘noncriminal violation’ shall not mean any conviction for any violation of any municipal or county ordinance. Nothing contained in this code shall repeal or change the penalty for a violation of any municipal or county ordinance.” § 775.08(3), F.S. The term “noncriminal infraction” is not defined in statute.

⁵ See, e.g., §§ 379.401, 379.4015, and 379.412, F.S. (specifying that an appeal of a county court’s finding that a person committed a “noncriminal infraction” relating to certain rules or orders of the Fish and Wildlife Conservation Commission, certain regulations relating to hunting, fishing, and trapping, or certain prohibitions against or restrictions on feeding wildlife or freshwater fish may be filed in the circuit court); and § 569.005, F.S. (specifying that an appeal of a county court’s finding that a person committed a “noncriminal violation” by operating without a retail tobacco products dealer permit may be filed in the circuit court).

⁶ Philip J. Padovano, Fla. Civil Practice § 1.6.; see, e.g., Footnote 5 (addressing statutes that grant county courts authority to hold hearings on whether certain noncriminal infractions and violations have been committed).

⁷ § 34.01(1)(c)2. and 3., F.S. (indicating that the amount of \$30,000 will increase to \$50,000 on January 1, 2023).

⁸ §§ 34.01 and 34.011, F.S.

County courts also have jurisdiction concurrent with the circuit court to consider certain disputes occurring in homeowners' association and landlord and tenant cases involving claims up to the county courts' jurisdictional limit.⁹

Finally, statute provides that "The county courts shall have jurisdiction previously exercised by county judges' courts other than that vested in the circuit court by s. 26.012, ... and the jurisdiction previously exercised by county courts, the claims court, small claims courts, small claims magistrates courts, magistrates courts, justice of the peace courts, municipal courts, and courts of chartered counties, including but not limited to the counties referred to in ss. 9, 10, 11, and 24, Art. VIII of the State Constitution of 1885, as preserved by s. (6)(e), Art. VIII of the State Constitution of 1968."¹⁰

Unless otherwise provided in law, an appeal of a case heard by a county court within a case type described above would be filed in the circuit court pursuant to §§ 26.012(1) or 924.08, F.S., or potentially pursuant to a more specific statute.¹¹ Given this appellate jurisdiction, the circuit courts would also be authorized to issue extraordinary writs in these cases.¹²

DCA Appellate Jurisdiction for County Court Cases: Section 26.012(1), F.S., specifies the following three exceptions to the circuit courts' appellate jurisdiction for county court orders and judgments:

- Appeals of county court orders or judgments where the amount in controversy is greater than \$15,000, until January 1, 2023, at which time this exception is repealed.
- Appeals of county court orders or judgments declaring invalid a state statute or a provision of the State Constitution.
- Orders or judgments of a county court that are certified by the county court to the DCA to be of great public importance and that are accepted by the DCA for review.¹³

The DCAs have appellate jurisdiction for final orders or judgments in county court cases falling within one of the above-described exceptions pursuant to the State Constitution, which states that DCAs "shall have jurisdiction to hear appeals, that may be taken as a matter of right, from final judgments or orders of trial courts, including those entered on review of administrative action, [that are] not directly appealable to the supreme court or a circuit court."^{14, 15} In such cases, the

⁹ Id.

¹⁰ § 34.01(2), F.S.

¹¹ See, e.g., Footnote 5 (addressing statutes that grant circuit court appellate jurisdiction for county court judgments finding that a noncriminal infraction or violation was committed).

¹² See Footnote 1.

¹³ Article V, § 5(b)(1), Fla. Const.; §§ 26.012(1), 34.017, and 35.065, Fla. Stat.

¹⁴ Article V, § 4(b)(1), Fla. Const.

¹⁵ "In Amendments to the Florida Rules of Appellate Procedure, 696 So. 2d 1103 (Fla. 1996), the supreme court stated that Article V of the Florida Constitution guarantees the right to appeal a final order. The supreme court receded from language in State v. Creighton, 469 So. 2d 735 (Fla. 1985) suggesting that the right to appeal was purely a statutory right. The court limited Creighton to its holding that the state has no constitutional right to appeal [in a criminal case]." Padovano, Fla. Appellate Practice § 4.1. "The state's right to appeal an order in a related civil case is not limited to orders that are specifically identified by statute or in the rules of procedure. Generally, the state is entitled to appeal a final order in a civil case. For example, the state has a right to appeal a final order dismissing a

DCAs may also issue writs¹⁶ and review nonfinal orders as authorized by the Florida Rules of Court.¹⁷

Effect of Bill

Committee Substitute for Senate Bill 1510 repeals the circuit courts' general statutory authority to hear appeals from county court final orders and judgments. As a result of these amendments, the DCAs will have jurisdiction to: hear appeals of such final orders and judgments pursuant to Article V, § 4(b)(1), Fla. Const.; issue extraordinary writs in those appellate cases pursuant to Article V, § 4(b)(3), Fla. Const.; and review nonfinal orders in those cases as provided by rules of court. Under existing statutes not amended by the bill, the circuit courts will continue to have appellate jurisdiction for certain administrative decisions and for certain county court decisions entered in noncriminal violation, noncriminal infraction, and other cases.

Specifically, the bill:

- Repeals the general authority in § 26.012, F.S., for circuit courts to hear certain appeals from county courts and adds text indicating that circuit courts have jurisdiction “of reviews and appeals as otherwise expressly provided by law.” This text is added to provide general notice to the reader that numerous other statutes afford appellate jurisdiction to the circuit courts to hear appeals of certain county court decisions in noncriminal violation and other cases and of certain administrative decisions.
- Amends §§ 34.017 and 35.065, F.S., to specify that a county court may continue to certify a question to the DCA in a final judgment, but only if that judgment is appealable to the circuit court.
- Repeals § 924.08, F.S., which authorizes circuit courts to hear appeals from final judgments in misdemeanor cases.

III. ANTICIPATED JUDICIAL OR COURT WORKLOAD IMPACT: The overall workload impact of the bill's transfer of the circuit courts' appellate and related extraordinary writ authority to the DCAs in county court cases is indeterminate. Complete and reliable¹⁸ data are

petition for involuntary commitment under the Jimmy Ryce Act. Likewise, the state has a right to appeal a final order granting postconviction relief under Rule 3.850. The procedure in the rule supplants habeas corpus which is a civil remedy.” Padovano, Fla. Appellate Practice § 27.24. Chapter 59, F.S., addresses appeals in civil cases and ch. 924, F.S., addresses defendant and state rights to appeal in criminal cases.

¹⁶ Article V, § 4(b)(3), Fla. Const.; and Padovano, Fla. Appellate Practice § 4.9 (stating that a DCA's authority “to issue an extraordinary writ generally follows jurisdiction to review an order by appeal. Therefore, a party who seeks to obtain an extraordinary writ directed to a lower court must file the petition in the appellate court that would have jurisdiction over the issue if it were presented in an appeal.”).

¹⁷ Article V, § 4(b)(1), Fla. Const.; see Fla. R. App. P. 9.030(b)(1)(b), 9.130, and 9.140 (specifying categories of nonfinal orders that may be appealed to the DCAs); and Fla. R. App. P. 9.030(b)(2)(A) (providing that nonfinal orders by lower tribunals that are not specified in court rule may be reviewed by the DCAs pursuant to their constitutional certiorari jurisdiction).

¹⁸ When reviewing a subset of the available Summary Reporting System (SRS) data for fiscal year 2016-17, circuit-level appellate data discrepancies between the SRS, clerk, and court administration data were uncovered. Specifically, slight variations in the numbers of county court appeals were recorded across nearly all circuits, and significant variations in the numbers of county court appeals were noted in the South Florida judicial circuits (11th, 15th, and 17th judicial circuits).

not available for the total number of appeals and petitions for writs that are filed in the circuit courts. Based on the data that is available from the Summary Reporting System (SRS), an average of 1,867 cases were appealed to the circuit courts annually during the past 10 years. This data includes appeals of county court decisions in civil, criminal, and noncriminal violation and infraction cases and petitions for writs in county court criminal cases. The data does not include administrative appeals or petitions for writs in civil appellate cases. Given that bill does not transfer all circuit court appellate authority with respect to noncriminal violation and infraction cases, the total of 1,867 cases may overstate the number of the cases that will transfer to the DCAs under the bill. Conversely, the total of 1,867 may understate the number of cases that will transfer, as it does not include petitions for writs in civil appellate cases.

For its final report and recommendations, the Workgroup, using the limited data described above, considered the additional judicial workload that will be experienced by the DCAs due to the transfer of appellate jurisdiction from the circuit courts. A preliminary estimate, based on the transfer of 1,867 cases, showed that the Fourth DCA may need three new judges to address the increase in workload. The Workgroup's estimate projected that all other DCAs could absorb the impact within current judicial resources.

Since the Workgroup's report and based on further consultation with the DCAs, an alternative approach to addressing the increase in DCA workload has been considered, in lieu of providing three additional DCA judges and their supporting staff. The alternative approach proposes five appellate staff attorneys and a deputy clerk,¹⁹ on an Other Personal Services (OPS) basis, for an annual total of \$418,639 (recurring). See Section V. This approach could provide a less expensive option to address the workload increase. OPS could be utilized to address the increase in workload until a full impact from the transfer can be determined. Temporary staffing was successfully used in the foreclosure initiative to manage the influx of filings occurring at that time. This approach assumes that county court appeals transferred to the DCAs would be less complex, thus requiring less judicial involvement and associated workload.

Additionally, because the overall statewide workload impact of the transfer of the circuit courts' appellate authority to the DCAs is indeterminate, it is possible that additional DCA deputy clerks and appellate staff attorneys will be needed based on implementation experience.

Over time, it is anticipated that the number of appeals of county court cases will decrease as intra- and inter-circuit court conflict is eliminated and issues are resolved by the DCAs through the transfer of circuit court appellate jurisdiction. As appeals are shifted from circuit courts to the DCAs, a corresponding decrease in circuit court workload will be experienced. In addition, circuit court workload is anticipated to also decrease with the increase of county court jurisdiction to \$30,000 that occurred on January 1, 2020. While the precise impact of the bill is unknown, the possible change in judicial workload and judge need will be reflected in the supreme court's annual opinion on certification of need for additional judges.

¹⁹ Based on consultation with the DCAs, three appellate staff attorneys and a deputy clerk III would be assigned to the Fourth DCA, one appellate staff attorney would be assigned to the Second DCA, and one appellate staff attorney would be assigned to the Fifth DCA.

Possible implementation impacts for this bill include:

- Operational changes will be required in both the circuit and appellate courts to accommodate the new flow of cases. Circuit court clerks and DCA appellate clerks will have workload impacts as the workload is shifted. The circuit court clerks would have a potential reduction in workload with an appellate jurisdiction transfer to the DCAs.
- Litigants will incur a fiscal impact if the Legislature maintains the current filing fees. The appellate filing fee for circuit courts is \$281.00, while the filing fee for DCAs is \$400.00.
- Self-represented litigants and other parties who have grown accustomed to appeals being heard within the same local courthouse may be resistant to litigating in a DCA or may be affected by a DCA courthouse location that is farther away. Given e-Filing, however, these parties should be affected by the location issue only when required to attend an oral argument, which is infrequently ordered.

IV. **IMPACT TO COURT RULES/JURY INSTRUCTIONS:** If the legislation is enacted, conforming amendments to the Florida Rules of Civil Procedure, Appellate Procedure, Judicial Administration, and other rules of court will be required.

V. **ESTIMATED FISCAL IMPACTS ON THE JUDICIARY:**

A. Revenue: As discussed above, it presently costs \$281 to file an appeal in the circuit court and \$400 to file an appeal in the DCA. The filing fee revenues for each of these fees are distributed differently. Due to the bill’s transfer of certain county court appeals to the DCAs, the clerks of court will experience a negative fiscal impact and the State Courts Revenue Trust Fund and general revenue will experience positive fiscal impacts (see tables and bullets below).

The chart below indicates the estimated number of appellate cases filed in the circuit court for Fiscal Year 2018-19, for which a filing fee was paid except when the petitioner was indigent.

FY 2018-19 Eligible Filings Currently Appealed to Circuit Court

Threshold	Criminal (501 cases less 27.48% of cases filed by an indigent person)	Civil (1,609 cases less 8.46% of cases filed by an indigent person)	Criminal and Civil Appeals FY 2018-19
County Civil and Criminal Cases Up to \$15,000 (current law in FY 2018-19)	363	1,473	1,836

**Estimated Impact in Filing Fee Revenue Generated by
Changing the County Court Appellate Process**

	Fee Distribution	Revenue Impact Based on 1,836 Appellate Cases
Revenue Generating Appellate Cases Filed in District Court of Appeal		
Clerks of Court	\$80.00	\$146,896
State Courts Revenue Trust Fund	\$50.00	\$91,810
General Revenue	\$270.00	\$495,775
Total	\$400.00	\$734,482
Revenue Generating Appellate Cases Filed in Circuit Court		
Clerks of Court	\$260.00	\$477,413
State Courts Revenue Trust Fund	\$1.00	\$1,836
General Revenue	\$20.00	\$36,724
Total	\$281.00	\$515,973
Difference		
Clerks of Court		-\$330,517
State Courts Revenue Trust Fund		\$89,974
General Revenue		\$459,051
Total		\$218,508

- The fiscal impact above details the difference in total revenue collected and the distribution of the revenue if civil and criminal cases originating in the county court are appealed to the DCAs. Note that changes in § 28.241(2), F.S., effective July 1, 2019, set filing fees for filing a notice of appeal from the county court to the DCA.
- The number of petitions for writs in county court civil cases that are filed in circuit court is indeterminate; therefore, a fiscal impact from a change in the distribution of revenue from those filings is also indeterminate.

B. Expenditures: The total fiscal impact of the bill is indeterminate due to lack of data to fully quantify the changes in judicial workload and other potential impacts of the bill on court operations, as discussed in Section III. above. The narrative below provides information on a recurring OPS staffing approach to address the potential increase in workload. Any judicial workload changes in the future as a result of this bill will be reflected in the Supreme Court’s annual opinion on certification of need for additional judges.

Following an analysis of actual workload data, or with the availability of more accurate workload estimates, additional DCA deputy clerks and appellate staff attorneys may be needed in all DCAs. For this analysis, five appellate staff attorneys and one deputy clerk III are used to estimate initial staffing needs for three of the DCAs, and the costs are as follows:

- Six-Month Funding Need (based on a January 1, 2021, implementation date)
Six OPS Positions (five appellate staff attorneys and one deputy clerk III)
RATE = 151,104
Salaries & Benefits: \$208,711
HR Services: \$1,218
Total: \$209,929

This expenditure data reflects the costs associated with six-month funding for the new OPS positions and includes health insurance. The fee for Human Resource Services is calculated at \$203 for each position, as outlined in the FY 2020-21 Legislative Budget Request Instructions.

- 12-Month Funding Need
Six OPS Positions (five appellate staff attorneys and one deputy clerk III)
RATE = 302,208
Salaries & Benefits: \$417,421
HR Services: \$1,218
Total: \$418,639 (recurring)

This expenditure data reflects the costs associated with 12-month funding for the new OPS positions and includes health insurance. Human Resource Services fee is calculated at \$203 for each position, as outlined in the FY 2020-21 Legislative Budget Request Instructions.

THE FLORIDA SENATE
APPEARANCE RECORD

2/18/2020

Meeting Date

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

SB 1510

Bill Number (if applicable)

Topic Jurisdiction of Courts

Amendment Barcode (if applicable)

Name Eric Maclure

Job Title Deputy State Courts Administrator

Address 500 South Duval St.

Phone 850-488-3733

Street

Tallahassee, FL 32399

City

State

Zip

Email macluree@flcourts.org

Speaking: For Against Information

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

Representing State Courts System

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

February 18 2020
Meeting Date

1510
Bill Number (if applicable)

Topic Jurisdiction of Courts

Amendment Barcode (if applicable)

Name Josh Aubuchon

Job Title Attorney

Address 315 S. Calhoun
Street

Phone 224-7000

Tallahassee FL 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/18/20

Meeting Date

1510

Bill Number (if applicable)

533428

Amendment Barcode (if applicable)

Topic Appeals

Name Carey Haughwout

Job Title Public Defender, 15th Judicial Circuit

Address 421 3d St.

Street

West Palm Beach

City

FL

State

33401

Zip

Phone 561-355-7500

Email CareyPD@pd15.state.fl.us

Speaking: For Against Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

By the Committee on Judiciary; and Senator Brandes

590-02410-20

20201510c1

1 A bill to be entitled
2 An act relating to the jurisdiction of courts;
3 amending s. 26.012, F.S.; limiting the appellate
4 jurisdiction of the circuit courts to appeals from
5 final administrative orders of local code enforcement
6 boards and other reviews and appeals expressly
7 provided by law; amending s. 34.017, F.S.; authorizing
8 a county court to certify a question to a district
9 court of appeal in a final judgment that is appealable
10 to a circuit court; amending s. 35.065, F.S.;
11 authorizing a district court of appeal to review
12 certain questions certified by a county court;
13 repealing s. 924.08, F.S., relating to the
14 jurisdiction of the circuit court to hear appeals from
15 final judgments in misdemeanor cases; providing an
16 effective date.

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

19
20 Section 1. Section 26.012, Florida Statutes, is amended to
21 read:

22 26.012 Jurisdiction of circuit court.-

23 ~~(1) Circuit courts shall have jurisdiction of appeals from~~
24 ~~county courts except:~~

25 ~~(a) Appeals of county court orders or judgments where the~~
26 ~~amount in controversy is greater than \$15,000. This paragraph is~~
27 ~~repealed on January 1, 2023.~~

28 ~~(b) Appeals of county court orders or judgments declaring~~
29 ~~invalid a state statute or a provision of the State~~

590-02410-20

20201510c1

30 Constitution.

31 ~~(c) Orders or judgments of a county court which are~~
32 ~~certified by the county court to the district court of appeal to~~
33 ~~be of great public importance and which are accepted by the~~
34 ~~district court of appeal for review.~~ Circuit courts shall have
35 jurisdiction of appeals from final administrative orders of
36 local government code enforcement boards and of reviews and
37 appeals as otherwise expressly provided by law.

38 (2) Circuit courts ~~They~~ shall have exclusive original
39 jurisdiction:

40 (a) In all actions at law not cognizable by the county
41 courts;

42 (b) Of proceedings relating to the settlement of the
43 estates of decedents and minors, the granting of letters
44 testamentary, guardianship, involuntary hospitalization, the
45 determination of incompetency, and other jurisdiction usually
46 pertaining to courts of probate;

47 (c) In all cases in equity including all cases relating to
48 juveniles except traffic offenses as provided in chapters 316
49 and 985;

50 (d) Of all felonies and of all misdemeanors arising out of
51 the same circumstances as a felony which is also charged;

52 (e) In all cases involving legality of any tax assessment
53 or toll or denial of refund, except as provided in s. 72.011;

54 (f) In actions of ejectment; and

55 (g) In all actions involving the title and boundaries of
56 real property.

57 (3) The circuit court may issue injunctions.

58 (4) The chief judge of a circuit may authorize a county

590-02410-20

20201510c1

59 court judge to order emergency hospitalizations pursuant to part
60 I of chapter 394 in the absence from the county of the circuit
61 judge; and the county court judge shall have the power to issue
62 all temporary orders and temporary injunctions necessary or
63 proper to the complete exercise of such jurisdiction.

64 (5) A circuit court is a trial court.

65 Section 2. Section 34.017, Florida Statutes, is amended to
66 read:

67 34.017 Certification of questions to district court of
68 appeal.—

69 (1) A county court may ~~is permitted to~~ certify a question
70 to the district court of appeal in a final judgment that is
71 appealable to the circuit court if the question may have
72 statewide application, and:

73 (a) Is of great public importance; or

74 (b) Will affect the uniform administration of justice.

75 (2) In the final judgment, the trial court shall:

76 (a) Make findings of fact and conclusions of law; and

77 (b) State concisely the question to be certified.

78 (3) The decision to certify the question to the district
79 court of appeal is within the sole discretion of the county
80 court.

81 (4) The district court of appeal has absolute discretion as
82 to whether to answer a question certified by the county court.

83 (a) If the district court agrees to answer the certified
84 question, it shall decide all appealable issues that have been
85 raised from the final judgment.

86 (b) If the district court declines to answer the certified
87 question, the case shall be transferred to the circuit court

590-02410-20

20201510c1

88 which has appellate jurisdiction.

89 Section 3. Section 35.065, Florida Statutes, is amended to
90 read:

91 35.065 Review of judgment or order certified by county
92 court to be of great public importance.—Pursuant to s. 34.017, a
93 district court of appeal may review any order or judgment of a
94 county court which is certified by the county court to be of
95 great public importance.

96 Section 4. Section 924.08, Florida Statutes, is repealed.

97 Section 5. This act shall take effect January 1, 2021.

CourtSmart Tag Report

Room: LL 37

Case No.:

Type:

Caption: Senate Appropriations Subcommittee on Criminal and Civil Justice

Judge:

Started: 2/18/2020 1:38:17 PM

Ends: 2/18/2020 3:24:24 PM

Length: 01:46:08

1:38:37 PM Recording Paused
1:40:01 PM Recording Resumed
1:47:48 PM Sen. Brandes (Chair)
1:48:45 PM S 28
1:48:58 PM Sen. Gibson
1:50:37 PM Sen. Gainer
1:50:52 PM Sen. Gibson
1:51:15 PM Sen. Rouson
1:51:30 PM Sen. Gibson
1:52:04 PM Sen. Harrell
1:52:34 PM Sen. Gibson
1:52:49 PM Sen. Harrell
1:52:53 PM Sen. Gibson
1:53:23 PM Kim Porteous, President, Florida Now (waives in support)
1:53:37 PM Sen. Rouson
1:54:03 PM Sen. Brandes
1:54:31 PM Sen. Gibson
1:55:34 PM Melina Farley-Barratt, Legislative Director, Florida Now (waives in support)
1:56:05 PM S 884
1:56:08 PM Sen. Hooper
1:57:39 PM Am. 460020
1:57:45 PM Sen. Hooper
1:58:09 PM S 884 (cont.)
1:58:17 PM Barney Bishop, Lobbyist, Florida Smart Justice Alliance (waives in support)
1:58:25 PM Matt Puckett, Lobbyist, Florida Police Benevolent Association (waives in support)
1:58:31 PM Steve Zona, President of Jacksonville Lodge, Fraternal Order of Police (waives in support)
1:59:20 PM Sen. Bracy (Chair)
1:59:50 PM S 790
2:00:07 PM Sen. Brandes
2:00:11 PM Am. 476654
2:00:19 PM Sen. Brandes
2:01:01 PM Am. 314044
2:01:10 PM Sen. Brandes
2:01:25 PM Jason Welty, Budget and Communications Director, Florida Clerks of Court Operations Corporation (waives in support)
2:01:43 PM Am. 476652 (cont.)
2:02:07 PM S 790 (cont.)
2:03:08 PM S 1304
2:03:13 PM Sen. Brandes
2:03:50 PM Sen. Rouson
2:04:14 PM Sen. Brandes
2:04:24 PM Sen. Harrell
2:04:56 PM Sen. Brandes
2:05:10 PM Sen. Harrell
2:05:28 PM Sen. Brandes
2:05:46 PM Sen. Harrell
2:05:58 PM Sen. Brandes
2:06:27 PM Ida Eskamani, Organize Florida and New Florida Majority (waives in support)
2:06:32 PM Robert Weissert, Executive Vice President, Florida Tax Watch (waives in support)
2:06:40 PM Eric Maclure, Deputy State Courts Administrator, Steering Committee on Problem Solving Courts/State Court Systems (waives in support)
2:06:46 PM Barney Bishop, Lobbyist, Florida Smart Justice Alliance (waives in support)

2:06:58 PM Stacy Scott, Public Defender, Florida Public Defenders (waives in support)
2:07:03 PM Kara Gross, Legislative Director, American Civil Liberties Union of Florida (waives in support)
2:07:17 PM Sen. Harrell
2:07:55 PM Sen. Brandes
2:09:17 PM S 1510
2:09:27 PM Sen. Brandes
2:09:48 PM Am. 669174
2:09:56 PM Sen. Brandes
2:10:36 PM Sen. Rouson
2:10:52 PM Sen. Brandes
2:12:06 PM S 1510 (cont.)
2:12:36 PM Eric Maclure, Deputy State Courts Administrator, State Courts System (waives in support)
2:12:43 PM Josh Aubuchon, Attorney, Florida Justice Reform Institute (waives in support)
2:13:03 PM Sen. Brandes
2:14:14 PM Carey Haughwout, Public Defender, Florida Public Defender Association (waives in support)
2:14:58 PM Sen. Brandes (Chair)
2:15:06 PM S 170
2:15:08 PM Sen. Stewart
2:16:34 PM Am. 413116
2:16:42 PM Sen. Stewart
2:17:43 PM Michael Crabb, Lieutenant, Orange County Sheriff (waives in opposition)
2:18:02 PM Katrina Puesterhaus, Self (waives in opposition)
2:19:52 PM Kim Jaimie, Self
2:22:26 PM Donna Hendrick, Self
2:22:26 PM Lori Wright, Self (waives in opposition)
2:32:02 PM Terresa Lansell, Self
2:38:19 PM S 170 (cont.)
2:38:33 PM Melina Farley-Barratt, Legislative Director, Florida Now (waives in support)
2:38:55 PM Katrina Duesterhaus, Self
2:39:55 PM Lori Wright, Self (waives in support)
2:39:59 PM Teresa Lansell, Self (waives in support)
2:40:03 PM Donna Hendrick, Self (waives in support)
2:40:10 PM Kim Jaimie, Self (waives in support)
2:40:15 PM Barney Bishop, Lobbyist, Florida Smart Justice Alliance (waives in support)
2:40:22 PM Kim Porteous, President, Florida Now
2:41:52 PM Jodi Stevens, Director of Government Affairs, Pace Center for Girls (waives in support)
2:42:00 PM Gail Gardner, Rape Abuse & Incest National Network (waives in support)
2:42:06 PM Michael Crabb, Lieutenant, Orange County Sherriff (waives in support)
2:42:18 PM Sen. Rouson
2:43:21 PM Sen. Stewart
2:44:51 PM Sen. Gainer
2:45:28 PM S 1328
2:45:37 PM Sen. Wright
2:46:15 PM Am. 385158
2:46:23 PM Sen. Wright
2:47:52 PM Ashley Thomas, Florida Director, Fines and Fees Justice Center (waives in support)
2:48:05 PM Sen. Wright
2:48:20 PM S 1328 (cont.)
2:48:31 PM Kenneth Boles, Retired, Veterans (waives in support)
2:48:42 PM Brewster Bevis, Senior Vice President, Associated Industries of Florida (waives in support)
2:48:47 PM Ashley Thomas, Florida Director, Fines and Fees Justice Center (waives in support)
2:48:52 PM Alix Miller, Vice President, Florida Trucking Association (waives in support)
2:49:11 PM Tom Bexley, Clerk, Florida Circuit Court and Comptroller
2:52:29 PM Sen. Bracy
2:52:35 PM T. Bexley
2:53:04 PM Ida Eskamani, Organize Florida and New Florida Majority (waives in support)
2:53:10 PM Gail Ernst, American Legion (waives in support)
2:53:12 PM Fred Ingley, Tallahassee Veterans Legal Collaborative (waives in support)
2:53:17 PM Dan Hendrickson, Volunteer, Tallahassee Veterans Legal Collaborative (waives in support)
2:53:21 PM Lauren Gallo, Lobbyist, League of Women Voters of Florida (waives in support)
2:53:25 PM Robert Davie, Vice Commander, American Legion (waives in support)
2:53:28 PM Larry Crumbie, Disabled Veteran (waives in support)

2:53:31 PM Richard Junnier, Researcher, Junnier Law and Research (waives in support)
2:53:36 PM Kevin Williams Mentor, Veteran's Treatment Court (waives in support)
2:53:41 PM Lauren Storch, Government Affairs, Hillsborough County (waives in support)
2:53:47 PM Markevia Williams, Administrative Assistant, Self (waives in support)
2:53:51 PM Charles Stanford, Commander, Military Order of the Purple Heart (waives in support)
2:53:54 PM Mike Ford, Military Order of the Purple Heart (waives in support)
2:53:58 PM Dana Parker, Self (waives in support)
2:54:02 PM Galan Ivan, Self (waives in support)
2:54:07 PM Jamuel Cotto, President, Prisoners of Hope (waives in support)
2:54:10 PM Starla Brown, Deputy State Director, Americans for Prosperity (waives in support)
2:54:14 PM Carey Haughwout, Public Defender, Florida Public Defender Association (waives in support)
2:54:18 PM Grace Lovett, Vice President of Government Affairs, Florida Retail Federation (waives in support)
2:54:22 PM Kara Gross, Legislative Director, American Civil Liberties Union of Florida (waives in support)
2:54:27 PM Kim Porteous, President, Florida Now (waives in support)
2:54:35 PM Tacnona Marc, Policy Analyst, Florida Policy Institute (waives in support)
2:55:02 PM Sen. Brandes
2:55:07 PM Sen. Wright
2:56:15 PM S 1396
2:56:21 PM Sen. Simmons
2:58:28 PM Sen. Rouson
2:58:52 PM Sen. Simmons
2:59:21 PM Dan Hendrickson, Tallahassee Veterans Legal Collaborative (waives in support)
2:59:25 PM Doug Mannheimer, Attorney, Alcohol Countermeasure Systems (waives in support)
2:59:35 PM Carey Haughwout, Public Defender, Florida Public Defender Association (information)
2:59:52 PM Phil Archer, State Attorney, Florida Prosecuting Attorneys Association
3:00:31 PM Sen. Brandes
3:01:08 PM S 652
3:01:14 PM Sen. Pizzo
3:02:11 PM Am. 299286
3:02:18 PM Sen. Pizzo
3:02:39 PM S 652 (cont.)
3:02:48 PM Ida Eskamani, Organize Florida and New Florida Majority (waives in support)
3:02:59 PM Sen. Pizzo
3:03:37 PM S 1262
3:03:47 PM Sen. Bracy
3:05:25 PM Am. 566828
3:05:36 PM Sen. Bracy
3:06:06 PM S 1262 (cont.)
3:06:19 PM Ida Eskamani, Organize Florida and New Florida Majority (waives in support)
3:06:26 PM Melina Farley-Barratt, Legislative Director, Florida Now (waives in support)
3:06:29 PM Kim Porteous, President, Florida Now (waives in support)
3:06:39 PM Kara Gross, Legislative Director, American Civil Liberties Union of Florida (waives in support)
3:06:44 PM Sen. Rouson
3:08:25 PM S 1450
3:08:34 PM Sen. Gruters
3:08:47 PM Am. 255866
3:08:59 PM Sen. Gruters
3:09:55 PM Sen. Bracy (Chair)
3:10:00 PM Am. 676938
3:10:14 PM Sen. Brandes
3:11:42 PM Sen. Brandes (Chair)
3:11:52 PM Am. 255866 (cont.)
3:12:21 PM S 1450 (cont.)
3:12:51 PM Sen. Gainer
3:13:41 PM Sen. Brandes
3:13:50 PM Alex Bickley, Director of Legislative Affairs, Florida Department of Environmental Protection (waives in support)
3:14:02 PM Adrian Moore, Vice President, Reason Foundation
3:15:32 PM David Cullen, Sierra Club Florida (waives in support)
3:15:45 PM Jane West, Policy and Planning Director, 1000 Friends of Florida
3:16:59 PM Sen. Perry
3:17:43 PM Sen. Gruters

3:19:32 PM S 852
3:20:54 PM Sen. Pizzo
3:21:05 PM Am. 656522
3:21:18 PM Sen. Pizzo
3:21:54 PM S 852 (cont.)
3:22:10 PM Baryney Bishop, Lobbyist, Florida Smart Justice Alliance (waives in support)
3:22:11 PM Brian Jogerst, Florida Association of Healthy Start Coalitions (waives in support)
3:22:11 PM Trish Brown, Organizer, Dignity (waives in support)
3:22:14 PM Melina Farley-Barratt, Legislative Director, Florida Now (waives in support)
3:22:14 PM Ida Eskamani, New Florida Majority and Organize Florida (waives in support)
3:22:14 PM Patricia Knight, Self (waives in support)
3:22:14 PM Carey Haughwout, Public Defender, Florida Public Defender Association (waives in support)
3:22:14 PM Karen Woodall, Executive Director, Florida Centers for Fiscal and Economic Policy (waives in support)
3:22:14 PM Scott McCoy, Policy Director, Southern Poverty Law Center Action Fund (waives in support)
3:22:14 PM Tray Johns, Criminal Justice Organizer, Dignity Florida (waives in support)
3:22:14 PM Kiwanda Green, Dignity Coalition (waives in support)
3:22:14 PM Joutinsa, Dignity Florida (waives in support)
3:22:14 PM Aaron Burks, Self (waives in support)
3:22:14 PM Charo Valers, Florida Policy Director, Florida Latina Advocacy Network (waives in support)
3:22:14 PM Loytricia Tolbert, Executive Director, Die Reactions Inc. (waives in support)
3:22:14 PM Cheryl Wafoe, Dignity (waives in support)
3:22:14 PM Carmen Antonety, Dignity Florida (waives in support)
3:22:14 PM Sherry Oliver, Organizer, Dignity Coalition (waives in support)
3:22:14 PM Jacqueline Cooney, Activist, Dignity Florida (waives in support)
3:22:14 PM Foxy Mason, Dignity Coalition (waives in support)
3:22:14 PM Monalisa Weber, Organizer, Dignity Florida (waives in support)
3:22:14 PM Muzette Thomas, Dignity Florida (waives in support)
3:22:14 PM Breynone Young, Dignity Florida (waives in support)
3:22:14 PM Michelle Eckels, Dignity Florida (waives in support)
3:22:14 PM Rosemary McCoy, Dignity Florida (waives in support)
3:22:14 PM Sheila Singleton, Dignity Florida (waives in support)
3:22:14 PM Bonny McKinnon, Dignity Coalition (waives in support)
3:22:14 PM Mike Todd, Organizer, Dignity Florida (waives in support)
3:22:14 PM Nubian Roberts, Organizer, Dignity Coalition (waives in support)
3:22:14 PM Jermerica Jones, Dignity Florida (waives in support)
3:22:14 PM Francesca Menes, Florida State Coordinator, Center for Popular Democracy (waives in support)
3:22:14 PM Destanie Morman, Dignity Florida (waives in support)
3:22:14 PM Aaron Hollis, Dignity Coalition (waives in support)
3:22:14 PM Marquita James, Dignity Florida (waives in support)
3:22:14 PM Shirley Nixon, Dignity Florida (waives in support)
3:22:14 PM Kara Gross, Legislative Director, American Civil Liberties Union of Florida (waives in support)
3:22:14 PM Marilyne Walker, Dignity Coalition (waives in support)
3:22:14 PM Kim Porteous, President, Florida Now (waives in support)
3:22:14 PM Waynesha Pye, Dignity Coalition (waives in support)
3:22:14 PM Dianne Hart, Representative, Florida House of Representatives (waives in support)
3:22:26 PM Sen. Rouson
3:22:37 PM Sen. Brandes
3:22:46 PM Sen. Pizzo
3:24:07 PM Sen. Brandes
3:24:17 PM Sen. Perry