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|--------------|---|--|--|--|--|--|
| Tab 1 | SB 226 by Bracy; Inmate Reentry Services | | | | | |
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|--------|----|---|-----|-----------|-------------------------|----------------|
| 654530 | D | S | RS | CJ, Bracy | Delete everything after | 10/09 05:01 PM |
| 183674 | SD | S | RCS | CJ, Bracy | Delete everything after | 10/09 05:01 PM |

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| Tab 2 | SB 262 by Farmer; (Identical to H 00233) Searches by Law Enforcement Officers | | | | | |
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Bracy, Chair
Senator Baxley, Vice Chair

MEETING DATE: Monday, October 9, 2017
TIME: 3:30—6:00 p.m.
PLACE: *Mallory Horne Committee Room, 37 Senate Office Building*

MEMBERS: Senator Bracy, Chair; Senator Baxley, Vice Chair; Senators Bean, Bradley, Brandes, Clemens, Grimsley, and Rouson

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|---------------------------------|--|---|-------------------------|
| 1 | SB 226 Bracy | Inmate Reentry Services; Requiring the Department of Corrections to allow representatives from nonprofit organizations to apply to be registered with the department for the purpose of providing inmate reentry services; authorizing the department and each of the correctional facilities in this state to retain the discretion to deny entry into a correctional facility at any time to a representative of an organization; prohibiting the department from endorsing or sponsoring any faith-based reentry program or endorsing any specific religious message, etc. CJ 10/09/2017 Fav/CS ACJ AP | Fav/CS Yeas 7 Nays 0 |
| 2 | SB 262 Farmer (Identical H 233) | Searches by Law Enforcement Officers; Prohibiting a law enforcement officer in this state from searching a person or his or her property without first informing the person of his or her lawful right to decline the search request by the law enforcement officer, etc. CJ 10/09/2017 Temporarily Postponed JU RC | Temporarily Postponed |
| Other Related Meeting Documents | | | |

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 226

INTRODUCER: Criminal Justice Committee and Senator Bracy

SUBJECT: Inmate Reentry Services

DATE: October 11, 2017 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|---------------|
| 1. | Jones | Jones | CJ | Fav/CS |
| 2. | | | ACJ | |
| 3. | | | AP | |

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 226 amends s. 944.705, F.S., to specify that the release orientation program consist of at least 200 hours of instruction time and begin at least 360 days prior to the inmate’s release. The bill also adds to the instruction topics of the release orientation and increases the comprehensive transition course from 100 hours to at least 200 hours.

The bill requires the Department of Corrections (DOC) to assist inmates in securing the identified basic support services and notify every inmate of opportunities for industry certifications and job placement in the community in which the inmate will be released.

The DOC must provide a written report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the opportunities currently available for inmates to receive industry certifications and vocational training and make recommendations for improvement in these areas. The report is due to the Governor and the Legislature by October 1, 2018. This portion of the bill is effective upon becoming law.

The fiscal impact of the bill is indeterminate. Please see Section V. Fiscal Impact Statement.

Except as otherwise provided, the bill is effective October 1, 2018.

II. Present Situation:

The Department of Corrections (DOC) begins the reentry process 240 days prior to an inmate's release. Release officers and health service providers assess the inmate's post-release needs and develop a release plan. The release plan is individualized for each inmate and includes community referrals specific to his or her needs.¹

The DOC also maintains a website with a reentry resource directory. The directory is searchable and contains over 6,000 community, state, and local organizations that provide transition services to ex-offenders. The DOC routinely verifies these resources and accepts applications from interested organizations to be included in the directory.²

Section 944.705, F.S., requires the DOC to provide a standardized release orientation program to every eligible inmate. The program instruction must include:

- Employment skills.
- Money management skills.
- Personal development and planning.
- Special needs.
- Community reentry concerns.
- Community reentry support.
- Any other appropriate instruction to ensure the inmate's successful reentry into the community.

The DOC must also conduct a needs assessment of every inmate to determine what basic support services an inmate needs after release.

Section 944.7065, F.S., requires each inmate complete a comprehensive transition course before release. The 100-hour course covers job readiness and life management skills.

III. Effect of Proposed Changes:

The bill amends s. 944.705, F.S., to specify that the release orientation program consist of at least 200 hours of instruction time and begin at least 360 days prior to the inmate's release. The instruction topics of the release orientation program are amended to include housing placement information and job search assistance.

The DOC must assist inmates in securing any identified basic support services and notify every inmate of opportunities for industry certifications and job placement in the community in which the inmate will be released.

The bill amends s. 944.7065, F.S., to increase the comprehensive transition course from 100 hours to at least 200 hours.

¹ Florida Department of Corrections, *FDC – Background Information on Re-Entry Programming and Transitional Services*, p. 1, (on file with the Senate Criminal Justice Committee).

² 2018 Florida Department of Corrections Bill Analysis, *SB 226*, p. 2, October 2, 2017, (on file with the Senate Criminal Justice Committee).

The bill specifies that the Legislature finds an essential part of reentry services and reducing recidivism is providing all inmates with the opportunity to obtain industry certifications and vocational training. The DOC must provide a written report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the opportunities currently available for inmates to receive industry certifications and vocational training and make recommendations for improvement in these areas. The report is due to the Governor and the Legislature by October 1, 2018. This section of the bill is effective upon becoming law.

Except as otherwise provided, the bill is effective October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires instruction time for the release orientation program be at least 200 hours and the program must begin 360 days before an inmate's release. The comprehensive transition course is increased from a 100-hour course to at least a 200-hour course. The fiscal impact of these changes on the DOC are indeterminate.

The DOC must report back to the Governor and the Legislature on the current opportunities available for inmates to receive industry certifications and vocational training and make recommendations for improvement in these areas. The fiscal impact of this report can likely be absorbed within existing resources at the DOC.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 944.705 and 944.7065.

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 9, 2017:

The Committee Substitute requires:

- The release orientation program and comprehensive transition course for inmates consist of at least 200 hours of instruction time;
- The release orientation program to begin at least 360 days prior to the inmates release;
- Housing placement and job search assistance information to be part of the release orientation program instruction;
- The DOC to notify every inmate of opportunities for industry certifications and job placement in the inmate's release community; and
- The DOC to report on the opportunities currently available for inmates to receive industry certifications and vocational training and make recommendations on improvement.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

| | | |
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| Senate | . | House |
| Comm: RS | . | |
| 10/09/2017 | . | |
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| | . | |
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The Committee on Criminal Justice (Bracy) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsections (1), (2), and (4) of section
944.705, Florida Statutes, are amended and a new subsection (7)
is added to that section to read:

944.705 Release orientation program.—

(1) The department shall provide participation in a
standardized release orientation program to every eligible



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11 inmate. The program must consist of at least 200 hours of
12 instruction time and begin 360 days prior to the inmate's
13 release.

14 (2) The release orientation program instruction must
15 include, but is not limited to:

- 16 (a) Employment skills.
- 17 (b) Money management skills.
- 18 (c) Personal development and planning.
- 19 (d) Special needs.
- 20 (e) Community reentry concerns.
- 21 (f) Community reentry support.
- 22 (g) Housing placement information.
- 23 (h) Job search assistance.

24 (i) ~~(g)~~ Any other appropriate instruction to ensure the
25 inmate's successful reentry into the community.

26 (4) The department shall conduct a needs assessment of
27 every inmate to determine which, if any, basic support services
28 the inmate needs after release. The department shall assist the
29 inmate in securing the identified basic support services.

30 (7) The department shall notify every inmate of
31 opportunities for industry certifications and job placement in
32 the community in which the inmate will be released.

33 Section 2. Effective upon becoming law, the Legislature
34 finds that an essential element of inmate reentry services and
35 reducing recidivism is providing all inmates with the
36 opportunity to obtain industry certifications and vocational
37 training. The Department of Corrections shall report to the
38 Governor, the President of the Senate, and the Speaker of the
39 House of Representatives on the opportunities currently



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40 available for all inmates to receive industry certifications and
41 vocational training. The report shall include recommendations on
42 improving and enhancing the availability of industry
43 certifications and vocational training for inmates. The
44 department must provide a written report to the Governor, the
45 President of the Senate, and the Speaker of the House of
46 Representatives by October 1, 2018.

47 Section 3. Except as otherwise expressly provided in this
48 act and except for this section, which shall take effect upon
49 this act being a law, this act shall take effect October 1,
50 2018.

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 everything before the enacting clause
55 and insert:

56 A bill to be entitled
57 An act relating to inmate reentry services; amending
58 s. 944.705, F.S.; requiring the release orientation
59 program to consist of at least 200 hours of
60 instruction time; requiring the program to begin 360
61 days prior to the inmate's release; requiring housing
62 placement information and job search assistance be
63 included in the release orientation program; requiring
64 the department to assist inmates in securing the
65 identified basic support services; requiring the
66 department to notify every inmate of opportunities for
67 industry certifications and job placement in the
68 community in which the inmate will be released; making



654530

69 Legislative findings; requiring the Department of
70 Corrections to report to the Governor, President of
71 the Senate, and the Speaker of the House of
72 Representatives on the opportunities available for all
73 inmates to receive industry certifications and
74 vocational training; requiring the report to include
75 recommendations for improvement and availability;
76 requiring the report be provided to the Governor and
77 the Legislature by a specified date; providing
78 effective dates.



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LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: RCS | . | |
| 10/09/2017 | . | |
| | . | |
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| | . | |

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

1 **Senate Substitute for Amendment (654530) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Subsections (1), (2), and (4) of section
7 944.705, Florida Statutes, are amended and a new subsection (7)
8 is added to that section to read:

9 944.705 Release orientation program.—

10 (1) The department shall provide participation in a



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11 standardized release orientation program to every eligible
12 inmate. The program must consist of at least 200 hours of
13 instruction time and begin at least 360 days prior to the
14 inmate's release.

15 (2) The release orientation program instruction must
16 include, but is not limited to:

- 17 (a) Employment skills.
- 18 (b) Money management skills.
- 19 (c) Personal development and planning.
- 20 (d) Special needs.
- 21 (e) Community reentry concerns.
- 22 (f) Community reentry support.
- 23 (g) Housing placement information.
- 24 (h) Job search assistance.

25 (i) ~~(g)~~ Any other appropriate instruction to ensure the
26 inmate's successful reentry into the community.

27 (4) The department shall conduct a needs assessment of
28 every inmate to determine which, if any, basic support services
29 the inmate needs after release. The department shall assist the
30 inmate in securing the identified basic support services.

31 (7) The department shall notify every inmate of
32 opportunities for industry certifications and job placement in
33 the community in which the inmate will be released.

34 Section 2. Section 944.7065, Florida Statutes, is amended
35 to read:

36 944.7065 Transition course for inmates.—In an effort to
37 ensure that inmates released from the Department of Corrections
38 successfully reenter the community, ~~beginning December 1, 2002,~~
39 each inmate released from incarceration by the department must



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40 complete ~~a~~ at least a 200 ~~100~~-hour comprehensive transition
41 course that covers job readiness and life management skills.
42 This requirement does not apply to inmates released in an
43 emergency situation.

44 Section 3. Effective upon becoming law, the Legislature
45 finds that an essential element of inmate reentry services and
46 reducing recidivism is providing all inmates with the
47 opportunity to obtain industry certifications and vocational
48 training. The Department of Corrections shall report to the
49 Governor, the President of the Senate, and the Speaker of the
50 House of Representatives on the opportunities currently
51 available for all inmates to receive industry certifications and
52 vocational training. The report shall include recommendations on
53 improving and enhancing the availability of industry
54 certifications and vocational training for inmates. The
55 department must provide a written report to the Governor, the
56 President of the Senate, and the Speaker of the House of
57 Representatives by October 1, 2018.

58 Section 4. Except as otherwise expressly provided in this
59 act and except for this section, which shall take effect upon
60 this act being a law, this act shall take effect October 1,
61 2018.

62
63 ===== T I T L E A M E N D M E N T =====

64 And the title is amended as follows:

65 Delete everything before the enacting clause
66 and insert:

67 A bill to be entitled

68 An act relating to inmate reentry services; amending



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69 s. 944.705, F.S.; requiring the release orientation
70 program to consist of at least 200 hours of
71 instruction time; requiring the program to begin at
72 least 360 days prior to the inmate's release;
73 requiring housing placement information and job search
74 assistance be included in the release orientation
75 program; requiring the department to assist inmates in
76 securing the identified basic support services;
77 requiring the department to notify every inmate of
78 opportunities for industry certifications and job
79 placement in the community in which the inmate will be
80 released; amending s. 944.7065, F.S.; requiring each
81 inmate released from incarceration by the department
82 to complete at least a 200-hour comprehensive
83 transition course; making Legislative findings;
84 requiring the Department of Corrections to report to
85 the Governor, President of the Senate, and the Speaker
86 of the House of Representatives on the opportunities
87 available for all inmates to receive industry
88 certifications and vocational training; requiring the
89 report to include recommendations for improvement and
90 availability; requiring the report be provided to the
91 Governor and the Legislature by a specified date;
92 providing effective dates.

By Senator Bracy

11-00282-18

2018226__

1 A bill to be entitled
 2 An act relating to inmate reentry services; creating
 3 s. 944.8025, F.S.; requiring the Department of
 4 Corrections to allow representatives from nonprofit
 5 organizations to apply to be registered with the
 6 department for the purpose of providing inmate reentry
 7 services; requiring the department to develop and
 8 adopt policies and procedures for screening,
 9 approving, and registering those nonprofit
 10 organizations and their representatives; authorizing
 11 the department to deny approval and registration to an
 12 organization or a representative from an organization
 13 if the department determines that the organization or
 14 representative does not meet the department's
 15 screening guidelines; authorizing the department and
 16 each of the correctional facilities in this state to
 17 retain the discretion to deny entry into a
 18 correctional facility at any time to a representative
 19 of an organization; requiring the department to post
 20 certain information on its public website for certain
 21 purposes; prohibiting the department from endorsing or
 22 sponsoring any faith-based reentry program or
 23 endorsing any specific religious message; prohibiting
 24 the department from requiring an inmate to participate
 25 in a faith-based program; providing rulemaking
 26 authority; providing an effective date.

28 Be It Enacted by the Legislature of the State of Florida:
 29

Page 1 of 3

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

11-00282-18

2018226__

30 Section 1. Section 944.8025, Florida Statutes, is created
 31 to read:
 32 944.8025 Inmate reentry services by nonprofit
 33 organizations.-
 34 (1) Subject to the policies and procedures adopted under
 35 subsection (2) for screening and approving applicants, the
 36 department shall allow representatives from all nonprofit faith-
 37 based, business and professional, civic, and community
 38 organizations to apply to be registered with the department
 39 under this section for the purpose of providing inmate reentry
 40 services. Reentry services include, but are not limited to,
 41 counseling, providing information on housing and job placement,
 42 and money management assistance.
 43 (2) The department shall develop and adopt policies and
 44 procedures for screening, approving, and registering
 45 organizations and their representatives that apply to provide
 46 inmate reentry services under subsection (1). The department may
 47 deny approval and registration of an organization or a
 48 representative from an organization if the department determines
 49 that the organization or representative does not meet the
 50 department's screening guidelines. The department and each of
 51 the correctional facilities in this state retain the discretion
 52 to deny entry to a correctional facility at any time to a
 53 representative of an organization listed under subsection (1)
 54 regardless of whether that representative previously applied to
 55 and was registered with the department to provide inmate reentry
 56 services at a correctional facility.
 57 (3) The department shall post a department telephone number
 58 and provide an application for registration on its public

Page 2 of 3

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

11-00282-18

2018226__

59 website. The telephone number and application may be used by
60 representatives from an organization described in subsection (1)
61 to obtain information and to begin the application process for
62 registration with the department to provide inmate reentry
63 services.

64 (4) The department may not endorse or sponsor any faith-
65 based reentry program or endorse any specific religious message.
66 The department may not require an inmate to participate in a
67 faith-based program.

68 (5) The department shall adopt rules to implement this
69 section.

70 Section 2. This act shall take effect October 1, 2018.

THE FLORIDA SENATE
APPEARANCE RECORD

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

10-9-2017
Meeting Date

226
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title TRUSTEE

Address 1119 Newton Ave So.
Street

Phone 727-897-9291

St. Petersburg Fla 33705
City State Zip

Email justice-2-jesus@yahoo.com

Speaking: For Against Information

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

Representing Justice-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

10/9/17.
Meeting/Date

226
Bill Number (if applicable)

Topic Inmate Reentry Services

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title State Director

Address 824 N Duval St

Phone 904 555 7001 x

PA FL 32303
City State Zip

Email _____

Speaking: For Against Information

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

Representing Right on Crime

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)

10/9/17
Meeting Date

226
Bill Number (if applicable)

Topic Inmate Reentry Services

Amendment Barcode (if applicable)

Name Christian Minor

Job Title Leg. Affairs Director

Address 2145 Metrocenter Blvd.

Phone 321-223-4232

Street

Orlando
City

FL
State

32835
Zip

Email cmminor10@aol.com

Speaking: For Against Information

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

Representing Bridges of America

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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 262

INTRODUCER: Senator Farmer

SUBJECT: Searches by Law Enforcement Officers

DATE: October 6, 2017

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Cellon | Jones | CJ | Pre-meeting |
| 2. | | | JU | |
| 3. | | | RC | |

I. Summary:

SB 262 extends the protection against law enforcement searches by requiring a law enforcement officer to inform a person that he or she may refuse the officer's request to conduct a consensual search of the person or their property.

The statutory requirement is not applicable when the officer is acting under a valid search warrant nor does the bill appear to apply if the officer is acting under one of the lawful exceptions to the search warrant requirement.

The bill is effective July 1, 2018.

II. Present Situation:

There are four primary sources of law related to searches and seizures by law enforcement officers (LEOs) in Florida. These are:

- The Fourth Amendment of the United States Constitution;¹
- United States Supreme Court case law interpreting and applying federal and state search and seizure law;
- Florida statutory law; and
- The Florida Supreme Court's interpretation and application of Fourth Amendment precedent, state statutory law, and state constitutional law.²

¹ "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const., Amend. IV.

² "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be

The U.S. Supreme Court has recognized that states may extend greater protection against unlawful searches or seizures than the Fourth Amendment.³ Examples of Florida statutory law and constitutional law extending greater protection than Fourth Amendment law include:

- The Florida constitutional requirement that a valid [search or arrest] warrant may not be issued unless it is *supported by an affidavit* “particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained.” FL Const., Art. I, Sect. 12.
- Sections 933.04, 933.06, and 933.07, F.S., setting forth statutory warrant requirements including the “supporting affidavit” described in the Florida Constitution.⁴
- Sections 901.19(1), and 933.09, F.S., requiring an officer to *knock and announce his or her authority and purpose in serving an arrest or search warrant* – and only after failing to gain admittance, to use the force necessary to enter the building.⁵

Remedy for Unlawful Searches

Where an unlawful search (or seizure) has occurred, the evidence seized as a result of the search may be suppressed, or excluded, by the trial court. However, the exclusionary rule is not always applied by the courts.

In *Herring v. U.S.*, 555 U.S. 135, 144 (2009), the court explained that “[t]o trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system. As laid out in our cases, the exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence.”⁶

obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.” FL Const., Art. I, Sect. 12.

³ *State v. Slaney*, 653 So.2d 422, 425 (Fla. 3d DCA 1995): “[T]he states are privileged under their state law to adopt higher, but not lower, standards for police conduct than those required by the Fourth Amendment. *Cooper v. California*, 386 U.S. 58, 62, 87 S.Ct. 788, 17 L.Ed.2d 730 (1967) (state constitutional provision on search and seizure); *Sibron v. New York*, 392 U.S. 40, 61, 88 S.Ct. 1889, 20 L.Ed.2d 917 (1968) (state statute).”

⁴ The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches shall not be violated and no search warrant shall be issued except upon probable cause, supported by oath or affirmation particularly describing the place to be searched and the person and thing to be seized. Section 933.04, F.S.; Search warrants must be supported by affidavits which state facts sufficient to permit impartial magistrate to determine whether probable cause exists; to be sufficient, the affidavit must state facts, not conclusions. *Younger v. State*, 433 So.2d 636, 639 (Fla. 5th DCA 1983).

⁵ If a peace officer fails to gain admittance after she or he has announced her or his authority and purpose in order to make an arrest either by a warrant or when authorized to make an arrest for a felony without a warrant, the officer may use all necessary and reasonable force to enter any building or property where the person to be arrested is or is reasonably believed to be. Section 901.19(1), F.S.

The officer may break open any outer door, inner door or window of a house, or any part of a house or anything therein, to execute the warrant, if after due notice of the officer’s authority and purpose he or she is refused admittance to said house or access to anything therein. Section 933.09, F.S.

⁶ See *Herring* at pg. 141: “[T]he benefits of deterrence must outweigh the costs.” *United States v. Leon*, 468 U.S. 897, 910 (1984). “We have never suggested that the exclusionary rule must apply in every circumstance in which it might provide marginal deterrence.” *Pennsylvania Board of Probation and Parole v. Scott*, 524 U.S. 357, 368 (1988). “[T]o the extent that

Exceptions to the Search (or Arrest) Warrant Requirement

People are deemed to be secure in their persons and property against *unreasonable* searches or seizures. The lawfulness of searches and seizures are measured against this backstop. The impartial magistrate who examines the LEO's warrant request and supporting affidavit looks for the probable cause⁷ upon which a lawful search or seizure may take place.⁸

While a valid warrant to conduct a search is the ideal, there are exceptions to the warrant requirement. These exceptions are based upon various factors, primarily measuring the reasonableness of the search as related to a person's expectation of privacy and the governmental interest if effecting the search.

Exceptions to the warrant requirement include:

- Search incident to a lawful arrest;⁹
- A “stop and frisk” during a temporary detention (commonly known as a “Terry” stop);¹⁰
- Vehicle searches under circumstances where there are officer safety and evidence preservation concerns, particularly when there is a likelihood that evidence related to the reason for the arrest will be in the vehicle;¹¹
- Evidence seized because it is in “plain view” during a lawful search;¹²

application of the exclusionary rule could provide some incremental deterrent, that possible benefit must be weighed against [its] substantial social costs.” *Illinois v. Krull*, 480 U.S. 340 (1987).

⁷ “Probable cause” means: A reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime. Under the Fourth Amendment, probable cause — which amounts to more than a bare suspicion but less than evidence that would justify a conviction — must be shown before an arrest warrant or search warrant may be issued. *Black’s Law Dictionary* (10th ed. 2014).

⁸ “The Fourth Amendment proscribes all unreasonable searches and seizures, and it is a cardinal principle that “searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.” *Katz v. United States*, 389 U.S. 347, 357 (1967).

⁹ “A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification. It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a reasonable search under that Amendment.” *U.S. v. Robinson*, 414 U.S. 218, 235 (1973).

¹⁰ Section 901.151(2), F.S. in Florida’s Stop and Frisk Law states:

“(2) Whenever any law enforcement officer of this state encounters any person under circumstances which reasonably indicate that such person has committed, is committing, or is about to commit a violation of the criminal laws of this state or the criminal ordinances of any municipality or county, the officer may temporarily detain such person for the purpose of ascertaining the identity of the person temporarily detained and the circumstances surrounding the person’s presence abroad which led the officer to believe that the person had committed, was committing, or was about to commit a criminal offense.” The statute further provides that a person shall not be detained longer than reasonably necessary or moved to a different location during the detention. See also *State v. Webb*, 398 So.2d 820 (Fla. 1981).

¹¹ *Arizona v. Gant*, 556 U.S. 332, 339-343 (2009).

¹² Unlike other exceptions to the search warrant requirement, the plain view exception does not justify the initial intrusion into a constitutionally protected area. The initial intrusion must instead be based upon some independent justification, either some other exception to the warrant requirement or a lawfully issued search warrant. Indeed, it has sometimes been suggested that the plain view “exception” is actually not an independent exception to the warrant requirement at all, but rather is simply “an extension of whatever the prior justification for an officer’s access to an object may be.” See *Texas v. Brown*, 460 U.S. 730, 739 (1983).

- Inventory searches of lawfully impounded vehicles;¹³
- Entry under emergency circumstances;¹⁴ and
- Consent searches.

Consent Searches

Although knowledge by the consenting person of his or her right to refuse consent is not an essential component of a voluntary consent to conduct a Fourth Amendment search, it is nevertheless a significant factor to consider in assessing voluntariness. See *U.S. v. Mendenhall*, 446 U.S. 544 (1980) (“[I]t is especially significant that the respondent was twice expressly told that she was free to decline to consent to the search, and only thereafter explicitly consented to it.”).

The voluntariness of a consent search is a question of fact and must be determined by reviewing the “totality of the circumstances.”¹⁵ No one factor is enough to ascertain whether consent for a search was voluntary or coerced in some way.

Among the factors a court should consider in making its determination as to voluntariness are:

- Did the LEO use coercive words or acts, misrepresentation, deceit, or trickery such as claiming that the LEO has a lawful reason to conduct the search regardless of consent?¹⁶
- Would a reasonable person have felt free to end contact with the LEO?
- How many LEOs were present during the encounter, and where and what time did it occur?¹⁷

In *Bustamonte*, the U.S. Supreme Court rejected the argument that “proof of knowledge of the right to refuse consent is a necessary prerequisite to demonstrating a ‘voluntary’ consent.” The court held that “[v]oluntariness is a question of fact to be determined from all the circumstances, and while the subject’s knowledge of a right to refuse is a factor to be taken into account, the prosecution is not required to demonstrate such knowledge as a prerequisite to establishing a voluntary consent.”¹⁸

III. Effect of Proposed Changes:

The bill creates a new section of the Florida Statutes requiring LEOs to inform a person of the right to decline a request by the LEO to search the person or their property.

¹³ “Although an inventory search does not contemplate a criminal investigation, officers are not required to look the other way if the inventory reveals contraband. Because it is a lawful search, anything found within the legitimate confines of the search may be used as evidence.” *Caplan v. State*, 531 So.2d 88, 90 (Fla. 1988).

¹⁴ Courts have found that fire, injury, and crimes being committed upon LEOs arrival on the scene constitute emergency circumstances that do not require a search warrant for the LEOs to enter the premises and render aid. See for example *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006) (“One exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with such injury.... Accordingly, law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury.”)

¹⁵ *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973).

¹⁶ See *Bumper v. North Carolina*, 391 U.S. 543 (1968).

¹⁷ *Ruiz v. State*, 50 So.3d 1229,1231 (Fla. 4th DCA 2011).

¹⁸ *Schneckloth v. Bustamonte*, 412 U.S. 218, 248 (1973).

The LEO need not provide such information if the LEO is carrying out the search under a valid search warrant or some other legally sufficient justification.

Legally sufficient justifications other than a valid search warrant, presumably include the exceptions to the search warrant requirement discussed in the Present Situation Section II.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

If the bill becomes law, there may be a need for additional LEO training. The possible fiscal impact of this training is unknown at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the section 933.50 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.

By Senator Farmer

34-00181-18

2018262__

A bill to be entitled

An act relating to searches by law enforcement officers; creating s. 933.50, F.S.; prohibiting a law enforcement officer in this state from searching a person or his or her property without first informing the person of his or her lawful right to decline the search request by the law enforcement officer; providing exceptions; providing an effective date.

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

Section 1. Section 933.50, Florida Statutes, is created to read:

933.50 Prohibited searches of persons or property without disclosure.—A law enforcement officer in this state may not search a person or his or her property without first informing the person of his or her lawful right to decline the search request by the law enforcement officer, unless the law enforcement officer is carrying out a valid search warrant or the search is based upon another legally sufficient justification.

Section 2. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

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

10-9-2017
Meeting Date

262
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brain Pitts

Job Title TRUSTEE

Address 1119 Newton Ave So.
Street

Phone 727-897-9291

St. Petersburg Fla 33705
City State Zip

Email justice-2-jesus@yahoo.com

Speaking: For Against Information

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

Representing Justice-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

10/9/17

Meeting Date

262

Bill Number (if applicable)

Topic Consent to Search without Warrant

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 N. Gadsden St.

Phone 850 488-6850

Street

Tallahassee

FL

32301

City

State

Zip

Email ndaniels@fpda.org

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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THE FLORIDA SENATE
APPEARANCE RECORD

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

10/9/2017

262

Meeting Date

Bill Number (if applicable)

Topic Searches / Consent

Amendment Barcode (if applicable)

Name Luke Newman

Job Title Attorney

Address 908 Thomaville Road

Phone (850) 681-0029

Street

City

State

Zip

Tallahassee FL 32303

Email

Speaking: For Against Information

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

Representing Florida Assoc of Criminal Defense Lawyers

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Higher Education
Appropriations Subcommittee on Pre-K - 12 Education
Agriculture
Education
Environmental Preservation and Conservation

SENATOR GARY M. FARMER, JR.

34th District

October 3, 2017

Chair Randolph Bracy,

I respectfully request that you place SB 262 relating to well stimulation on the agenda of the Criminal Justice Committee at your earliest convenience.

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

Thank you,

A handwritten signature in cursive script, appearing to read "Gary M. Farmer, Jr.", written in black ink.

Senator Gary Farmer
District 34

CC:

Lauren Jones, Staff Director

Sue Arnold, Committee Administrative Assistant

Charlean Gatlin, Legislative Assistant to Senator Bracy

Travaris McCurdy, Legislative Assistant to Senator Bracy

REPLY TO:

- Broward College Campus, 111 East Las Olas Boulevard, Suite 913, Fort Lauderdale, Florida 33301 (954) 467-4227
- 216 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5034

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

CourtSmart Tag Report

Room: LL 37
Caption: Senate Criminal Justice

Case No.:
Judge:

Type:

Started: 10/9/2017 3:33:08 PM

Ends: 10/9/2017 4:22:25 PM

Length: 00:49:18

3:33:07 PM Chair Bracy called the meeting to order
3:33:33 PM Chair introduces Sen. Grimsley as a new member to CJ
3:33:48 PM Opening remarks by Chair Bracy
3:34:21 PM Chair asks Sue to call the roll and announce a quorum. Sue stated a quorum is present
3:34:56 PM Chair asks all appearance cards to be turned to the AA and turn off or mute cell phones
3:35:31 PM Chair stated we will now turn to TAB 2
3:35:46 PM TAB 2 by Senator Farmer - Searches by Law Enforcement Officer
3:36:14 PM Senator Farmer to explain the bill
3:39:18 PM Chair asks for questions of the Sponsor
3:40:10 PM Senator Bradley asks Senator Farmer a question
3:40:30 PM Senator Farmer answers
3:41:21 PM Senator Bradley asks another question
3:41:34 PM Senator Farmer answers
3:42:58 PM Senator Bradley asks question
3:43:08 PM Senator Farmer answers
3:43:51 PM Senator Bradley question
3:44:03 PM Senator Farmer answers
3:44:11 PM Senator Clemens asks question
3:44:25 PM Senator Farmer answers
3:44:46 PM Senator Brandes asks question
3:44:59 PM Senator Farmer answers
3:46:36 PM Senator Brandes asks question
3:46:40 PM Senator Farmer answers
3:47:21 PM Senator Brandes asks question
3:47:29 PM Senator Brandes asks staff a question
3:48:19 PM Staff answer question
3:48:38 PM Senator Bradley asks question
3:48:49 PM Senator Farmer answers
3:49:44 PM Senator Bradley asks question
3:50:18 PM Senator Farmer asks answers
3:50:36 PM Senator Bradley asks question
3:51:01 PM Senator Farmer answer
3:51:28 PM Senator Bradley asks question
3:51:37 PM Senator Farmer answers
3:52:22 PM Senator Brandes makes a statement
3:52:35 PM Senator Baxley asks question
3:53:26 PM Senator Farmer answers
3:54:25 PM Senator Baxley asks question
3:54:35 PM Senator Farmer answers
3:55:34 PM Senator Baxley asks question
3:55:43 PM Senator Farmer answers
3:56:37 PM Senator Baxley asks question
3:56:52 PM Senator Farmer answers
3:57:54 PM Chair asks for Appearance Cards, He calls Mr. Brain Pitts
3:58:24 PM Mr. Brain Pitts, Justice-to-Jesus speaking
4:02:13 PM Chair calls Ms. Nancy Daniels, Legislative Consultant, FL Public Defender Association
4:02:19 PM Ms. Daniel waives in support
4:02:28 PM Chair calls Mr. Luke Newman, Attorney, FL Assoc of Criminal Defense Lawyers
4:02:35 PM Mr. Luke Newman waives in support
4:02:45 PM Chair calls for debate
4:02:49 PM Senator Baxley in debate on the bill
4:05:41 PM Chair stated we are going to TP the bill

4:05:53 PM Senator Farmer makes a brief statement regarding the bill
4:06:44 PM Chair stated again to TP the bill
4:06:54 PM Senator Bradley in debate on the bill
4:09:21 PM Chair called on Senator Brandes
4:10:20 PM Senator Brandes in debate on the bill
4:11:54 PM Chair called on Senator Rouson
4:11:55 PM Senator Rouson in debate on the bill
4:12:07 PM Chair stated he will now turn the chair over to Senator Baxley
4:12:56 PM Vice Chair Baxley stated we will now turn to TAB 1
4:13:19 PM TAB 1 SB 226 on Inmate Reentry Services by Chair Bracy
4:13:27 PM Senator Baxley stated Amendment Barcode 654530 by Senator Bracy and asks if he would like to take up the Substitute Amendment
4:14:02 PM Senator Bracy stated he would like to take up 183674
4:14:33 PM Senator Bracy explains the substitute delete all amendment #183674
4:15:16 PM Vice-Chair Baxley asked for questions
4:15:39 PM No questions
4:15:44 PM Vice-Chair called for Appearance Cards to speak on the Amendment he called Mr. Brian Pitts
4:15:54 PM Mr. Brian Pitts, Justice-to-Jesus speaks against the amendment
4:19:20 PM Vice -Chair call Ms. Chelsea Murphy, Director, Right on Crime
4:19:40 PM Ms. Murphy waives in support
4:19:49 PM Vice Chair called Ms. Christian Minor, Leg. Affairs Director, Bridges of America
4:20:00 PM Ms. Minor waives in support
4:20:10 PM Vice Chair asks, is there any one else wishing to speak. Vice Chair asks the Sen. Bracy to close on the Amendment
4:20:12 PM Vice-Chair any debate on the bill as amended
4:20:12 PM Vice-Chair stated, Senator Bracy you may close on the bill as amended
4:21:00 PM Roll Call on SB 266
4:21:25 PM Senator Baxley returns chair to Senator Bracy
4:21:35 PM Any other business before the committee/comments?
4:21:42 PM Senator Baxley moves to rise, meeting is adjourned