

Tab 1	SB 392 by Bracy; Juvenile Justice					
Tab 2	SB 588 by Rader; (Similar to H 00211) Crimes Evidencing Prejudice					
Tab 3	SB 706 by Steube; (Similar to CS/H 00957) Crime Stoppers Organizations					
612416	A	S	RCS	CJ, Steube	Delete L.69:	02/06 11:50 AM
Tab 4	CS/SB 820 by GO, Powell; (Similar to H 00637) Firesafety Inspectors					
Tab 5	SB 870 by Bracy; Capital Felonies					
Tab 6	SB 952 by Steube (CO-INTRODUCERS) Hutson, Perry, Hukill; (Compare to CS/H 00473) Cruelty to Animals					
Tab 7	SB 1142 by Steube; (Similar to CS/H 01065) Expunction of Criminal History Records					
Tab 8	SB 1222 by Brandes; (Similar to H 01409) Inmate Reentry Program					
415846	D	S	RCS	CJ, Brandes	Delete everything after	02/06 11:50 AM
Tab 9	SB 1226 by Book (CO-INTRODUCERS) Hutson; (Similar to H 01301) Sentencing for Sexual Offenders and Sexual Predators					
669362	A	S	RCS	CJ, Book	Delete L.247 - 257:	02/06 11:50 AM
196412	A	S	RCS	CJ, Book	Delete L.298 - 312:	02/06 11:50 AM
Tab 10	SB 1230 by Baxley; (Compare to CS/H 01401) Criminal Judgments					
135342	A	S	RCS	CJ, Baxley	Delete L.32 - 90:	02/06 11:50 AM
Tab 11	SB 1256 by Brandes; (Compare to CS/H 01249) Search of the Content, Information, and Communications of Cellular Phones, Portable Electronic Communication Devices, and Microphone-enabled Household Devices					
340722	D	S	RCS	CJ, Brandes	Delete everything after	02/06 11:50 AM
Tab 12	CS/SB 1418 by CF, Rouson; (Identical to CS/H 01069) Substance Abuse Services					
306102	D	S	RCS	CJ, Rouson	Delete everything after	02/06 11:50 AM
Tab 13	SB 1490 by Bracy; (Compare to H 00967) Determining Bail					
648186	D	S	FAV	CJ, Bracy	Delete everything after	02/06 11:50 AM
683982	AA	S	FAV	CJ, Bracy	Delete L.90 - 142:	02/06 11:50 AM
Tab 14	CS/SB 1548 by ED, Book; (Similar to H 00777) K-12 Student Safety					
Tab 15	SB 1552 by Bracy; (Compare to H 00195) Juvenile Justice					

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Bracy, Chair
Senator Baxley, Vice Chair

MEETING DATE: Tuesday, February 6, 2018

TIME: 9:00—10:30 a.m.

PLACE: Mallory Horne Committee Room, 37 Senate Office Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 392 Bracy (Compare S 1552)	Juvenile Justice; Increasing the age of a child at which a state attorney may, or is required to, request a court to transfer the child to adult court for criminal prosecution; increasing the age of a child at which a state attorney may, or is required to, file an information against the child for prosecution as an adult, etc. CJ 02/06/2018 Not Considered JU RC	Not Considered
2	SB 588 Rader (Similar H 211)	Crimes Evidencing Prejudice; Expanding grounds for the reclassification of crimes to include prejudice based on the gender or gender identity of the victim; expanding grounds for reclassification of crimes to include prejudice based on a disability of the victim, etc. CJ 02/06/2018 Favorable ACJ AP RC	Favorable Yeas 3 Nays 2
3	SB 706 Steube (Similar CS/H 957)	Crime Stoppers Organizations; Prohibiting a person who engages in privileged communication, a law enforcement crime stoppers coordinator or his or her staff, or a member of a crime stoppers organization's board of directors from being required to disclose privileged communications or produce protected information; authorizing a person charged with a criminal offense to petition the court to inspect the protected information under certain circumstances, etc. CJ 02/06/2018 Fav/CS JU RC	Fav/CS Yeas 4 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, February 6, 2018, 9:00—10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 820 Governmental Oversight and Accountability / Powell (Similar H 637)	Firesafety Inspectors; Prohibiting certain actions to influence a firesafety inspector to violate the Florida Fire Prevention Code, other rules of the State Fire Marshal, or ch. 633, F.S., etc. GO 01/23/2018 Fav/CS CJ 02/06/2018 Favorable RC	Favorable Yeas 4 Nays 0
5	SB 870 Bracy	Capital Felonies; Providing legislative findings and intent regarding the retroactive application of Hurst v. State, No. SC12-1947 (Fla., October 14, 2016), etc. CJ 01/09/2018 Not Considered CJ 02/06/2018 Favorable RC	Favorable Yeas 3 Nays 2
6	SB 952 Steube (Compare CS/H 473, CS/S 1576)	Cruelty to Animals; Citing this act as "Ponce's Law"; authorizing a court to prohibit certain offenders from owning or having contact with animals, etc. CJ 02/06/2018 Favorable JU RC	Favorable Yeas 4 Nays 0
7	SB 1142 Steube (Similar CS/H 1065, Compare CS/S 298)	Expunction of Criminal History Records; Revising the eligibility requirements for expunction of criminal history records to include instances in which a verdict of not guilty was rendered, etc. CJ 02/06/2018 Favorable JU RC	Favorable Yeas 4 Nays 0
8	SB 1222 Brandes (Similar H 1409)	Inmate Reentry Program; Requiring the Department of Corrections to administer a reentry program for certain inmates with substance abuse, mental health, or co-occurring disorders; establishing that the reentry program consists of an in-prison treatment program and a community-based aftercare treatment program; requiring the department to provide special training to employees serving in the reentry program, etc. CJ 02/06/2018 Fav/CS ACJ AP	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, February 6, 2018, 9:00—10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	SB 1226 Book (Similar H 1301)	<p>Sentencing for Sexual Offenders and Sexual Predators; Redefining the terms “permanent residence,” “temporary residence,” and “transient residence” by decreasing the amount of days a person abides, lodges, or resides in a certain place to qualify for that type of residency category; revising existing criminal penalties for sexual predators to require mandatory minimum terms of community control with electronic monitoring for first, second, and third and subsequent violations of specified offenses, etc.</p> <p>CJ 02/06/2018 Fav/CS AP RC</p>	Fav/CS Yeas 4 Nays 0
10	SB 1230 Baxley (Compare CS/H 1401)	<p>Criminal Judgments; Requiring that all judgments of guilty and not guilty for felonies and misdemeanors be documented in a written or electronic record; requiring a judge to cause to be gathered, either manually or electronically, in his or her presence in open court the fingerprints and social security number of a defendant found guilty of a felony or a misdemeanor; deleting provisions requiring judgments of guilt for certain violations to be in writing, signed by a judge, and recorded by a clerk of the circuit court, etc.</p> <p>CJ 02/06/2018 Fav/CS JU RC</p>	Fav/CS Yeas 6 Nays 0
11	SB 1256 Brandes (Compare CS/H 1249)	<p>Search of the Content, Information, and Communications of Cellular Phones, Portable Electronic Communication Devices, and Microphone-enabled Household Devices; Authorizing the obtaining in criminal cases of the contents of electronic communications only by court order or by search warrant, as provided in ch. 934, F.S., unless otherwise required by law; requiring that each application for a warrant, rather than an order, authorizing or approving the interception of wire, oral, or electronic communications be made in writing and state the applicant’s authority; providing criminal penalties for the intentional and unlawful access without authorization of certain devices and obtainment of wire, oral, or electronic communications stored within those devices, etc.</p> <p>CJ 02/06/2018 Fav/CS JU RC</p>	Fav/CS Yeas 4 Nays 1

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, February 6, 2018, 9:00—10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	CS/SB 1418 Children, Families, and Elder Affairs / Rouson (Identical CS/H 1069)	Substance Abuse Services; Authorizing the Department of Health or the Agency for Health Care Administration, as applicable, to grant exemptions from disqualification for service provider personnel to work solely in certain treatment programs and facilities; revising provisions relating to background checks and exemptions from disqualification for certain service provider personnel and volunteers; requiring recovery residences to comply with specified Florida Fire Prevention Code provisions; revising background screening requirements for owners, directors, and chief financial officers of recovery residences, etc. CF 01/22/2018 Fav/CS CJ 02/06/2018 Fav/CS RC	Fav/CS Yeas 4 Nays 0
13	SB 1490 Bracy (Compare H 967, S 1882)	Determining Bail; Creating a presumption that individuals arrested for allegedly committing nonviolent misdemeanors be released on nonmonetary conditions or nonmonetary restrictions; restricting the determinations a court must consider for bail or other conditions for persons committing crimes other than nonviolent misdemeanor offenses; authorizing a court to revoke pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new violent crime or a new dangerous crime while on pretrial release, etc. CJ 01/29/2018 Temporarily Postponed CJ 02/06/2018 Temporarily Postponed JU RC	Temporarily Postponed
14	CS/SB 1548 Education / Book (Similar H 777, Compare H 1391, CS/H 7055, S 1616)	K-12 Student Safety; Prohibiting certain teachers from receiving bonuses related to specified FTE student membership calculations; requiring certified educators to inform their employers within a specified time period after being arrested for, rather than convicted of, certain offenses, etc. ED 01/22/2018 Fav/CS CJ 02/06/2018 Favorable AP	Favorable Yeas 4 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, February 6, 2018, 9:00—10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	SB 1552 Bracy (Compare H 195, H 509, H 1417, S 288, S 392, CS/S 936, S 1298)	Juvenile Justice; Requiring that a prolific juvenile offender be held in secure detention until a detention hearing is held if the juvenile violated the conditions of nonsecure detention; requiring a court to receive and consider a predisposition report before committing a child if the court determines that adjudication and commitment to the Department of Juvenile Justice is appropriate; increasing the age of a child at which a state attorney may, or is required to, request a court to transfer the child to adult court for criminal prosecution, etc. CJ 02/06/2018 Favorable ACJ AP	Favorable Yeas 4 Nays 1

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: SB 392

INTRODUCER: Senator Bracy

SUBJECT: Juvenile Justice

DATE: February 5, 2018

REVISED: _____

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

I. Summary:

SB 392 makes several changes to the minimum age in which a child qualifies for transfer to adult court.

The bill changes the age in which a child can be transferred to adult court by involuntary judicial waiver from 14 to 15 years of age.

The bill also changes the ages in which a child can be transferred to adult court by discretionary direct file. The bill provides that the state attorney may direct file a child when a child is:

- 15 or 16 years of age (currently 14 or 15) and is charged with an enumerated felony offense;
- 17 years of age (currently 16 or 17) at the time any felony was committed;
- 17 years of age (currently 16 or 17) at the time the misdemeanor was committed, provided the child has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which was a felony.

The bill changes the age in which a child can be transferred to adult court by mandatory direct file from 16 or 17 years of age to 17 years of age.

The bill will likely reduce the number of children transferred to the adult system, which will likely result in a significant negative fiscal impact on the DJJ. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2018.

II. Present Situation:

Transferring of a Child to Adult Court

There are three methods of transferring a child to adult court for prosecution: judicial waiver, indictment by a grand jury, or direct filing an information.

Judicial Waiver

The judicial waiver process allows juvenile courts to waive jurisdiction to adult court on a case-by-case basis. To transfer a child pursuant to judicial waiver, the state attorney must file a motion and the court must approve of the transfer.¹ Section 985.556, F.S., provides for three types of judicial waivers:

- Voluntary Waiver – the child requests to have his or her case transferred to adult court;²
- Involuntary Discretionary Waiver – the state attorney may file a motion requesting the court to transfer any case where the child is 14 years of age or older at the time the alleged delinquent act or violation of law was committed;³ and
- Involuntary Mandatory Waiver – the state attorney must request the transfer of a child 14 years of age or older if the child:
 - Has been previously adjudicated delinquent for an enumerated felony⁴ and the child is currently charged with a second or subsequent violent crime against a person; or
 - Was 14 years of age or older at the time of commission of a fourth or subsequent felony offense and was previously adjudicated delinquent or had adjudication withheld for three felony offenses, one or more of which involved the use or possession of a firearm or violence against a person.⁵

Indictment by a Grand Jury

Section 985.56, F.S., specifies that a child of any age who is charged with an offense punishable by death or life imprisonment is subject to the jurisdiction of the juvenile courts unless and until an indictment by a grand jury. If the grand jury returns an indictment on the charge, the child's case must be transferred to adult court.⁶

Direct File

Direct file is when a state attorney files an information charging a child in adult court. Direct file under s. 985.557, F.S., can be either discretionary or mandatory, and is accomplished exclusively by the state attorney without requiring the court's approval.⁷ Direct file is the predominant transfer method to adult court, accounting for 97.7 percent of the transfers in 2016-17.⁸

¹ Section 985.556, F.S.

² Section 985.556(1), F.S.

³ Section 985.556(2), F.S.

⁴ The enumerated felonies are: murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, aggravated assault, or burglary with an assault or battery. *See* s. 985.556(3)(a), F.S.

⁵ Section 985.556(3), F.S.

⁶ Section 985.56(1), F.S.

⁷ Section 985.557, F.S.

⁸ Department of Juvenile Justice, *2018 Bill Analysis for SB 392*, (February 1, 2018) (on file with the Senate Criminal Justice Committee).

Discretionary Direct File

Section 985.557(1), F.S., provides the state attorney with discretion to file a case in adult court for certain cases when he or she believes the offense requires that adult sanctions be considered or imposed. Specifically, the state attorney may direct file a child when a child is:

- 14 or 15 years of age and is charged with one of the following felony offenses:
 - Arson;
 - Sexual battery;
 - Robbery;
 - Kidnapping;
 - Aggravated child abuse;
 - Aggravated assault;
 - Aggravated stalking;
 - Murder;
 - Manslaughter;
 - Unlawful throwing, placing, or discharging of a destructive device or bomb;
 - Armed burglary in violation of s. 810.02(2)(b), F.S.;
 - Burglary of a dwelling or structure in violation of s. 810.02(2)(c), F.S.;
 - Burglary with an assault or battery in violation of s. 810.02(2)(a), F.S.;
 - Aggravated battery;
 - Any lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age;
 - Carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony;
 - Grand theft in violation of s. 812.014(2)(a), F.S.;
 - Possessing or discharging any weapon or firearm on school property in violation of s. 790.115, F.S.;
 - Home invasion robbery;
 - Carjacking;
 - Grand theft of a motor vehicle in violation of s. 812.014(2)(c)6., F.S.; or
 - Grand theft of a motor vehicle valued at \$20,000 or more in violation of s. 812.014(2)(b), F.S., if the child has a previous adjudication for grand theft of a motor vehicle in violation of s. 812.014(2)(c)6. or (2)(b), F.S.⁹
- 16 or 17 years of age and is charged with any felony offense;¹⁰ or
- 16 or 17 years of age and is charged with a misdemeanor, provided the child has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which was a felony.¹¹

Mandatory Direct File

Section 985.557(2), F.S., requires the state attorney to file a case in adult court when the child is:

- 16 or 17 years of age at the time of the alleged offense and:

⁹ Section 985.557(1)(a)1.-19., F.S.

¹⁰ Section 985.557(1)(b), F.S.

¹¹ *Id.*

- Is charged with a second or subsequent violent crime against a person and has been previously adjudicated delinquent for an enumerated felony;¹²
- Is charged with a forcible felony¹³ and has been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred at least 45 days apart from each other;¹⁴ or
- Is charged with committing or attempting to commit an offense listed in s. 775.087(2)1.a.-p., F.S.,¹⁵ and during the commission of the offense the child actually possessed or discharged a firearm or destructive device;¹⁶ or
- Any age and is alleged to have committed an act that involves stealing a vehicle in which the child, while possessing the vehicle, caused serious bodily injury or death to a person who was not involved in the underlying offense.

III. Effect of Proposed Changes:

The bill changes the age in which a child can be transferred to adult court by involuntary judicial waiver from 14 to 15 years of age.

The bill also changes the ages in which a child can be transferred to adult court by discretionary direct file. The bill provides that the state attorney may direct file a child when a child is:

- 15 or 16 years of age (currently 14 or 15) and is charged with an enumerated felony offense;¹⁷
- 17 years of age (currently 16 or 17) at the time any felony was committed; or
- 17 years of age (currently 16 or 17) at the time the misdemeanor was committed, provided the child has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which was a felony.

The bill changes the age in which a child can be transferred to adult court by mandatory direct file from 16 or 17 years of age to 17 years of age. The bill maintains the provision that a state attorney must direct file a child of any age who is alleged to have committed an act that involves causing serious bodily injury or death to a person while possessing a stolen vehicle.

¹² The enumerated felonies include: murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, or aggravated assault. *See* s. 985.557(2)(a), F.S.

¹³ Section 776.08, F.S., defines “forcible felony” as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the threat of physical force or violence against any individual.

¹⁴ Section 985.557(2)(b), F.S., provides that this provision does not apply when the state attorney has good cause to believe that exceptional circumstances exist which preclude the just prosecution of the child in adult court.

¹⁵ The offenses include murder; sexual battery; robbery; burglary; arson; aggravated battery; kidnapping; escape; aircraft piracy; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; home-invasion robbery; aggravated stalking; trafficking in cannabis; trafficking in cocaine; capital importation of cocaine; trafficking in illegal drugs; capital importation of illegal drugs; trafficking in phencyclidine; capital importation of phencyclidine; trafficking in methaqualone; capital importation of methaqualone; trafficking in amphetamine; capital importation of amphetamine; trafficking in flunitrazepam; trafficking in gamma-hydroxybutyric acid (GHB); trafficking in 1,4-Butanediol; trafficking in Phenethylamines; or other violation of s. 893.135(1), F.S. Section 775.087(2)(a)1.a.-p., F.S.

¹⁶ The terms “firearm” and “destructive device” are defined in s. 790.001, F.S.

¹⁷ *See* s. 985.557(1)(a)1.-19., F.S.

Current law requires the Department of Corrections (DOC) to make every reasonable effort to ensure that any child 16 or 17 years of age who is convicted and sentenced in adult court pursuant to direct file be completely separated from adult offenders in the facility. The bill repeals this age requirement and directs the DOC to keep separate a child of *any age* from adult offenders in the facility.

The bill also reenacts ss. 985.15(1), 985.26(2)(c), 985.265(5), and 985.565(4), F.S., to incorporate amendments by the bill to statutes that are cross-referenced in the reenacted section.

The bill is effective July 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 is likely to reduce the number of children transferred to the adult system, which will likely result in a significant negative prison bed impact (a decrease in the number of prison beds) on the DOC and a significant positive residential bed impact (an increase in the number of beds) on the Department of Juvenile Justice (DJJ). The DJJ estimates that the bill would result in 132 juveniles being ineligible for transfer to adult court and the cost for detention and treatment for these additional juveniles would be \$12,270,113. The DJJ also predicts that new facilities would need to be procured or retrofitted to serve the increased population.¹⁸

¹⁸ Department of Juvenile Justice, *2018 Bill Analysis for SB 392 (2018)*, (January 17, 2018) (on file with the Senate Criminal Justice Committee).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 985.556 and 985.557.

This bill reenacts the following sections of the Florida Statutes: 985.15, 985.26, 985.265, and 985.565.

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.

By Senator Bracy

11-00279-18

2018392__

A bill to be entitled

An act relating to juvenile justice; amending s. 985.556, F.S.; increasing the age of a child at which a state attorney may, or is required to, request a court to transfer the child to adult court for criminal prosecution; amending s. 985.557, F.S.; increasing the age of a child at which a state attorney may, or is required to, file an information against the child for prosecution as an adult; making a technical change; reenacting s. 985.15(1), F.S., relating to filing decisions, to incorporate the amendment made to s. 985.556, F.S., in a reference thereto; reenacting ss. 985.265(5) and 985.565(4), F.S., relating to children in adult jails and sentencing alternatives for juveniles prosecuted as adults, respectively, to incorporate the amendments made to ss. 985.556 and 985.557, F.S., in references thereto; reenacting s. 985.26(2)(c), F.S., relating to the length of detention, to incorporate the amendment made to s. 985.557, F.S., in a reference thereto; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 985.556, Florida Statutes, are amended to read:

985.556 Waiver of juvenile court jurisdiction; hearing.—

(2) INVOLUNTARY DISCRETIONARY WAIVER.—Except as provided in subsection (3), the state attorney may file a motion requesting

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the court to transfer the child for criminal prosecution if the child was 15 ~~14~~ years of age or older at the time the alleged delinquent act or violation of law was committed.

(3) INVOLUNTARY MANDATORY WAIVER.—

(a) If the child was 15 ~~14~~ years of age or older, and if the child has been previously adjudicated delinquent for an act classified as a felony, which adjudication was for the commission of, attempt to commit, or conspiracy to commit murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, aggravated assault, or burglary with an assault or battery, and the child is currently charged with a second or subsequent violent crime against a person; or

(b) If the child was 15 ~~14~~ years of age or older at the time of commission of a fourth or subsequent alleged felony offense and the child was previously adjudicated delinquent or had adjudication withheld for or was found to have committed, or to have attempted or conspired to commit, three offenses that are felony offenses if committed by an adult, and one or more of such felony offenses involved the use or possession of a firearm or violence against a person;

the state attorney shall request the court to transfer and certify the child for prosecution as an adult or shall provide written reasons to the court for not making such request, or proceed under s. 985.557(1). Upon the state attorney's request, the court shall either enter an order transferring the case and certifying the case for trial as if the child were an adult or provide written reasons for not issuing such an order.

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Section 2. Subsection (1) and paragraphs (a), (b), and (d) of subsection (2) of section 985.557, Florida Statutes, are amended to read:

985.557 Direct filing of an information; discretionary and mandatory criteria.—

(1) DISCRETIONARY DIRECT FILE.—

(a) With respect to any child who was ~~14 or~~ 15 or 16 years of age at the time the alleged offense was committed, the state attorney may file an information when in the state attorney's judgment and discretion the public interest requires that adult sanctions be considered or imposed and when the offense charged is for the commission of, attempt to commit, or conspiracy to commit:

1. Arson;

2. Sexual battery;

3. Robbery;

4. Kidnapping;

5. Aggravated child abuse;

6. Aggravated assault;

7. Aggravated stalking;

8. Murder;

9. Manslaughter;

10. Unlawful throwing, placing, or discharging of a destructive device or bomb;

11. Armed burglary in violation of s. 810.02(2)(b) or specified burglary of a dwelling or structure in violation of s. 810.02(2)(c), or burglary with an assault or battery in violation of s. 810.02(2)(a);

12. Aggravated battery;

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13. Any lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age;

14. Carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony;

15. Grand theft in violation of s. 812.014(2)(a);

16. Possessing or discharging any weapon or firearm on school property in violation of s. 790.115;

17. Home invasion robbery;

18. Carjacking; or

19. Grand theft of a motor vehicle in violation of s. 812.014(2)(c)6. or grand theft of a motor vehicle valued at \$20,000 or more in violation of s. 812.014(2)(b) if the child has a previous adjudication for grand theft of a motor vehicle in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).

(b) With respect to any child who was ~~16 or~~ 17 years of age at the time the alleged offense was committed, the state attorney may file an information when in the state attorney's judgment and discretion the public interest requires that adult sanctions be considered or imposed. However, the state attorney may not file an information on a child charged with a misdemeanor, unless the child has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which involved an offense classified as a felony under state law.

(2) MANDATORY DIRECT FILE.—

(a) With respect to any child who was ~~16 or~~ 17 years of age at the time the alleged offense was committed, the state attorney shall file an information if the child has been previously adjudicated delinquent for an act classified as a

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felony, which adjudication was for the commission of, attempt to commit, or conspiracy to commit murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, or aggravated assault, and the child is currently charged with a second or subsequent violent crime against a person.

(b) With respect to any child ~~16- or~~ 17 years of age at the time an offense classified as a forcible felony, as defined in s. 776.08, was committed, the state attorney shall file an information if the child has previously been adjudicated delinquent or had adjudication withheld for three acts classified as felonies each of which occurred at least 45 days apart from each other. This paragraph does not apply when the state attorney has good cause to believe that exceptional circumstances exist which preclude the just prosecution of the juvenile in adult court.

(d)1. With respect to any child who was ~~16- or~~ 17 years of age at the time the alleged offense was committed, the state attorney shall file an information if the child has been charged with committing or attempting to commit an offense listed in s. 775.087(2)(a)1.a.-p., and, during the commission of or attempt to commit the offense, the child:

a. Actually possessed a firearm or destructive device, as those terms are defined in s. 790.001.

b. Discharged a firearm or destructive device, as described in s. 775.087(2)(a)2.

c. Discharged a firearm or destructive device, as described in s. 775.087(2)(a)3., and, as a result of the discharge, death or great bodily harm was inflicted upon any person.

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2. Upon transfer, any child who is:

a. Charged under sub-subparagraph 1.a. and who has been previously adjudicated or had adjudication withheld for a forcible felony offense or any offense involving a firearm, or who has been previously placed in a residential commitment program, shall be subject to sentencing under s. 775.087(2)(a), notwithstanding s. 985.565.

b. Charged under sub-subparagraph 1.b. or sub-subparagraph 1.c., shall be subject to sentencing under s. 775.087(2)(a), notwithstanding s. 985.565.

3. Upon transfer, any child who is charged under this paragraph, but who does not meet the requirements specified in subparagraph 2., shall be sentenced under s. 985.565; however, if the court imposes a juvenile sanction, the court must commit the child to a high-risk or maximum-risk juvenile facility.

4. This paragraph shall not apply if the state attorney has good cause to believe that exceptional circumstances exist that preclude the just prosecution of the child in adult court.

5. The Department of Corrections shall make every reasonable effort to ensure that any child ~~16- or 17 years of age~~ who is convicted and sentenced under this paragraph be completely separated such that there is no physical contact with adult offenders in the facility, to the extent that it is consistent with chapter 958.

Section 3. For the purpose of incorporating the amendment made by this act to section 985.556, Florida Statutes, in a reference thereto, subsection (1) of section 985.15, Florida Statutes, is reenacted to read:

985.15 Filing decisions.—

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(1) The state attorney may in all cases take action independent of the action or lack of action of the juvenile probation officer and shall determine the action that is in the best interest of the public and the child. If the child meets the criteria requiring prosecution as an adult under s. 985.556, the state attorney shall request the court to transfer and certify the child for prosecution as an adult or shall provide written reasons to the court for not making such a request. In all other cases, the state attorney may:

(a) File a petition for dependency;

(b) File a petition under chapter 984;

(c) File a petition for delinquency;

(d) File a petition for delinquency with a motion to transfer and certify the child for prosecution as an adult;

(e) File an information under s. 985.557;

(f) Refer the case to a grand jury;

(g) Refer the child to a diversionary, pretrial intervention, arbitration, or mediation program, or to some other treatment or care program if such program commitment is voluntarily accepted by the child or the child's parents or legal guardian; or

(h) Decline to file.

Section 4. For the purpose of incorporating the amendments made by this act to sections 985.556 and 985.557, Florida Statutes, in references thereto, subsection (5) of section 985.265, Florida Statutes, is reenacted to read:

985.265 Detention transfer and release; education; adult jails.-

(5) The court shall order the delivery of a child to a jail

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or other facility intended or used for the detention of adults:

(a) When the child has been transferred or indicted for criminal prosecution as an adult under part X, except that the court may not order or allow a child alleged to have committed a misdemeanor who is being transferred for criminal prosecution pursuant to either s. 985.556 or s. 985.557 to be detained or held in a jail or other facility intended or used for the detention of adults; however, such child may be held temporarily in a detention facility; or

(b) When a child taken into custody in this state is wanted by another jurisdiction for prosecution as an adult.

The child shall be housed separately from adult inmates to prohibit a child from having regular contact with incarcerated adults, including trustees. "Regular contact" means sight and sound contact. Separation of children from adults shall permit no more than haphazard or accidental contact. The receiving jail or other facility shall contain a separate section for children and shall have an adequate staff to supervise and monitor the child's activities at all times. Supervision and monitoring of children includes physical observation and documented checks by jail or receiving facility supervisory personnel at intervals not to exceed 10 minutes. This subsection does not prohibit placing two or more children in the same cell. Under no circumstances shall a child be placed in the same cell with an adult.

Section 5. For the purpose of incorporating the amendments made by this act to sections 985.556 and 985.557, Florida Statutes, in references thereto, subsection (4) of section

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985.565, Florida Statutes, is reenacted to read:

985.565 Sentencing powers; procedures; alternatives for juveniles prosecuted as adults.—

(4) SENTENCING ALTERNATIVES.—

(a) *Adult sanctions*.—

1. Cases prosecuted on indictment.—If the child is found to have committed the offense punishable by death or life imprisonment, the child shall be sentenced as an adult. If the juvenile is not found to have committed the indictable offense but is found to have committed a lesser included offense or any other offense for which he or she was indicted as a part of the criminal episode, the court may sentence as follows:

a. As an adult;

b. Under chapter 958; or

c. As a juvenile under this section.

2. Other cases.—If a child who has been transferred for criminal prosecution pursuant to information or waiver of juvenile court jurisdiction is found to have committed a violation of state law or a lesser included offense for which he or she was charged as a part of the criminal episode, the court may sentence as follows:

a. As an adult;

b. Under chapter 958; or

c. As a juvenile under this section.

3. Notwithstanding any other provision to the contrary, if the state attorney is required to file a motion to transfer and certify the juvenile for prosecution as an adult under s. 985.556(3) and that motion is granted, or if the state attorney is required to file an information under s. 985.557(2)(a) or

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(b), the court must impose adult sanctions.

4. Any sentence imposing adult sanctions is presumed appropriate, and the court is not required to set forth specific findings or enumerate the criteria in this subsection as any basis for its decision to impose adult sanctions.

5. When a child has been transferred for criminal prosecution as an adult and has been found to have committed a violation of state law, the disposition of the case may include the enforcement of any restitution ordered in any juvenile proceeding.

(b) *Juvenile sanctions*.—For juveniles transferred to adult court but who do not qualify for such transfer under s. 985.556(3) or s. 985.557(2)(a) or (b), the court may impose juvenile sanctions under this paragraph. If juvenile sentences are imposed, the court shall, under this paragraph, adjudge the child to have committed a delinquent act. Adjudication of delinquency shall not be deemed a conviction, nor shall it operate to impose any of the civil disabilities ordinarily resulting from a conviction. The court shall impose an adult sanction or a juvenile sanction and may not sentence the child to a combination of adult and juvenile punishments. An adult sanction or a juvenile sanction may include enforcement of an order of restitution or probation previously ordered in any juvenile proceeding. However, if the court imposes a juvenile sanction and the department determines that the sanction is unsuitable for the child, the department shall return custody of the child to the sentencing court for further proceedings, including the imposition of adult sanctions. Upon adjudicating a child delinquent under subsection (1), the court may:

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1. Place the child in a probation program under the supervision of the department for an indeterminate period of time until the child reaches the age of 19 years or sooner if discharged by order of the court.

2. Commit the child to the department for treatment in an appropriate program for children for an indeterminate period of time until the child is 21 or sooner if discharged by the department. The department shall notify the court of its intent to discharge no later than 14 days prior to discharge. Failure of the court to timely respond to the department's notice shall be considered approval for discharge.

3. Order disposition under ss. 985.435, 985.437, 985.439, 985.441, 985.45, and 985.455 as an alternative to youthful offender or adult sentencing if the court determines not to impose youthful offender or adult sanctions.

(c) *Adult sanctions upon failure of juvenile sanctions.*—If a child proves not to be suitable to a commitment program, juvenile probation program, or treatment program under paragraph (b), the department shall provide the sentencing court with a written report outlining the basis for its objections to the juvenile sanction and shall simultaneously provide a copy of the report to the state attorney and the defense counsel. The department shall schedule a hearing within 30 days. Upon hearing, the court may revoke the previous adjudication, impose an adjudication of guilt, and impose any sentence which it may lawfully impose, giving credit for all time spent by the child in the department. The court may also classify the child as a youthful offender under s. 958.04, if appropriate. For purposes of this paragraph, a child may be found not suitable to a

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commitment program, community control program, or treatment program under paragraph (b) if the child commits a new violation of law while under juvenile sanctions, if the child commits any other violation of the conditions of juvenile sanctions, or if the child's actions are otherwise determined by the court to demonstrate a failure of juvenile sanctions.

(d) *Further proceedings heard in adult court.*—When a child is sentenced to juvenile sanctions, further proceedings involving those sanctions shall continue to be heard in the adult court.

(e) *School attendance.*—If the child is attending or is eligible to attend public school and the court finds that the victim or a sibling of the victim in the case is attending or may attend the same school as the child, the court placement order shall include a finding pursuant to the proceeding described in s. 985.455(2), regardless of whether adjudication is withheld.

It is the intent of the Legislature that the criteria and guidelines in this subsection are mandatory and that a determination of disposition under this subsection is subject to the right of the child to appellate review under s. 985.534.

Section 6. For the purpose of incorporating the amendment made by this act to section 985.557, Florida Statutes, in a reference thereto, paragraph (c) of subsection (2) of section 985.26, Florida Statutes, is reenacted to read:

985.26 Length of detention.—

(2)

(c) A prolific juvenile offender under s. 985.255(1)(j)

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shall be placed on nonsecure detention care with electronic monitoring or in secure detention care under a special detention order until disposition. If secure detention care is ordered by the court, it must be authorized under this part and may not exceed:

1. Twenty-one days unless an adjudicatory hearing for the case has been commenced in good faith by the court or the period is extended by the court pursuant to paragraph (b); or

2. Fifteen days after the entry of an order of adjudication.

As used in this paragraph, the term "disposition" means a declination to file under s. 985.15(1)(h), the entry of nolle prosequi for the charges, the filing of an indictment under s. 985.56 or an information under s. 985.557, a dismissal of the case, or an order of final disposition by the court.

Section 7. 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)

2/6/2018

Meeting Date

392

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Scott D. McCoy

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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 & No Place for a Child 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.

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)

2/6/18

Meeting Date

SB392

Bill Number (if applicable)

Topic SB392-Juvenile Justice by Bray

Amendment Barcode (if applicable)

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Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

CAMPAIGN FOR CRIMINAL JUSTICE

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)

02/06/2018

Meeting Date

SB 392

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Nancy Daniels

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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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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2-6-18

Meeting Date

392

Bill Number (if applicable)

Topic

JJ

Amendment Barcode (if applicable)

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City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Florida PTA

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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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)

2/6/18

Meeting Date

392

Bill Number (if applicable)

Topic JUVENILE JUSTICE

Amendment Barcode (if applicable)

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing BROWARD COUNTY GOVT

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)

2.6.18

Meeting Date

392

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

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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)

APPEARANCE RECORD

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

2/6/2018

Meeting Date

SB 392

Bill Number (if applicable)

Topic Raising age of child transfer
to adult court

Amendment Barcode (if applicable)

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Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing League of Women VotersAppearing at request of Chair: ☐ Yes ☐ NoLobbyist 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)

2/6/18

Meeting Date

SB 392

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Ingrid Delgado

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing FL Conf. of Catholic Bishops

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
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 588

INTRODUCER: Senator Rader

SUBJECT: Crimes Evidencing Prejudice

DATE: February 5, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	Favorable
2.			ACJ	
3.			AP	
4.			RC	

I. Summary:

SB 588 amends ss. 775.085 and 775.0863, F.S., Florida's hate crimes statutes. Section 775.085, F.S., reclassifies the felony or misdemeanor degree of an offense if the commission of the offense evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, or advanced age of the victim of the crime. Section 775.0863, F.S., is similar to s. 775.085, F.S., but only addresses hate crimes based on a victim's mental or physical disability.

The bill specifies that a violation of ss. 775.085 or 775.0863, F.S., occurs if the commission of a crime evidences prejudice "in whole or in part" based on a characteristic of the victim of the crime specified in either statute.

The bill also expands s. 775.085, F.S., to include gender and gender identity as relevant victim characteristics. Therefore, a violation of s. 775.085, F.S., occurs if the commission of a crime evidences prejudice "in whole or in part" based on the gender or gender identity of the victim of the crime. The bill defines the term "gender identity."

The bill also amends s. 775.0863, F.S., to remove reference to "mental or physical" in regard to the term "disability." The bill repeals the current definition of "mental or physical disability" and provides a definition of "disability" that is more expansive than the current definition of "mental or physical disability."

The Criminal Justice Impact Conference estimates the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

II. Present Situation:

Florida's Hate Crimes Laws

Section 775.085, F.S., reclassifies the felony or misdemeanor degree of an offense if the commission of the offense evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, or advanced age of the victim.¹ Offenses are reclassified as follows:

- A second degree misdemeanor is reclassified to a first degree misdemeanor;
- A first degree misdemeanor is reclassified to a third degree felony;
- A third degree felony is reclassified to a second degree felony;
- A second degree felony is reclassified to a first degree felony; and
- A first degree felony is reclassified to a life felony.

Reclassification of the degree of an offense has the effect of increasing the maximum sentence that a judge may impose for the offense. The maximum sentence for:

- A second degree misdemeanor is 60 days in jail and a \$500 fine;
- A first degree misdemeanor is 1 year in jail and a \$1,000 fine;
- A third degree felony is 5 years in state prison and a \$5,000 fine;
- A second degree felony is 15 years in state prison and a \$10,000 fine;
- A first degree felony is generally 30 years in state prison and a \$10,000 fine; and
- A life felony is generally a term of imprisonment for life or imprisonment for a term of years not exceeding life imprisonment and a \$15,000 fine.²

Additionally, felony reclassification may impact the scored lowest permissible sentence under the Criminal Punishment Code. For example, a primary offense that is a second degree felony would typically score more sentence points than a primary offense that is a third degree felony.

Section 775.0863, F.S., is similar to s. 775.085, F.S., but only addresses hate crimes based on a victim's mental or physical disability. Section 775.0863(1)(b), F.S., defines the term "mental or physical disability" as a condition of mental or physical incapacitation due to a developmental disability, organic brain damage, or mental illness, and one or more mental or physical limitations that restrict a person's ability to perform the normal activities of daily living. The reclassification provisions of s. 775.0863, F.S., are identical to the reclassification provisions of s. 775.085, F.S.

¹ Section 775.0863, F.S., provides for reclassification of the felony or misdemeanor degree of an offense if the commission of the offense evidences prejudice based on the victim's mental or physical disability.

² Sections 775.082 and 775.083, F.S. However, if a defendant is sentenced for an offense that was committed on or after July 1, 2009, which is a third degree felony that is not a forcible felony, as defined in s. 776.08, F.S., and excluding a felony violation of ch. 810, F.S., and if total sentence points pursuant to s. 921.0014, F.S., are 22 points are fewer, the court must sentence the offender to a nonstate prison sanction unless it makes written findings that such sanction could present a danger to the public. Section 775.082(10), F.S.

According to the Florida jury instruction for ss. 775.085 and 775.0863, F.S.,³ the jury should find a defendant guilty of the crime charged (or a lesser included crime) aggravated by the defendant intentionally selecting the victim based on prejudice if the jury finds that the defendant committed the crime charged (or lesser included crime) and also finds beyond a reasonable doubt that the defendant:

- Perceived, knew, or had reasonable ground to perceive or know the victim's race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, mental or physical disability, or advanced age; and
- Intentionally selected the victim because of that perception or knowledge.⁴

Gender and Gender Identity

Laws may treat the terms “gender” and “sex” as interchangeable terms⁵ and may only recognize a gender binary of “male” and “female.”⁶ One court has described this gender binary as “an individual’s biological sex in the binary sense -either male or female- that is assigned at birth, as reflected on that individual’s birth certificate, and typically assigned on the basis of an individual’s genitalia.”⁷

“Increasingly in medicine and sociology, gender is distinguished from sex.”⁸ For example, according to information provided by the American Psychological Association (APA), “[g]ender refers to the attitudes, feelings, and behaviors that a given culture associates with a person’s biological sex.”⁹ In contrast, “[s]ex refers to a person’s biological status and is typically categorized as male, female, or intersex (i.e., atypical combinations of features that usually distinguish male from female). There are a number of indicators of biological sex, including sex chromosomes, gonads, internal reproductive organs, and external genitalia.”¹⁰

Sex is typically assigned at birth (or before [or] during ultrasound) based on the appearance of external genitalia. When the external genitalia are ambiguous other

³ Fla. Std. Jury Instr. (Crim.) 3.3(f).

⁴ Proof that the defendant intentionally selected the victim is required by *State v. Stalder*, 630 So.2d 1072 (Fla. 1994). However, “[t]o qualify criminal conduct for sentencing enhancement under section 775.085, *Stalder* does not require that prejudice be the sole motivating factor for the underlying crime.” *State v. Hart*, 677 So.2d 385, 386 (Fla. 4th DCA 1996).

⁵ See, e.g., Yamuna Menon, “The Intersex Community and the Americans with Disabilities Act,” 43 *Conn. L. Rev.* 1221, 1226, n. 24. (2010) (asserting that “federal and Supreme Court cases use the terms ‘sex’ and ‘gender’ interchangeably”).

⁶ *Id.* at p. 1227.

⁷ *Johnston v. Univ. of Pittsburgh of the Commonwealth Sys. of Higher Educ.*, 97 F. Supp. 3d 657, 672 (W.D. Pa. 2015).

⁸ *Id.*

⁹ *Definitions Related to Sexual Orientation and Gender Diversity in APA Guidelines and Policy Documents*, American Psychological Association, available at <http://www.apa.org/pi/lgbt/resources/sexuality-definitions.pdf> (last visited on Jan. 30, 2018).

¹⁰ *Id.* However, one legal commentator has noted that “the definition of intersex is shifting and changing alongside the corresponding shifts and changes in societal definitions of ‘male’ and ‘female.’ Intersex individuals have congenital anomalies of the reproductive and sexual system that bring into question their categorization as either male or female. Whether a given anomaly is sufficient to bring male or female categorization into question and whether the anomaly is required to introduce some combination of ‘male’ and ‘female’ characteristics into a single body are both disputed and socially determined questions. What is clear is that the intersex body fits the definition of neither a male nor a female body - and that it defies the gender binary so commonly assumed by individuals and the law.” Ilana Gelfman, “Because of Intersex: Intersexuality. Title VII, And The Reality Of Discrimination ‘Because of ... [Perceived] Sex,’” 34 *N.Y.U. Rev. L. & Soc. Change* 55, 62 (2010) (citation omitted).

indicators (e.g., internal genitalia, chromosomal and hormonal sex) are considered to assign a sex with the aim of assigning a sex that is most likely to be congruent with the child's gender identity.... For most people, gender identity is congruent with sex assigned at birth (see cisgender); for ... [transgender and gender-nonconforming] individuals, gender identity differs in varying degrees from sex assigned at birth.¹¹

III. Effect of Proposed Changes:

The bill amends ss. 775.085 and 775.0863, F.S., Florida's hate crimes statutes. Section 775.085, F.S., reclassifies the felony or misdemeanor degree of an offense if the commission of the offense evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, or advanced age of the victim of the crime. Section 775.0863, F.S., is similar to s. 775.085, F.S., but only addresses hate crimes based on a victim's mental or physical disability.

The bill also specifies that a violation of ss. 775.085 or 775.0863, F.S., occurs if the commission of a crime evidences prejudice "in whole or in part" based on a characteristic of the victim of the crime specified in either statute.

The bill also expands s. 775.085, F.S., to include gender and gender identity as relevant victim characteristics. Therefore, a violation of s. 775.085, F.S., occurs if the commission of a crime evidences prejudice "in whole or in part" based on the gender or gender identity of the victim of the crime. The bill defines the term "gender identity" as a person's gender-related identity, appearance, or behavior, regardless of whether such gender-related identity, appearance, or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth.¹²

The bill also amends s. 775.0863, F.S., to remove reference to "mental or physical" in regard to the term "disability." The bill repeals the current definition of "mental or physical disability" and provides a definition of "disability." A "disability" is a physical or mental impairment that substantially limits one or more of a person's major life activities. Several definitions in Florida

¹¹ *Supra*, n. 9. According to information from the American Psychological Association, "gender identity" refers to "[a] person's deeply-felt, inherent sense of being a boy, a man, or male; a girl, a woman, or female; or an alternative gender (e.g., genderqueer, gender nonconforming, gender neutral) that may or may not correspond to a person's sex assigned at birth or to a person's primary or secondary sex characteristics. Since gender identity is internal, a person's gender identity is not necessarily visible to others." *Id.*

¹² This definition is very similar to a definition of "gender identity or expression" in Connecticut law (CT Gen Stat s. 1-1n) and almost identical to a definition of "gender identity" in Massachusetts law (Mass. Gen. L. ch. 4, s. 7).

law incorporate similar language¹³ as does the definition of “disability”¹⁴ relevant to the Americans with Disabilities Act.¹⁵

This definition of “disability” is more expansive than the definition of “mental or physical disability” that is currently in s. 775.0863, F.S., which requires a condition of mental or physical incapacitation due to a developmental disability, organic brain damage, or mental illness. For example, a crime victim’s paralysis may not be covered by the current definition but appears to be covered by the amended definition in the bill if it substantially limits one or more of a person’s major life activities.

The bill also reenacts s. 921.002, F.S., the Criminal Punishment Code offense severity ranking chart, for the purpose of incorporating the amendments made by the bill to ss. 775.085 and 775.0863, F.S., in reference to those statutes.

The effective date of the bill July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹³ “Persons with disabilities” means individuals who have a *physical or mental impairment that substantially limits one or more major life activities*. Section 97.021(26), F.S. “Disability” means, with respect to an individual, a *physical or mental impairment that substantially limits one or more of the major life activities of the individual*, or a record of having such an impairment, or being regarded as having such an impairment. Section 110.215(2)(b), F.S. “Individual with a disability” means a person who has a *physical or mental impairment that substantially limits one or more major life activities of the individual*. Section 413.08(1)(b), F.S. Section 760.22(7)(a), F.S. “Handicap” means a person has a *physical or mental impairment which substantially limits one or more major life activities*, or he or she has a record of having, or is regarded as having, such physical or mental impairment. “Adult with disability” means an individual who has a *physical or mental impairment that substantially limits one or more major life activities*, has a record of such impairment, or is regarded as having such an impairment, and who requires modifications to the educational program, adaptive equipment, or specialized instructional methods and services in order to participate in workforce development programs that lead to competitive employment. Section 1004.02(6), F.S.

¹⁴ The term “disability” means, with respect to an individual: a *physical or mental impairment that substantially limits one or more major life activities of such individual*; a record of such impairment; or being regarded as having such impairment (as further defined in this section). 42 U.S.C. Section 12102(1)(A) to (C).

¹⁵ The Americans with Disabilities Act of 1990, as amended, is codified at 42 U.S.C. Sections 12101 *et seq.*

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) estimates the bill will have a “positive indeterminate” prison bed impact (an unquantifiable increase in prison beds).¹⁶

The Legislature’s Office of Economic and Demographic Research (EDR) provided the following information relevant to the CJIC estimate:

There is currently no data available on whether crimes committed against persons evidenced prejudice based on their gender or gender identity. Nationwide, the Uniform Crime Reports (UCR) for 2016 note that there were 28 known offenders who committed offenses with Anti-Male/Anti-Female motivations. There were 165 known offenders who committed offenses with Anti-Transgender/Anti-Gender Non-Conforming motivations. However, it is unknown how many states currently have these laws. Per ... [the Florida Department of Law Enforcement’s (FDLE’s)] statewide UCR, in 2016, there were 124 offenses, with 34 arrests for hate crimes. There were 45 offenses motivated by sexual orientation, with 10 arrests, and one offense motivated by mental disability, with one arrest. Also per [the] FDLE’s Computerized Criminal History (CCH) files, in FY ... [2015-16], there were 7 arrests and 2 guilty/convicted for ... [first] degree misdemeanors under s. 775.085, F.S., with arrests possibly overlapping with UCR. There were no arrests under ... s. 775.0863, F.S., for evidencing prejudice during an offense against someone with a mental or physical disability. However, since these statutes reclassify felonies, such acts might not be captured in the initial arrest.¹⁷

VI. Technical Deficiencies:

None.

¹⁶ E-mail from EDR staff to staff of the Senate Committee on Criminal Justice, dated Jan. 31, 2018, (on file with the Senate Committee on Criminal Justice).

¹⁷ Prison bed impact information provided by EDR staff to staff of the Senate Committee on Criminal Justice (on file with the Senate Committee on Criminal Justice).

VII. Related Issues:

According to information reported by the Anti-Defamation League in 2016, 31 states had a hate crime law that included gender as a crime victim characteristic and 18 states had a hate crime law that included gender identity as a crime victim characteristic.¹⁸

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 775.085 and 775.0863.

This bill also reenacts section 921.0022, Florida Statutes, for the purpose of incorporating the amendments made by the bill to sections 775.085 and 775.0863, Florida Statutes, in references to those 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.

¹⁸ *Anti-Defamation League State Hate Crime Statutory Provisions* (updated April 2016), Anti-Defamation League (Washington Office), available at <https://www.adl.org/sites/default/files/documents/assets/pdf/combating-hate/ADL-2016-State-Hate-Crime-Statutes.pdf> (last visited on Jan. 30, 2018).

By Senator Rader

29-00347-18

2018588__

1 A bill to be entitled
 2 An act relating to crimes evidencing prejudice;
 3 amending s. 775.085, F.S.; expanding grounds for the
 4 reclassification of crimes to include prejudice based
 5 on the gender or gender identity of the victim;
 6 defining the term "gender identity"; amending s.
 7 775.0863, F.S.; expanding grounds for reclassification
 8 of crimes to include prejudice based on a disability
 9 of the victim; redefining the term "disability";
 10 reenacting s. 921.0022(2), F.S., relating to the
 11 Criminal Punishment Code and the offense severity
 12 ranking chart, to incorporate the amendments made to
 13 ss. 775.085 and 775.0863, F.S., in references thereto;
 14 providing an effective date.
 15
 16 Be It Enacted by the Legislature of the State of Florida:
 17
 18 Section 1. Subsection (1) of section 775.085, Florida
 19 Statutes, is amended to read:
 20 775.085 Evidencing prejudice while committing offense;
 21 reclassification.—
 22 (1) (a) The penalty for any felony or misdemeanor shall be
 23 reclassified as provided in this subsection if the commission of
 24 such felony or misdemeanor evidences prejudice based in whole or
 25 in part on the race, color, ancestry, ethnicity, religion,
 26 sexual orientation, national origin, homeless status, ~~or~~
 27 advanced age, gender, or gender identity of the victim:
 28 1. A misdemeanor of the second degree is reclassified to a
 29 misdemeanor of the first degree.

Page 1 of 5

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

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2018588__

30 2. A misdemeanor of the first degree is reclassified to a
 31 felony of the third degree.
 32 3. A felony of the third degree is reclassified to a felony
 33 of the second degree.
 34 4. A felony of the second degree is reclassified to a
 35 felony of the first degree.
 36 5. A felony of the first degree is reclassified to a life
 37 felony.
 38 (b) As used in paragraph (a), the term:
 39 1. "Advanced age" means that the victim is older than 65
 40 years of age.
 41 2. "Gender identity" means a person's gender-related
 42 identity, appearance, or behavior, regardless of whether such
 43 gender-related identity, appearance, or behavior is different
 44 from that traditionally associated with the person's physiology
 45 or assigned sex at birth.
 46 ~~3.2.~~ "Homeless status" means that the victim:
 47 a. Lacks a fixed, regular, and adequate nighttime
 48 residence; or
 49 b. Has a primary nighttime residence that is:
 50 (I) A supervised publicly or privately operated shelter
 51 designed to provide temporary living accommodations; or
 52 (II) A public or private place not designed for, or
 53 ordinarily used as, a regular sleeping accommodation for human
 54 beings.
 55 Section 2. Section 775.0863, Florida Statutes, is amended
 56 to read:
 57 775.0863 Evidencing prejudice while committing offense
 58 against person with ~~mental or physical~~ disability;

Page 2 of 5

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

29-00347-18

2018588__

reclassification.—

(1) (a) The penalty for any felony or misdemeanor shall be reclassified as provided in this subsection if the commission of such felony or misdemeanor evidences prejudice based in whole or in part on a ~~mental or physical~~ disability of the victim:

1. A misdemeanor of the second degree is reclassified to a misdemeanor of the first degree.

2. A misdemeanor of the first degree is reclassified to a felony of the third degree.

3. A felony of the third degree is reclassified to a felony of the second degree.

4. A felony of the second degree is reclassified to a felony of the first degree.

5. A felony of the first degree is reclassified to a life felony.

(b) As used in paragraph (a), the term "disability" ~~"mental or physical disability"~~ means a physical or mental impairment that substantially limits one or more of a person's major life activities a condition of mental or physical incapacitation due to a developmental disability, organic brain damage, or mental illness, and one or more mental or physical limitations that restrict a person's ability to perform the normal activities of daily living.

(2) A person or organization that establishes by clear and convincing evidence that it has been coerced, intimidated, or threatened in violation of this section has a civil cause of action for treble damages, an injunction, or any other appropriate relief in law or in equity. Upon prevailing in such civil action, the plaintiff may recover reasonable attorney fees

29-00347-18

2018588__

and costs.

(3) It is an essential element of this section that the record reflect that the defendant perceived, knew, or had reasonable grounds to know or perceive that the victim was within the class delineated in this section.

Section 3. For the purpose of incorporating the amendments made by this act to sections 775.085 and 775.0863, Florida Statutes, in references thereto, subsection (2) of section 921.0022, Florida Statutes, is reenacted to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(2) The offense severity ranking chart has 10 offense levels, ranked from least severe, which are level 1 offenses, to most severe, which are level 10 offenses, and each felony offense is assigned to a level according to the severity of the offense. For purposes of determining which felony offenses are specifically listed in the offense severity ranking chart and which severity level has been assigned to each of these offenses, the numerical statutory references in the left column of the chart and the felony degree designations in the middle column of the chart are controlling; the language in the right column of the chart is provided solely for descriptive purposes. Reclassification of the degree of the felony through the application of s. 775.0845, s. 775.085, s. 775.0861, s. 775.0862, s. 775.0863, s. 775.087, s. 775.0875, s. 794.023, or any other law that provides an enhanced penalty for a felony offense, to any offense listed in the offense severity ranking chart in this section shall not cause the offense to become unlisted and is not subject to the provisions of s. 921.0023.

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2018588__

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Section 4. 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)

SB 588

Bill Number (if applicable)

Meeting Date _____

Topic _____

Amendment Barcode (if applicable)

Name JR Harding

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 Persons with disabilities

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)

2/6/2018

Meeting Date

588

Bill Number (if applicable)

Topic

Senate Bill 588

Amendment Barcode (if applicable)

Name

David Barclay

Job Title

ADL Southeast Council

Address

621 NW 53rd St

Phone

361-988-2912

Street

Boca Raton

State

FL

Zip

33433

Email

dbarclay@adl.org

City

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Anti-Defamation League

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)

2-6-18

Meeting Date

588

Bill Number (if applicable)

Topic Crimes Evidencing Prejudice

Amendment Barcode (if applicable)

Name Barbara DePina

Job Title MS

Address 625 E. Bernard St

Phone 850-251-4280

Street

Tallahassee FL 32308

City

State

Zip

Email barbaradepina1@yahoo.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.

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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)

2.6.18

Meeting Date

588

Bill Number (if applicable)

Topic Crimes Evidencing Prejudice

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

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)

2/6/2018

Meeting Date

SB 588

Bill Number (if applicable)

Topic Hate Crimes Extension

Amendment Barcode (if applicable)

Name Lakey Love

Job Title Graduate Teaching Assistant

Address 1511 Melvin Street

Phone 850-345-0018

Street

Tallahassee FL 32301

City

State

Zip

Email butterflylake@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing University Students in the Gendoneer + Disabled Communities

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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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)

2/6/18

Meeting Date

588

Bill Number (if applicable)

Topic Hate Crimes

Amendment Barcode (if applicable)

Name Jon Harris Maurer

Job Title Government Affairs Manager

Address 201 E Park Ave, Ste 200

Street

Tallahassee

City

FL

State

32301

Zip

Phone

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Equality 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)

2/6/2018

Meeting Date

SSB 588

Bill Number (if applicable)

Topic Hate crimes extension

Amendment Barcode (if applicable)

Name Dr. Petra Doan

Job Title Professor at FSU

Address 3342 Nottingham Dr.
Street

Phone 850-388-2935

Tallahassee
City

FL
State

32312
Zip

Email petradoan@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Transaction Initiative - Equality 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)

APPEARANCE RECORD

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2/6/18

Meeting Date

SB 588

Bill Number (if applicable)

Topic Hate Crimes Law Expansion

Amendment Barcode (if applicable)

Name Savannah MiddlebrooksJob Title Data AnalystAddress 1767 Hermitage Blvd, Apt. 3110

Street

Phone (850) 933-1752Tallahassee

City

FL

State

32308

Zip

Email keywestsue@comcast.netSpeaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)Representing PELAGI / The disabled communityAppearing at request of Chair: ☐ Yes ☒ NoLobbyist 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)

APPEARANCE RECORD

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

2/6/18

Meeting Date

588

Bill Number (if applicable)

Topic CRIMES EVIDENCING PREJUDICE

Amendment Barcode (if applicable)

Name CHARO VALEROJob Title FL STATE POLICE DIRECTORAddress 8235 NE 2ND AVE
StreetPhone 786 442 8199City MiamiState FLZip 33137Email CHARO@LATINA INSTITUTE.ORGSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing FLORIDA LATINA ADVOCACY NETWORKAppearing at request of Chair: ☐ Yes ☒ NoLobbyist 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)

2/6/18

Meeting Date

588

~~Feb 7 2018~~
Bill Number (if applicable)

Topic Gov. Integrity

Amendment Barcode (if applicable)

Name Greg Pound

Job Title _____

Address 9160 Sunrise Dr.
Street

Phone _____

hargo
City

Fl.
State

33773
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)

2/6/2018

Meeting Date

588

Bill Number (if applicable)

Topic Crimes Evidencing Prejudice

Amendment Barcode (if applicable)

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

Street

Tallahassee

FL

32302

City

State

Zip

Email scott.mccoy@splcenter.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Southern Poverty Law 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.

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

S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

Senator Kevin J. Rader
5301 N. Federal Hwy, Suite 135
Boca Raton Florida 33487

To: Senator Randolph Bracy, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: January 11, 2018

I respectfully request that **Senate Bill #588**, relating to Crime Evidence Prejudice, be placed on the:

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

A handwritten signature in cursive script that reads "Kevin Rader".

Senator Kevin J. Rader
Florida Senate, District 29

Senator Randolph Bracy, Chair
Committee on Criminal Justice
510 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

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 706

INTRODUCER: Criminal Justice Committee and Senator Steube

SUBJECT: Crime Stoppers Organizations

DATE: February 6, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 706 amends s. 90.595, F.S., creating a new category of privileged communication to the Florida Evidence Code.

The bill provides the communication that relays a tip of alleged criminal activity to a crime stoppers organization is considered privileged communication under the Code. The bill also provides that specified entities involved in the communication of a tip of alleged criminal activity may not be required to:

- Disclose a privileged communication or protected information unless such failure to disclose would infringe on the constitutional rights of an accused person.
- Produce, under subpoena, any records or other evidence relating to such privileged communication or protected information:
 - In connection with a criminal case, criminal proceeding, or any administrative hearing; or
 - By way of any discovery procedure.

The bill authorizes a person charged with a criminal offense as a result of a tip being provided to a crime stoppers organization to petition the court for an in camera inspection of the protected information and authorizes the court to, in the event it determines that all of the specified criteria are satisfied, order the production and disclosure of all or any part of the protected information.

The bill makes it a third-degree felony offense for a person, other than the person who provides the privileged communication, to disclose any information related to privileged communication or protected information.

To the extent that the felony created in the bill results in persons being convicted for a felony, the bill may result in a positive indeterminate prison bed impact (i.e. an unquantifiable increase of prison beds).

The bill is effective October 1, 2018.

II. Present Situation:

Crime Stoppers – Overview

Local crime stoppers programs authenticate tips about criminal activity and act as liaisons between citizens and law enforcement agencies.¹ Such organizations allow citizens to anonymously report individuals who are known or suspected of committing criminal acts within the community and offer cash rewards for any tips that lead to an arrest.²

Crime stoppers began in Albuquerque, New Mexico in 1976. A homicide detective with the Albuquerque Police asked a local television station to broadcast a re-enactment of an unsolved murder on its newscast. A reward was offered and a caller contacted the police the next day with a tip that led the police to the two men who were responsible. The success of this concept launched a program which is now internationally known as “Crime Stoppers.” There are now over 1,200 crime stoppers programs worldwide.³

Today there are 27 programs in Florida operating under the name Florida Association of Crime Stoppers, Inc.⁴

A crime stoppers organization may receive tips through a variety of mediums, including phone calls, online submissions, text message submissions, and tips through the mobile application.⁵ The crime stoppers staff member receiving the information completes a tip information form, makes initial inquiries, and then passes the information to the investigating law enforcement agency.⁶

¹ Crime Stoppers of Broward County website, “What is Crime Stoppers?,” available at <http://www.browardcrimestoppers.org/about-us/> (last visited January 31, 2018).

² Florida Association of Crime Stoppers, *Home page*, available at <http://www.facsflorida.org/> (last visited January 31, 2018).

³ Florida Association of Crime Stoppers, *Where It All Started*, available at <http://www.facsflorida.org/where-it-all-started/> (last visited January 31, 2018).

⁴ Florida Association of Crime Stoppers, *Who We Are*, available at <http://www.facsflorida.org/who-we-are/> (last visited January 31, 2018).

⁵ Florida Association of Crime Stoppers, *How’s It Done*, available at <http://www.facsflorida.org/what-we-do/how-they-do-it/> (last visited January 31, 2018).

⁶ *See Id.*

Privileged Communications Provided for in the Evidence Code

The Florida Evidence Code (Code) specifies what types of evidence and testimony are admissible in court.⁷ The Code makes certain communications privileged, meaning their disclosure generally cannot be compelled, even in legal proceedings. Examples of generally privileged communications include communications between a lawyer and client,⁸ communications between a husband and wife,⁹ and communications between a psychotherapist and a patient.¹⁰

Crime Stoppers Privileged Communication in Other States

There are a number of other states that protect the identity of a person who provides a crime tip to a crime stoppers organization and provide that the communication of the tip and any documents created as a result of a tip received by a crime stoppers organization are privileged. Examples of these states include:

- Arkansas;¹¹
- Colorado;¹²
- Kentucky;¹³
- Louisiana;¹⁴
- New Mexico;¹⁵
- Oklahoma;¹⁶ and
- Texas.¹⁷

Further, five states have created criminal penalties for the prohibited disclosure of such protected information. However, the criminal penalty is generally classified as a misdemeanor, rather than a felony.¹⁸

III. Effect of Proposed Changes:

The bill amends s. 90.595, F.S., creating a new category of privileged communication to the Code. The bill provides the following definitions:

- “Crime stoppers organization” means a private not-for-profit organization that collects and expends donations for rewards to persons who report to the organization information

⁷ Chapter 90, F.S.

⁸ Section 90.502, F.S.

⁹ Section 90.504, F.S.

¹⁰ Section 90.503, F.S.

¹¹ Section 16-90-1005, AR.ST.

¹² Section 16-15.7-104, C.R.S.A.

¹³ Section 431.580, K.R.S.

¹⁴ Section 15:477.1, LA.R.S.

¹⁵ Section 29-12A-4, N.M.S.A.

¹⁶ Section 414.008, V.T.C.A.

¹⁷ Section 414.009, T.G.C.

¹⁸ The five states Senate staff found that assign criminal penalties include Arkansas, Colorado, Kentucky, New Mexico, and Texas. *See* s. 16-90-1006, AR.ST.; s. 16-15.7-104, C.R.S.A.; s. 431.585, K.R.S.; s. 29-12A-5, N.M.S.A.; and s. 414.009, V.T.C.A. The exception to the offense being classified as a misdemeanor is in Texas where the offense is a misdemeanor unless the person divulged the information to obtain a monetary benefit.

concerning criminal activity and forwards that information to appropriate law enforcement agencies.

- “Privileged communication” means the act of providing information to a crime stoppers organization for the purpose of reporting alleged criminal activity.
- “Protected information” includes the identity of a person who engages in privileged communication with a crime stoppers program and any records, recordings, oral or written statements, papers, documents, or other tangible things provided to or collected by a crime stoppers organization, a law enforcement crime stoppers coordinator or his or her staff, or a law enforcement agency in connection with such privileged communication.

The bill provides the communication that relays a report or tip of alleged criminal activity to a crime stoppers organization is considered privileged communication under the Code.

Additionally, the bill provides that a person reporting the alleged criminal activity, a law enforcement crime stoppers coordinator or his or her staff, or a member of a crime stopper’s organization board of directors, may not be required to:

- Disclose, by way of testimony or any other means, a privileged communication or protected information unless such failure to disclose would infringe on the constitutional rights of an accused person.
- Produce, under subpoena, any records, documentary evidence, opinions, or decisions relating to such privileged communication or protected information:
 - In connection with a criminal case, criminal proceeding, or any administrative hearing; or
 - By way of any discovery procedure.

The bill authorizes a person charged with a criminal offense as a result of a tip being provided to a crime stoppers organization to petition the court for an in camera inspection of the protected information. A petition filed in accordance with this provision must allege that the protected information:

- Provides evidence favorable to the defendant;
- Is specifically related to the determination of the innocence or guilt of the petitioner; and
- Is such that, if it is not disclosed, will cause a deprivation of a constitutional right of the petitioner.

If the court determines that all of the criteria described above are satisfied, the court may order the production and disclosure of all or any part of the protected information. However, even in the disclosure, the court must, to the fullest extent possible, protect the identity of the persons who engaged in privileged communication.

The bill makes it a third-degree felony offense¹⁹ for a person, other than the person who provides the privileged communication, to disclose any information related to privileged communication or protected information.

The bill is effective on October 1, 2018.

¹⁹ A third-degree felony offense is punishable by not more than five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The First Amendment of the United States Constitution prevents the government from creating laws that restrict a citizen from communicating nonprotected opinions or information with other people.²⁰ The bill makes it a crime for a person to disclose any information made in the privileged communication. To the extent that this prohibition restricts a person's right to communicate nonprotected speech, the bill may implicate the First Amendment.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill creates a new felony offense related to a person disclosing any information related to privileged communication or protected information. To the extent that this provision of the bill results in offenders being convicted for this felony offense, the bill may result in a positive indeterminate prison bed impact (i.e. an unquantifiable increase in prison beds).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁰ U.S. Const. amend. I.

VIII. Statutes Affected:

This bill substantially amends section 90.595 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 6, 2018:

The committee substitute exempts the person who provides the privileged communication from the criminal penalty created in 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.



612416

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2018	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 69

and insert:

(4) A person, other than the person who provides the
privileged communication, who discloses any information related
to

By Senator Steube

23-00477-18

2018706__

A bill to be entitled

An act relating to crime stoppers organizations; creating s. 90.595, F.S.; defining terms; prohibiting a person who engages in privileged communication, a law enforcement crime stoppers coordinator or his or her staff, or a member of a crime stoppers organization's board of directors from being required to disclose privileged communications or produce protected information; providing an exception; authorizing a person charged with a criminal offense to petition the court to inspect the protected information under certain circumstances; authorizing a court to disclose all or a portion of the protected information; providing criminal penalties; providing an effective date.

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

Section 1. Section 90.595, Florida Statutes, is created to read:

90.595 Privileged communication with and the provision of protected information to crime stoppers organizations.-

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

(a) "Crime stoppers organization" means a private not-for-profit organization that collects and expends donations for rewards to persons who report to the organization information concerning criminal activity and forwards that information to appropriate law enforcement agencies.

(b) "Privileged communication" means the act of providing

Page 1 of 3

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

23-00477-18

2018706__

information to a crime stoppers organization for the purpose of reporting alleged criminal activity.

(c) "Protected information" includes the identity of a person who engages in privileged communication with a crime stoppers program and any records, recordings, oral or written statements, papers, documents, or other tangible things provided to or collected by a crime stoppers organization, a law enforcement crime stoppers coordinator or his or her staff, or a law enforcement agency in connection with such privileged communication.

(2) A person who engages in privileged communication under this section, a law enforcement crime stoppers coordinator or his or her staff, or a member of a crime stoppers organization's board of directors may not be required:

(a) To disclose, by way of testimony or any other means, a privileged communication or protected information unless such failure to disclose would infringe on the constitutional rights of an accused person.

(b) To produce, under subpoena, any records, documentary evidence, opinions, or decisions relating to such privileged communication or protected information:

1. In connection with a criminal case, criminal proceeding, or any administrative hearing; or

2. By way of any discovery procedure.

(3) (a) A person charged with a criminal offense may petition the court for inspection in camera of the protected information. The petition must allege that the protected information meets all of the following criteria:

1. Provides evidence favorable to the defendant.

Page 2 of 3

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

23-00477-18

2018706__

59 2. Is specifically related to the determination of the
60 innocence or guilt of the petitioner.

61 3. Is such that, if it is not disclosed, will cause a
62 deprivation of a constitutional right of the petitioner.

63 (b) If the court determines that all of the criteria
64 specified in paragraph (a) are satisfied, the court may order
65 the production and disclosure of all or any part of the
66 protected information, while, to the fullest extent possible,
67 protecting the identity of the persons who engaged in privileged
68 communication.

69 (4) A person who discloses any information related to
70 privileged communication or protected information commits a
71 felony of the third degree, punishable as provided in s.
72 775.082, s. 775.083, or s. 775.083.

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

APPEARANCE RECORD

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

2/6/18

Meeting Date

SB 706

Bill Number (if applicable)

Topic Crime Stoppers

Amendment Barcode (if applicable)

Name Phil Archer

Job Title State Attorney

Address 2725 Judge Frank Jamieson

Phone _____

Street

Viera

City

Fl.

State

32940

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

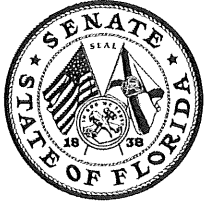
Representing FPAA - Fla. Prosecuting Attorneys Assoc.

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.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on Pre-K - 12 Education
Children, Families, and Elder Affairs
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE

23rd District

November 8, 2017

The Honorable Randolph Bracy
Florida Senate
213 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

L

Dear Senator Bracy,

I am writing this letter because my bill, SB 706 – Crime Stoppers Organizations, has been referred to the Senate Criminal Justice Committee. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

Thank you for your consideration. Please contact me if you have any questions.

Very respectfully yours,

A handwritten signature in dark ink, appearing to be "W. Gregory Steube".

W. Gregory Steube, District 23

REPLY TO:

- ☐ 6230 University Parkway, Suite 202, Sarasota, Florida 34240 (941) 342-9162
- ☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

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 820

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Powell

SUBJECT: Firesafety Inspectors

DATE: February 5, 2018

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Peacock	Caldwell	GO	Fav/CS
2. Erickson	Jones	CJ	Favorable
3. _____	_____	RC	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 820 creates s. 633.217, F.S., which prohibits certain actions to influence a firesafety inspector by coercion or compensation to violate the Florida Fire Prevention Code, any rules adopted by the State Fire Marshal, or any provision of ch. 633, F.S.

The bill imposes criminal penalties for violation of the prohibited provisions. A first offense is a second degree misdemeanor. A second or subsequent offense is a first degree misdemeanor.

The bill takes effect on October 1, 2018.

II. Present Situation:

Division of the State Fire Marshal

State law on fire prevention and control is provided in ch. 633, F.S. Section 633.104(1), F.S., designates the Chief Financial Officer (CFO) as the State Fire Marshal, operating through the Division of the State Fire Marshal (Division).¹ Pursuant to this authority, the State Fire Marshal:

- Regulates, educates or trains, and certifies fire service personnel;²

¹ The head of the Department of Financial Services (DFS) is the Chief Financial Officer. The Division of the State Fire Marshal is located within the DFS. *See* s. 20.121, F.S.

² Section 633.128(1), F.S. *See* Part IV, ch. 633, F.S. (Fire Standards and Training).

- Investigates the causes of fires;³
- Enforces arson laws;⁴
- Regulates the installation and maintenance of fire equipment;⁵
- Conducts firesafety inspections of state buildings;⁶
- Develops firesafety standards;⁷
- Provides testing facilities for testing firefighting equipment;⁸ and
- Operates the Florida State Fire College.⁹

The Division consists of the two bureaus: the Bureau of Fire Standards and Training (BFST), and the Bureau of Fire Prevention.¹⁰ The Florida Fire College, part of the BFST, trains over 6,000 students per year.¹¹ The Inspections Section, under the Bureau of Fire Prevention, annually inspects more than 14,000 state-owned buildings and facilities. Over 1.8 million fire and emergency reports are collected every year. These reports are entered into a database to form the basis for the State Fire Marshal's annual report.¹²

Florida Fire Prevention Code

The State Fire Marshal adopts by rule the Florida Fire Prevention Code (FFPC), which contains all firesafety laws and rules that pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such firesafety laws and rules.¹³ The State Fire Marshal adopts a new edition of the FFPC every three years.¹⁴ The FFPC includes national firesafety and life safety standards set forth by the National Fire Protection Association (NFPA),¹⁵ including the NFPA's Fire Code (1), Life Safety Code (101), and Guide on Alternative Approaches to Life Safety (101A).¹⁶

³ Sections 633.104(2)(e) and 633.112, F.S.

⁴ Section 633.104(2)(e), F.S.

⁵ Section 633.104(2)(b), F.S. See s. 633.104(2)(c), F.S., and part II, ch. 633, F.S. (Fire Protection and Suppression).

⁶ Section 633.218, F.S.

⁷ Part II, ch. 633, F.S. (Fire Safety and Prevention).

⁸ Section 633.432, F.S.

⁹ Section 633.128(1)(h)–(q), F.S. See ss. 633.428–633.434, F.S.

¹⁰ See State Fire Marshall, available at <https://www.myfloridacfo.com/Division/sfm/> (last visited on Jan. 29, 2018).

¹¹ Division of State Fire Marshal, *About the Florida State Fire Marshal*, available at <http://www.myfloridacfo.com/division/sfm/AbouttheStateFireMarshal.htm> (last visited on Jan. 29, 2018).

¹² *Id.*

¹³ Section 633.202(1), F.S. See ch. 69A-60, F.A.C.

¹⁴ *Id.*

¹⁵ Section 633.202(2), F.S. Founded in 1896, the NFPA is a global, nonprofit organization devoted to eliminating death, injury, property and economic loss due to fire, electrical and related hazards. It has developed over 300 voluntary consensus codes and standards in the areas of fire, electrical, and building safety which are widely used by state and local officials. See National Fire Protection Association, *About NFPA*, available at <http://www.nfpa.org/about-nfpa> (last visited on Jan. 29, 2018).

¹⁶ The NFPA states that the Guide on Alternative Approaches to Life Safety “is intended to be used in conjunction with the NFPA 101: Life Safety Code, not as a substitute.” National Fire Protection Association, *NFPA 101A: Guide on Alternative Approaches to Life Safety*, available at <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=101A> (last visited on Jan. 29, 2018).

Firesafety Enforcement by Local Governments

State law requires all municipalities, counties, and special districts with firesafety responsibilities to enforce the FFPC as the minimum fire prevention code, which operates uniformly among local governments and in conjunction with the Florida Building Code.¹⁷ These local enforcing authorities may adopt more stringent firesafety standards, subject to certain requirements in s. 633.208, F.S.,¹⁸ but may not enact firesafety ordinances which conflict with ch. 633, F.S., or any other state law.¹⁹

The chiefs of local government fire service providers (or their designees) are authorized to enforce ch. 633, F.S., and the rules prescribed by the State Fire Marshal within their respective jurisdictions as agents of those jurisdictions, not agents of the State Fire Marshal.²⁰ Each county, municipality, and special district with firesafety enforcement responsibilities is also required to employ or contract with a firesafety inspector (certified by the State Fire Marshal) to conduct all firesafety inspections required by law.²¹

Firesafety Inspectors

Section 633.102(12), F.S., defines a firesafety inspector as an individual who holds a current and valid Fire Safety Inspector Certificate of Compliance issued by the Division under s. 633.216, F.S., who is officially assigned the duties of conducting firesafety inspections of buildings and facilities on a recurring or regular basis on behalf of the state or any county, municipality, or special district with fire safety responsibilities.²² The BFST issues certifications for Firesafety Inspector I and Firesafety Inspector II.²³

A person applying for certification as a Firesafety Inspector I must:

- Be a high school graduate or the equivalent and at least 18 years of age;
- Not have been convicted of a misdemeanor relating to the certification or to perjury or false statements, or a felony or a crime punishable by imprisonment of one year or more, or be dishonorably discharged from the Armed Forces of the United States;
- Submit a set of fingerprints to the Division with a current processing fee; and
- Have a good moral character.²⁴

A Firesafety Inspector I Certificate of Compliance will be issued by the Division to an individual who:

- Successfully completes a minimum of 200 hours of basic certification training for firesafety inspectors, or has received equivalent training in another state; and

¹⁷ Sections 633.108 and 633.208, F.S.

¹⁸ See Rule 69A-60.002, F.A.C.

¹⁹ Section 633.214(4), F.S. The State Fire Marshal maintains a list of local amendments to the FFPC. This information is available at <https://www.myfloridacfo.com/Division/SFM/bfp/LocalAmendments.htm> (last visited on Jan. 29, 2018).

²⁰ Section 633.118, F.S.

²¹ Section 633.216(1), F.S.

²² See s. 633.214(1)(a), F.S.

²³ Section 633.216(2), F.S., and ch. 69A-39, F.A.C. See Division of State Fire Marshal, BFST, *Certification and Testing* available at <https://www.myfloridacfo.com/Division/SFM/BFST/Standards/default.htm> (last visited on Jan. 29, 2018).

²⁴ Sections 633.216(2) and 633.412(1)-(4), F.S.

- Passes a state written examination.²⁵

The Firesafety Inspector I Certificate of Compliance is valid for a period of 4 years from the date of issuance. Renewal of this certificate includes completion of at least 54 hours of continuing education during the preceding 4 year period.²⁶

A Firesafety Inspector II Certificate of Compliance will be issued by the Division to an individual who:

- Is certified as a Firesafety Inspector I; and
- Successfully completes a minimum of 160 hours of certification training for Firesafety Inspector II, or has received equivalent training in another state.²⁷

Criminal Penalties

Section 633.122, F.S., prohibits a person from falsely assuming or pretending to be the State Fire Marshal, an agent of the State Fire Marshal, a firefighter, a volunteer firefighter, or a firesafety inspector by identifying herself or himself as the State Fire Marshal, an agent of the State Fire Marshal, a firefighter, a volunteer firefighter, or a firesafety inspector by wearing a uniform or presenting or displaying a badge as credentials that would cause a reasonable person to believe that she or he is a State Fire Marshal, an agent of the State Fire Marshal, a firefighter, a volunteer firefighter, or firesafety inspector. A violation of this section is a third degree felony.²⁸ However, it is a first degree felony²⁹ if the impersonation occurs during the commission of a separate felony by that person.

Section 468.629, F.S., prohibits a person from influencing a building code enforcement official³⁰ by coercion or compensation. Any person who violates any provision of Part XII of ch. 468, F.S.,³¹ relating to building code administrators and inspectors, commits a first degree misdemeanor.³² A person who violates any provision of Part XII of ch. 468, F.S., after a previous conviction for such violation commits a third degree felony.

III. Effect of Proposed Changes:

Section 1 creates s. 633.217, F.S., which prohibits:

- Influencing a firesafety inspector by threatening, coercing, tricking, persuading, interfering with, or otherwise influencing; or attempting to threaten, coerce, trick, persuade, interfere with, or otherwise attempting to influence, the firesafety inspector into violating any

²⁵ *Supra*, n. 23.

²⁶ Section 633.216(4), F.S., and Rule 69A-39.009(1)(b), F.A.C.

²⁷ *See supra*, n. 24, and s. 633.216(8), F.S.

²⁸ A third degree felony is punishable by a term of imprisonment not to exceed 5 years, a fine not to exceed \$5,000, or both. Sections 775.082 and 775.083, F.S.

²⁹ A first degree felony is generally punishable by a term of imprisonment not to exceed 30 years, a fine not to exceed \$10,000, or both. Sections 775.082 and 775.083, F.S.

³⁰ Section 468.603(3), F.S., defines building code enforcement official or enforcement official as a licensed building code administrator, building code inspector, or plans examiner.

³¹ Sections 468.601-468.633, F.S.

³² A first degree misdemeanor is punishable by a jail term not to exceed one year, a fine not to exceed \$1,000, or both.

provision of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of ch. 633, F.S.; and

- Offering any compensation to the firesafety inspector to induce a violation of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of ch. 633, F.S.

A person who violates this section commits a second degree misdemeanor.³³ However, a person who commits a second or subsequent violation of this section commits a first degree misdemeanor.

Section 2 provides an effective date of October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill creates criminal offenses and penalties. Article VII, Section 18(d) of the Florida Constitution, provides that criminal laws are exempt from the requirements of this section relating to mandates on municipalities and counties.

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:

Indeterminate.

C. Government Sector Impact:

The bill does not create any felony penalties. Therefore, it does not have a prison bed impact. The bill may have a positive indeterminate jail impact.

VI. Technical Deficiencies:

None.

³³ A second degree misdemeanor is punishable by a jail term not to exceed 60 days, a fine not to exceed \$500, or both. Sections 775.082 and 775.083, F.S.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 633.217 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 Governmental Oversight and Accountability on January 23, 2018:

The Committee Substitute:

- Revises criminal penalty for first offense from first degree misdemeanor to second degree misdemeanor; and
- Revises criminal penalty for second or subsequent offense from third degree felony to first degree misdemeanor.

B. Amendments:

None.

By the Committee on Governmental Oversight and Accountability;
and Senator Powell

585-02376-18

2018820c1

A bill to be entitled

An act relating to firesafety inspectors; creating s.
633.217, F.S.; prohibiting certain actions to
influence a firesafety inspector to violate the
Florida Fire Prevention Code, other rules of the State
Fire Marshal, or ch. 633, F.S.; providing criminal
penalties; providing an effective date.

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

Section 1. Section 633.217, Florida Statutes, is created to
read:

633.217 Influencing a firesafety inspector; criminal
penalties.-

(1) A person may not influence a firesafety inspector by:

(a) Threatening, coercing, tricking, persuading,
interfering with, or otherwise influencing; or attempting to
threaten, coerce, trick, persuade, interfere with, or otherwise
attempting to influence, the firesafety inspector into violating
any provision of the Florida Fire Prevention Code, any rule
adopted by the State Fire Marshal, or any provision of this
chapter.

(b) Offering any compensation to the firesafety inspector
to induce a violation of the Florida Fire Prevention Code, any
rule adopted by the State Fire Marshal, or any provision of this
chapter.

(2) A person who violates subsection (1) commits a
misdemeanor of the second degree, punishable as provided in s.
775.082 or s. 775.083. A person who commits a second or

Page 1 of 2

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585-02376-18

2018820c1

subsequent violation of subsection (1) commits a misdemeanor of
the first degree, punishable as provided in s. 775.082 or s.
775.083.

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

Page 2 of 2

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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 6, 2018

820

Meeting Date

Bill Number (if applicable)

Topic Fire Safety Inspector

Amendment Barcode (if applicable)

Name RAY Colburn

Job Title Executive Director

Address 880 Airport RD
Street

Phone 407-468-6622

Ormond Beach, FL
City State Zip

Email ray@ffca.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA Fire Chiefs' 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)

2/6/2018
Meeting Date

820
Bill Number (if applicable)

Topic Fire safety Inspectors

Amendment Barcode (if applicable)

Name Jeff Branch

Job Title Legislative Advocate

Address Dronough St.
Street

Phone 904-3655

Tallahassee FL
City State Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida League of Cities

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

Committee Agenda Request

To: Lauren Jones, Staff Director
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: January 23, 2018

I respectfully request that **Senate Bill #820**, relating to Firesafety Inspection, be placed on the:

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

A handwritten signature in dark ink, appearing to read "Bobby Powell".

Senator Bobby Powell
Florida Senate, District 30

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 870

INTRODUCER: Senator Bracy

SUBJECT: Capital Felonies

DATE: January 8, 2018

REVISED: 02/05/18

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Cellon	Jones	CJ	Favorable
2.		RC	

I. Summary:

SB 870 sets forth legislative findings and intent related to the implementation of the death penalty by the courts.

During 2016 and 2017 the question of whether a unanimous vote of the jury would be required under Florida law in order for the death penalty to be imposed was settled by the Legislature and the courts.

The Florida Supreme Court and the Legislature have now required jury unanimity and the application of that law by the court has resulted in retroactive applicability to June 24, 2002, the date of *Ring v. Arizona*, 536 U.S. 584 (2002), a U.S. Supreme Court case.

Specifically, the bill sets forth legislative findings in ss. 921.141 and 921.142, F.S., reflecting that:

- The Florida Supreme Court's decision not to apply *Hurst v. State*, 202 So.3d 40 (Fla. 2016), in cases in which the death sentence became final prior to June 24, 2002, will result in a miscarriage of justice for those inmates; and
- The retroactive application of *Hurst* in those cases will provide a more just and final resolution in those cases.

The legislative intent set forth in the bill is that the *Hurst v. State* case apply retroactively in cases in which the death sentence became final prior to June 24, 2002. This will pave the way for inmates under those sentences to seek review under *Hurst*.

Although difficult to quantify, the judiciary, prosecutors, public defenders, and appellate counsel should expect additional workload when the bill becomes law.

The bill is effective July 1, 2018.

II. Present Situation:

Recent Death Penalty Sentencing Background

In 2016, the U.S. Supreme Court decided in *Hurst v. Florida*¹ that “the Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death.”² The U.S. Supreme Court remanded the *Hurst v. Florida* case to the Florida Supreme Court.

The state court issued its opinion applying the *Hurst v. Florida* ruling in October 2016.³ The Florida Supreme Court found that the [U.S.] Supreme Court’s decision in *Hurst v. Florida* requires that “all the critical findings necessary before the trial court may consider imposing a sentence of death must be found unanimously by the jury,” and that “in order for the trial court to impose a sentence of death, *the jury’s recommended sentence of death must be unanimous.*”⁴

After the Florida Supreme Court issued its *Hurst v. State* opinion, the 2017 Legislature passed a bill requiring jury unanimity in order for the death penalty to be imposed.⁵

The *Ring v. Arizona* Case and the Retroactive Application of *Hurst*

In *Ring v. Arizona* the U.S. Supreme Court ruled that juries, rather than judges acting alone, must make crucial factual determinations that subject a convicted murderer to the death penalty. The decision was clear as to its application to the Arizona death penalty sentencing scheme.⁶ The *Ring* court was not so clear about whether Florida’s different sentencing scheme was effected by the *Ring* decision, so over the next 14 years *Ring* was not applied in Florida. However, the U.S. Supreme Court clarified in its 2016 *Hurst v. Florida* opinion that *Ring* applied in Florida just as it did in Arizona.⁷

In the December 2016 *Mosely* case, the Florida Supreme Court held that its *Hurst v. State* decision requiring jury unanimity for a death sentence applied retroactively.⁸ The date of the *Ring* opinion⁹ became the Florida Supreme Court’s bright line for deciding *Hurst*’s retroactivity.

¹ *Hurst v. Florida*, 136 S.Ct. 616 (2016).

² *Id.* at p. 619.

³ *Hurst v. State*, 202 So.3d 40 (Fla. 2016).

⁴ *Id.* at p. 44. (emphasis added).

⁵ Chapter 2017-1, L.O.F. (2017).

⁶ “Capital defendants, no less than noncapital defendants, we conclude, are entitled to a jury determination of any fact on which the legislature conditions an increase in their maximum punishment.” *Ring v. Arizona*, 536 U.S. 584, 589 (2002).

⁷ “In light of *Ring*, we hold that *Hurst*’s sentence violates the Sixth Amendment.” *Hurst v. Florida*, 136 S.Ct. 616, 622 (2016).

⁸ “[A] major development occurred in 2016, when the United States Supreme Court finally held in *Hurst v. Florida* that the ‘analysis the *Ring* Court applied to Arizona’s sentencing scheme applies equally to Florida’s.’” *Mosley v. State*, 209 So.3d 1248, 1274 (Fla. 2016).

⁹ *Ring v. Arizona* was decided on June 24, 2002.

Therefore, if a death sentence became final *prior to* June 24, 2002, under current decisional law the defendant is *not* entitled to *Hurst* relief.¹⁰ If, however, the sentence became final *on or after* June 24, 2002, the defendant *is* entitled to seek *Hurst* relief.¹¹

III. Effect of Proposed Changes:

The bill creates the opportunity for inmates whose death sentences became final prior to June 24, 2002, to seek relief under the *Hurst v. State* decision which requires a unanimous jury vote for death in order for a death sentence to be imposed.¹²

The bill sets forth legislative findings in ss. 921.141 and 921.142, F.S., the death penalty statutes, reflecting that:

- The Florida Supreme Court's decision not to apply *Hurst* in cases in which the death sentence became final prior to June 24, 2002,¹³ will result in a miscarriage of justice for those inmates; and
- The retroactive application of *Hurst* in those cases will provide a more just and final resolution in those cases.

The legislative intent in the bill is that the *Hurst v. State*¹⁴ case apply retroactively in cases in which the death sentence became final prior to June 24, 2002.

The bill is effective July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁰ *Asay v. State*, 210 So.3d 1, 11 (Fla., 2016), *cert. den.* 138 S.Ct. 41 (2017).

A sentence becomes final on the disposition of the petition for writ of certiorari by the U.S. Supreme Court if filed, or 90 days after the Florida Supreme Court's decision affirming a judgment and sentence becomes final if the petition for certiorari review is not filed. Fla. R. Crim. P. 3.851.

¹¹ *Mosely v. State*, 209 So.3d 1248, 1283 (Fla. 2016).

¹² *Hurst v. State*, 202 So.3d 40 (Fla. 2016).

¹³ June 24, 2002, is the date that the U.S. Supreme Court's opinion in *Ring v. Arizona* was decided. *Ring v. Arizona*, 536 U.S. 584 (2002).

¹⁴ *Hurst v. State*, 202 So.3d 40 (Fla. 2016).

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The number of cases in which the death sentence may be effected by the bill cannot be determined with certainty. There are currently 350 people sentenced to death and housed in the Department of Corrections and an undetermined number of those inmates are already entitled to post-*Ring* case review under the *Hurst* decision.¹⁵ If the bill becomes law all death cases will be under review. For this reason, the judiciary, prosecutors, public defenders, and appellate counsel should expect additional workload.

The Department of Corrections submitted its 2018 Agency Bill Analysis on January 8, 2018, indicating that the fiscal impact to the department resulting from this bill is indeterminate.¹⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

While the *Hurst* opinion did require jury unanimity for a death sentence, it did not declare the death penalty itself to be unconstitutional.¹⁷ Therefore, no case to come before the Florida Supreme Court after the court's *Hurst* decision has resulted in a death row inmate being set free or having his or her sentence automatically changed to a life sentence.

As the court has considered death cases raising a *Hurst* claim, the court has ruled that if the jury's recommended death sentence was the result of a vote that was less than unanimous (a *Hurst* claim), then the sentencing error was not harmless.¹⁸ In those cases the court has vacated the death sentences, and remanded the cases to the trial court for a new penalty proceeding.¹⁹

¹⁵ Florida Department of Corrections, Corrections Offender Network, Offender Information Search, Death Row Statistics, <http://www.dc.state.fl.us/OffenderSearch/deathrowroster.aspx> (last visited January 4, 2018).

¹⁶ Department of Corrections, 2018 Agency Legislative Bill Analysis for Senate Bill 870, p. 4 (January 4, 2018) (on file with the Senate Committee on Criminal Justice).

¹⁷ *Hurst v. State*, 202 So.3d 40, 65 (Fla. 2016).

¹⁸ The harmless error analysis places the burden on the state, as the beneficiary of the error, to prove that there is no reasonable possibility that the error contributed to the conviction or to the sentence recommended in the sentencing proceeding. Where the Court finds that the error was not harmless the case must be remanded to "correct" the error. *State v. DiGuilio*, 491 So.2d 1129, 1138 (Fla. 1986); *Zack v. State*, 753 So.2d 9, 20 (Fla. 2000).

¹⁹ *Hojan v. State*, 212 So.3d 982 (Fla. 2017).

Conversely, if the jury recommendation for death was the result of a unanimous vote, the death sentences have been upheld by the court.²⁰

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 921.141 and 921.142.

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.

²⁰ *Cozzie v. State*, 225 So.3d 717 (Fla. 2017).

By Senator Bracy

11-00587-18

2018870

A bill to be entitled

An act relating to capital felonies; amending ss. 921.141 and 921.142, F.S.; providing legislative findings and intent regarding the retroactive application of *Hurst v. State*, No. SC12-1947 (Fla., October 14, 2016); providing an effective date.

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

Section 1. Present subsection (9) of section 921.141, Florida Statutes, is redesignated as subsection (10), and a new subsection (9) is added to that section, to read:

921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.—

(9) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that the Florida Supreme Court decided in *Asay v. State*, No. SC16-223, SC16-102, and SC16-628 (Fla., December 22, 2016), that *Hurst v. State*, No. SC12-1947 (Fla., October 14, 2016), will not apply in cases in which the death sentence became final prior to June 24, 2002, the day that the United States Supreme Court issued its opinion in *Ring v. Arizona*, 536 U.S. 584 (2002). The Legislature finds that the court's decision not to apply *Hurst v. State* in the cases of inmates whose death sentences became final before June 24, 2002, will result in a miscarriage of justice for those inmates. The Legislature further finds that the retroactive application of *Hurst v. State* to death row cases in which the death sentence became final before June 24, 2002, will provide a more just and final resolution in those cases. Therefore, it is the intent of the Legislature that *Hurst v.*

11-00587-18

2018870

State, No. SC12-1947 (Fla., October 14, 2016), apply in cases in which the death sentence became final before June 24, 2002.

Section 2. Subsection (1) of section 921.142, Florida Statutes, is amended to read:

921.142 Sentence of death or life imprisonment for capital drug trafficking felonies; further proceedings to determine sentence.—

(1) LEGISLATIVE FINDINGS AND INTENT.—

(a) The Legislature finds that trafficking in cocaine or opiates carries a grave risk of death or danger to the public; that a reckless disregard for human life is implicit in knowingly trafficking in cocaine or opiates; and that persons who traffic in cocaine or opiates may be determined by the trier of fact to have a culpable mental state of reckless indifference or disregard for human life.

(b) The Legislature finds that the Florida Supreme Court decided in *Asay v. State*, No. SC16-223, SC16-102, and SC16-628 (Fla., December 22, 2016), that *Hurst v. State*, No. SC12-1947 (Fla., October 14, 2016), will not apply in cases in which the death sentence became final prior to June 24, 2002, the day that the United States Supreme Court issued its opinion in *Ring v. Arizona*, 536 U.S. 584 (2002). The Legislature finds that the court's decision not to apply *Hurst v. State* in the cases of inmates whose death sentences became final before June 24, 2002, will result in a miscarriage of justice for those inmates. The Legislature further finds that the retroactive application of *Hurst v. State* to death row cases in which the death sentence became final before June 24, 2002, will provide a more just and final resolution in those cases. Therefore, it is the intent of

11-00587-18

2018870__

59 the Legislature that *Hurst v. State*, No. SC12-1947 (Fla.,
60 October 14, 2016), apply in cases in which the death sentence
61 became final before June 24, 2002.

62 Section 3. 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)

2/6/18

Meeting Date

SB 870

Bill Number (if applicable)

Topic Hurst

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Assoc. Dir. for Life + Social Concerns

Address 201 W. Park Ave

Phone _____

Street

Tallahassee, FL 32301

City

State

Zip

Email idelgado@flaccb.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FL. Conf. of Catholic Bishops

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)

02/06/2018

Meeting Date

SB 870

Bill Number (if applicable)

Topic Capital Felonies

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 N. Gadsden Street

Phone 85-488-6850

Street

Tallahassee

FL

32301

Email ndaniels@flpda.org

City

State

Zip

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

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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)

2.6.18

Meeting Date

870

Bill Number (if applicable)

Topic Capitol Felonies

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

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

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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)

2/6/2018

Meeting Date

870

Bill Number (if applicable)

Topic Capital Felonies

Amendment Barcode (if applicable)

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

Street

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

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

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)

APPEARANCE RECORD

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

2-6-18

Meeting Date

SB 870

Bill Number (if applicable)

Topic DEATH PENALTY

Amendment Barcode (if applicable)

Name NEAL DUPREE

Job Title CCRC-SOUTH

Address 1 EAST BROWARD BLVD. Suite 444 Phone 954-713-1284

Street

FT. LAUD.

City

FLA.

State

33301

Zip

Email DUPREE@CCSR.STATE.FL.US

Speaking: ☒ For ☐ Against ☐ Information

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

Representing CAPITAL & LATERAL REGIONAL COUNSELS

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
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 952

INTRODUCER: Senator Steube and others

SUBJECT: Cruelty to Animals

DATE: February 5, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	Favorable
2.			JU	
3.			RC	

I. Summary:

SB 952 increases the offense ranking on the Offense Severity Ranking Chart of the Criminal Punishment Code from a Level 3 to a Level 5 for a violation of s. 828.12(2), F.S., aggravated animal cruelty. Effectively this increases the corresponding sentencing points for purposes of calculating the lowest permissible sentence from 16 points to 28 points.

The bill also amends s. 828.12, F.S., by adding a provision that allows the court to prohibit a person convicted of a violation of s. 828.12, F.S., from owning, possessing, keeping, harboring, having contact with, or having custody of or control over any animal for a period of time determined by the court.

The bill is effective July 1, 2018.

II. Present Situation:

Animal Cruelty

Section 828.12, F.S., prohibits criminal offenses involving cruelty to animals.

Specifically, a person commits animal cruelty if he or she unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter, or unnecessarily mutilates, or kills any animal, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any animal in a cruel or inhumane manner, commits animal cruelty, a first degree misdemeanor.¹

A person commits aggravated animal cruelty, if he or she intentionally commit an act to any animal, or a person who owns or has the custody or control of any animal and fails to act, which

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

results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done. Aggravated animal cruelty is a third degree felony.²

A person convicted of aggravated animal cruelty, where the finder of fact determines that the violation included the knowing and intentional torture or torment of an animal that injures, mutilates, or kills the animal, must be ordered to pay a minimum mandatory fine of \$2,500 and undergo psychological counseling or complete an anger management treatment program.³

A second or subsequent conviction of aggravated animal cruelty requires the person to pay a minimum mandatory fine of \$5,000 and serve a minimum mandatory period of incarceration of 6 months. In addition, the person is not eligible for parole, control release, or any form of early release, and must serve 100 percent of the court-imposed sentence.⁴

Section 828.12(3), F.S., specifies that if a person commits multiple acts of animal cruelty or aggravated animal cruelty against an animal he or she may be charged with a separate offense for each such act. A person who commits animal cruelty or aggravated animal cruelty against more than one animal may be charged with a separate offense for each animal such cruelty was committed upon.⁵

Criminal Punishment Code

The Criminal Punishment Code⁶ (Code) is Florida's "primary sentencing policy."⁷ Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).⁸ Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.⁹ Absent mitigation,¹⁰ the permissible sentencing

² A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

³ Section 828.12(2)(a), F.S. Any plea of nolo contendere shall be considered a conviction for purposes of s. 828.12(2), F.S.

⁴ Section 828.12(2)(b), F.S.

⁵ Section 828.12(3), F.S.

⁶ 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.

⁷ *Florida's Criminal Punishment Code: A Comparative Assessment (FY 2012-2013) Executive Summary (Offenses Committed On or After October 1, 1998)*, Florida Department of Corrections, available at http://www.dc.state.fl.us/pub/sg_annual/1213/executives.html (last visited February 3, 2018).

⁸ Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

⁹ Section 921.0024, F.S.

¹⁰ The court may "mitigate" or "depart downward" from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.¹¹

Aggravated animal cruelty is a Level 3 offense on the Offense Severity Ranking Chart of the Code.¹² This means that 16 sentencing points are assigned to the offense of aggravated animal cruelty for purposes of calculating the lowest permissible sentence.¹³

III. Effect of Proposed Changes:

The bill amends s. 828.12, F.S., by adding a provision that allows the court to prohibit a person convicted of a violation of s. 828.12, F.S., from owning, possessing, keeping, harboring, having contact with, or having custody of or control over any animal for a period of time determined by the court. Presumably this period of time will be limited by the amount of time the court may have jurisdiction to enforce its order against the person, for example, up to five years in a third degree felony case.

The bill increases the offense ranking on the Offense Severity Ranking Chart of the Code from a Level 3 to a Level 5 for a violation of s. 828.12(2), F.S., aggravated animal cruelty.¹⁴ Effectively this increases the corresponding sentencing points for purposes of calculating the lowest permissible sentence from 16 points to 28 points.¹⁵

The bill is named “Ponce’s Law” in honor of a puppy that was allegedly beaten to death in Volusia County in April 2017.¹⁶

The bill is effective July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹¹ If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

¹² Section 921.0022(3)(c), F.S.

¹³ Section 921.0024(1)(a), F.S.

¹⁴ Section 921.0022(3)(e), F.S.

¹⁵ Section 921.0024(1)(a), F.S.

¹⁶ Daytona Beach News Journal, *Public Outrage Fuels Push for Animal Abuse Punishments*, Frank Fernandez (April 21, 2017), available at <http://www.news-journalonline.com/news/20170416/public-outrage-fuels-push-for-animal-abuse-punishments> (last visited February 2, 2018).

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of Economic and Demographic Research Criminal Justice Impact Conference met on January 8, 2018, and considered this bill. The Impact Conference determined that the bill would have a positive insignificant prison bed impact, meaning that there would be an increase of ten or fewer prison beds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 828.12, and 921.0022.

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.

By Senator Steube

23-01107-18

2018952__

A bill to be entitled

An act relating to cruelty to animals; providing a short title; amending s. 828.12, F.S.; authorizing a court to prohibit certain offenders from owning or having contact with animals; amending s. 921.0022, F.S.; revising the ranking of offenses on the offense severity ranking chart of the Criminal Punishment Code; providing an effective date.

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

Section 1. This act may be cited as "Ponce's Law."

Section 2. Section 828.12, Florida Statutes, is amended to read:

828.12 Cruelty to animals.—

(1) A person who unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter, or unnecessarily mutilates, or kills any animal, or causes the same to be done, or carries in or upon vehicle, or otherwise, any animal in a cruel or inhumane manner, commits animal cruelty, a misdemeanor of the first degree, punishable as provided in s. 775.082 or by a fine of not more than \$5,000, or both.

(2) A person who intentionally commits an act to any animal, or a person who owns or has the custody or control of any animal and fails to act, which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done, commits aggravated animal cruelty, a felony of the third degree, punishable as provided in s. 775.082 or by a fine of not more than \$10,000, or

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

23-01107-18

2018952__

both.

(a) A person convicted of a violation of this subsection, where the finder of fact determines that the violation includes the knowing and intentional torture or torment of an animal that injures, mutilates, or kills the animal, shall be ordered to pay a minimum mandatory fine of \$2,500 and undergo psychological counseling or complete an anger management treatment program.

(b) A person convicted of a second or subsequent violation of this subsection shall be required to pay a minimum mandatory fine of \$5,000 and serve a minimum mandatory period of incarceration of 6 months. In addition, the person shall be released only upon expiration of sentence, is not eligible for parole, control release, or any form of early release, and must serve 100 percent of the court-imposed sentence. Any plea of nolo contendere shall be considered a conviction for purposes of this subsection.

(3) A person who commits multiple acts of animal cruelty or aggravated animal cruelty against an animal may be charged with a separate offense for each such act. A person who commits animal cruelty or aggravated animal cruelty against more than one animal may be charged with a separate offense for each animal such cruelty was committed upon.

(4) A veterinarian licensed to practice in the state shall be held harmless from either criminal or civil liability for any decisions made or services rendered under the provisions of this section. Such a veterinarian is, therefore, under this subsection, immune from a lawsuit for his or her part in an investigation of cruelty to animals.

(5) A person who intentionally trips, fells, ropes, or

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lassos the legs of a horse by any means for the purpose of entertainment or sport ~~commits a shall be guilty of a third degree felony of the third degree~~, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this subsection, the term "trip" means any act that consists of the use of any wire, pole, stick, rope, or other apparatus to cause a horse to fall or lose its balance, and the term "horse" means any animal of any registered breed of the genus *Equus*, or any recognized hybrid thereof. ~~The provisions of~~ This subsection does ~~shall~~ not apply when tripping is used:

(a) To control a horse that is posing an immediate threat to other livestock or human beings;

(b) For the purpose of identifying ownership of the horse when its ownership is unknown; or

(c) For the purpose of administering veterinary care to the horse.

(6) In addition to other penalties prescribed by law, a person who is convicted of a violation of this section may be prohibited by the court from owning, possessing, keeping, harboring, having contact with, or having custody of or control over any animal for a period of time determined by the court.

Section 3. Paragraphs (c) and (e) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(c) LEVEL 3

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Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
319.33(4)	3rd	With intent to defraud,

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possess, sell, etc., a blank,
forged, or unlawfully obtained
title or registration.

327.35(2)(b)

3rd

Felony BUI.

328.05(2)

3rd

Possess, sell, or counterfeit
fictitious, stolen, or
fraudulent titles or bills of
sale of vessels.

328.07(4)

3rd

Manufacture, exchange, or
possess vessel with counterfeit
or wrong ID number.

376.302(5)

3rd

Fraud related to reimbursement
for cleanup expenses under the
Inland Protection Trust Fund.

379.2431

3rd

(1)(e)5.

Taking, disturbing, mutilating,
destroying, causing to be
destroyed, transferring,
selling, offering to sell,
molesting, or harassing marine
turtles, marine turtle eggs, or
marine turtle nests in
violation of the Marine Turtle
Protection Act.

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379.2431

3rd

(1)(e)6.

Possessing any marine turtle
species or hatchling, or parts
thereof, or the nest of any
marine turtle species described
in the Marine Turtle Protection
Act.

379.2431

3rd

(1)(e)7.

Soliciting to commit or
conspiring to commit a
violation of the Marine Turtle
Protection Act.

400.9935(4)(a)

3rd

or (b)

Operating a clinic, or offering
services requiring licensure,
without a license.

400.9935(4)(e)

3rd

Filing a false license
application or other required
information or failing to
report information.

440.1051(3)

3rd

False report of workers'
compensation fraud or
retaliation for making such a
report.

501.001(2)(b)

2nd

Tampers with a consumer product
or the container using
materially false/misleading

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information.

107

624.401(4)(a) 3rd Transacting insurance without a
certificate of authority.

108

624.401(4)(b)1. 3rd Transacting insurance without a
certificate of authority;
premium collected less than
\$20,000.

109

626.902(1)(a) & 3rd Representing an unauthorized
(b) insurer.

110

697.08 3rd Equity skimming.

111

790.15(3) 3rd Person directs another to
discharge firearm from a
vehicle.

112

806.10(1) 3rd Maliciously injure, destroy, or
interfere with vehicles or
equipment used in firefighting.

113

806.10(2) 3rd Interferes with or assaults
firefighter in performance of
duty.

114

810.09(2)(c) 3rd Trespass on property other than
structure or conveyance armed

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with firearm or dangerous
weapon.

115

812.014(2)(c)2. 3rd Grand theft; \$5,000 or more but
less than \$10,000.

116

812.0145(2)(c) 3rd Theft from person 65 years of
age or older; \$300 or more but
less than \$10,000.

117

815.04(5)(b) 2nd Computer offense devised to
defraud or obtain property.

118

817.034(4)(a)3. 3rd Engages in scheme to defraud
(Florida Communications Fraud
Act), property valued at less
than \$20,000.

119

817.233 3rd Burning to defraud insurer.

120

817.234 3rd Unlawful solicitation of
(8)(b) & (c) persons involved in motor
vehicle accidents.

121

817.234(11)(a) 3rd Insurance fraud; property value
less than \$20,000.

122

817.236 3rd Filing a false motor vehicle
insurance application.

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123

817.2361 3rd Creating, marketing, or
presenting a false or
fraudulent motor vehicle
insurance card.

124

817.413(2) 3rd Sale of used goods as new.

125

~~828.12(2) 3rd Tortures any animal with intent
to inflict intense pain,
serious physical injury, or
death.~~

126

831.28(2) (a) 3rd Counterfeiting a payment
instrument with intent to
defraud or possessing a
counterfeit payment instrument.

127

831.29 2nd Possession of instruments for
counterfeiting driver licenses
or identification cards.

128

838.021(3) (b) 3rd Threatens unlawful harm to
public servant.

129

843.19 3rd Injure, disable, or kill police
dog or horse.

130

860.15(3) 3rd Overcharging for repairs and

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131

parts.

870.01(2) 3rd Riot; inciting or encouraging.

132

893.13(1) (a) 2. 3rd Sell, manufacture, or deliver
cannabis (or other s.
893.03(1) (c), (2) (c) 1.,
(2) (c) 2., (2) (c) 3., (2) (c) 5.,
(2) (c) 6., (2) (c) 7., (2) (c) 8.,
(2) (c) 9., (3), or (4) drugs).

133

893.13(1) (d) 2. 2nd Sell, manufacture, or deliver
s. 893.03(1) (c), (2) (c) 1.,
(2) (c) 2., (2) (c) 3., (2) (c) 5.,
(2) (c) 6., (2) (c) 7., (2) (c) 8.,
(2) (c) 9., (3), or (4) drugs
within 1,000 feet of
university.

134

893.13(1) (f) 2. 2nd Sell, manufacture, or deliver
s. 893.03(1) (c), (2) (c) 1.,
(2) (c) 2., (2) (c) 3., (2) (c) 5.,
(2) (c) 6., (2) (c) 7., (2) (c) 8.,
(2) (c) 9., (3), or (4) drugs
within 1,000 feet of public
housing facility.

135

893.13(4) (c) 3rd Use or hire of minor; deliver
to minor other controlled

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substances.

136

893.13(6)(a) 3rd Possession of any controlled substance other than felony possession of cannabis.

137

893.13(7)(a)8. 3rd Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.

138

893.13(7)(a)9. 3rd Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.

139

893.13(7)(a)10. 3rd Affix false or forged label to package of controlled substance.

140

893.13(7)(a)11. 3rd Furnish false or fraudulent material information on any document or record required by chapter 893.

141

893.13(8)(a)1. 3rd Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through

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deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.

142

893.13(8)(a)2. 3rd Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.

143

893.13(8)(a)3. 3rd Knowingly write a prescription for a controlled substance for a fictitious person.

144

893.13(8)(a)4. 3rd Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.

145

918.13(1)(a) 3rd Alter, destroy, or conceal investigation evidence.

146

944.47 3rd Introduce contraband to
(1)(a)1. & 2. correctional facility.

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147

944.47(1)(c) 2nd Possess contraband while upon
the grounds of a correctional
institution.

148

985.721 3rd Escapes from a juvenile
facility (secure detention or
residential commitment
facility).

149

150

(e) LEVEL 5

151

152

Florida Statute	Felony Degree	Description
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153

316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
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154

316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
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155

316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
-----------	-----	--

156

322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious
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157

bodily injury.

327.30(5)

3rd

Vessel accidents involving
personal injury; leaving scene.

158

379.365(2)(c)1.

3rd

Violation of rules relating to:
willful molestation of stone
crab traps, lines, or buoys;
illegal bartering, trading, or
sale, conspiring or aiding in
such barter, trade, or sale, or
supplying, agreeing to supply,
aiding in supplying, or giving
away stone crab trap tags or
certificates; making, altering,
forging, counterfeiting, or
reproducing stone crab trap
tags; possession of forged,
counterfeit, or imitation stone
crab trap tags; and engaging in
the commercial harvest of stone
crabs while license is
suspended or revoked.

159

379.367(4)

3rd

Willful molestation of a
commercial harvester's spiny
lobster trap, line, or buoy.

160

379.407(5)(b)3.

3rd

Possession of 100 or more

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undersized spiny lobsters.

161

381.0041(11)(b) 3rd Donate blood, plasma, or organs
knowing HIV positive.

162

440.10(1)(g) 2nd Failure to obtain workers'
compensation coverage.

163

440.105(5) 2nd Unlawful solicitation for the
purpose of making workers'
compensation claims.

164

440.381(2) 2nd Submission of false,
misleading, or incomplete
information with the purpose of
avoiding or reducing workers'
compensation premiums.

165

624.401(4)(b)2. 2nd Transacting insurance without a
certificate or authority;
premium collected \$20,000 or
more but less than \$100,000.

166

626.902(1)(c) 2nd Representing an unauthorized
insurer; repeat offender.

167

790.01(2) 3rd Carrying a concealed firearm.

168

790.162 2nd Threat to throw or discharge

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destructive device.

169

790.163(1) 2nd False report of bomb,
explosive, weapon of mass
destruction, or use of firearms
in violent manner.

170

790.221(1) 2nd Possession of short-barreled
shotgun or machine gun.

171

790.23 2nd Felons in possession of
firearms, ammunition, or
electronic weapons or devices.

172

796.05(1) 2nd Live on earnings of a
prostitute; 1st offense.

173

800.04(6)(c) 3rd Lewd or lascivious conduct;
offender less than 18 years of
age.

174

800.04(7)(b) 2nd Lewd or lascivious exhibition;
offender 18 years of age or
older.

175

806.111(1) 3rd Possess, manufacture, or
dispense fire bomb with intent
to damage any structure or
property.

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176

812.0145(2) (b) 2nd Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.

177

812.015(8) 3rd Retail theft; property stolen is valued at \$300 or more and one or more specified acts.

178

812.019(1) 2nd Stolen property; dealing in or trafficking in.

179

812.131(2) (b) 3rd Robbery by sudden snatching.

180

812.16(2) 3rd Owning, operating, or conducting a chop shop.

181

817.034(4) (a) 2. 2nd Communications fraud, value \$20,000 to \$50,000.

182

817.234(11) (b) 2nd Insurance fraud; property value \$20,000 or more but less than \$100,000.

183

817.2341(1), 3rd Filing false financial
(2) (a) & (3) (a) statements, making false entries of material fact or false statements regarding property values relating to the

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184

solvency of an insuring entity.

817.568(2) (b) 2nd Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons.

185

817.611(2) (a) 2nd Traffic in or possess 5 to 14 counterfeit credit cards or related documents.

186

817.625(2) (b) 2nd Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.

187

825.1025(4) 3rd Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.

188

827.071(4) 2nd Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.

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189	23-01107-18	2018952__	
	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
190	<u>828.12(2)</u>	<u>3rd</u>	<u>Tortures any animal with intent to inflict intense pain, serious physical injury, or death.</u>
191	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
192	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
193	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
194	847.0137	3rd	Transmission of pornography by
195	(2) & (3)		electronic device or equipment.

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	847.0138	3rd	Transmission of material
	(2) & (3)		harmful to minors to a minor by electronic device or equipment.
196	874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
197	874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
198	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
199	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned

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recreational facility or
community center.

200

893.13(1)(d)1. 1st Sell, manufacture, or deliver
cocaine (or other s.
893.03(1)(a), (1)(b), (1)(d),
(2)(a), (2)(b), or (2)(c)4.
drugs) within 1,000 feet of
university.

201

893.13(1)(e)2. 2nd Sell, manufacture, or deliver
cannabis or other drug
prohibited under s.
893.03(1)(c), (2)(c)1.,
(2)(c)2., (2)(c)3., (2)(c)5.,
(2)(c)6., (2)(c)7., (2)(c)8.,
(2)(c)9., (3), or (4) within
1,000 feet of property used for
religious services or a
specified business site.

202

893.13(1)(f)1. 1st Sell, manufacture, or deliver
cocaine (or other s.
893.03(1)(a), (1)(b), (1)(d),
or (2)(a), (2)(b), or (2)(c)4.
drugs) within 1,000 feet of
public housing facility.

203

893.13(4)(b) 2nd Use or hire of minor; deliver

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to minor other controlled
substance.

204

893.1351(1) 3rd Ownership, lease, or rental for
trafficking in or manufacturing
of controlled substance.

205

206

Section 4. This act shall take effect July 1, 2018.

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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)

2/16/14

Meeting Date

952

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jennifer Hobgood

Job Title _____

Address 414 El Destinado Dr

Phone 850-329-7007

Street

Tall

City

FL

State

32312

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ASPCA

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)

APPEARANCE RECORD

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

2-10-18

Meeting Date

952

Bill Number (if applicable)

Topic

Cruelty to Animals

Amendment Barcode (if applicable)

Name

Dena DeCamp

Job Title

President

Address

395 Osprey Landing Way

Phone

863 640-4805

Street

LAKE LANDFL33813

City

State

Zip

Email

ddecampgap@gmail.com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

FLORIDA Federation of Republican Women

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)

216118

Meeting Date

952

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Diana Ferguson

Job Title Attorney

Address 119 S Monroe St Ste 202

Phone 850-681-6788

Street

Taхо

City

FL

State

32301

Zip

Email dferguson@rtledge-ecenia.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Animal law section of the Florida Bar

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)

2.6.18

Meeting Date

952

Bill Number (if applicable)

Topic Cruelty to Animals

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

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)

2/6/18

Meeting Date

952

Bill Number (if applicable)

Topic Cruelty to Animals

Amendment Barcode (if applicable)

Name Chief Stephan Dembinsky

Job Title Chief of Police, Daytona Beach Shores Police Department

Address 3050 S Atlantic Ave

Phone 386-763-5333

Street

Daytona Beach Shores

FL

32118

Email sdembinsky@cityofdbs.org

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing The Florida Police Chiefs 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

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on Pre-K - 12 Education
Children, Families, and Elder Affairs
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE

23rd District

December 4, 2017

The Honorable Randolph Bracy
Florida Senate
213 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Bracy,

I am writing this letter because my bill, SB 952 – Cruelty to Animals, has been referred to the Senate Criminal Justice Committee. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

Thank you for your consideration. Please contact me if you have any questions.

Very respectfully yours,

A handwritten signature in dark ink, appearing to be "W. Gregory Steube".

W. Gregory Steube, District 23

REPLY TO:

- ☐ 6230 University Parkway, Suite 202, Sarasota, Florida 34240 (941) 342-9162
- ☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

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 1142

INTRODUCER: Senator Steube

SUBJECT: Expunction of Criminal History Records

DATE: February 5, 2018

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Storch	Jones	CJ	Favorable
2. _____	_____	JU	_____
3. _____	_____	RC	_____

I. Summary:

SB 1142 revises the eligibility requirements that must be met for a person to seek a court-ordered expunction of a criminal history record.

Currently, a person is ineligible for a court-ordered expunction of a criminal history record that resulted in a trial, without regard to the outcome. The bill permits a person to obtain a court-ordered expunction of a criminal history record if the outcome at trial was a not guilty verdict.

Currently, a person seeking to expunge a criminal history record that resulted in a trial, without regard to the outcome, must have the record sealed for a minimum of 10 years prior to seeking an expunction of such record. The bill provides that a person seeking to expunge his or her criminal history record that resulted in a not guilty verdict at trial does not have to obtain a sealing of the record for a minimum of 10 years prior to seeking an expunction of such record.

The bill is effective July 1, 2018.

II. Present Situation:

Expunction of Criminal History Record

A criminal history record¹ is any nonjudicial record maintained by a criminal justice agency containing criminal history information.² Florida law³ makes adult criminal history records

¹ Section 943.045(6), F.S.

² "Criminal history information" consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. *See* s. 943.045(5), F.S.

³ Section 943.053, F.S.

accessible to the public unless the record has been sealed or expunged.⁴ Sealed records are placed under highly restricted access, while expunged records are removed from record systems and destroyed.⁵ Florida statutes authorize the following expungement processes:

- Administrative;⁶
- Court-ordered;⁷
- Juvenile diversion;⁸
- Lawful self-defense;⁹
- Human trafficking;¹⁰
- Automatic juvenile;¹¹ and
- Early juvenile.¹²

Court-Ordered Expunction of Criminal Record

A court may order a criminal history record of a minor or an adult to be expunged. A person is permitted to obtain one court-ordered expunction in their lifetime.¹³

To qualify for a court-ordered expunction, a person must first obtain a certificate of eligibility (COE) from the Florida Department of Law Enforcement (FDLE) pursuant to requirements set forth in ss. 943.0585(2) or 943.0585(5), F.S. To obtain a COE for expunction, a person must submit to the FDLE:

- A written, certified statement from the appropriate state attorney or statewide prosecutor which indicates:
 - An indictment, information, or other charging document was not filed or issued in the case.
 - An indictment, information, or other charging document, if filed or issued in the case, was dismissed or *nolle prosequi*¹⁴ by the state attorney or statewide prosecutor, and that none of the charges that the person is seeking to expunge *resulted in a trial*, without regard to the outcome of the trial.
 - The criminal history record does not relate to certain violations.¹⁵

⁴ Florida Department of Law Enforcement, *Seal and Expunge Process*, available at <http://www.fdle.state.fl.us/cms/Seal-and-Expunge-Process/Seal-and-Expunge-Home.aspx> (last visited January 29, 2018). See s. 943.053, F.S.

⁵ “Expunction of a criminal history record” is the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order. See s. 943.045(16), F.S.

⁶ Section 943.0581, F.S.

⁷ Section 943.0585, F.S.

⁸ Section 943.0582, F.S.

⁹ Section 943.0585(5), F.S.

¹⁰ Section 943.0583, F.S.

¹¹ Section 943.0515, F.S.

¹² Section 943.0515(1)(b)2., F.S.

¹³ Section 943.0585, F.S.

¹⁴ Nolle prosequi is a formal entry upon the record that declares that the case will not be further prosecuted. THE LAW DICTIONARY: FEATURING BLACK’S LAW DICTIONARY FREE ONLINE LEGAL DICTIONARY (2nd ed.), available at <http://thelawdictionary.org> (last visited January 29, 2018).

¹⁵ These violations include sexual misconduct, luring or enticing a child, sexual battery, procuring a person under 18 for prostitution, lewd or lascivious offenses committed in front of a minor, an elderly person, or a disabled person, voyeurism, violations of the Florida Communications Fraud Act, sexual abuse of a child, offenses by public officers and employees, acts in connection with obscenity and minors, child pornography, selling or buying of minors, drug trafficking, violation of

- A \$75 processing fee, unless it is waived by the executive director.
- A certified copy of the disposition of the charge.¹⁶

In addition, the applicant must not:

- Prior to the date the application for a COE is filed, have been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3)(b), F.S.;¹⁷
- Have been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition to expunge pertains;
- Be under court supervision for the arrest or alleged criminal activity to which the petition pertains; and
- Have secured a prior expunction or sealing of a criminal history record, unless the expunction sought is of a criminal history record previously sealed for 10 years pursuant to s. 943.0585(2)(h), F.S.¹⁸

Section 943.0585(2)(h), F.S., requires a person, prior to seeking a court-ordered expunction, to have a criminal history record that resulted in a withhold of adjudication or a trial sealed for a minimum of 10 years. This sealing requirement does not apply to a criminal history record that a plea was not entered or all charges were dismissed prior to trial.¹⁹

Upon receipt of a COE for expunction, a person must then petition the court to expunge his or her criminal history record. Along with the COE, the petition must include a sworn statement attesting that the petitioner:

- Has never been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a specified misdemeanor;²⁰
- Has not been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition pertains;
- Has never secured a prior sealing or expunction of a criminal history record, unless the expunction is sought for a criminal history record previously sealed for 10 years pursuant to s. 943.0585(2)(h), F.S., and the record is otherwise eligible for expunction; and
- Is eligible for such an expunction and does not have any other petition to expunge or seal pending before any court.²¹

A copy of the completed petition is then served upon the appropriate state attorney or statewide prosecutor and the arresting agency, any of which may respond to the court regarding the

pretrial detention, and any violation specified as a predicated offense for registration as a sexual predator pursuant to the Florida Sexual Predators Act. *See* s. 943.0585(2)(a)3., F.S.

¹⁶ Section 943.0585(2)(a)-(c), F.S.

¹⁷ These offenses include assault, battery, carrying a concealed weapon, unlawful use of destructive devices or bombs, child neglect, assault or battery on a law enforcement officer, a firefighter, or other specified officer, open carrying of a weapon, indecent exposure, unlawful possession of a firearm, petit theft, animal cruelty, arson, and unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property. *See* s. 943.051(3)(b), F.S.

¹⁸ Section 943.0585(2)(d)-(g), F.S.

¹⁹ The 10-year sealing requirement applies without regard to the outcome of the trial. Section 943.0585(2)(h), F.S.

²⁰ *Supra*, n. 17.

²¹ Section 943.0585(1)(b), F.S.

petition.²² There is no statutory right to a court-ordered expunction and any request for expunction of a criminal history record may be denied at the sole discretion of the court.²³

Effect of a Court-Ordered Criminal History Record Expunction

If the court grants a petition to expunge a criminal history record, the clerk of the court then certifies copies of the order to the appropriate state attorney and the arresting agency and any other agency that has received the criminal history record from the court. The arresting agency must provide the expunction order to any agencies that received the criminal history record information from the arresting agency. The FDLE must provide the expunction order to the Federal Bureau of Investigation.²⁴

Any criminal history record that the court grants the expunction of must be physically destroyed or obliterated by any criminal justice agency having such record. The FDLE, however, is required to maintain the record. However, that record is confidential and exempt from disclosure requirements under the public records laws. Only a court order would make the record available to a person or entity that is otherwise excluded.²⁵

A person who has his or her criminal history record expunged may lawfully deny or fail to acknowledge the records that were expunged, unless they are:

- A defendant in a criminal prosecution;
- Seeking appointment as a guardian, a position with a criminal justice agency, a license by the Division of Insurance Agent and Agency Services within the Department of Financial Services, or a position with an agency that is responsible for the protection of vulnerable persons, including children, the disabled, or the elderly;
- Petitioning to have a court-ordered criminal history record expunged or sealed or petitioning for relief under s. 943.0583, F.S.;²⁶ or
- A candidate for admission to The Florida Bar.²⁷

III. Effect of Proposed Changes:

Currently, a person is ineligible for a court-ordered expunction of a criminal history record that resulted in trial. The bill repeals this prohibition and permits a person to seek a court-ordered expunction of a criminal history record that resulted in a not guilty verdict, rendered by a judge or jury.

²² Section 943.0585(3)(a), F.S.

²³ Section 943.0585, F.S.

²⁴ Section 943.0585(3)(b), F.S.

²⁵ Section 943.0585(4), F.S.

²⁶ Section 943.0583, F.S., provides that a victim of human trafficking may petition for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committing while the person was a victim or human trafficking, which offense was committed or reported to have been committed as a part of the human trafficking scheme of which the person was a victim or at the direction of an operator of the scheme, including, but not limited to, violations under chs. 796 and 847, F.S., without regard to the disposition of the arrest or of any charges. *See* s. 943.0583(3), F.S.

²⁷ Section 943.0585(4)(a), F.S.

Currently, a person seeking to expunge a criminal history record that resulted in a trial must have the record sealed for a minimum of 10 years prior to seeking an expunction of such record. The bill provides that a person seeking to expunge a criminal history record that resulted in a not guilty verdict at trial does not have to obtain a sealing of the record for a minimum of 10 years prior to seeking an expunction of such record.

The bill is effective July 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:

Current law prohibits a person from seeking the expunction of a criminal history record that resulted in a trial, regardless of the outcome. However, current law allows a person to have this record sealed. The bill enables a person to seek the expunction of a criminal history record that resulted in a not guilty verdict at trial, and provides that a prior sealing is not required.

The FDLE estimates that this change would result in the submission of approximately 5,000 additional applications for a court-ordered expunction, which would require an additional full-time employee. The fiscal impact to accommodate for this increase in applications is projected to be \$62,441 in year one and \$58,686 in recurring years.²⁸

²⁸ Florida Department of Law Enforcement, *2018 Legislative Bill Analysis for SB 1142*, (January 5, 2018) (on file with the Senate Criminal Justice Committee).

However, it is unclear whether the bill would lead to an increase in applications, or rather a shift in the type of application submitted. The bill enables a person who was previously only eligible to have his or her criminal history record sealed to now be able to seek an expunction of a criminal history record without obtaining a prior sealing. It seems that this would result in such persons submitting an application for a court-ordered expunction, rather than a court-ordered sealing, which would modify the type of applications being submitted, but would not provide for a significant increase in applications.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 943.0585 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Steube

23-01315A-18

20181142__

A bill to be entitled

An act relating to expunction of criminal history records; amending s. 943.0585, F.S.; revising the eligibility requirements for expunction of criminal history records to include instances in which a verdict of not guilty was rendered; providing an effective date.

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

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

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2) or subsection (5). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025,

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

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chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests

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of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each petition to a court to expunge a criminal history record is complete only when accompanied by:

(b) The petitioner's sworn statement attesting that the petitioner:

1. Has never, prior to the date on which the petition is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3)(b).

2. Has not been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition pertains.

3. Has never secured a prior sealing or expunction of a criminal history record under this section, s. 943.059, former s. 893.14, former s. 901.33, or former s. 943.058, unless expunction is sought of a criminal history record previously sealed for 10 years pursuant to paragraph (2)(h) and the record is otherwise eligible for expunction.

4. Is eligible for such an expunction to the best of his or her knowledge or belief and does not have any other petition to expunge or any petition to seal pending before any court.

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

(2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to petitioning the court to expunge a criminal history record, a person seeking to expunge a criminal history record shall apply to the department for a certificate of eligibility for expunction. The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for expunction. A certificate of eligibility for expunction is valid for 12 months after the date stamped on the certificate when issued by the department. After that time, the petitioner must reapply to the department for a new certificate of eligibility. Eligibility for a renewed certification of eligibility must be based on the status of the applicant and the law in effect at the time of the renewal application. The department shall issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person:

(a) Has obtained, and submitted to the department, a written, certified statement from the appropriate state attorney or statewide prosecutor which indicates:

1. That an indictment, information, or other charging document was not filed or issued in the case.

2. That an indictment, information, or other charging document, if filed or issued in the case, was dismissed or nolle prosequi by the state attorney or statewide prosecutor, ~~or~~ was

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117 dismissed by a court of competent jurisdiction, or that a
 118 verdict of not guilty was rendered by a judge or jury and that
 119 none of the charges related to the arrest or alleged criminal
 120 activity to which the petition to expunge pertains resulted in a
 121 trial, without regard to whether the outcome of the trial was
 122 other than an adjudication of guilt.

123 3. That the criminal history record does not relate to a
 124 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
 125 former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025,
 126 s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,
 127 s. 893.135, s. 916.1075, a violation enumerated in s. 907.041,
 128 or any violation specified as a predicate offense for
 129 registration as a sexual predator pursuant to s. 775.21, without
 130 regard to whether that offense alone is sufficient to require
 131 such registration, or for registration as a sexual offender
 132 pursuant to s. 943.0435, where the defendant was found guilty
 133 of, or pled guilty or nolo contendere to any such offense, or
 134 that the defendant, as a minor, was found to have committed, or
 135 pled guilty or nolo contendere to committing, such an offense as
 136 a delinquent act, without regard to whether adjudication was
 137 withheld.

138 (f) Has never secured a prior sealing or expunction of a
 139 criminal history record under this section, s. 943.059, former
 140 s. 893.14, former s. 901.33, or former s. 943.058, unless
 141 expunction is sought of a criminal history record previously
 142 sealed for 10 years pursuant to paragraph (h) and the record is
 143 otherwise eligible for expunction.

144 (h) Has previously obtained a court order sealing the
 145 record under this section, former s. 893.14, former s. 901.33,

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146 or former s. 943.058 for a minimum of 10 years because
 147 adjudication was withheld or because all charges related to the
 148 arrest or alleged criminal activity to which the petition to
 149 expunge pertains were not dismissed before prior to trial,
 150 without regard to whether the outcome of the trial was other
 151 than an adjudication of guilt. The requirement for the record to
 152 have previously been sealed for a minimum of 10 years does not
 153 apply when a plea was not entered or all charges related to the
 154 arrest or alleged criminal activity to which the petition to
 155 expunge pertains were dismissed before prior to trial or a
 156 verdict of not guilty was rendered by a judge or jury.

157 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)

2.6.18

Meeting Date

1142

Bill Number (if applicable)

Topic Expunction of Criminal History Records

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

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)

2/8/18

Meeting Date

1142

Bill Number (if applicable)

Topic

Expunction - Not Guilty Verdicts

Amendment Barcode (if applicable)

Name

Jorge Chamizo

Job Title

Attorney

Address

108 South Monroe Street

Phone

(850) 681-0024

Street

Tallahassee, FL 32301

Email

jorge@flapartners.com

City

State

Zip

Speaking:

☒ For

☐ Against

☐ Information

Waive Speaking:

☒ In Support

☐ Against

(The Chair will read this information into the record.)

Representing

FACDL

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)

02/06/2018

Meeting Date

SB 1142

Bill Number (if applicable)

Topic Expunction of Criminal History Records

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 N. Gadsden Street

Phone 85-488-6850

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32301

Email ndaniels@flpda.org

City

State

Zip

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.

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

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on Pre-K - 12 Education
Children, Families, and Elder Affairs
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE

23rd District

December 18, 2017

The Honorable Randolph Bracy
Florida Senate
213 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Bracy,

I am writing this letter because my bill, SB 1142 – Expunction of Criminal History Records, has been referred to the Senate Criminal Justice Committee. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

Thank you for your consideration. Please contact me if you have any questions.

Very respectfully yours,

A handwritten signature in dark ink, appearing to be "W. Gregory Steube".

W. Gregory Steube, District 23

REPLY TO:

- ☐ 6230 University Parkway, Suite 202, Sarasota, Florida 34240 (941) 342-9162
- ☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

9The 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 1222

INTRODUCER: Criminal Justice Committee and Senator Brandes

SUBJECT: Sentencing

DATE: February 7, 2018

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1222 creates a probationary split 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 split sentence for substance use and mental health.

The bill requires the following conditions to be part of a probationary split sentence for substance use or mental health offenders:

- A term of imprisonment, which must include an in-prison 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;
- A 24 month term of 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 in-prison treatment program for specified reasons. Following completion of the in-prison treatment program, the bill provides that an offender must be immediately transitioned into the community on drug offender or mental health probation for the last 24 months of his or her sentence.

The DOC must develop a computerized system to track data on the recidivism and recommitment of offenders who have receive such a sentence report the findings to the Governor, President of the Senate, and Speaker of the House of Representatives.

The DOC reports that the bill will have a negative indeterminate fiscal impact on the department. Section V. Fiscal Impact.

The bill is effective October 1, 2018.

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, 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;
- 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.⁷

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), F.S.

⁶ Section 948.012, F.S., provides the authority for this type of split sentence.

⁷ *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 offender⁸ upon completion of specified in-prison programming.⁹

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 Department of Corrections (DOC) institutions seeks to treat participants with histories of dependency by focusing on changing the behaviors that led to the addiction.¹⁰ The DOC has developed Correctional Substance Abuse Programs at its institutions and community-based sites throughout the state.¹¹ The programs' principle objectives are to identify substance users, assess the severity of their drug problems, and provide the appropriate services.¹² The Department of Children and Families license all in-prison substance abuse programs.¹³ The Bureau of Programs within the DOC is responsible for the coordination and delivery of substance abuse program services for individuals incarcerated in a state correction facility.¹⁴

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).¹⁵ 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.¹⁶ Inmates identified during the assessment as being in need of treatment or services become mandated program participants and are placed on the DOC's centralized statewide automated priority list for placement in a program.¹⁷

⁸ 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 Department of Corrections (DOC) can classify a person as a youthful offender.

⁹ See ss. 958.04(2)(d) and 958.045(6), F.S.

¹⁰ DOC, *Division of Development, Bureau of Programs*, available at <http://www.dc.state.fl.us/orginfo/development/programs.html> (last visited on February 3, 2018).

¹¹ DOC, Bureau of Programs, *Substance Abuse Treatment, Annual Report, Fiscal Year 2015-2016*, p. 1, available at <http://www.dc.state.fl.us/pub/subabuse/inmates/15-16-IP-AR.pdf> (last visited February 3, 2018) (hereinafter cited as "Substance Abuse Annual Report").

¹² *Id.*

¹³ Licensure is conducted in accordance with ch. 397, F.S., and R. 65D-30.003, F.A.C.

¹⁴ Substance Abuse Annual Report at p. 6.

¹⁵ DOC, *Agency Analysis for SB 1222*, p. 2, January 18, 2018 (on file with the Senate Criminal Justice Committee) (hereinafter cited as "DOC SB 1222 Analysis").

¹⁶ 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 is provided that target the specific crime producing needs of offenders who are higher risk. *Id.*

¹⁷ Substance Abuse Annual Report, p. 6.

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.¹⁸

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.¹⁹

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.²⁰ 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.²¹ 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. Whereas, mental health probation is supervised by officers with reduced caseloads who are sensitive to the unique needs of individuals with mental health disorders, and who will work in tandem with community mental health case managers assigned to the defendant.²²

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.²³ 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.²⁴

¹⁸ DOC SB 1222 Analysis, p. 2.

¹⁹ *Id.*

²⁰ Section 948.001(8), F.S.

²¹ Section 948.001(4), F.S.

²² Section 948.001(5), F.S.

²³ 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.

²⁴ Section 944.275(4)(f), F.S.

III. Effect of Proposed Changes:

The bill creates a probationary split sentence for substance use or mental health offenders.

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.;²⁵
- 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.;²⁶
 - Any offense for which the sentence was enhanced under s. 775.087, F.S.;²⁷ 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.

²⁵ 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. 775.082(1)(c)1., F.S., or an attempt to commit any such felony offense.

²⁶ 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 (s. 394.4593(2), F.S.); kidnapping (s. 787.01, F.S.), false imprisonment (s. 787.02, F.S.), or luring or enticing a child (s. 787.025(2)(c), F.S.), where the victim is a minor; human trafficking (s. 787.06(3)(b), (d), (f), or (g), F.S., or former s. 787.06(3)(h), F.S.); sexual battery (s. 794.011, F.S., excluding s. 794.011(10), F.S.); unlawful sexual activity with certain minors (s. 794.05, F.S.); former procuring person under age of 18 for prostitution (s. 796.03, F.S. (2014)); former selling or buying of minors into prostitution (s. 796.035, F.S. (2014)); lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age (s. 800.04, F.S.); video voyeurism (s. 810.145(8), F.S.); lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person (s. 825.1025, F.S.); sexual performance by a child (s. 827.071, F.S.); prohibition of certain acts in connection with obscenity (s. 847.0133, F.S.); computer pornography (s. 847.0135, F.S., excluding s. 847.0135(6), F.S.); transmission of pornography by electronic device or equipment prohibited (s. 847.0137, F.S.); transmission of material harmful to minors to a minor by electronic device or equipment prohibited (s. 847.0138, F.S.); selling or buying of minors (s. 847.0145, F.S.); prohibited activities/RICO (s. 895.03, F.S., 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 (s. 916.1075(2), F.S.); or sexual misconduct prohibited (s. 985.701(1), F.S.); 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.

²⁷ 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.

Sentencing Requirements

The bill requires the following conditions to be part of a probationary split sentence for substance use or mental health offenders:

- A term of imprisonment, which must include an in-prison 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;
- A 24 month term of 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 an in-prison treatment program for a specified reason 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.

The sentencing court may order a presentencing investigation report for any offender that the court believes may be sentenced to a probationary split sentence. 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.

Department of Corrections Duties

The DOC is required to administer the in-prison treatment program provide a special training program for staff members selected to implement the in-prison treatment program. The DOC may enter into performance-based contracts with qualified individuals, agencies, or corporations to supply any or all services provided through the in-prison 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 in-prison treatment program to promote participation in rehabilitative programs and the orderly operation of institutions and facilities.

The DOC must send written notification of the offender's admission into the in-prison 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 in-prison treatment program the DOC must evaluate the offender's needs and develop a postrelease treatment plan that includes substance or mental health aftercare services.

The bill provides rulemaking authority to the DOC to implement the in-prison treatment program. The DOC can refuse to place an offender in the in-prison 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 in-prison treatment program as proscribed by rule. The DOC must notify the sentencing court, the state attorney, defense counsel, of this and that the rest of the offender's sentence will be served in a DOC facility.

If, after placement in the in-prison 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 in-prison 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 in-prison treatment program the remaining portion of his or her sentence will be served in a DOC facility.

If an offender, after placement in the in-prison 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 discharged from the program. If the offender is discharged from the in-prison treatment program the remaining portion of his or her sentence will be served in a DOC facility.

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 in-prison treatment program, or other program modifications dependent upon the severity of the violation. Additionally, the bill authorizes the DOC to place an offender that is a participant in the in-prison treatment program in administrative or protective confinement, as it deems necessary.

Drug Offender or Mental Health Probation Portion of Sentence

Upon completion of the term of imprisonment, 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. An offender on probation is subject to:

- All standard terms 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.

The bill requires the DOC to collect the cost of supervision, as appropriate, from the offender. An offender who is 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 sentenced to a probationary split sentence.

The bill also requires the DOC to, on October 1 of every year, beginning on October 1, 2019, submit an annual report 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, 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:

The bill authorizes the DOC to contract with qualified individuals, agencies, or corporations to supply any or all services provided for the in-prison treatment program. To the extent that this increases revenues of for-profit companies that offer these services, the bill will likely have a positive fiscal impact on such entities.

C. Government Sector Impact:

The DOC reports that the bill will have a negative indeterminate fiscal impact on the agency as additional resources may be needed to implement the in-prison treatment program.²⁸ The DOC further reports that there will likely be a need for increased contracted services funding to achieve the requirement of special training provided for in the bill as well as the need to obtain additional procurements or modifications of current contracts for comprehensive medical services, mental health care and substance use treatment.²⁹

VI. Technical Deficiencies:

None.

²⁸ DOC SB 1222 Analysis, p. 6.

²⁹ *Id.*

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

CS by Criminal Justice on February 6, 2018:

The committee substitute:

- Creates a split sentencing option for substance use or mental health offenders which includes a period of incarceration, an in-prison treatment program, and either drug offender or mental health probation;
- Specifies eligibility criteria for an offender to be sentenced under this split sentencing option; and
- Requires the DOC to develop a computerized system to tract recidivism data for these offenders and provide an annual report to the Governor and the Legislature.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2018	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 948.0121, Florida Statutes, is created
to read:

948.0121 Probationary split sentences for substance use or
mental health offenders.—

(1) DEFINITIONS.—For purposes of this section:

(a) "Department" means the Department of Corrections; and



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11 (b) "Offender" means a person sentenced by the court on a
12 felony offense to the probationary split sentence for substance
13 use or mental health offenders as proscribed in this section.

14 (2) CREATION.—A probationary split sentence for substance
15 use or mental health offenders is established in accordance with
16 s. 948.012. A court may sentence an offender to such
17 probationary split sentence in accordance with this section.

18 (3) ELIGIBILITY.—For an offender to be sentenced by the
19 court to a probationary split sentence pursuant to this section,
20 the offender shall be a nonviolent offender that is in need of
21 substance use or mental health treatment and who does not pose a
22 danger to the community. For purposes of this section,
23 nonviolent offender means an offender that has never been
24 convicted of, or pled guilty or no contest to, the commission
25 of, an attempt to commit, or a conspiracy to commit any of the
26 following:

27 (a) A capital, life, or first degree felony;

28 (b) A second degree or third degree felony listed in s.
29 775.084(1)(c)1.;

30 (c) A violation of ss. 784.021, 784.07, 827.03, or 843.01,
31 or any offense that requires a person to register as a sex
32 offender in accordance with s. 943.0435;

33 (d) A violation of an offense for which the sentence was
34 enhanced under s. 775.087; or

35 (e) A violation of an offense in another jurisdiction which
36 would be an offense described in this subsection, or which would
37 have been enhanced under s. 775.087, if that offense had been
38 committed in this state.

39 (4) SENTENCING REQUIREMENTS.—As a condition of a



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probationary split sentence for substance use or mental health offenders, the court shall order that the offender, at a minimum serve:

(a) A term of imprisonment, which must include an in-prison treatment program for substance use, mental health, or co-occurring disorders that is a minimum of 90-days in-custody treatment and is administered by the department at a department facility;

(b) The remainder of his or her imprisonment in a department facility in the event the department finds that the offender is ineligible or not appropriate for placement in an in-custody treatment program for the reasons proscribed in subsection (7), or any other reason the department deems as good cause; and

(c) A term of probation of 24 months that consists of:

1. Either drug offender or mental health probation to be determined by the court at the time of sentencing;

2. Any special conditions of probation ordered by the sentencing court; and

3. Any recommendations made by the department in a postrelease treatment plan for substance use or mental health aftercare services.

(5) PRESENTENCE INVESTIGATION REPORT.—For any offender that the court believes may be sentenced under this section, the court may order the department to conduct a presentence investigation report in accordance with s. 921.231 to provide the court with appropriate information to make a determination at the time of sentencing of whether drug offender or mental health probation is most appropriate for the offender.



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(6) DEPARTMENT DUTIES.—The department:

(a) Shall administer treatment programs that comply with the type of treatment required in this section.

(b) May develop and enter into performance-based contracts with qualified individuals, agencies, or corporations to provide any or all services necessary for the in-custody treatment program. Such contract may not be entered into or renewed unless it offers a substantial savings to the department. The department may establish a system of incentives within the in-custody treatment program to promote participation in rehabilitative programs and the orderly operation of institutions and facilities.

(c) Shall provide a special training program for staff members selected to administer or implement the in-custody treatment program.

(d) Shall evaluate the offender's needs and develop a postrelease treatment plan that includes substance use or mental health aftercare services.

(7) IN-PRISON TREATMENT.—

(a) The department shall give written notification of the offender's admission into the in-prison treatment program portion of the probationary split sentence to the sentencing court, state attorney, defense counsel for the offender, and any victim of the crime committed by the offender.

(b) If, after evaluating an offender for custody and classification status, the department determines at any point during the term of imprisonment that an offender sentenced under this section does not meet the criteria for placement in the in-prison treatment program portion of the probationary split



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98 sentence as determined in rule by the department, or space is
99 not available for the offender's placement in the in-prison
100 treatment program, the department shall notify the court, state
101 attorney, and defense counsel immediately that this portion of
102 the sentence is served in accordance with paragraph (4) (b).

103 (c) If, after placement in the in-prison treatment program,
104 an offender appears to be unable to participate due to medical
105 or other reasons, he or she must be examined by qualified
106 medical personnel or qualified nonmedical personnel appropriate
107 for the offender's situation, as determined by the department.
108 The qualified personnel shall consult with the director of the
109 in-prison treatment program, and the director shall determine if
110 the offender will continue with treatment or if the offender is
111 discharged from the program. If the director discharges the
112 offender from the treatment program, the department shall notify
113 the court, state attorney, and defense counsel immediately that
114 this portion of the sentence is served in accordance with
115 paragraph (4) (b).

116 (d) If, after placement in the in-prison treatment program,
117 an offender appears to be unable to participate due to
118 disruptive behavior or violations of any of the rules
119 promulgated by the department for the implementation of this
120 section, the director shall determine if the offender will
121 continue with treatment or if the offender is discharged from
122 the program. If the director discharges the offender from the
123 treatment program, the department shall notify the court, state
124 attorney, and defense counsel immediately that this portion of
125 the sentence is served in accordance with paragraph (4) (b).

126 (e) An offender participating in the in-prison treatment



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program portion of his or her imprisonment must comply with any additional requirements placed on the participants by the department in rule. If an offender violates any of the rules, he or she may have sanctions imposed, including loss of privileges, restrictions, disciplinary confinement, forfeiture of gain-time or the right to earn gain-time in the future, alteration of release plans, termination from the in-prison treatment program, or other program modifications in keeping with the nature and gravity of the program violation. The department may place an inmate in the in-prison treatment program in an administrative or protective confinement, as necessary.

(8) DRUG OFFENDER OR MENTAL HEALTH PROBATION.—

(a) Upon completion of the term of imprisonment ordered by the court, the offender shall be transitioned into the community to his or her drug offender or mental health probation for a term of 24 months as ordered by the court at the time of sentencing in accordance with subsection (4).

(b) An offender on drug offender or mental health probation pursuant to a probationary split sentence ordered pursuant to this section must comply with all standard conditions of drug offender or mental health probation, any special condition of probation ordered by the sentencing court, including 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.

(c) While on probation pursuant to this subsection, the offender shall pay all appropriate costs of probation to the department. An offender who is determined to be financially able



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to shall also pay all costs of substance abuse or mental health treatment. The court may impose on the offender additional conditions requiring payment of restitution, court costs, and fines, community service, or compliance with other special conditions.

(d) An offender's violation of any condition or order may result in revocation of probation by the court and imposition of any sentence authorized under the law, with credit given for the time already served in prison.

(9) REPORTING.—The department shall develop a computerized system to track data on the recidivism and recommitment of offenders who have been sentenced to the probationary split sentence for substance use or mental health offenders. On October 1, 2019, and on each October 1 thereafter, the department shall submit an annual report of the results of the collected data to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(10) RULEMAKING.—The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this section.

Section 3. This act shall take effect October 1, 2018.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to sentencing; creating s. 948.0121,
F.S.; providing definitions; creating a probationary
split sentence for substance use and mental health



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offenders in accordance with s. 948.012, F.S.;

authorizing the court to sentence an offender to the probationary split sentence; providing an eligible offender must be a nonviolent offender; defining the term "nonviolent offender"; providing sentencing requirements for the probationary split sentence; providing an exception to the court's order of a probationary split sentence; authorizing the sentencing court to have the Department of Corrections conduct a presentence investigation report in accordance with s. 921.231, F.S., for the purpose of providing the court with appropriate information to determine the type of probation is most appropriate for the offender; requiring the department to perform specified duties; requiring the department to provide written notification to specified parties upon the offender's admission into the in-prison treatment program; providing that the department may find an offender is not eligible to participate in the in-prison treatment program under certain circumstances; requiring written notification from the department to the specified parties if an offender is terminated from or prevented from entering the in-prison treatment program; providing an offender is transitioned to probation upon the completion of the offender's imprisonment; requiring an offender to comply with specified terms of drug offender or mental health probation; requiring the offender to pay specified fees associated with his or her probation;



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214 providing that a violation of the probation may result
215 in revocation by the court and imposition of any
216 sentence under the law; providing for credit of time
217 served for a sentence that is revoked; providing
218 reporting requirements; providing rulemaking
219 authority; providing an effective date.

By Senator Brandes

24-01180-18

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1 A bill to be entitled
 2 An act relating to an inmate reentry program; creating
 3 s. 397.755, F.S.; requiring the Department of
 4 Corrections to administer a reentry program for
 5 certain inmates with substance abuse, mental health,
 6 or co-occurring disorders; establishing that the
 7 reentry program consists of an in-prison treatment
 8 program and a community-based aftercare treatment
 9 program; requiring the sentencing court to issue a
 10 recommendation for an inmate's participation in the
 11 reentry program in a sentencing order; requiring the
 12 department to consider inmates for admission to the
 13 reentry program; providing factors for consideration;
 14 providing eligibility criteria for participation in
 15 the program; requiring the department to give written
 16 notification of the inmate's admission into the
 17 reentry program to the sentencing court and specified
 18 persons; specifying that the department may refuse to
 19 place an inmate in the reentry program for good cause;
 20 requiring the department to develop a postrelease
 21 treatment plan before an inmate completes in-prison
 22 treatment; providing a procedure for an inmate who
 23 appears to become unable to participate in the reentry
 24 program; authorizing sanctions to be imposed on an
 25 inmate who violates rules of conduct established by
 26 department rule; authorizing the department to place
 27 an inmate in the reentry program in an administrative
 28 or protective confinement; providing that an inmate
 29 shall be immediately transitioned into the community

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30 on drug offender-mental health probation following his
 31 or her completion of the in-prison treatment program;
 32 providing that an inmate in the reentry program who is
 33 on such probation is subject to the standard terms of
 34 probation and any special condition ordered by the
 35 sentencing court; requiring an inmate's case to be
 36 transferred to a drug court or mental health court if
 37 the sentencing county has such a court and is willing
 38 to accept the case; requiring the department to
 39 collect the cost of supervision from the inmate, as
 40 appropriate; requiring the inmate to comply with all
 41 conditions of his or her supervision and related court
 42 orders; specifying that a violation of such conditions
 43 or orders may result in revocation of supervision by
 44 the court and imposition of a sentence; requiring an
 45 inmate who is on probation as part of the reentry
 46 program to pay all appropriate costs of supervision to
 47 the department; requiring a financially able inmate to
 48 pay all costs of substance abuse or mental health
 49 treatment; authorizing the supervising court to impose
 50 additional conditions on the inmate, such as requiring
 51 the payment of restitution, the payment of court costs
 52 and fines, or community service; specifying that time
 53 spent on probation as part of the reentry program is
 54 considered in-custody time for purposes of calculating
 55 gain-time; requiring the department to implement the
 56 program, within available resources, to the fullest
 57 extent possible; requiring the department to provide
 58 special training to employees serving in the reentry

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program; authorizing the department to develop and enter into certain performance-based contracts to supply services through the program; authorizing the department to establish a system of incentives in the program to promote participation in rehabilitative programs and the orderly operation of institutions and facilities; clarifying that this act does not confer any right to placement in the reentry program or early release; specifying that an inmate has no cause of action for actions taken in the administration of the reentry program; requiring the department to develop a computerized system to track data on the recidivism and recommitment of inmates who have participated in the reentry program; requiring the department to submit an annual report on such data to the Governor and the Legislature by a specified date; requiring the department to adopt rules; requiring the Office of Program Policy Analysis and Government Accountability to provide a report to the Legislature before a specified date; providing an effective date.

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

Section 1. Section 397.755, Florida Statutes, is created to read:

397.755 Reentry program.-

(1) PROGRAM DEVELOPMENT.-The department shall administer a reentry program by which an eligible, nonviolent, low-risk inmate, who poses a minimal foreseeable risk to the public and

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for whom the reentry program has been ordered as part of his or her sentence, may be transitioned into the community during the last 2 years of the sentence. The reentry program consists of at least 90 days of participation in an in-prison treatment program for substance abuse, mental health, or co-occurring disorders, followed by a community-based aftercare treatment program. In-prison treatment may be operated in secure areas within or adjacent to an adult institution, a community residential facility, or a work release center. The reentry program must be intensive and may include a work-release component.

(2) ELIGIBILITY.-The sentencing court must include a recommendation for an inmate's participation in the reentry program in the sentencing order to alert the department as to such inmate's preliminary eligibility when it screens incoming inmates to determine their preliminary eligibility for the reentry program. The department shall then consider the inmate for admission to the reentry program. In considering the inmate's admission to the reentry program, the department may consider an inmate's criminal history, need for substance abuse or mental health treatment, general rehabilitative interests, and potential risk to the public. The department may consider comments of a victim and its own operational needs.

(a) An inmate is ineligible for consideration for admission to the program if:

1. The inmate was sentenced to a term of 10 years or more;
2. Whether related to the current term of incarceration, or a previous term of incarceration, the inmate was convicted of or pled guilty or no contest to:
 - a. Any capital, life, or first degree felony;

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b. Any second degree or third degree felony offense listed in s. 775.084(1)(c)1.;

c. Any offense listed in s. 784.07, s. 784.021, s. 827.03, or s. 843.01 or any offense that makes a person subject to sex offender registration under s. 943.0435;

d. Any offense for which the sentence was enhanced under s. 775.087; or

e. Any offense in another jurisdiction which would be an offense described in sub-subparagraphs a.-c., or which would have been enhanced under s. 775.087, if that offense had been committed in this state.

(b) An inmate is eligible for consideration for admission to the program if:

1. The inmate is not ineligible under paragraph (a).

2. The inmate is in need of substance abuse or mental health treatment.

3. The reentry program is ordered as part of the inmate's sentence.

4. The department has placed the inmate in minimum or community custody status.

5. The inmate otherwise meets the criteria for placement as determined by the department. The criteria shall include, but is not limited to, consideration of the inmate's criminal history, need for substance abuse or mental health treatment, general rehabilitative interests, and potential risk to the public and the operational needs of the department.

(3) ADMISSION INTO PROGRAM.—If an inmate meets the criteria for program admission under subsection (2), the department approves the inmate for entry into the program, and space is

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available, the department shall give written notification of the inmate's admission into the program to the sentencing court, state attorney, counsel for the inmate, and any victim of the crime committed by the inmate. The department may refuse to place an inmate in the reentry program for good cause, in its discretion.

(4) PROCEDURE UPON ADMISSION TO PROGRAM; IN-PRISON TREATMENT.—

(a) In-prison treatment shall begin upon an inmate's admission into the program. Before the inmate completes the in-prison treatment, the department shall evaluate the inmate's needs and develop a postrelease treatment plan that includes substance abuse or mental health aftercare services.

(b) If, after placement in the reentry program, an inmate 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 inmate's situation, as determined by the department. The qualified personnel shall consult with the director of the reentry program, and the director shall determine if the inmate shall continue with treatment or if the inmate is discharged from the program.

(c) An inmate in the reentry program is subject to the rules of conduct established by the department and may have sanctions imposed, including loss of privileges, restrictions, disciplinary confinement, forfeiture of gain-time or the right to earn gain-time in the future, alteration of release plans, termination from the reentry program, or other program modifications in keeping with the nature and gravity of the

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175 program violation. The department may place an inmate in the
 176 reentry program in an administrative or protective confinement,
 177 as necessary.

178 (5) PROCEDURE UPON COMPLETION OF IN-PRISON TREATMENT.—
 179 Following completion of the in-prison treatment program, the
 180 inmate shall be immediately transitioned into the community on
 181 drug offender-mental health probation for the last 24 months of
 182 his or her sentence.

183 (a) While in the community, the inmate shall be subject to
 184 all standard terms of drug offender or mental health probation,
 185 any special condition of supervision ordered by the sentencing
 186 court, including participation in an aftercare substance abuse
 187 or mental health program, residence in a postrelease
 188 transitional residential halfway house, or any other appropriate
 189 form of supervision or treatment.

190 (b) If the county in which sentencing occurred has a drug
 191 court or mental health court and it is willing to accept the
 192 case, the inmate's case shall be transferred to the drug court
 193 or mental health court for supervision for the last 24 months of
 194 his or her sentence. The drug court judge is deemed the
 195 sentencing judge for purposes of ensuring compliance with this
 196 section, and the department shall collect the cost of
 197 supervision, as appropriate, from the inmate.

198 (c) An inmate on probation pursuant to this subsection must
 199 comply with all conditions of the supervision and must comply
 200 with all orders of the drug court or other supervising court.
 201 Violation of any condition or order may result in revocation of
 202 supervision by the court and imposition of any sentence
 203 authorized under the law, with credit given for the time already

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204 served in prison.

205 (d) While on probation pursuant to this subsection, the
 206 inmate shall pay all appropriate costs of supervision to the
 207 department. An inmate who is financially able to shall also pay
 208 all costs of substance abuse or mental health treatment. The
 209 court may impose on the inmate additional conditions requiring
 210 payment of restitution, court costs, and fines; community
 211 service; or compliance with other special conditions.

212 (e) Time spent on probation as part of the reentry program
 213 shall be considered in-custody time in calculating the 85
 214 percent requirement of s. 944.275.

215 (6) DEPARTMENT DUTIES.—The department shall, within
 216 available resources, implement the reentry program to the
 217 fullest extent possible. The department shall provide a special
 218 training program for staff members selected to serve in the
 219 reentry program.

220 (7) CONTRACTORS.—The department may develop and enter into
 221 performance-based contracts with qualified individuals,
 222 agencies, or corporations to supply any or all services provided
 223 through the reentry program. Such contract may not be entered
 224 into or renewed unless it offers a substantial savings to the
 225 department. The department may establish a system of incentives
 226 within the reentry program to promote participation in
 227 rehabilitative programs and the orderly operation of
 228 institutions and facilities.

229 (8) NO RIGHTS CONFERRED UPON INMATES.—This section does not
 230 create or confer upon any inmate any right to placement in the
 231 reentry program or any right to placement or early release under
 232 supervision of any type. An inmate has no cause of action

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233 against the department, a court, the state attorney, or a victim
234 for any action taken related to the administration of the
235 reentry program.

236 (9) REPORTING.—The department shall develop a computerized
237 system to track data on the recidivism and recommitment of
238 inmates who have participated in the reentry program. On October
239 1, 2019, and on each October 1 thereafter, the department shall
240 submit an annual report of the results of the collected data to
241 the Governor, the President of the Senate, and the Speaker of
242 the House of Representatives.

243 (10) RULEMAKING.—The department shall adopt rules pursuant
244 to ss. 120.536(1) and 120.54 to administer this section.

245 Section 2. The Office of Program Policy Analysis and
246 Government Accountability shall review the reentry program under
247 s. 397.755, Florida Statutes, as created by this act, and report
248 its findings to the President of the Senate and the Speaker of
249 the House of Representatives before the commencement of the 2019
250 legislative session.

251 Section 3. 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)

2-6-18

Meeting Date

SB 1222

Bill Number (if applicable)

415846

Amendment Barcode (if applicable)

Topic Probationary Split Sentence / INMATE Re-Entry

Name MARK FONTAINE

Job Title CEO

Address 2868 Mahan Drive

Street

Phone 878-2196

TALLAHASSEE FL

City

State

32308

Zip

Email mfontaine@fadaa.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA Behavioral Health 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)

APPEARANCE RECORD

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

waive in support

1/6/18

Meeting Date

SB 1222

Bill Number (if applicable)

Topic Inmate Re-Entry

Amendment Barcode (if applicable)

Name Alisa LaPolt

Job Title Executive Director

Address PO Box 961

Phone 850-671-4445

Street

City

Tallahassee

State

FL

Zip

32301

Email alisa@nami-florida.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing National Alliance on Mental Illness - 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)

2/6/18

Meeting Date

SB 1222

Bill Number (if applicable)

Topic Inmate Reentry Program

Amendment Barcode (if applicable)

Name Mia Diaz

Job Title Exec. Assistant + Office Manager

Address 4537 Louvinia Drive
Street

Phone _____

Tallahassee
City

FL
State

32311
Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information
VOID

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.

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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)

2/6/18
Meeting Date

1222
Bill Number (if applicable)

Topic INMATE REENTRY PROGRAM

Amendment Barcode (if applicable)

Name DAPHNEE SAINVIL

Job Title POLICY ADVISOR

Address 115 S. ANDREWS AVE.

Phone 954-253-7320

Street

FT. LAUDERDALE

FL

33301

City

State

Zip

Email dsainvil@broward.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing BROWARD COUNTY GOVT

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)

2/6/18

Meeting Date

1222

Bill Number (if applicable)

Topic Inmate Rents

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Phone (850) 681-0024

Street Tallahassee, FL 32301

Email jorge@flapartners.com

City State Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Fla. 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.

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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)

2/6/18
Meeting Date

SB 1222
Bill Number (if applicable)

Topic SB 1222 - Innate Recentry Program by Brander Amendment Barcode (if applicable)

Name MATT SACCO

Job Title

Address
Street

Phone 9544480134

City

State

Zip

Email SACCOM@RUBIN GROUP + COM

Speaking: ☒ For ☐ Against ☐ Information

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

Representing CAMPAIGN FOR CRIMINAL JUSTICE

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)

2.6.18

Meeting Date

1222

Bill Number (if applicable)

Topic Inmate Reentry Program

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

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

Committee Agenda Request



To: Senator Randolph Bracy
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: December 24, 2017

I respectfully request that **Senate Bill #1222**, relating to **Inmate Reentry Program**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

A handwritten signature in black ink, which appears to read "Jeff Brandes", is written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1226

INTRODUCER: Criminal Justice Committee and Senators Book and Hutson

SUBJECT: Sentencing for Sexual Offenders and Sexual Predators

DATE: February 6, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	Fav/CS
2.			AP	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1226 modifies definitions of the terms “permanent residence,” “temporary residence,” and “transient residence.” These terms are relevant to reporting residence information under Florida laws requiring reporting of certain information by those persons required to register as a sexual predator or sexual offender. The bill decreases from 5 days to 3 days the time period in which a person must abide, lodge, or reside at a place in order to meet any of the definitions for reporting purposes.

The bill also requires mandatory community control with electronic monitoring for sexual predators and sexual offenders who commit a felony violation of the registry laws if the court does not impose a prison sentence. These felonies punish various acts that constitute noncompliance with the requirements of the registry laws. The bill excludes mandatory community control for an offense relating to harboring a sexual predator or sexual offender in noncompliance with registration requirements.

According to the Florida Department of Law Enforcement, the bill could have a fiscal impact on sheriff’s offices if they have to expand registration hours. The Department of Corrections states that the impact on that department is indeterminate. See Section V. Fiscal Impact Statement.

II. Present Situation:

Florida's Sexual Predator and Sexual Offender Registration Laws

Florida law requires registration of any person who has been convicted or adjudicated delinquent of a specified sex offense or offenses and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender.¹ The registration laws also require reregistration and provide for public and community notification of certain information about sexual predators and sexual offenders. The laws span several different chapters and numerous statutes,² and are implemented through the combined efforts of the Florida Department of Law Enforcement (FDLE), all Florida sheriffs, the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), the Department of Highway Safety and Motor Vehicles (DHSMV), and the Department of Children and Families (DCF).

A person is designated as a sexual predator by a court if the person:

- Has been convicted of a current qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;³
- Has been convicted of a current qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Was found to be a sexually violent predator in a civil commitment proceeding.⁴

A person is classified as a sexual offender if the person:

- Has been convicted of a qualifying sex offense and has been released on or after October 1, 1997, from the sanction imposed for that offense;
- Establishes or maintains a Florida residence and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the person was 14 years of age or older.⁵

Requirements for registration and reregistration are similar for sexual predators and sexual offenders, but the frequency of reregistration may differ.⁶ Registration requirements may also

¹ Sections 775.21 and 943.0435, F.S.

² Sections 775.21-775.25, 943.043-943.0437, 944.606, 944.607, and 985.481-985.4815, F.S.

³ Examples of qualifying sex offenses are sexual battery by an adult on a child under 12 years of age (s. 794.011(2)(a), F.S.) and lewd battery by an adult on a child 12 years of age or older but under 16 years of age (s. 800.04(4)(a), F.S.).

⁴ Section 775.21(4) and (5), F.S. The Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act, part V, ch. 394, F.S., provides for the civil confinement of a group of sexual offenders who, due to their criminal history and the presence of mental abnormality, are found likely to engage in future acts of sexual violence if they are not confined in a secure facility for long-term control, care, and treatment.

⁵ Sections 943.0435(1)(h) and 985.4815(1)(h), F.S. Sections 944.606(1)(f) and 944.607(1)(f), F.S., which address sexual offenders in the custody of or under the DOC's supervision, also define the term "sexual offender."

⁶ All sexual predators, sexual offenders convicted for offenses specified in s. 943.0435(14)(b), F.S., and juvenile sexual offenders required to register per s. 943.0435(1)(h)1.d., F.S., for certain offenses must reregister four times per year (on the birth month of the sexual predator or qualifying sexual offender and every third month thereafter). Sections 775.21(8)(a), 943.0435(14)(b), 944.607(13)(a), and 985.4815(13)(a), F.S. All other sexual offenders are required to reregister two times

differ based on a special status, e.g., the sexual predator or sexual offender is in the DOC's control or custody, under the DOC's or the DJJ's supervision, or in a residential commitment program under the DJJ.

Sexual predators and sexual offenders are required to report certain information, including residence information, at registration and reregistration (see discussion, *infra*).

The FDLE, through its agency website, provides a searchable database that contains information about sexual predators and sexual offenders, including residence information.⁷ Further, local law enforcement agencies may also provide access to this information, such as providing a link to the state public registry webpage.

Reporting Residence Information During Registration and Reregistration

Section 775.21, F.S., defines terms relevant to the reporting of residence information by sexual predators and sexual offenders (registrant):

- “Permanent residence” means a place where the person abides, lodges, or resides for 5 or more consecutive days.⁸
- “Temporary residence” means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of 5 or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.⁹
- “Transient residence” means a county where a person lives, remains, or is located for a period of 5 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.¹⁰

Provided below is a description of the registration and reregistration processes and the reporting of residence information for sexual predators and sexual offenders who are not in custody or under supervision of the DOC, the DJJ, or another agency.¹¹

per year (on the birth month of the qualifying sexual offender and during the sixth month following the sexual offender's birth month). Section 943.0435(14)(a), F.S.

⁷ The FDLE is the central repository for registration information. The department also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration. *About Us* (updated October 1, 2016), Florida Department of Law Enforcement, available at <http://offender.fdle.state.fl.us/offender/About.jsp> (last visited on Feb. 1, 2018). The FDLE maintains a database that allows members of the public to search for sexual offenders and sexual predators through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at an institute of higher education. *See* <http://offender.fdle.state.fl.us/offender/Search.jsp> (last visited on Feb. 1, 2018).

⁸ Section 775.21(2)(k), F.S.

⁹ Section 775.21(2)(n), F.S.

¹⁰ Section 775.21(2)(o), F.S.

¹¹ Registration and reregistration and reporting requirements for persons in those statuses are addressed not only in ss. 775.21 and 934.0435, F.S., but also in ss. 944.606, 944.607, 985.481, and 985.4815, F.S.

Upon initial registration, a registrant who is a sexual offender must report in person at the sheriff's office:

- In the county in which the registrant establishes or maintains a residence within 48 hours after:
 - Establishing a residence in this state; or
 - Being released from the custody, control, or supervision of the DOC or from the custody of a private correctional facility; or
- In the county where he or she was convicted within 48 hours after being convicted for a qualifying offense for registration, if the offender is not in the custody or control of, or under the supervision of, the DOC, or is not in the custody of a private correctional facility.¹²

A registrant who is a sexual predator must register in person:

- At the sheriff's office in the county where he or she establishes or maintains a residence within 48 hours after establishing or maintaining a residence in this state; and
- At the sheriff's office in the county where he or she was designated a sexual predator by the court within 48 hours after such finding is made.¹³

At this registration, the registrant must report specified information, including residence information.¹⁴

Generally, within 48 hours after this registration, a registrant must report in person at a driver license office of the DHSMV. At the driver license office, the registrant must, if otherwise qualified, secure a Florida driver license, renew a Florida driver license, or secure an identification card. The registrant must provide any of the information required to be provided at initial registration, if requested. Each time a registrant's driver license or identification card is subject to renewal, and, without regard to the status of the registrant's driver license or identification card, within 48 hours after any change in the offender's residence, the registrant must report in person to a driver license office, and is subject to the same reporting requirements. A registrant who is unable to secure or update a driver license or an identification card with the DHSMV must report any change in the registrant's residence within 48 hours after the change to the sheriff's office in the county where the registrant resides or is located and provide confirmation that he or she reported such information to the DHSMV, but this reporting requirement does not negate the requirement for a registrant to obtain a Florida driver license or an identification card.¹⁵

A registrant who vacates a residence and fails to establish or maintain another one must, within 48 hours after vacating the residence, report in person to the sheriff's office of the county in which he or she is located. The registrant must specify the date upon which he or she intends to or did vacate the residence, and provide or update all of the registration information required to be reported at initial registration. The registrant must provide an address for the residence or

¹² Section 943.0435(2)(a), F.S.

¹³ Section 775.21(6)(e) F.S.

¹⁴ Sections 775.21(6)(a) and (e) and 943.0435(2), F.S.

¹⁵ Sections 775.21(6)(f) and (g)1. and 943.0435(3) and (4)(a), F.S.

other place that he or she is or will be located during the time in which he or she fails to establish or maintain a permanent or temporary residence.¹⁶

A registrant must report in person at the sheriff's office in the county in which he or she is located within 48 hours after establishing a transient residence and thereafter must report in person every 30 days to the sheriff's office in the county in which he or she is located while maintaining a transient residence. The registrant must provide the addresses and locations where he or she maintains a transient residence. A registrant who remains at a residence after reporting his or her intent to vacate the residence must, within 48 hours after the date upon which the registrant said he or she would or did vacate such residence, report in person to the agency to which he or she reported vacating the residence. The failure of a registrant to make this report is a second degree felony.¹⁷ The failure of a registrant who maintains a transient residence to report in person to the sheriff's office every 30 days (as previously described) is a third degree felony.¹⁸

A registrant who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than this state must report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction or at least 21 days before the date he or she intends to travel if the intended residence of 5 days or more is outside of the United States. Any travel that is not known by the sexual offender 21 days before the departure date must be reported in person to the sheriff's office as soon as possible before departure. The registrant must provide to the sheriff the address, municipality, county, state, and country of intended residence. The failure of a registrant to provide his or her intended place of residence is a third degree felony.¹⁹

A registrant who indicates his or her intent to establish a residence in another state, a jurisdiction other than this state, or another country and later decides to remain in this state must, within 48 hours after the date upon which the registrant indicated he or she would leave this state, report in person to the sheriff to which the registrant reported the intended change of residence, and report his or her intent to remain in this state. A registrant who reports his or her intent to establish a residence in another state, a jurisdiction other than this state, or another country but who remains in this state without reporting to the sheriff (as previously described) commits a second degree felony.²⁰

A registrant must report in person to the sheriff's office in the county in which he or she resides or is otherwise located to reregister. Reregistration includes reporting any changes to residence information. Any registrant who fails to report in person as required at the sheriff's office or fails to respond to any address verification correspondence from the FDLE within 3 weeks of the date of the correspondence commits a third degree felony.²¹

¹⁶ Sections 775.21(6)(g)2.a. and 943.0435(4)(b)1., F.S.

¹⁷ A second degree felony is punishable by a prison sentence not exceeding 15 years, a fine not exceeding \$10,000, or both. Sections 775.082 and 775.083, F.S.

¹⁸ Sections 775.21(6)(g)2.b., 3., and 4., and 943.0435(4)(b)2., (c), and (d), F.S. A third degree felony is punishable by a prison sentence not exceeding 5 years, a fine not exceeding \$5,000, or both. Sections 775.082 and 775.083, F.S.

¹⁹ Sections 775.21(6)(i) and 943.0435(7), F.S.

²⁰ Sections 775.21(6)(j) and 943.0435(8), F.S.

²¹ Sections 775.21(8)(a) and (10)(a), and 943.0435(14), 944.607(12), and 985.4815(13). F.S.

General Penalties under Sections 775.21 and 943.0435, F.S.

Sections 775.21 and 943.0435, F.S., contain a general penalties provision. Section 775.21(10)(a), F.S., provides that it is a third degree felony for a sexual predator to:

- Fail to register;
- Fail, after registration, to maintain, acquire, or renew a driver license or an identification card;
- Fail to provide required location information;
- Fail to provide electronic mail addresses, Internet identifiers, and each Internet identifier's corresponding website homepage or application software name;
- Fail to provide all home telephone numbers and cellular telephone numbers, employment information, change in status at an institution of higher education, or change-of-name information;
- Fail to make a required report in connection with vacating a permanent residence;
- Fail to reregister as required;
- Fail to respond to any address verification correspondence from the FDLE within 3 weeks of the date of the correspondence;
- Knowingly provide false registration information by act or omission; or
- Otherwise fail, by act or omission, to comply with the requirements of s. 775.21, F.S., or s. 943.0435, F.S., as applicable.

Section 943.0435(9)(a), F.S., provides that a sexual offender who does not comply with the requirements of s. 943.0435, F.S., commits a third degree felony.

Community Control

Community control” is a form of intensive, supervised custody²² in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced.²³ “As with probation, violation of any community control condition may result in revocation by the court and imposition of any sentence which it might have imposed before placing the offender on community control supervision. Many of the offenders who are placed on community control are prison diversions.”²⁴

III. Effect of Proposed Changes:

The bill amends s. 775.21, F.S., to modify definitions of the terms “permanent residence,” “temporary residence,” and “transient residence.” These terms are relevant to reporting residence information under Florida laws requiring reporting of certain information by those persons required to register as a sexual predator or sexual offender. The bill decreases from 5 days to 3

²² The DOC describes it as “form of intensive supervised house arrest in the community[.]” *Community Supervision*, Florida Department of Corrections, available at http://www.dc.state.fl.us/pub/annual/9798/stats/stat_cs.html (last visited on Feb. 1, 2018).

²³ Section 948.001(3), F.S.

²⁴ *Supra*, n. 22.

days the time period in which a person must abide, lodge, or reside at a place in order to meet any of the definitions for reporting purposes.

The definitions of these terms and corresponding changes to the definitions also apply to s. 943.435, F.S.²⁵

The bill also amends the general penalties provisions in ss. 775.21 and 943.0435, F.S., to require mandatory community control with electronic monitoring for sexual predators and sexual offenders who commit a felony violation of either of these statutes if the court does not impose a prison sentence. These felonies punish various acts that constitute noncompliance with the requirements of the registry laws (see “Present Situation” section of this analysis, *supra*). The bill excludes mandatory community control for an offense relating to harboring a sexual predator or sexual offender in noncompliance with registration requirements.²⁶

Mandatory community control with electronic monitoring shall be imposed as follows:

- For a first offense committed on or after July 1, 2018, a mandatory minimum term of 6 months of community control with electronic monitoring;
- For a second offense committed on or after July 1, 2018, a mandatory minimum term of 1 year of community control with electronic monitoring; and
- For a third or subsequent offense committed on or after July 1, 2018, a mandatory minimum term of 2 years of community control with electronic monitoring.

Felony violations of ss. 775.21 and 943.0435, F.S., are ranked in Level 7 of the offense severity ranking chart of the Criminal Punishment Code.²⁷ A Level 7 offense scores sufficient sentence points to require a prison sentence,²⁸ which a sentencing court must impose absent mitigation of a prison sentence.²⁹ Therefore, if the court does not impose a prison sentence, and the mandatory community control provisions of the bill apply, this is because the court imposed a downward departure sentence.

The bill takes effect on July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁵ Section 943.0435(1)(f), F.S.

²⁶ See ss. 775.21(10)(g) and 943.0435(13), F.S. This prohibited act is not committed by a sexual predator or sexual offender. The act involves a person unlawfully facilitating the sexual predator’s or sexual offender’s noncompliance with registration requirements by the person withholding important information, providing false information, or harboring or concealing the noncompliant sexual predator or sexual offender.

²⁷ Section 921.0022(3)(g), F.S.

²⁸ A Level 7 offense scores 56 sentence points. Section 921.0024(1)(a), F.S. When total sentence points exceed 44 points, the lowest permissible sentence is a prison sentence. Section 921.0024(2), F.S.

²⁹ The court may “mitigate” or “depart downward” from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

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:

According to the FDLE, the bill could have a fiscal impact on sheriff's offices if they have to expand registration hours.³⁰

The DOC states that probation officers "who supervise sex offenders on community control with electronic monitoring have reduced caseloads due to the workload associated with this type of supervision and the monitoring required. Impact is indeterminate at this time as we are unable to estimate how many offenders will be sentenced under this requirement."³¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 775.21 and 943.0435.

This bill also reenacts the following sections of the Florida Statutes: 775.25, 944.606, 985.481, and 985.4815, F.S.

³⁰ 2018 FDLE Legislative Bill Analysis (SB 1226) (Dec. 15, 2017), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice).

³¹ 2018 Agency Legislative Bill Analysis (SB 1226) (Jan. 19, 2018), Department of Corrections (on file with the Senate Committee on Criminal Justice).

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 6, 2018:

The committee substitute:

- Requires mandatory community control with electronic monitoring for sexual predators and sexual offenders who commit a felony violation of the registry laws if the court does not impose a prison sentence.
- Excludes from mandatory community control offenses relating to harboring a sexual predator or sexual offender in noncompliance with registration requirements.

- 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	.	
02/06/2018	.	
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	.	

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

Senate Amendment (with directory and title amendments)

Delete lines 247 - 257

and insert:

s. 775.082, s. 775.083, or s. 775.084.

(b) A sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation, or attempted violation, of s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor; s. 794.011, excluding s. 794.011(10); s.



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794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 827.071; s. 847.0133; s. 847.0135(5); s. 847.0145; or s. 985.701(1); or a violation of a similar law of another jurisdiction when the victim of the offense was a minor, and who works, whether for compensation or as a volunteer, at any business, school, child care facility, park, playground, or other place where children regularly congregate, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) For a felony violation of this section, excluding paragraph (10)(g), committed on or after July 1, 2018, if the court does not impose a prison sentence, the court shall impose a mandatory minimum term of community control, as defined in s. 948.001, as follows:

1. For a first offense, a mandatory minimum term of 6 months of community control with electronic monitoring.

2. For a second offense, a mandatory minimum term of 1 year of community control with electronic monitoring.

3. For a third or subsequent offense, a mandatory minimum term of 2 years of community control with electronic monitoring.

(d)~~(e)~~ Any person who misuses public records information relating to a sexual predator, as defined in this section, or a sexual offender, as defined in s. 943.0435 or s. 944.607, to secure a payment from such a predator or offender; who knowingly distributes or publishes false information relating to such a predator or offender which the person misrepresents as being public records information; or who materially alters public records information with the intent to misrepresent the information, including documents, summaries of public records



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information provided by law enforcement agencies, or public records information displayed by law enforcement agencies on websites or provided through other means of communication, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(e)~~(d)~~ A sexual predator who commits any act or omission in violation of this section may be prosecuted for the act or omission in the county in which the act or omission was committed, in the county of the last registered address of the sexual predator, in the county in which the conviction occurred for the offense or offenses that meet the criteria for designating a person as a sexual predator, in the county where the sexual predator was released from incarceration, or in the county of the intended address of the sexual predator as reported by the predator prior to his or her release from incarceration. In addition, a sexual predator may be prosecuted for any such act or omission in the county in which he or she was designated a sexual predator.

(f)~~(e)~~ An arrest on charges of failure to register, the service of an information or a complaint for a violation of this section, or an arraignment on charges for a violation of this section constitutes actual notice of the duty to register when the predator has been provided and advised of his or her statutory obligation to register under subsection (6). A sexual predator's failure to immediately register as required by this section following such arrest, service, or arraignment constitutes grounds for a subsequent charge of failure to register. A sexual predator charged with the crime of failure to register who asserts, or intends to assert, a lack of notice of



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the duty to register as a defense to a charge of failure to register shall immediately register as required by this section. A sexual predator who is charged with a subsequent failure to register may not assert the defense of a lack of notice of the duty to register.

~~(f)~~ Registration following such arrest, service, or arraignment is not a defense and does not relieve the sexual predator of criminal liability for the failure to register.

(g) Any person who has reason to believe that a sexual predator is not complying, or has not complied, with the requirements of this section and who, with the intent to assist the sexual predator in eluding a law enforcement agency that is seeking to find the sexual predator to question the sexual predator about, or to arrest the sexual predator for, his or her noncompliance with the requirements of this section:

1. Withholds information from, or does not notify, the law enforcement agency about the sexual predator's noncompliance with the requirements of this section, and, if known, the whereabouts of the sexual predator;

2. Harbors, or attempts to harbor, or assists another person in harboring or attempting to harbor, the sexual predator;

3. Conceals or attempts to conceal, or assists another person in concealing or attempting to conceal, the sexual predator; or

4. Provides information to the law enforcement agency regarding the sexual predator which the person knows to be false information,



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commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. This paragraph does not apply if the sexual predator is incarcerated in or is in the custody of a state correctional facility, a private correctional facility, a local jail, or a federal correctional facility.

===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

And the directory clause is amended as follows:

Delete lines 33 - 37

and insert:

Section 1. Paragraphs (k), (n), and (o) of subsection (2) and subsection (10) of section 775.21, Florida Statutes, are amended, and paragraph (d) of subsection (5) and paragraphs (g) and (i) of subsection (6) of that section are republished, to read:

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

And the title is amended as follows:

Delete lines 8 - 12

and insert:

residency category; revising existing criminal penalties for sexual predators to require mandatory minimum terms of community control with electronic monitoring for first, second, and third and subsequent felony violations if the court does not impose a prison sentence; amending s.



196412

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2018	.	
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	.	

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

Senate Amendment (with directory and title amendments)

Delete lines 298 - 312
and insert:

(9) (a) Except as otherwise specifically provided, a sexual offender who does not comply with the requirements of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) For a felony violation of this section, excluding subsection (13), committed on or after July 1, 2018, if the



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11 court does not impose a prison sentence, the court shall impose
12 a mandatory minimum term of community control, as defined in s.
13 948.001, as follows:

14 1. For a first offense, a mandatory minimum term of 6
15 months of community control with electronic monitoring.

16 2. For a second offense, a mandatory minimum term of 1 year
17 of community control with electronic monitoring.

18 3. For a third or subsequent offense, a mandatory minimum
19 term of 2 years of community control with electronic monitoring.

20 (c) ~~(b)~~ A sexual offender who commits any act or omission in
21 violation of this section may be prosecuted for the act or
22 omission in the county in which the act or omission was
23 committed, in the county of the last registered address of the
24 sexual offender, in the county in which the conviction occurred
25 for the offense or offenses that meet the criteria for
26 designating a person as a sexual offender, in the county where
27 the sexual offender was released from incarceration, or in the
28 county of the intended address of the sexual offender as
29 reported by the offender prior to his or her release from
30 incarceration.

31 (d) ~~(e)~~ An arrest on charges of failure to register when the
32 offender has been provided and advised of his or her statutory
33 obligations to register under subsection (2), the service of an
34 information or a complaint for a violation of this section, or
35 an arraignment on charges for a violation of this section
36 constitutes actual notice of the duty to register. A sexual
37 offender's failure to immediately register as required by this
38 section following such arrest, service, or arraignment
39 constitutes grounds for a subsequent charge of failure to



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register. A sexual offender charged with the crime of failure to register who asserts, or intends to assert, a lack of notice of the duty to register as a defense to a charge of failure to register shall immediately register as required by this section. A sexual offender who is charged with a subsequent failure to register may not assert the defense of a lack of notice of the duty to register.

~~(d)~~ Registration following such arrest, service, or arraignment is not a defense and does not relieve the sexual offender of criminal liability for the failure to register.

=====
D I R E C T O R Y C L A U S E A M E N D M E N T
=====
And the directory clause is amended as follows:

Delete lines 258 - 261
and insert:

Section 2. Subsection (9) of section 943.0435, Florida Statutes, is amended, and paragraph (f) of subsection (1), paragraph (d) of subsection (4), and subsection (7) of that section are republished, to read:

=====
T I T L E A M E N D M E N T
=====
And the title is amended as follows:

Delete lines 16 - 17
and insert:

for first, second, and third and subsequent felony violations if the court does not impose a prison sentence; reenacting s. 775.25, F.S.,

By Senator Book

32-01124-18

20181226__

A bill to be entitled

An act relating to sentencing for sexual offenders and sexual predators; amending s. 775.21, F.S.; redefining the terms "permanent residence," "temporary residence," and "transient residence" by decreasing the amount of days a person abides, lodges, or resides in a certain place to qualify for that type of residency category; revising existing criminal penalties for sexual predators to require mandatory minimum terms of community control with electronic monitoring for first, second, and third and subsequent violations of specified offenses; amending s. 943.0435, F.S.; revising existing criminal penalties for sexual offenders to require mandatory minimum terms of community control with electronic monitoring for first, second, and third and subsequent violations of specified offenses; reenacting s. 775.25, F.S., relating to prosecutions for certain acts or omissions, to incorporate the amendments made to ss. 775.21 and 943.0435, F.S., in references thereto; reenacting ss. 944.606(1)(d), 985.481(1)(d), and 985.4815(1)(f), F.S., relating to sexual offenders and required notifications upon release, sexual offenders adjudicated delinquent and required notifications upon release, and notification to the Department of Law Enforcement of information on juvenile sexual offenders, respectively, to incorporate the amendment made to s. 775.21, F.S., in references thereto; providing an effective date.

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

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

Section 1. Paragraphs (k), (n), and (o) of subsection (2) and paragraph (a) of subsection (10) of section 775.21, Florida Statutes, are amended, and paragraph (d) of subsection (5) and paragraphs (g) and (i) of subsection (6) of that section are republished, to read:

775.21 The Florida Sexual Predators Act.—

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

(k) "Permanent residence" means a place where the person abides, lodges, or resides for 3 ~~5~~ or more consecutive days.

(n) "Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of 3 ~~5~~ or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.

(o) "Transient residence" means a county where a person lives, remains, or is located for a period of 3 ~~5~~ or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.

(5) SEXUAL PREDATOR DESIGNATION.—An offender is designated as a sexual predator as follows:

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(d) A person who establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person was a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender, shall register in the manner provided in s. 943.0435 or s. 944.607 and shall be subject to community and public notification as provided in s. 943.0435 or s. 944.607. A person who meets the criteria of this section is subject to the requirements and penalty provisions of s. 943.0435 or s. 944.607 until the person provides the department with an order issued by the court that designated the person as a sexual predator, as a sexually violent predator, or by another sexual offender designation in the state or jurisdiction in which the order was issued which states that such designation has been removed or demonstrates to the department that such designation, if not imposed by a court, has been removed by operation of law or court order in the state or jurisdiction in which the designation was made, and provided such person no longer meets the criteria for registration as a sexual offender under the laws of this state.

(6) REGISTRATION.—

(g)1. Each time a sexual predator's driver license or identification card is subject to renewal, and, without regard to the status of the predator's driver license or identification

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card, within 48 hours after any change of the predator's residence or change in the predator's name by reason of marriage or other legal process, the predator shall report in person to a driver license office and is subject to the requirements specified in paragraph (f). The Department of Highway Safety and Motor Vehicles shall forward to the department and to the Department of Corrections all photographs and information provided by sexual predators. Notwithstanding the restrictions set forth in s. 322.142, the Department of Highway Safety and Motor Vehicles may release a reproduction of a color-photograph or digital-image license to the Department of Law Enforcement for purposes of public notification of sexual predators as provided in this section. A sexual predator who is unable to secure or update a driver license or an identification card with the Department of Highway Safety and Motor Vehicles as provided in paragraph (f) and this paragraph shall also report any change of the predator's residence or change in the predator's name by reason of marriage or other legal process within 48 hours after the change to the sheriff's office in the county where the predator resides or is located and provide confirmation that he or she reported such information to the Department of Highway Safety and Motor Vehicles. The reporting requirements under this subparagraph do not negate the requirement for a sexual predator to obtain a Florida driver license or identification card as required by this section.

2.a. A sexual predator who vacates a permanent, temporary, or transient residence and fails to establish or maintain another permanent, temporary, or transient residence shall, within 48 hours after vacating the permanent, temporary, or

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transient residence, report in person to the sheriff's office of the county in which he or she is located. The sexual predator shall specify the date upon which he or she intends to or did vacate such residence. The sexual predator shall provide or update all of the registration information required under paragraph (a). The sexual predator shall provide an address for the residence or other place that he or she is or will be located during the time in which he or she fails to establish or maintain a permanent or temporary residence.

b. A sexual predator shall report in person at the sheriff's office in the county in which he or she is located within 48 hours after establishing a transient residence and thereafter must report in person every 30 days to the sheriff's office in the county in which he or she is located while maintaining a transient residence. The sexual predator must provide the addresses and locations where he or she maintains a transient residence. Each sheriff's office shall establish procedures for reporting transient residence information and provide notice to transient registrants to report transient residence information as required in this sub-subparagraph. Reporting to the sheriff's office as required by this sub-subparagraph does not exempt registrants from any reregistration requirement. The sheriff may coordinate and enter into agreements with police departments and other governmental entities to facilitate additional reporting sites for transient residence registration required in this sub-subparagraph. The sheriff's office shall, within 2 business days, electronically submit and update all information provided by the sexual predator to the department.

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3. A sexual predator who remains at a permanent, temporary, or transient residence after reporting his or her intent to vacate such residence shall, within 48 hours after the date upon which the predator indicated he or she would or did vacate such residence, report in person to the sheriff's office to which he or she reported pursuant to subparagraph 2. for the purpose of reporting his or her address at such residence. When the sheriff receives the report, the sheriff shall promptly convey the information to the department. An offender who makes a report as required under subparagraph 2. but fails to make a report as required under this subparagraph commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

4. The failure of a sexual predator who maintains a transient residence to report in person to the sheriff's office every 30 days as required by sub-subparagraph 2.b. is punishable as provided in subsection (10).

5.a. A sexual predator shall register all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, with the department through the department's online system or in person at the sheriff's office within 48 hours after using such electronic mail addresses and Internet identifiers. If the sexual predator is in the custody or control, or under the supervision, of the Department of Corrections, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, to the Department of Corrections before using such electronic mail

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 175 addresses or Internet identifiers. If the sexual predator is in
 176 the custody or control, or under the supervision, of the
 177 Department of Juvenile Justice, he or she must report all
 178 electronic mail addresses and Internet identifiers, and each
 179 Internet identifier's corresponding website homepage or
 180 application software name, to the Department of Juvenile Justice
 181 before using such electronic mail addresses or Internet
 182 identifiers.

183 b. A sexual predator shall register all changes to home
 184 telephone numbers and cellular telephone numbers, including
 185 added and deleted numbers, all changes to employment
 186 information, and all changes in status related to enrollment,
 187 volunteering, or employment at institutions of higher education,
 188 through the department's online system; in person at the
 189 sheriff's office; in person at the Department of Corrections if
 190 the sexual predator is in the custody or control, or under the
 191 supervision, of the Department of Corrections; or in person at
 192 the Department of Juvenile Justice if the sexual predator is in
 193 the custody or control, or under the supervision, of the
 194 Department of Juvenile Justice. All changes required to be
 195 reported in this sub-subparagraph shall be reported within 48
 196 hours after the change.

197 c. The department shall establish an online system through
 198 which sexual predators may securely access, submit, and update
 199 all electronic mail addresses; Internet identifiers and each
 200 Internet identifier's corresponding website homepage or
 201 application software name; home telephone numbers and cellular
 202 telephone numbers; employment information; and institution of
 203 higher education information.

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 204 (i) A sexual predator who intends to establish a permanent,
 205 temporary, or transient residence in another state or
 206 jurisdiction other than the State of Florida shall report in
 207 person to the sheriff of the county of current residence within
 208 48 hours before the date he or she intends to leave this state
 209 to establish residence in another state or jurisdiction or at
 210 least 21 days before the date he or she intends to travel if the
 211 intended residence of 5 days or more is outside of the United
 212 States. Any travel that is not known by the sexual predator 21
 213 days before the departure date must be reported to the sheriff's
 214 office as soon as possible before departure. The sexual predator
 215 shall provide to the sheriff the address, municipality, county,
 216 state, and country of intended residence. For international
 217 travel, the sexual predator shall also provide travel
 218 information, including, but not limited to, expected departure
 219 and return dates, flight number, airport of departure, cruise
 220 port of departure, or any other means of intended travel. The
 221 sheriff shall promptly provide to the department the information
 222 received from the sexual predator. The department shall notify
 223 the statewide law enforcement agency, or a comparable agency, in
 224 the intended state, jurisdiction, or country of residence of the
 225 sexual predator's intended residence. The failure of a sexual
 226 predator to provide his or her intended place of residence is
 227 punishable as provided in subsection (10).

228 (10) PENALTIES.—

229 (a) Except as otherwise specifically provided, a sexual
 230 predator who fails to register; who fails, after registration,
 231 to maintain, acquire, or renew a driver license or an
 232 identification card; who fails to provide required location

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information; who fails to provide electronic mail addresses, Internet identifiers, and each Internet identifier's corresponding website homepage or application software name; who fails to provide all home telephone numbers and cellular telephone numbers, employment information, change in status at an institution of higher education, or change-of-name information; who fails to make a required report in connection with vacating a permanent residence; who fails to reregister as required; who fails to respond to any address verification correspondence from the department within 3 weeks of the date of the correspondence; who knowingly provides false registration information by act or omission; or who otherwise fails, by act or omission, to comply with the requirements of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and shall be sentenced:

1. For a first offense committed on or after July 1, 2018, to a mandatory minimum term of 6 months of community control, as defined in s. 948.001, with electronic monitoring.

2. For a second offense committed on or after July 1, 2018, to a mandatory minimum term of 1 year of community control, as defined in s. 948.001, with electronic monitoring.

3. For a third or subsequent offense committed on or after July 1, 2018, to a mandatory minimum term of 2 years of community control, as defined in s. 948.001, with electronic monitoring.

Section 2. Paragraph (a) of subsection (9) of section 943.0435, Florida Statutes, is amended, and paragraph (f) of subsection (1), paragraph (d) of subsection (4), and subsection (7) of that section are republished, to read:

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943.0435 Sexual offenders required to register with the department; penalty.—

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

(f) "Permanent residence," "temporary residence," and "transient residence" have the same meaning as provided in s. 775.21.

(4)

(d) The failure of a sexual offender who maintains a transient residence to report in person to the sheriff's office every 30 days as required in subparagraph (b)2. is punishable as provided in subsection (9).

(7) A sexual offender who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida shall report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction or at least 21 days before the date he or she intends to travel if the intended residence of 5 days or more is outside of the United States. Any travel that is not known by the sexual offender 21 days before the departure date must be reported in person to the sheriff's office as soon as possible before departure. The sexual offender shall provide to the sheriff the address, municipality, county, state, and country of intended residence. For international travel, the sexual offender shall also provide travel information, including, but not limited to, expected departure and return dates, flight number, airport of departure, cruise port of departure, or any other means of intended travel. The sheriff shall promptly provide to the department the

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291 information received from the sexual offender. The department
 292 shall notify the statewide law enforcement agency, or a
 293 comparable agency, in the intended state, jurisdiction, or
 294 country of residence of the sexual offender's intended
 295 residence. The failure of a sexual offender to provide his or
 296 her intended place of residence is punishable as provided in
 297 subsection (9).

298 (9) (a) Except as otherwise specifically provided, a sexual
 299 offender who does not comply with the requirements of this
 300 section commits a felony of the third degree, punishable as
 301 provided in s. 775.082, s. 775.083, or s. 775.084, and shall be
 302 sentenced:

303 1. For a first offense committed on or after July 1, 2018,
 304 to a mandatory minimum term of 6 months of community control, as
 305 defined in s. 948.001, with electronic monitoring.

306 2. For a second offense committed on or after July 1, 2018,
 307 to a mandatory minimum term of 1 year of community control, as
 308 defined in s. 948.001, with electronic monitoring.

309 3. For a third or subsequent offense committed on or after
 310 July 1, 2018, to a mandatory minimum term of 2 years of
 311 community control, as defined in s. 948.001, with electronic
 312 monitoring.

313 Section 3. For the purpose of incorporating the amendments
 314 made by this act to sections 775.21 and 943.0435, Florida
 315 Statutes, in references thereto, section 775.25, Florida
 316 Statutes, is reenacted to read:

317 775.25 Prosecutions for acts or omissions.—A sexual
 318 predator or sexual offender who commits any act or omission in
 319 violation of s. 775.21, s. 943.0435, s. 944.605, s. 944.606, s.

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320 944.607, or former s. 947.177 may be prosecuted for the act or
 321 omission in the county in which the act or omission was
 322 committed, in the county of the last registered address of the
 323 sexual predator or sexual offender, in the county in which the
 324 conviction occurred for the offense or offenses that meet the
 325 criteria for designating a person as a sexual predator or sexual
 326 offender, in the county where the sexual predator or sexual
 327 offender was released from incarceration, or in the county of
 328 the intended address of the sexual predator or sexual offender
 329 as reported by the predator or offender prior to his or her
 330 release from incarceration. In addition, a sexual predator may
 331 be prosecuted for any such act or omission in the county in
 332 which he or she was designated a sexual predator.

333 Section 4. For the purpose of incorporating the amendment
 334 made by this act to section 775.21, Florida Statutes, in a
 335 reference thereto, paragraph (d) of subsection (1) of section
 336 944.606, Florida Statutes, is reenacted to read:

337 944.606 Sexual offenders; notification upon release.—

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

339 (d) "Permanent residence," "temporary residence," and
 340 "transient residence" have the same meaning as provided in s.
 341 775.21.

342 Section 5. For the purpose of incorporating the amendment
 343 made by this act to section 775.21, Florida Statutes, in a
 344 reference thereto, paragraph (d) of subsection (1) of section
 345 985.481, Florida Statutes, is reenacted to read:

346 985.481 Sexual offenders adjudicated delinquent;
 347 notification upon release.—

348 (1) As used in this section:

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349 (d) "Permanent residence," "temporary residence," and
350 "transient residence" have the same meaning as provided in s.
351 775.21.

352 Section 6. For the purpose of incorporating the amendment
353 made by this act to section 775.21, Florida Statutes, in a
354 reference thereto, paragraph (f) of subsection (1) of section
355 985.4815, Florida Statutes, is reenacted to read:

356 985.4815 Notification to Department of Law Enforcement of
357 information on juvenile sexual offenders.—

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

359 (f) "Permanent residence," "temporary residence," and
360 "transient residence" have the same meaning as provided in s.
361 775.21.

362 Section 7. 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)

2.6.18

Meeting Date

1226

Bill Number (if applicable)

Topic Sentencing for Sexual Offenders/Predators

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

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)

2-6-18

Meeting Date

1226

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Jess McCarty

Job Title Assistant County Attorney

Address 111 NW 1st Street, Suite 2810

Phone 305-979-7110

Street

Miami

FL

33128

Email jmm2@miamidade.gov

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Miami-Dade County

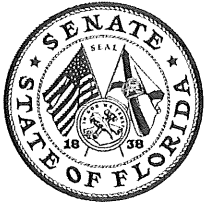
Appearing at request of Chair: ☐ Yes ☒ No

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.

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on the
Environment and Natural Resources, *Chair*
Appropriations
Appropriations Subcommittee on Health and
Human Services
Education
Environmental Preservation and
Conservation
Health Policy
Rules

SENATOR LAUREN BOOK

Democratic Leader Pro Tempore
32nd District

December 19, 2017

Chair Randolph Bracy
Committee on Criminal Justice
510 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Bracy,

I respectfully request that you place SB 1226, relating to Sentencing for Sexual Offenders and Sexual Predators, on the agenda of the Committee on Criminal Justice at your earliest convenience.

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

Thank you,

A handwritten signature in cursive script that reads "Lauren Book".

Senator Lauren Book
Senate District 32

cc: Lauren Jones, Staff Director
Sue Arnold, Administrative Assistant

REPLY TO:

- ☐ 967 Nob Hill Road, Plantation, Florida 33324 (954) 424-6674
- ☐ 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

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 1230

INTRODUCER: Criminal Justice Committee and Senator Baxley

SUBJECT: Criminal Judgments

DATE: February 6, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1230 requires that a judgment of guilty or not guilty of petit theft or a felony or guilty judgment of a misdemeanor under ch. 796, F.S., be in a written or an *electronic* record, signed by the judge, and recorded by the clerk of the court.

The bill requires electronically captured fingerprints of a defendant who is found guilty of petit theft, a felony, or a misdemeanor under ch. 796, F.S., be included in the electronic judgment and associated with a transaction control number. The bill requires the judge to certify that the digital fingerprints are those of the defendant.

The bill retains the requirement for the social security number of a defendant who is found guilty of a felony to be taken and provides that such number must be specified in the written or *electronic* judgment.

The bill is effective July 1, 2018.

II. Present Situation:

Petit Theft and Felony Judgments

Every criminal judgment adjudicating a person guilty or not guilty of petit theft or a felony must be *in writing*, signed by the judge, and recorded by the clerk of the court.¹

At the time the judgment of guilty is rendered, the fingerprints of the defendant must be taken and affixed beneath the judge's signature to such judgment. Beneath the fingerprints, the judge must certify and attest that such fingerprints belong to the defendant. Such certification is admissible as prima facie evidence that the fingerprints are those of the defendant.²

For a guilty felony judgment, in addition to the defendant's fingerprints, the judge must also record the defendant's social security number and affix it to the written judgment. If the defendant is unable or unwilling to provide his or her social security number, the reason for its absence must be indicated on the written judgment.³

Criminal Judgments Under Chapter 796, F.S.

Chapter 796, F.S., governs prostitution and similar crimes. Every criminal judgment adjudicating a person guilty of an offense governed by ch. 796, F.S., must be in writing, signed by the judge, and recorded by the clerk of the circuit court.⁴ Additionally, the fingerprints of the defendant must be taken and affixed beneath the judge's signature to such judgment.⁵ Beneath the fingerprints, the judge must certify and attest that such fingerprints belong to the defendant. Such certification is admissible as prima facie evidence that the fingerprints are those of the defendant.⁶

III. Effect of Proposed Changes:

The bill requires that a judgment of guilty or not guilty of petit theft, a felony, or a judgment of guilty for a misdemeanor under ch. 796, F.S., must be in a written or an *electronic* record, signed by the judge, and recorded by the clerk of the court.

The bill requires that an electronic record must contain the judge's electronic signature. The bill defines this as any letters, characters, symbols, or process manifested by electronic or similar means and attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.⁷

Current law requires the fingerprints of a defendant with a guilty judgment of petit theft, a felony, or a misdemeanor under ch. 796, F.S., be taken. The bill requires manual fingerprints to

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

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

³ Section 921.241(4), F.S.

⁴ Section 921.242(1), F.S.

⁵ *Id.*

⁶ Section 921.242(2), F.S.

⁷ Section 933.40(1)(d), F.S.

be attached to a written judgment. For an electronic judgment, the bill requires the fingerprints to be electronically captured and included in the judgment with the judge's electronic signature.

The bill provides that digital fingerprint records will be associated with a transaction control number. The bill defines the transaction control number as the unique identifier comprised of numbers, letters, or other symbols for a digital fingerprint record, which is generated by the device used to electronically capture the fingerprints. The bill requires the judge to certify that the digital fingerprints associated with the transaction control number are those of the defendant.

Current law provides that the judge's certification of a written record is admissible as prima facie evidence that the fingerprints included in the judgment are those of the defendant. The bill provides that the judge's certification of an electronic record will be regarded in the same manner.

Current law requires the social security number of a defendant who is found guilty of a felony to be taken and indicated in the record. The bill retains this requirement and provides that such number must be specified in the written or *electronic* judgment.

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

The bill is effective July 1, 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 permits the courts to implement an electronic fingerprinting and judgment process. Circuits that wish to implement such electronic recordkeeping will need to procure electronic Live Scan fingerprinting technology, which could provide for initial costs associated with implementing this electronic system. However, this may save money and reduce the workload on the courts in the long run to the extent that it is less time consuming to create and maintain electronic criminal fingerprints and judgments.⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

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

This bill reenacts section 775.084 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Criminal Justice on February 6, 2018:

The Committee Substitute:

- Requires a judgment of guilty or not guilty of a petit theft or a judgment of guilty for a misdemeanor under ch. 796, F.S., be in a written or electronic record, signed by the judge, and recorded by the clerk of the court;
- Requires an electronic record to contain the judge's electronic signature;
- Defines a transaction control number;
- Requires manual fingerprints be attached to the written judgment;
- Requires electronically captured fingerprints be associated with a transaction control number and included in the electronic judgment;
- Requires the judge to certify that the digital fingerprints included in the electronic judgment are those of the defendant;
- Provides that the judge's certification and signature on an electronic judgment is admissible as prima facie evidence that the fingerprints included in the judgment are those of the defendant against whom the judgment is rendered; and

⁸ Office of the State Courts Administrator, *2018 Judicial Impact Statement for SB 1230*, (January 17, 2018) (on file with the Senate Criminal Justice Committee).

- Requires the social security number of a defendant with a guilty judgment for a felony be taken and included in an electronic judgment.

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	.	
02/06/2018	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 32 - 90

and insert:

Section 1. Paragraph (d) of subsection (3) of section 812.014, Florida Statutes, is amended to read:

812.014 Theft.—

(3)

(d)1. A ~~Every~~ judgment of guilty or not guilty of a petit theft shall be in:



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11 a. A written record that is ~~writing~~, signed by the judge,
12 and recorded by the clerk of the circuit court; or

13 b. An electronic record that contains the judge's
14 electronic signature, as defined in s. 933.40, and is recorded
15 by the clerk of the circuit court.

16 2. At the time a defendant is found guilty of petit theft,
17 the judge shall cause the following to occur ~~to be affixed to~~
18 ~~every such written judgment of guilty of petit theft,~~ in open
19 court and in the presence of such judge;.

20 a. For a written judgment of guilty, the fingerprints of
21 the defendant against whom such judgment is rendered shall be
22 manually taken. Such fingerprints shall be affixed beneath the
23 judge's signature on the ~~to such~~ judgment. Beneath such
24 fingerprints shall be appended a certificate to the following
25 effect:

26
27 "I hereby certify that the above and foregoing fingerprints
28 on this judgment are the fingerprints of the defendant,,
29 and that they were placed thereon by said defendant in my
30 presence, in open court, this the day of,
31 ... (year)"

32
33 Such certificate shall be signed by the judge, whose signature
34 thereto shall be followed by the word "Judge."

35 b. For an electronic judgment of guilty, s. 921.241(3)(b)
36 applies.

37 3.2. A ~~Any such~~ written or an electronic judgment of guilty
38 of a petit theft, or a certified copy thereof, is admissible in
39 evidence in the courts of this state as provided in s.



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921.241(4) ~~prima facie evidence that the fingerprints appearing thereon and certified by the judge are the fingerprints of the defendant against whom such judgment of guilty of a petit theft was rendered.~~

Section 2. Section 921.241, Florida Statutes, is amended to read:

921.241 Felony judgments; fingerprints and social security number required in record.—

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

(a) "Electronic signature" has the same meaning as in s. 933.40.

(b) "Transaction control number" means the unique identifier comprised of numbers, letters, or other symbols for a digital fingerprint record which is generated by the device used to electronically capture the fingerprints ~~At the time a defendant is found guilty of a felony, the judge shall cause the defendant's fingerprints to be taken.~~

(2) A ~~Every~~ judgment of guilty or not guilty of a felony shall be in:

(a) A written record that is ~~writing,~~ signed by the judge, and recorded by the clerk of the court; or

(b) An electronic record that contains the judge's electronic signature and is recorded by the clerk of court.

(3) At the time a defendant is found guilty of a felony, the judge shall cause the following to occur ~~to be affixed to every written judgment of guilty of a felony,~~ in open court and in the presence of such judge:

(a) For a written judgment of guilty, ~~and at the time the judgment is rendered,~~ the fingerprints of the defendant shall be



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manually taken and ~~against whom such judgment is rendered. Such fingerprints shall be~~ affixed beneath the judge's signature on the ~~to such~~ judgment. Beneath such fingerprints shall be appended a certificate to the following effect:

"I hereby certify that the above and foregoing fingerprints on this judgment are the fingerprints of the defendant,, and that they were placed thereon by said defendant in my presence, in open court, this the day of, ... (year)"

Such certificate shall be signed by the judge, whose signature thereto shall be followed by the word "Judge."

(b) For an electronic judgment of guilty, the fingerprints of the defendant shall be electronically captured and the following certificate shall be included in the electronic judgment:

"I hereby certify that the digital fingerprints record associated with Transaction Control Number contains the fingerprints of the defendant,, which were electronically captured from the defendant in my presence, in open court, this the day of, ... (year)"

The judge shall place his or her electronic signature, which shall be followed by the word "Judge," on the certificate.

(4)(3) A written or electronic ~~Any such written~~ judgment of guilty ~~of a felony~~, or a certified copy thereof, shall be admissible in evidence in the several courts of this state as



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prima facie evidence that the:

(a) Manual fingerprints appearing thereon and certified by the judge as aforesaid are the fingerprints of the defendant against whom the ~~such~~ judgment of guilty ~~of a felony~~ was rendered.

(b) Digital fingerprint record associated with the transaction control number specified in the judge's certificate contains the fingerprints of the defendant against whom the judgment of guilty was rendered.

~~(5)(4)~~ At the time the defendant's fingerprints are manually taken or electronically captured, the judge shall also cause the defendant's social security number to be taken. The defendant's social security number shall be specified in each ~~affixed to every~~ written or electronic judgment of guilty of a felony, in open court, in the presence of such judge, and at the time the judgment is rendered. If the defendant is unable or unwilling to provide his or her social security number, the reason for its absence shall be specified in ~~indicated on~~ the written or electronic judgment.

Section 3. Section 921.242, Florida Statutes, is amended to read:

921.242 Subsequent offenses under chapter 796; method of proof applicable.—

(1) A ~~Every~~ judgment of guilty with respect to any offense governed by the provisions of chapter 796 shall be in:

(a) A written record that is ~~writing~~, signed by the judge, and recorded by the clerk of the circuit court; or

(b) An electronic record that contains the judge's electronic signature, as defined in s. 933.40, and is recorded



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by the clerk of circuit court.

(2) At the time a defendant is found guilty, the judge shall cause the following to occur ~~to be affixed to every such written judgment of guilty,~~ in open court and in the presence of such judge:

(a) For a written judgment of guilty, the fingerprints of the defendant against whom such judgment is rendered shall be manually taken. Such fingerprints shall be affixed beneath the judge's signature on the ~~to any such~~ judgment. Beneath such fingerprints shall be appended a certificate to the following effect:

"I hereby certify that the above and foregoing fingerprints are of the defendant, ...(name)..., and that they were placed thereon by said defendant in my presence, in open court, this the day of, ...(year)...."

Such certificate shall be signed by the judge, whose signature thereto shall be followed by the word "Judge."

(b) For an electronic judgment of guilty, s. 921.241(3)(b) applies.

(2) ~~A Any such written or an electronic judgment of guilty, or a certified copy thereof, shall be admissible in evidence in the several courts of this state as provided in s. 921.241(4) prima facie evidence that the fingerprints appearing thereon and certified by the judge as aforesaid are the fingerprints of the defendant against whom such judgment of guilty was rendered.~~

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



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And the title is amended as follows:

Delete lines 3 - 28

and insert:

812.014, F.S.; requiring that judgments of guilty or not guilty of petit theft be in a written record or an electronic record with the judge's electronic signature, recorded by the clerk of the circuit court; conforming provisions to changes made by the act; amending s. 921.241, F.S.; defining terms; requiring that judgments of guilty or not guilty of a felony be in a written record or an electronic record with the judge's electronic signature, recorded by the clerk of the circuit court; requiring that for an electronic judgment of guilty, the fingerprints of a defendant be electronically captured and a certain certification be included; requiring the judge to place his or her electronic signature on the certificate; conforming provisions to changes made by the act; amending s. 921.242, F.S.; requiring that specified judgments of guilty be in a written record or an electronic record with the judge's electronic signature, recorded by the clerk of the circuit court; conforming provisions to changes made by the act; providing an effective date.

By Senator Baxley

12-01205-18

20181230__

A bill to be entitled

An act relating to criminal judgments; amending s. 921.241, F.S.; requiring that all judgments of guilty and not guilty for felonies and misdemeanors be documented in a written or electronic record; requiring a judge to cause to be gathered, either manually or electronically, in his or her presence in open court the fingerprints and social security number of a defendant found guilty of a felony or a misdemeanor; providing that a judgment of guilty is admissible as evidence under certain circumstances; authorizing a judge to electronically sign an electronic judgment of guilty or not guilty and a certificate documenting the electronically gathered fingerprints; defining the term "electronic signature"; repealing s. 921.242, F.S.; deleting provisions requiring judgments of guilt for certain violations to be in writing, signed by a judge, and recorded by a clerk of the circuit court; deleting a provision requiring the gathering of a defendant's fingerprints and the judge's accompanying certification; deleting a provision providing for the admissibility of the judgment of guilt under certain circumstances; reenacting s. 775.084(3)(a), (b), and (c), F.S., relating to fingerprinting a defendant for the purpose of identification, to incorporate the amendment made to s. 921.241, F.S., in references thereto; providing an effective date.

Page 1 of 7

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

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

Section 1. Section 921.241, Florida Statutes, is amended to read:

921.241 Criminal Felony judgments; fingerprints and social security number required in record.—

(1) ~~At the time a defendant is found guilty of a felony, the judge shall cause the defendant's fingerprints to be taken.~~

~~(2) A~~ Every judgment of guilty or not guilty of a felony or misdemeanor shall be in a written or an electronic record ~~writing~~, signed by the judge, and recorded by the clerk of the court.

(2) At the time a defendant is found guilty of a felony or misdemeanor, the judge shall cause all of the following to occur ~~to be affixed to every written judgment of guilty of a felony,~~ in open court, in the presence of such judge, and at the time the judgment is rendered:—

(a) The fingerprints of the defendant shall be taken manually or electronically and against whom such judgment is rendered. Such fingerprints shall be attached ~~affixed~~ beneath the judge's signature on the to such judgment. Beneath such fingerprints shall be attached ~~appended~~ a certificate to the following effect:

"I hereby certify that the above and foregoing fingerprints on this judgment are the fingerprints of the defendant, ..., and that they were placed thereon by said defendant in my presence, in open court, this the day of ..., ... (year)...."

Page 2 of 7

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

12-01205-18

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Such certificate shall be signed by the judge, whose signature thereto shall be followed by the word "Judge."

(b) The social security number of the defendant shall be taken and indicated on the judgment. If the defendant is unable or unwilling to provide his or her social security number, the reason for its absence shall be indicated on the judgment.

(3) ~~A Any such written~~ judgment of guilty ~~of a felony~~, or a certified copy thereof, shall be admissible in evidence in the several courts of this state as prima facie evidence that the fingerprints appearing thereon and certified by the judge as aforesaid are the fingerprints of the defendant against whom such judgment of guilty ~~of a felony~~ was rendered.

(4) A judge may electronically sign:

(a) An electronic judgment of guilty or not guilty under subsection (1) if the judge determines, after examination of the electronic record, that such record accurately reflects the judgment entered by the court.

(b) The certificate required under paragraph (2)(a) if the judge witnesses the electronic taking of the defendant's fingerprints and certifies that such fingerprints have been attached to the judgment by reliable electronic means.

(5) As used in this section, the term "electronic signature" has the same meaning as in s. 933.40 ~~At the time the defendant's fingerprints are taken, the judge shall also cause the defendant's social security number to be taken. The defendant's social security number shall be affixed to every written judgment of guilty of a felony, in open court, in the presence of such judge, and at the time the judgment is rendered. If the defendant is unable or unwilling to provide his~~

12-01205-18

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~~or her social security number, the reason for its absence shall be indicated on the written judgment.~~

Section 2. Section 921.242, Florida Statutes, is repealed.

Section 3. For the purpose of incorporating the amendment made by this act to section 921.241, Florida Statutes, in a reference thereto, paragraphs (a), (b), and (c) of subsection (3) of section 775.084, Florida Statutes, are reenacted to read:
775.084 Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms.—

(3)(a) In a separate proceeding, the court shall determine if the defendant is a habitual felony offender or a habitual violent felony offender. The procedure shall be as follows:

1. The court shall obtain and consider a presentence investigation prior to the imposition of a sentence as a habitual felony offender or a habitual violent felony offender.

2. Written notice shall be served on the defendant and the defendant's attorney a sufficient time prior to the entry of a plea or prior to the imposition of sentence in order to allow the preparation of a submission on behalf of the defendant.

3. Except as provided in subparagraph 1., all evidence presented shall be presented in open court with full rights of confrontation, cross-examination, and representation by counsel.

4. Each of the findings required as the basis for such sentence shall be found to exist by a preponderance of the evidence and shall be appealable to the extent normally applicable to similar findings.

5. For the purpose of identification of a habitual felony

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offender or a habitual violent felony offender, the court shall fingerprint the defendant pursuant to s. 921.241.

6. For an offense committed on or after October 1, 1995, if the state attorney pursues a habitual felony offender sanction or a habitual violent felony offender sanction against the defendant and the court, in a separate proceeding pursuant to this paragraph, determines that the defendant meets the criteria under subsection (1) for imposing such sanction, the court must sentence the defendant as a habitual felony offender or a habitual violent felony offender, subject to imprisonment pursuant to this section unless the court finds that such sentence is not necessary for the protection of the public. If the court finds that it is not necessary for the protection of the public to sentence the defendant as a habitual felony offender or a habitual violent felony offender, the court shall provide written reasons; a written transcript of orally stated reasons is permissible, if filed by the court within 7 days after the date of sentencing. Each month, the court shall submit to the Office of Economic and Demographic Research of the Legislature the written reasons or transcripts in each case in which the court determines not to sentence a defendant as a habitual felony offender or a habitual violent felony offender as provided in this subparagraph.

(b) In a separate proceeding, the court shall determine if the defendant is a three-time violent felony offender. The procedure shall be as follows:

1. The court shall obtain and consider a presentence investigation prior to the imposition of a sentence as a three-time violent felony offender.

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2. Written notice shall be served on the defendant and the defendant's attorney a sufficient time prior to the entry of a plea or prior to the imposition of sentence in order to allow the preparation of a submission on behalf of the defendant.

3. Except as provided in subparagraph 1., all evidence presented shall be presented in open court with full rights of confrontation, cross-examination, and representation by counsel.

4. Each of the findings required as the basis for such sentence shall be found to exist by a preponderance of the evidence and shall be appealable to the extent normally applicable to similar findings.

5. For the purpose of identification of a three-time violent felony offender, the court shall fingerprint the defendant pursuant to s. 921.241.

6. For an offense committed on or after the effective date of this act, if the state attorney pursues a three-time violent felony offender sanction against the defendant and the court, in a separate proceeding pursuant to this paragraph, determines that the defendant meets the criteria under subsection (1) for imposing such sanction, the court must sentence the defendant as a three-time violent felony offender, subject to imprisonment pursuant to this section as provided in paragraph (4)(c).

(c) In a separate proceeding, the court shall determine whether the defendant is a violent career criminal with respect to a primary offense committed on or after October 1, 1995. The procedure shall be as follows:

1. Written notice shall be served on the defendant and the defendant's attorney a sufficient time prior to the entry of a plea or prior to the imposition of sentence in order to allow

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the preparation of a submission on behalf of the defendant.

2. All evidence presented shall be presented in open court with full rights of confrontation, cross-examination, and representation by counsel.

3. Each of the findings required as the basis for such sentence shall be found to exist by a preponderance of the evidence and shall be appealable only as provided in paragraph (d).

4. For the purpose of identification, the court shall fingerprint the defendant pursuant to s. 921.241.

5. For an offense committed on or after October 1, 1995, if the state attorney pursues a violent career criminal sanction against the defendant and the court, in a separate proceeding pursuant to this paragraph, determines that the defendant meets the criteria under subsection (1) for imposing such sanction, the court must sentence the defendant as a violent career criminal, subject to imprisonment pursuant to this section unless the court finds that such sentence is not necessary for the protection of the public. If the court finds that it is not necessary for the protection of the public to sentence the defendant as a violent career criminal, the court shall provide written reasons; a written transcript of orally stated reasons is permissible, if filed by the court within 7 days after the date of sentencing. Each month, the court shall submit to the Office of Economic and Demographic Research of the Legislature the written reasons or transcripts in each case in which the court determines not to sentence a defendant as a violent career criminal as provided in this subparagraph.

Section 4. 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)

2/6/18

Meeting Date

1230

Bill Number (if applicable)

135342

Amendment Barcode (if applicable)

Topic Criminal Judgments

Name Kristina Wiggins

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Address 103 N. Gadsden St.

Street

Tallahassee

City

Florida

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32301

Zip

Phone 850-488-6850

Email kwiggins@flpda.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.

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

S-001 (10/14/14)

Duplicate

THE FLORIDA SENATE

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.6.18

Meeting Date

1230

Bill Number (if applicable)

Topic Criminal Judgments

Amendment Barcode (if applicable)

Name Jennifer C. Pritt

Job Title Assistant Commissioner

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City

State

Zip

Email jennifer.pritt@fdle.state.fl.us

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FDLE

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)

APPEARANCE RECORD

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

2/6/18

Meeting Date

1230

Bill Number (if applicable)

Topic Criminal Judgments

Amendment Barcode (if applicable)

Name Sarah Naf Bieh1

Job Title Chief of Legislative Affairs, OSCA

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Tallahassee FL 32399
City State Zip

Email nafs@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)

2.6.18

Meeting Date

1230

Bill Number (if applicable)

Topic Criminal Judgements

Amendment Barcode (if applicable)

Name Barney Bishop

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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

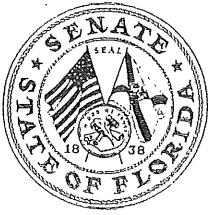
Appearing at request of Chair: ☐ Yes ☒ No

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)



SENATOR DENNIS BAXLEY
12th District

THE FLORIDA SENATE

COMMITTEES:

Governmental Oversight and Accountability, *Chair*
Criminal Justice, *Vice Chair*
Appropriations
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Health and
Human Services
Agriculture
Transportation

SELECT COMMITTEE:

Joint Select Committee on Collective Bargaining

JOINT COMMITTEE:

Joint Legislative Auditing Committee

January 11, 2018

The Honorable Senator Randolph Bracy
213 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399

Dear Senator Bracy,

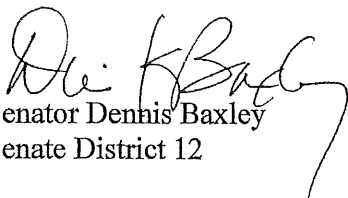
I respectfully request that you place SB 1230 Criminal Judgments on your next available agenda.

Current law requires a judgment to be a writing signed by a judge and, if the case is a felony or a misdemeanor under ch. 796, F.S., fingerprints to be affixed below the judge's signature on the written judgment. For the proposed pilot program to go forward, current law needs to be revised to permit electronic judgments and fingerprints. The Fifth, Seventh, and Nineteenth judicial circuits are applying for grant funding for a pilot program in which judgments and fingerprints would be entered electronically. Not all counties within the circuits are expected to participate.

This authorizes the use, but does not require, electronic judgments and fingerprints; thus, eliminating the necessity for written judgments. Applies to all misdemeanors and authorizes judges to electronically sign judgments.

I appreciate your favorable consideration.

Onward & Upward,


Senator Dennis Baxley
Senate District 12

DKB/dd

cc: Lauren Jones, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012

Email: baxley.dennis@flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

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 1256

INTRODUCER: Criminal Justice Committee and Senator Brandes

SUBJECT: Search of the Content, Information, and Communications of Cellular Phones, Portable Electronic Communication Devices, and Microphone-enabled Household Devices

DATE: February 7, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1256 amends Florida law to address privacy issues related to the use of communication technology. The bill amends ch. 934, F.S., by:

- Providing legislative intent;
- Defining the terms “portable electronic communication device” and “microphone-enabled household device”;
- Changing the current definition of oral communication to include the use of a microphone-enabled household device;
- Amending the definition of a tracking device;
- Requiring a warrant for the installation and use of a tracking device;
- Setting forth time constraints under which a tracking device must be used and when notice must be provided to the person tracked;
- Allowing for emergency tracking under certain circumstances; and
- Prohibiting the intentional, unlawful access, without authorization, to a cellular phone, portable electronic communication device, or microphone-enabled household device when a person obtains wire, oral, or electronic communications stored within the device.

The bill is effective July 1, 2018.

II. Present Situation:

Fourth Amendment

The Fourth Amendment of the United States Constitution guarantees:

- 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 without probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.¹

Under Fourth Amendment jurisprudence, a search occurs whenever the government intrudes upon an area in which a person has a reasonable expectation of privacy.² A warrantless search is generally per se unreasonable,³ unless an exception to the warrant requirement applies.⁴

The Florida Constitution similarly protects the people against unreasonable searches and seizures, and that right is construed in conformity with the Fourth Amendment of the U.S. Constitution.⁵ Both the Florida and federal constitutions law require a warrant to be supported by probable cause, as established by oath or affirmation, and to particularly describe the place to be searched and items or people to be seized.

Advancing technology has presented law enforcement with new means of investigation and surveillance, and the courts with new questions about the Fourth Amendment implications of this technology.

Location Tracking

Cell phones, smartphones, laptops, and tablets are all mobile devices that can be located whenever they are turned on.⁶ There are essentially three methods of locating a mobile device:

- *Network-based location* occurs when a mobile device communicates with nearby cell sites. The mobile device communicates through a process called registration even when the device is idle. The service provider of the mobile device⁷ can also initiate the registration of a device. This information is stored in provider databases in order to route calls. The smaller the cell site, the more precise the location data.
- *Handset-based location* uses information transmitted by the device itself, such as global positioning system (GPS) data.
- *Third-party methods* facilitate real-time tracking of a mobile signal directly by using technology that mimics a wireless carrier's network.⁸

¹ U.S. CONST. AMEND. IV.

² *Katz v. United States*, 389 U.S. 347 (1967).

³ *United States v. Harrison*, 689 F.3d 301, 306 (3d Cir. 2012).

⁴ Examples of exceptions to the warrant requirement include exigent circumstances, searches of motor vehicles, and searches incident to arrest.

⁵ Fla. Const. Art. 1, s. 12.

⁶ Electronic Privacy Information Center, *Locational Privacy Issues*, available at <https://epic.org/privacy/location/> (last visited January 30, 2018).

⁷ A service provider is the company that provides the internet to the mobile device. *Id.*

⁸ *Id.*

Mobile Tracking Devices

Mobile tracking devices can also be used to track a person's location. This broad category of devices includes radio frequency (RF)-enabled tracking devices (commonly referred to as "beepers"), satellite-based tracking devices, and cell-site tracking devices. Satellite-based tracking devices are commonly referred to as (GPS) devices.⁹

Florida law defines a "tracking device" as an electronic or mechanical device which permits the tracking of movement of a person or object.¹⁰ Section 934.42, F.S., requires a law enforcement officer to apply to a judge for a *court order* approving the "installation and use of a mobile tracking device" and if the court grants the order, the officer installs and uses the device without the need for assistance. The application for such an order must include:

- A statement of the identity of the applicant and the identity of the law enforcement agency conducting the investigation.
- A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the investigating agency.
- A statement of the offense to which the information likely to be obtained relates.
- A statement whether it may be necessary to use and monitor the mobile tracking device outside the jurisdiction of the court from which authorization is being sought.¹¹

The court then must review the application and if the court finds that the above requirements are met, the court will order the authorization of the installation and use of a mobile tracking device. The court is not allowed to require greater specificity or additional information then listed above.¹²

The installation and the monitoring of a mobile tracking device are governed by the standards established by the United State Supreme Court.¹³

Cellular-Site Location Data

There are currently 327.6 million cell phones in use in the United States and more than the 315 million people living in the United States.¹⁴ As the cell phone travels, it connects to various cell phone towers, which means an electronic record of its location is created. The location record is held by the telecommunications company that services the device.¹⁵

Cellular-site location information (CSLI) is information that is created when a cell phone connects and identifies its location to a nearby cell tower that would process a phone call or text message made by the cell phone. CSLI can be "historic," which is the record of the phone's past

⁹ *Where We Are with Location Tracking: A look at the Current Technology and the Implications on Fourth Amendment Jurisprudence*, Ian Herbert, Issue 16.2, (Fall 2011) available at http://www.bjcl.org/articles/16_2%20herbert_formatted.pdf (last visited February 3, 2018).

¹⁰ Section 934.42(6), F.S.

¹¹ Section 934.42(2), F.S.

¹² Section 934.42(3) and (4), F.S.

¹³ Section 934.42(5), F.S.

¹⁴ Center for Democracy and Technology, *Location Data: The More They Know*, Mana Azarmi, November 27, 2017, available at <https://cdt.org/blog/location-data-the-more-they-know/> (last visited January 31, 2016).

¹⁵ *Id.*

movements, or it can be “real-time” or prospective, which is the information that reveals the phone’s current location.¹⁶ Historic CSLI enables law enforcement to piece together past events by connecting a suspect to the location of a past crime.¹⁷ Prospective location information helps law enforcement trace the current whereabouts of a suspect.¹⁸

GPS Location Data

A cell phone’s GPS capabilities allow it to be tracked to within 5 to 10 feet.¹⁹ GPS provides users with positioning, navigation, and timing services based on data available from satellites orbiting the earth.²⁰ If a mobile device is equipped with GPS technology, significantly more precise location information is then sent from the handset to the carrier.²¹

Microphone-Enabled Household Devices

Smart speakers are devices that use voice-activated artificial intelligence technology to respond to commands. They are designed as virtual home assistants and intended to be used in as many different ways as possible.²²

Although the term “always on” is often used to describe smart speakers, this is not entirely accurate. Speech activated devices use the power of energy efficient processors to remain in an inert state of passive processing, or “listening,” for the “wake words.” The device buffers and re-records locally, without transmitting or storing any information, until it detects the word or phrase that triggers the device to begin actively recording and transmitting audio outside of the device to the service provider.²³

Chapter 934, F.S., Security of Communications Definitions

Florida law governing security of communications is found in ch. 934, F.S. Among the subjects covered in the chapter are procedures related to, and limitations upon, the government’s use of

¹⁶ *Id.*

¹⁷ National Association of Criminal Defense Lawyers, *Cell Phone Location Tracking*, available at https://www.law.berkeley.edu/wp-content/uploads/2015/04/2016-06-07_Cell-Tracking-Primer_Final.pdf (last visited January 30, 2018).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ GPS.gov, *GPS Location Privacy*, last modified August 22, 2017, available at <https://www.gps.gov/policy/privacy> (last visited January 30, 2018).

²¹ EE Times, *How does a GPS tracking system work?*, Patrick Bertagna, October 26, 2010 available at https://www.eetimes.com/document.asp?doc_id=1278363&page_number=2 (last visited January 30, 2018). Note that cell phone service providers were required by the Federal Communications Commission in 1996 to begin providing location data to 911 operators for a program called Enhanced 911 (E911) which ultimately required a high level of handset location accuracy. As a result, many cell service providers began putting GPS chips inside the handsets. See Herbert, *Where We are with Location Tracking: A Look at the Current Technology and the Implications on Fourth Amendment Jurisprudence*, Berkeley Journal of Criminal Law, Volume 16, Issue 2, (2011).

²² NextAdvisor, *Smart Speakers and Voice Recognition: Is Your Privacy at Risk?*, Jocelyn Baird, April 4, 2017, available at <https://www.nextadvisor.com/blog/2017/04/04/smart-speakers-and-voice-recognition-is-your-privacy-at-risk/> (last visited February 1, 2018).

²³ *Id.*; See also The Future of Privacy Forum, *Always On: Privacy Implications Of Microphone-Enabled Devices*, Stacey Gray, April 2016, available at https://fpf.org/wp-content/uploads/2016/04/FPF_Always_On_WP.pdf (last visited February 1, 2018).

wiretapping or interception, and tracking devices. This chapter closely mirrors the federal statutory law found in the Electronic Communications Privacy Act of 1986.²⁴

Definitions provided in the chapter that are pertinent to the bill are as follows:

- “Wire communication” means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception including the use of such connection in a switching station furnished or operated by any person engaged in providing or operating such facilities for the transmission of intrastate, interstate, or foreign communications or communications affecting intrastate, interstate, or foreign commerce.²⁵
- “Electronic communication” means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects intrastate, interstate, or foreign commerce, but does not include:
 - Any wire or oral communication;
 - Any communication made through a tone paging device;
 - Any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object; or
 - Electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.²⁶
- “Oral communication” means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation does not mean any public oral communication uttered at a public meeting or any electronic communication.²⁷
- “Intercept” means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.²⁸
- “Contents” when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication.²⁹
- “Electronic, mechanical, or other device” means any device or apparatus which can be used to intercept a wire, electronic, or oral communication other than any telephone or telegraph instrument, equipment, or facility, or any component thereof:
 - Furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or
 - Being used by a provider of wire or electronic communications service in the ordinary course of its business or by an investigative or law enforcement officer in the ordinary course of her or his duties.³⁰
- “Investigative or law enforcement officer” means any officer of the State of Florida or political subdivision thereof, of the United States, or of any other state or political

²⁴ 18 U.S.C. 2510-3127.

²⁵ Section 934.02(1), F.S.

²⁶ Section 934.02(12), F.S.

²⁷ Section 934.02(2), F.S.

²⁸ Section 934.02(3), F.S.

²⁹ Section 934.02(7), F.S.

³⁰ Section 934.02 (4), F.S.

subdivision thereof, who is empowered by law to conduct on behalf of the Government investigations of, or to make arrests for, offenses enumerated in this chapter or similar federal offenses, any attorney authorized by law to prosecute or participate in the prosecution of such offenses, or any other attorney representing the State of Florida or political subdivision thereof in any civil, regulatory, disciplinary, or forfeiture action relating to, based upon, or derived from such offenses.³¹

Stored Communications

Florida law also prohibits accessing stored communications. It is unlawful for a person to:

- Intentionally access a facility through which an electronic communication service is provided; or
- Intentionally exceed an authorization to access; and
- Obtain, alter, or prevent authorized access to a wire or electronic communication while it is in electronic storage in such a system.³²

The penalties for this offense vary based on the specific intent and the number of offenses.³³ It is a first degree misdemeanor³⁴ if the above described offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain.³⁵ Any subsequent offense with this intent is a third degree felony.³⁶

If the person did not have the above described intent then the above described offense is a second degree misdemeanor.³⁷

III. Effect of Proposed Changes:

Legislative Findings for Chapter 934, F.S. (Section 1)

The bill amends s. 934.01, F.S., by adding the term “electronic” to the current terminology of “wire and oral” communications in the legislative findings.

The bill also creates new legislative findings:

- Recognizing a subjective and objectively reasonable expectation of privacy in precise location data. As such, the law enforcement collection of the precise location of a person, cellular phone, or portable electronic communication device³⁸ without the consent of the device owner should be allowed only when authorized by a warrant issued by a court and should remain under the control and supervision of the authorizing court.

³¹ Section 934.02(6), F.S.

³² Section 934.21(1), F.S.

³³ See s. 934.21(2), F.S.

³⁴ A first degree misdemeanor is punishable by up to one year in jail and up to a \$1,000 fine. Sections 775.082 and 775.083, F.S.

³⁵ Section 934.21(2), F.S.

³⁶ A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

³⁷ A second degree misdemeanor is punishable by up to 60 days in county jail and up to a \$500 fine. Sections 775.082 and 775.083, F.S.

³⁸ The term “portable electronic communication device” is defined in Section 3 of the bill.

- Recognizing that the use of portable electronic devices is growing at a rapidly increasing rate. These devices can store, and encourage the storage of, an almost limitless amount of personal and private information. Further recognizing that these devices are commonly used to access personal and business information and other data stored in computers and servers that can be located anywhere in the world. Recognizing a person who uses a portable electronic device has a reasonable and justifiable expectation of privacy in the information contained in the portable electronic device.
- Recognizing that microphone-enabled household devices³⁹ often contain microphones that listen for and respond to environmental triggers. Further recognizing that these devices are generally connected to and communicate through the Internet, resulting in the storage of and accessibility of daily household information in a device itself or in a remote computing service. Finding that an individual should not have to choose between using household technological enhancements and conveniences or preserving the right to privacy in one's home.

Chapter 934, F.S., Security of Communications Definitions (Section 2)

The bill amends s. 934.02, F.S., by amending a current definition, and creating new definitions:

- The current definition of “oral communication” is amended to include the use of a *microphone-enabled device*.
- The definition of “microphone-enabled household device” is created and is defined as a device, sensor, or other physical object within a residence:
 - Capable of connecting to the Internet, directly or indirectly, or to another connected device;
 - Capable of creating, receiving, accessing, processing, or storing electronic data or communications;
 - Which communicates with, by any means, another device, entity, or individual; and
 - Which contains a microphone designed to listen for and respond to environmental cues.
- The definition of “portable electronic communication device” is created and is defined as an object capable of being easily transported or conveyed by a person which is capable of creating, receiving, accessing, or storing electronic data or communications and which communicates with, by any means, another device, entity, or individual.

Stored Communications (Section 3)

The bill creates new misdemeanor offenses by prohibiting a person who intentionally and unlawfully accesses, without authorization, a cellular phone, portable electronic communication device, or microphone-enabled household device and thereby obtains wire, oral, or electronic communications stored within them. The bill provides that the penalties for these offenses are the same as the other offenses for unlawfully accessing stored communications. These penalties also vary based on the specific intent and the number of offenses committed.

It is a first degree misdemeanor if the above described offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain. Any subsequent offense with this intent is a third degree felony.

³⁹ The term “microphone-enabled household device” is defined in Section 3 of the bill.

If the person did not have the above described intent then the above described offense is a second degree misdemeanor.

Location Tracking (Section 4)

The bill expands the scope of s. 934.42, F.S., to include the cellular-site location data, precise global positioning satellite location data, and historical global positioning satellite location data.

Specifically, s. 934.42, F.S., amends the definition for a “tracking device” to create a definition of a “mobile tracking device” or “tracking device.” A “mobile tracking device” or “tracking device” is defined to mean any electronic or mechanical device, including a cellular phone or a portable electronic communication device, which allows the tracking of the movement of a person or object and may be used to access cellular-site location data, precise global positioning satellite location data, and historical global positioning satellite data.

The bill also amends s. 934.42, F.S., to require a *warrant* rather than a *court order* for the law enforcement officer to install and use a mobile tracking device or to acquire cellular-site location data, precise global positioning satellite location data, or historical global positioning satellite data.

The bill requires that the application for a *warrant* must set forth a reasonable length of time that the mobile tracking device may be used. The time may not exceed 45 days after the date the warrant was issued. The court may, for good cause, grant one or more extensions for a reasonable period not to exceed 45 days each.

The bill requires the court to find probable cause in the required application statements in granting of a warrant for the use of a mobile tracking device or tracking device. The warrant must also require the officer to complete any authorized installation within a specified timeframe after the warrant is issued, to be no longer than 10 days. Within 10 days after the use of the tracking device has ended, the officer executing the warrant must return the warrant to the judge.

Also, within 10 days after the use of the tracking device has ended, the officer executing the warrant must serve a copy of it on the person who was tracked or whose property was tracked. Upon request by the law enforcement agency, the court may delay notice for a period of 90 days.

The bill requires that, in addition to the United States Supreme Court, standards established by Florida courts apply to the installation, use, or monitoring of any mobile tracking device as authorized by s. 934.42, F.S.

The bill also allows for the installation of a mobile tracking device without a warrant if an emergency exists which:

- Involves immediate danger of death or serious physical injury to any person or the danger of escape of a prisoner;
- Requires the installation or use of a mobile tracking device before a warrant authorizing such installation or use can, with due diligence, be obtained; and

- There are grounds upon which a warrant could be issued to authorize such installation or use.⁴⁰

Within 48 hours after the installation or use has occurred or begins to occur, a warrant approving the installation or use must be issued in accordance with s. 934.42, F.S. If an application for the warrant is denied, or when 48 hours have lapsed since the installation or use of the mobile tracking device began, whichever is earlier a law enforcement officer must immediately terminate the installation or use of a mobile tracking device.

The bill is effective July 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 Florida Department of Law Enforcement does not expect any fiscal impact from this bill.⁴¹

VI. Technical Deficiencies:

None.

⁴⁰ This exception is similar to that found in s. 934.09(7), F.S.

⁴¹ The Florida Department of Law Enforcement, *2018 Legislative Bill Analysis*, January 4, 2018 (on file with the Senate Committee on Criminal Justice).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 934.01, 934.02, 934.21, and 934.42.

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 6, 2018:

The committee substitute:

- Defines the terms “portable electronic communication device” and “microphone-enabled household device”;
- Changes the current definition of oral communication to include the use of a microphone-enabled household device;
- Amends the definition of a tracking device;
- Requires a warrant for the installation and use of a tracking device;
- Sets forth time constraints under which a tracking device must be used and when notice must be provided to the person tracked;
- Allows for emergency tracking under certain circumstances;
- Removes the requirement of a warrant instead of a court order for the interception of a wire, oral, or electronic communication; and
- Removes the misdemeanor the bill created for a person intentionally and unlawfully accessing a cell phone, portable electronic communication device, or microphone-enabled household device.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2018	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 934.01, Florida Statutes, is amended to
read:

934.01 Legislative findings.—On the basis of its own
investigations and of published studies, the Legislature makes
the following findings:

(1) Wire communications are normally conducted through the



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11 use of facilities which form part of an intrastate network. The
12 same facilities are used for interstate and intrastate
13 communications.

14 (2) In order to protect effectively the privacy of wire,
15 ~~and~~ oral, and electronic communications, to protect the
16 integrity of court and administrative proceedings, and to
17 prevent the obstruction of intrastate commerce, it is necessary
18 for the Legislature to define the circumstances and conditions
19 under which the interception of wire, ~~and~~ oral, and electronic
20 communications may be authorized and to prohibit any
21 unauthorized interception of such communications and the use of
22 the contents thereof in evidence in courts and administrative
23 proceedings.

24 (3) Organized criminals make extensive use of wire, ~~and~~
25 oral, and electronic communications in their criminal
26 activities. The interception of such communications to obtain
27 evidence of the commission of crimes or to prevent their
28 commission is an indispensable aid to law enforcement and the
29 administration of justice.

30 (4) To safeguard the privacy of innocent persons, the
31 interception of wire, ~~or~~ oral, or electronic communications when
32 none of the parties to the communication has consented to the
33 interception should be allowed only when authorized by a court
34 of competent jurisdiction and should remain under the control
35 and supervision of the authorizing court. Interception of wire,
36 ~~and~~ oral, and electronic communications should further be
37 limited to certain major types of offenses and specific
38 categories of crime with assurance that the interception is
39 justified and that the information obtained thereby will not be



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misused.

(5) To safeguard the privacy of innocent persons, the Legislature recognizes that the subjective expectation of privacy in precision location data that society is now prepared to accept is objectively reasonable. As such, the law enforcement collection of the precise location of a person, cellular phone, or portable electronic communication device without the consent of the person or owner of the cellular phone or portable electronic communication device should be allowed only when authorized by a warrant issued by a court of competent jurisdiction and should remain under the control and supervision of the authorizing court.

(6) The Legislature recognizes that the use of portable electronic communication devices is growing at a rapidly increasing rate. These devices can store, and encourage the storing of, an almost limitless amount of personal and private information. Often linked to the Internet, these devices are commonly used to access personal and business information and databases in computers and servers that can be located anywhere in the world. The user of a portable electronic communication device has a reasonable and justifiable expectation of privacy in the information that these devices contain.

(7) The Legislature recognizes that the use of household electronic devices, including microphone-enabled household devices, is growing at a rapidly increasing rate. These devices often contain microphones that listen for and respond to environmental triggers. These household devices are generally connected to and communicate through the Internet resulting in the storage of and accessibility to daily household information



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in a device itself or in a remote computing service. Persons should not have to choose between using household technological enhancements and conveniences or preserving the right to privacy in one's home.

Section 2. Subsection (2) of section 934.02, Florida Statutes, is amended, and subsections (27) and (28) are added to that section, to read:

934.02 Definitions.—As used in this chapter:

(2) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, including the use of a microphone-enabled household device, and does not mean any public oral communication uttered at a public meeting or any electronic communication.

(27) "Microphone-enabled household device" means a device, sensor, or other physical object within a residence:

(a) Capable of connecting to the Internet, directly or indirectly, or to another connected device;

(b) Capable of creating, receiving, accessing, processing, or storing electronic data or communications;

(c) That communicates with, by any means, another entity or individual; and

(d) That contains a microphone designed to listen for and respond to environmental cues.

(28) "Portable electronic communication device" means an object capable of being easily transported or conveyed by a person which is capable of creating, receiving, accessing, or storing electronic data or communications and that communicates



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with, by any means, another device, entity, or individual.

Section 3. Section 934.21, Florida Statutes, is amended to read:

934.21 Unlawful access to stored communications; penalties.—

(1) Except as provided in subsection (4) ~~(3)~~, whoever:

(a) Intentionally accesses without authorization a facility through which an electronic communication service is provided, or

(b) Intentionally exceeds an authorization to access such facility,

and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system shall be punished as provided in subsection (3) ~~(2)~~.

(2) Except as provided in subsection (4), whoever intentionally and unlawfully accesses without authorization a cellular phone, portable electronic communication device, or microphone-enabled household device and thereby obtains wire, oral, or electronic communications stored within the cellular phone, portable electronic communication device, or microphone-enabled household device shall be punished as provided in subsection (3).

(3) ~~(2)~~ The punishment for an offense under subsection (1) or subsection (2) is as follows:

(a) If the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain, the person ~~is~~:



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1. In the case of a first offense under this subsection,
commits ~~guilty of~~ a misdemeanor of the first degree, punishable
as provided in s. 775.082, s. 775.083, or s. 934.41.

2. In the case of any subsequent offense under this
subsection, commits ~~guilty of~~ a felony of the third degree,
punishable as provided in s. 775.082, s. 775.083, s. 775.084, or
s. 934.41.

(b) In any other case, the person commits ~~is guilty of~~ a
misdemeanor of the second degree, punishable as provided in s.
775.082 or s. 775.083.

(4)(3) Subsections ~~subsection~~ (1) and (2) do ~~does~~ not apply
with respect to conduct authorized:

(a) By the person or entity providing a wire, oral, or
electronic communications service, including through cellular
phones, portable electronic communication devices, or
microphone-enabled household devices;

(b) By a user of a wire, oral, or electronic communications
service, including through cellular phones, portable electronic
communication devices, or microphone-enabled household devices,
with respect to a communication of or intended for that user; ~~or~~

(c) In s. 934.09, s. 934.23, or s. 934.24; or

(d) For accessing for a legitimate business purpose
information that is not personally identifiable or that has been
collected in a way that prevents identification of the user of
the device.

Section 4. Section 934.42, Florida Statutes, is amended to
read:

934.42 Mobile tracking device and location tracking
authorization.—



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(1) An investigative or law enforcement officer may make application to a judge of competent jurisdiction for a warrant ~~an order~~ authorizing or approving the installation and use of a mobile tracking device or the acquisition of cellular-site location data, precise global positioning satellite location data, or historical global positioning satellite location data.

(2) An application under subsection (1) ~~of this section~~ must include:

(a) A statement of the identity of the applicant and the identity of the law enforcement agency conducting the investigation.

(b) A statement setting forth a reasonable period of time that the device may be used or the location data may be obtained. The time must not exceed 45 days from the date the warrant was issued. The court may, for good cause, grant one or more extensions for a reasonable period of time not to exceed 45 days each ~~certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the investigating agency.~~

(c) A statement of the offense to which the information likely to be obtained relates.

(d) A statement whether it may be necessary to use and monitor the mobile tracking device outside the jurisdiction of the court from which authorization is being sought.

(3) Upon application made as provided under subsection (2), the court, if it finds probable cause, ~~that the certification and the~~ statements required by subsection (2) have been made in the application, shall grant a warrant ~~enter an ex parte order~~ authorizing the installation and use of a mobile tracking



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device. Such warrant ~~order~~ may authorize the use of the device within the jurisdiction of the court and outside that jurisdiction but within the State of Florida if the device is installed within the jurisdiction of the court. The warrant must command the officer to complete any installation authorized by the warrant within a specified period of time not to exceed 10 calendar days.

(4) A court may not require greater specificity or additional information beyond that which is required by law and this section as a requisite for issuing a warrant ~~an order~~.

(5) Within 10 days after the time period specified in paragraph (2) (b) has ended, the officer executing a warrant must return the warrant to the issuing judge. The officer may do so by reliable electronic means.

(6) Within 10 days after the time period specified in paragraph (2) (b) has ended, the officer executing a warrant must serve a copy of the warrant on the person who, or whose property, was tracked. Service may be accomplished by delivering a copy to the person who, or whose property, was tracked or by leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location and by mailing a copy to the person's last known address. Upon request of the law enforcement agency, the court may delay notice for a period of 90 days as provided in s. 934.25.

(7) ~~(5)~~ The standards established by Florida courts and the United States Supreme Court for the installation, use, or ~~and~~ monitoring of mobile tracking devices shall apply to the installation, use, or monitoring ~~and use~~ of any device as



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authorized by this section.

(8)~~(6)~~ As used in this section, the term "mobile tracking device" or a "tracking device" means an electronic or mechanical device, including a cellular phone or a portable electronic communication device, which permits the tracking of the movement of a person or object and may be used to access cellular-site location data, precise global positioning satellite location data, or historical global positioning satellite location data.

(9) (a) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer specially designated by the Governor, the Attorney General, the statewide prosecutor, or a state attorney acting pursuant to this chapter who reasonably determines that:

1. An emergency exists which:

a. Involves immediate danger of death or serious physical injury to any person or the danger of escape of a prisoner; and

b. Requires the installation or use of a mobile tracking device before a warrant authorizing such installation or use can, with due diligence, be obtained; and

2. There are grounds upon which a warrant could be issued under this chapter to authorize such installation or use,

may install or use a mobile tracking device if, within 48 hours after the installation or use has occurred or begins to occur, a warrant approving the installation or use is issued in accordance with this section.

(b) In the absence of an authorizing warrant, such installation or use shall immediately terminate when the information sought is obtained, when the application for the



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warrant is denied, or when 48 hours have lapsed since the
installation or use of the mobile tracking device began,
whichever is earlier.

(c) The knowing installation or use by any investigative or
law enforcement officer of a mobile tracking device pursuant to
paragraph (a) without application for the authorizing warrant
within 48 hours after the installation or use begins constitutes
a violation of this section.

Section 5. This act shall take effect July 1, 2018.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to the search of the content,
information, and communications of cellular phones,
portable electronic communication devices, and
microphone-enabled household devices; amending s.
934.01, F.S.; providing legislative findings; amending
s. 934.02, F.S.; providing definitions; amending s.
934.21, F.S.; conforming provisions to changes made by
the act; prohibiting unlawful access to communications
stored in specified devices; providing penalties;
amending s. 934.42, F.S.; requiring that law
enforcement obtain a warrant to acquire certain
location information; providing procedures for such
warrants; providing limited exceptions in certain
circumstances; providing an effective date.

By Senator Brandes

24-00935-18

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1 A bill to be entitled
 2 An act relating to the search of the content,
 3 information, and communications of cellular phones,
 4 portable electronic communication devices, and
 5 microphone-enabled household devices; amending s.
 6 92.605, F.S.; authorizing the obtaining in criminal
 7 cases of the contents of electronic communications
 8 only by court order or by search warrant, as provided
 9 in ch. 934, F.S., unless otherwise required by law;
 10 amending s. 934.01, F.S.; revising and providing
 11 legislative findings; reordering and amending s.
 12 934.02, F.S.; redefining the term "oral
 13 communication"; defining the terms "portable
 14 electronic communication device" and "microphone-
 15 enabled household device"; amending s. 934.03, F.S.;
 16 authorizing specified persons to provide information,
 17 facilities, or technical assistance to a person
 18 authorized by law to intercept wire, oral, or
 19 electronic communications if the person has been
 20 provided with a warrant; prohibiting specified persons
 21 from disclosing the existence of any interception of a
 22 wire, oral, or electronic communication with respect
 23 to which the person has been served with a warrant;
 24 conforming a cross-reference; amending s. 934.07,
 25 F.S.; authorizing a judge to issue, instead of
 26 granting, a warrant in conformity with specified
 27 provisions; authorizing the Department of Law
 28 Enforcement to request a law enforcement agency that
 29 provided it with certain information to join with the

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30 department in seeking a new warrant; amending s.
 31 934.08, F.S.; authorizing certain disclosure or use
 32 when an investigative or law enforcement officer
 33 intercepts wire, oral, or electronic communications
 34 relating to offenses other than those specified in a
 35 warrant; amending s. 934.09, F.S.; requiring that each
 36 application for a warrant, rather than an order,
 37 authorizing or approving the interception of wire,
 38 oral, or electronic communications be made in writing
 39 and state the applicant's authority; authorizing a
 40 judge to authorize a warrant ex parte, rather than an
 41 ex parte order, based on the application under certain
 42 circumstances; specifying requirements for warrants,
 43 rather than orders, issued under certain
 44 circumstances; deleting a time limitation that, if not
 45 met, prohibits the introduction into evidence of the
 46 contents of certain wire, oral, or electronic
 47 communications or other evidence; deleting a provision
 48 authorizing a judge to waive the time limitation if he
 49 or she makes certain findings; authorizing an
 50 aggrieved person to move to suppress the contents of
 51 certain wire, oral, or electronic communications
 52 before, as well as during, a trial, hearing, or
 53 proceeding; providing for inadmissibility of certain
 54 evidence if a certain motion is granted; authorizing a
 55 judge of competent jurisdiction to authorize
 56 interception within this state under specified
 57 circumstances; amending s. 934.10, F.S.; providing
 58 that a good faith reliance on a warrant issued under

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59 certain provisions constitutes a complete defense
 60 against specified actions; amending s. 934.21, F.S.;
 61 providing criminal penalties for the intentional and
 62 unlawful access without authorization of certain
 63 devices and obtainment of wire, oral, or electronic
 64 communications stored within those devices; conforming
 65 cross-references; reordering and amending s. 934.42,
 66 F.S.; authorizing an investigative or law enforcement
 67 officer to apply to a judge of competent jurisdiction
 68 for a warrant, rather than an order, authorizing the
 69 acquisition of cellular-site location data, precise
 70 global positioning system data, or historical global
 71 positioning satellite data; requiring an application
 72 for a warrant to include a statement of a reasonable
 73 length of time that a mobile tracking device may be
 74 used, not to exceed a specified duration; authorizing
 75 a court to grant extensions not individually exceeding
 76 a specified duration, for good cause; deleting a
 77 provision requiring a certification to be included in
 78 the application for an order; requiring a court to
 79 grant a warrant ex parte if it finds probable cause in
 80 the application and if the required statements have
 81 been made; requiring the warrant to command the
 82 officer to complete an installation authorized by the
 83 warrant within a certain timeframe; providing
 84 requirements for the return of the warrant to the
 85 judge and service of a copy of the warrant on the
 86 person who was tracked or whose property was tracked;
 87 authorizing a court to delay the notice requirement

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88 for a certain time upon request by the law enforcement
 89 agency; requiring that the standards established by
 90 Florida courts for the installation, use, or
 91 monitoring of mobile tracking devices apply to the
 92 installation, use, or monitoring of certain devices;
 93 redefining the term "tracking device"; authorizing any
 94 investigative or law enforcement officer who is
 95 specially designated by certain persons and who makes
 96 specified determinations to install or use a mobile
 97 tracking device under certain circumstances; providing
 98 requirements for the installation and use of the
 99 mobile tracking devices; providing criminal penalties;
 100 reenacting s. 934.22(2)(b), F.S., relating to
 101 voluntary disclosure of customer communications or
 102 records, to incorporate the amendments made to ss.
 103 934.03 and 934.07, F.S., in references thereto;
 104 reenacting s. 934.27(1) and (4), F.S., relating to
 105 relief, damages, and defenses for certain civil
 106 actions, to incorporate the amendments made to ss.
 107 934.09 and 934.21, F.S., in references thereto;
 108 reenacting ss. 934.23(6), 934.24(6) and (7),
 109 934.25(5), and 934.28, F.S., relating to required
 110 disclosures of customer communications or records, a
 111 subscriber or customer filing a motion for certain
 112 relief and customer notification, delayed notice, and
 113 the exclusivity of remedies and sanctions for certain
 114 violations, respectively, to incorporate the amendment
 115 made to s. 934.21, F.S., in references thereto;
 116 providing an effective date.

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

Section 1. Subsection (9) of section 92.605, Florida Statutes, is amended to read:

92.605 Production of certain records by Florida businesses and out-of-state corporations.—

(9) In any criminal case, the content of any electronic communication may be obtained under this section only by court order or by the issuance of a search warrant, as provided in chapter 934, unless otherwise required by ~~provided under~~ the Electronic Communications Privacy Act or other provision of law.

Section 2. Section 934.01, Florida Statutes, is amended to read:

934.01 Legislative findings.—On the basis of its own investigations and of published studies, the Legislature makes the following findings:

(1) Wire communications are normally conducted through the use of facilities which form part of an intrastate network. The same facilities are used for interstate and intrastate communications.

(2) In order to protect effectively the privacy of wire, ~~and oral, and electronic~~ communications, to protect the integrity of court and administrative proceedings, and to prevent the obstruction of intrastate commerce, it is necessary for the Legislature to define the circumstances and conditions under which the interception of wire, ~~and oral, and electronic~~ communications may be authorized and to prohibit any unauthorized interception of such communications and the use of

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the contents thereof in evidence in courts and administrative proceedings.

(3) Organized criminals make extensive use of wire, ~~and~~ oral, ~~and electronic~~ communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to law enforcement and the administration of justice.

(4) To safeguard the privacy of innocent persons, the interception of wire, ~~or~~ oral, or electronic communications when none of the parties to the communication has consented to the interception should be allowed only when authorized by a court of competent jurisdiction and should remain under the control and supervision of the authorizing court. Interception of wire, ~~and~~ oral, and electronic communications should further be limited to certain major types of offenses and specific categories of crime with assurance that the interception is justified and that the information obtained thereby will not be misused.

(5) To safeguard the privacy of innocent persons, the Legislature recognizes a subjective expectation of privacy in precision location data that society is now prepared to accept as objectively reasonable. As such, the collection by law enforcement of the precise location of a person, a cellular phone, or a portable electronic communication device without the consent of the person or the owner of the cellular phone or portable electronic communication device should be allowed only when authorized by a warrant issued by a court of competent jurisdiction and should remain under the control and supervision

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of the authorizing court.

(6) The Legislature recognizes that the use of portable electronic communication devices is growing at a rapidly increasing rate. These devices can store, and encourage the storage of, an almost limitless amount of personal and private information. Often linked to the Internet, these devices are commonly used to access personal and business information and other data stored in computers and servers that can be located anywhere in the world. The user of a portable electronic communication device has a reasonable and justifiable expectation of privacy of the information that these devices contain.

(7) The Legislature recognizes that the use of household electronic devices, including microphone-enabled household devices, is growing at a rapidly increasing rate. These devices often contain microphones that listen for and respond to environmental triggers. These household devices are generally connected to and communicate through the Internet, resulting in the storage of and accessibility of daily household information in a device itself or in a remote computing service. An individual should not have to choose between using household technological enhancements and conveniences or preserving the right to privacy in one's home.

Section 3. Section 934.02, Florida Statutes, is reordered and amended to read:

934.02 Definitions.—As used in this chapter, the term:

(28)(1) "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or

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other like connection between the point of origin and the point of reception including the use of such connection in a switching station furnished or operated by any person engaged in providing or operating such facilities for the transmission of intrastate, interstate, or foreign communications or communications affecting intrastate, interstate, or foreign commerce.

(17)(2) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, including interception through the use of a microphone-enabled household device. The term and does not mean any public oral communication uttered at a public meeting or any electronic communication.

(12)(3) "Intercept" means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

(10)(4) "Electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire, electronic, or oral communication other than:

(a) Any telephone or telegraph instrument, equipment, or facility, or any component thereof:

1. Furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or

2. Being used by a provider of wire or electronic communications service in the ordinary course of its business or

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233 by an investigative or law enforcement officer in the ordinary
234 course of her or his duties.

235 (b) A hearing aid or similar device being used to correct
236 subnormal hearing to not better than normal.

237 ~~(19)(5)~~ "Person" means any employee or agent of the State
238 of Florida or political subdivision thereof, of the United
239 States, or of any other state or political subdivision thereof,
240 and any individual, partnership, association, joint stock
241 company, trust, or corporation.

242 (20) "Portable electronic communication device" means an
243 object capable of being easily transported or conveyed by a
244 person which is capable of creating, receiving, accessing, or
245 storing electronic data or communications and which communicates
246 with, by any means, another device, entity, or individual.

247 ~~(13)(6)~~ "Investigative or law enforcement officer" means
248 any officer of the State of Florida or political subdivision
249 thereof, of the United States, or of any other state or
250 political subdivision thereof, who is empowered by law to
251 conduct on behalf of the Government investigations of, or to
252 make arrests for, offenses enumerated in this chapter or similar
253 federal offenses, any attorney authorized by law to prosecute or
254 participate in the prosecution of such offenses, or any other
255 attorney representing the State of Florida or political
256 subdivision thereof in any civil, regulatory, disciplinary, or
257 forfeiture action relating to, based upon, or derived from such
258 offenses.

259 ~~(5)(7)~~ "Contents," when used with respect to any wire,
260 oral, or electronic communication, includes any information
261 concerning the substance, purport, or meaning of that

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262 communication.

263 ~~(14)(8)~~ "Judge of competent jurisdiction" means justice of
264 the Supreme Court, judge of a district court of appeal, circuit
265 judge, or judge of any court of record having felony
266 jurisdiction of the State of Florida, irrespective of the
267 geographic location or jurisdiction where the judge presides.

268 ~~(1)(9)~~ "Aggrieved person" means a person who was a party to
269 any intercepted wire, oral, or electronic communication or a
270 person against whom the interception was directed.

271 ~~(15)(10)~~ "Law enforcement agency" means an agency of the
272 State of Florida or a political subdivision thereof or of the
273 United States if the primary responsibility of the agency is the
274 prevention and detection of crime or the enforcement of the
275 penal, traffic, or highway laws of this state and if its agents
276 and officers are empowered by law to conduct criminal
277 investigations and to make arrests.

278 (16) "Microphone-enabled household device" means a device,
279 sensor, or other physical object within a residence:

280 (a) Which is capable of connecting to the Internet,
281 directly or indirectly, or to another connected device;

282 (b) Which is capable of creating, receiving, accessing,
283 processing, or storing electronic data or communications;

284 (c) Which communicates with, by any means, another device,
285 entity, or individual; and

286 (d) Which contains a microphone designed to listen for and
287 respond to environmental cues.

288 ~~(3)(11)~~ "Communication common carrier" ~~has~~ ~~shall have~~ the
289 same meaning which is given the term "common carrier" in 47
290 U.S.C. s. 153 ~~47 U.S.C. s. 153(10).~~

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291 ~~(6)(12)~~ "Electronic communication" means any transfer of
 292 signs, signals, writing, images, sounds, data, or intelligence
 293 of any nature transmitted in whole or in part by a wire, radio,
 294 electromagnetic, photoelectronic, or photooptical system that
 295 affects intrastate, interstate, or foreign commerce, but does
 296 not include:

297 (a) Any wire or oral communication;

298 (b) Any communication made through a tone-only paging
 299 device;

300 (c) Any communication from an electronic or mechanical
 301 device which allows ~~permits~~ the tracking of the movement of a
 302 person or an object; or

303 (d) Electronic funds transfer information stored by a
 304 financial institution in a communications system used for the
 305 electronic storage and transfer of funds.

306 ~~(27)(13)~~ "User" means any person or entity who:

307 (a) Uses an electronic communication service, and

308 (b) Is duly authorized by the provider of such service to
 309 engage in such use.

310 ~~(8)(14)~~ "Electronic communications system" means any wire,
 311 radio, electromagnetic, photooptical, or photoelectronic
 312 facilities for the transmission of wire or electronic
 313 communications, and any computer facilities or related
 314 electronic equipment for the electronic storage of such
 315 communications.

316 ~~(7)(15)~~ "Electronic communication service" means any
 317 service which provides to users thereof the ability to send or
 318 receive wire or electronic communications.

319 ~~(22)(16)~~ "Readily accessible to the general public" means,

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320 with respect to a radio communication, that such communication
 321 is not:

322 (a) Scrambled or encrypted;

323 (b) Transmitted using modulation techniques whose essential
 324 parameters have been withheld from the public with the intention
 325 of preserving the privacy of such communication;

326 (c) Carried on a subcarrier or other signal subsidiary to a
 327 radio transmission;

328 (d) Transmitted over a communications system provided by a
 329 common carrier, unless the communication is a tone-only paging
 330 system communication; or

331 (e) Transmitted on frequencies allocated under part 25;
 332 subpart D, subpart E, or subpart F of part 74; or part 94 of the
 333 Rules of the Federal Communications Commission, unless, in the
 334 case of a communication transmitted on a frequency allocated
 335 under part 74 that is not exclusively allocated to broadcast
 336 auxiliary services, the communication is a two-way voice
 337 communication by radio.

338 ~~(9)(17)~~ "Electronic storage" means:

339 (a) Any temporary intermediate storage of a wire or
 340 electronic communication incidental to the electronic
 341 transmission thereof.

342 (b) Any storage of a wire or electronic communication by an
 343 electronic communication service for purposes of backup
 344 protection of such communication.

345 ~~(2)(18)~~ "Aural transfer" means a transfer containing the
 346 human voice at any point between and including the point of
 347 origin and the point of reception.

348 ~~(23)(19)~~ "Remote computing service" means the provision to

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349 the public of computer storage or processing services by means
350 of an electronic communications system.

351 (18)~~(20)~~ "Pen register" means a device or process that
352 records or decodes dialing, routing, addressing, or signaling
353 information transmitted by an instrument or facility from which
354 a wire or electronic communication is transmitted, but such
355 information does not include the contents of any communication.
356 The term does not include any device or process used by a
357 provider or customer of a wire or electronic communication
358 service for billing or recording as an incident to billing or
359 for communication services provided by such provider, and does
360 not include any device or process used by a provider or customer
361 of a wire communication service for cost accounting or other
362 like purposes in the ordinary course of its business.

363 (26)~~(21)~~ "Trap and trace device" means a device or process
364 that captures the incoming electronic or other impulses that
365 identify the originating number or other dialing, routing,
366 addressing, or signaling information reasonably likely to
367 identify the source of a wire or electronic communication, but
368 such information does not include the contents of any
369 communication.

370 (24)~~(22)~~ "State" means any state of the United States, the
371 District of Columbia, the Commonwealth of Puerto Rico, or any
372 other possession or territory of the United States.

373 (25)~~(23)~~ "Subpoena" means any administrative subpoena
374 authorized by federal or Florida law, federal or Florida grand
375 jury subpoena, or any criminal investigative subpoena as
376 authorized by Florida statute which may be utilized on behalf of
377 the government by an investigative or law enforcement officer.

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378 (11)~~(24)~~ "Foreign intelligence information" means
379 information, whether or not concerning a United States person,
380 as that term is defined in 50 U.S.C. s. 1801, which relates to:

381 (a) The ability of the United States to protect against
382 actual or potential attack or other grave hostile acts of a
383 foreign power or an agent of a foreign power;

384 (b) Sabotage or international terrorism by a foreign power
385 or an agent of a foreign power;

386 (c) Clandestine intelligence activities by an intelligence
387 service, a network of a foreign power, or an agent of a foreign
388 power; or

389 (d) With respect to a foreign power or foreign territory,
390 the national defense or security of the United States or the
391 conduct of the foreign affairs of the United States.

392 (21)~~(25)~~ "Protected computer" means:

393 (a) A computer for the exclusive use of a financial
394 institution or governmental entity;

395 (b) A computer that is not for the exclusive use of a
396 financial institution or governmental entity, but that is used
397 by or for a financial institution or governmental entity and
398 with respect to which unlawful conduct can affect the use by or
399 for the financial institution or governmental entity; or

400 (c) A computer that is used in interstate or foreign
401 commerce or communication, including a computer located outside
402 the United States.

403 (4)~~(26)~~ "Computer trespasser" means a person who accesses a
404 protected computer without authorization and thus does not have
405 a reasonable expectation of privacy with respect to any
406 communication transmitted to, through, or from the protected

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computer. The term does not include a person known by the owner or operator of the protected computer to have an existing contractual relationship with the owner or operator of the protected computer for access to all or part of the protected computer.

Section 4. Paragraphs (a) and (g) of subsection (2) of section 934.03, Florida Statutes, are amended, and subsection (1), paragraphs (b) through (f) and (h) through (k) of subsection (2), and paragraph (b) of subsection (3) of that section are republished, to read:

934.03 Interception and disclosure of wire, oral, or electronic communications prohibited.—

(1) Except as otherwise specifically provided in this chapter, any person who:

(a) Intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, oral, or electronic communication;

(b) Intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when:

1. Such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or

2. Such device transmits communications by radio or interferes with the transmission of such communication;

(c) Intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the

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information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

(d) Intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection; or

(e) Intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication intercepted by means authorized by subparagraph (2)(a)2., paragraph (2)(b), paragraph (2)(c), s. 934.07, or s. 934.09 when that person knows or has reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation, has obtained or received the information in connection with a criminal investigation, and intends to improperly obstruct, impede, or interfere with a duly authorized criminal investigation;

shall be punished as provided in subsection (4).

(2)(a)1. It is lawful under this section and ss. 934.04-934.09 for an operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service whose facilities are used in the transmission of a wire or electronic communication, to intercept, disclose, or use that communication in the normal course of his or her employment while engaged in any activity which is a necessary incident to the rendition of his or her

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service or to the protection of the rights or property of the provider of that service, except that a provider of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

2. Notwithstanding any other law, a provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person, may provide information, facilities, or technical assistance to a person authorized by law to intercept wire, oral, or electronic communications if such provider, or an officer, employee, or agent thereof, or landlord, custodian, or other person, has been provided with:

a. A court order directing such assistance signed by the authorizing judge; ~~or~~

b. A certification in writing by a person specified in s. 934.09(7) that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required, setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required; or
c. A warrant issued by a judge of competent jurisdiction as required by law.

3. A provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person may not disclose the existence of any interception or the device used to accomplish the interception with respect to which the person has been served with a warrant

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or furnished an order under this section and ss. 934.04-934.09, except as may otherwise be required by legal process and then only after prior notice to the Governor, the Attorney General, the statewide prosecutor, or a state attorney, as may be appropriate. Any such disclosure renders such person liable for the civil damages provided under s. 934.10, and such person may be prosecuted under s. 934.43. An action may not be brought against any provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person for providing information, facilities, or assistance in accordance with the terms of a court order under this section and ss. 934.04-934.09.

(b) It is lawful under this section and ss. 934.04-934.09 for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his or her employment and in discharge of the monitoring responsibilities exercised by the commission in the enforcement of 47 U.S.C. chapter 5, to intercept a wire, oral, or electronic communication transmitted by radio or to disclose or use the information thereby obtained.

(c) It is lawful under this section and ss. 934.04-934.09 for an investigative or law enforcement officer or a person acting under the direction of an investigative or law enforcement officer to intercept a wire, oral, or electronic communication when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception and the purpose of such interception is to obtain evidence of a criminal act.

(d) It is lawful under this section and ss. 934.04-934.09 for a person to intercept a wire, oral, or electronic

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communication when all of the parties to the communication have given prior consent to such interception.

(e) It is unlawful to intercept any wire, oral, or electronic communication for the purpose of committing any criminal act.

(f) It is lawful under this section and ss. 934.04-934.09 for an employee of a telephone company to intercept a wire communication for the sole purpose of tracing the origin of such communication when the interception is requested by the recipient of the communication and the recipient alleges that the communication is obscene, harassing, or threatening in nature. The individual conducting the interception shall notify local police authorities within 48 hours after the time of the interception.

(g) It is lawful under this section and ss. 934.04-934.09 for an employee of:

1. An ambulance service licensed pursuant to s. 401.25, a fire station employing firefighters as defined by s. 633.102, a public utility, a law enforcement agency as defined by s. 934.02 ~~s. 934.02(10)~~, or any other entity with published emergency telephone numbers;

2. An agency operating an emergency telephone number "911" system established pursuant to s. 365.171; or

3. The central abuse hotline operated pursuant to s. 39.201,

to intercept and record incoming wire communications; however, such employee may intercept and record incoming wire communications on designated "911" telephone numbers and

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published nonemergency telephone numbers staffed by trained dispatchers at public safety answering points only. It is also lawful for such employee to intercept and record outgoing wire communications to the numbers from which such incoming wire communications were placed when necessary to obtain information required to provide the emergency services being requested. For the purpose of this paragraph, the term "public utility" has the same meaning as provided in s. 366.02 and includes a person, partnership, association, or corporation now or hereafter owning or operating equipment or facilities in the state for conveying or transmitting messages or communications by telephone or telegraph to the public for compensation.

(h) It shall not be unlawful under this section and ss. 934.04-934.09 for any person:

1. To intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public.

2. To intercept any radio communication which is transmitted:

a. By any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

b. By any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including any police or fire communications system, readily accessible to the general public;

c. By a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general

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581 mobile radio services; or
 582 d. By any marine or aeronautical communications system.
 583 3. To engage in any conduct which:
 584 a. Is prohibited by s. 633 of the Communications Act of
 585 1934; or
 586 b. Is excepted from the application of s. 705(a) of the
 587 Communications Act of 1934 by s. 705(b) of that act.
 588 4. To intercept any wire or electronic communication the
 589 transmission of which is causing harmful interference to any
 590 lawfully operating station of consumer electronic equipment to
 591 the extent necessary to identify the source of such
 592 interference.
 593 5. To intercept, if such person is another user of the same
 594 frequency, any radio communication that is not scrambled or
 595 encrypted made through a system that utilizes frequencies
 596 monitored by individuals engaged in the provision or the use of
 597 such system.
 598 6. To intercept a satellite transmission that is not
 599 scrambled or encrypted and that is transmitted:
 600 a. To a broadcasting station for purposes of retransmission
 601 to the general public; or
 602 b. As an audio subcarrier intended for redistribution to
 603 facilities open to the public, but not including data
 604 transmissions or telephone calls, when such interception is not
 605 for the purposes of direct or indirect commercial advantage or
 606 private financial gain.
 607 7. To intercept and privately view a private satellite
 608 video communication that is not scrambled or encrypted or to
 609 intercept a radio communication that is transmitted on

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610 frequencies allocated under subpart D of part 74 of the rules of
 611 the Federal Communications Commission that is not scrambled or
 612 encrypted, if such interception is not for a tortious or illegal
 613 purpose or for purposes of direct or indirect commercial
 614 advantage or private commercial gain.
 615 (i) It shall not be unlawful under this section and ss.
 616 934.04-934.09:
 617 1. To use a pen register or a trap and trace device as
 618 authorized under ss. 934.31-934.34 or under federal law; or
 619 2. For a provider of electronic communication service to
 620 record the fact that a wire or electronic communication was
 621 initiated or completed in order to protect such provider,
 622 another provider furnishing service toward the completion of the
 623 wire or electronic communication, or a user of that service,
 624 from fraudulent, unlawful, or abusive use of such service.
 625 (j) It is not unlawful under this section and ss. 934.04-
 626 934.09 for a person acting under color of law to intercept the
 627 wire or electronic communications of a computer trespasser which
 628 are transmitted to, through, or from a protected computer if:
 629 1. The owner or operator of the protected computer
 630 authorizes the interception of the communications of the
 631 computer trespasser;
 632 2. The person acting under color of law is lawfully engaged
 633 in an investigation;
 634 3. The person acting under color of law has reasonable
 635 grounds to believe that the contents of the communications of
 636 the computer trespasser will be relevant to the investigation;
 637 and
 638 4. The interception does not acquire communications other

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639 than those transmitted to, through, or from the computer
640 trespasser.

641 (k) It is lawful under this section and ss. 934.04-934.09
642 for a child under 18 years of age to intercept and record an
643 oral communication if the child is a party to the communication
644 and has reasonable grounds to believe that recording the
645 communication will capture a statement by another party to the
646 communication that the other party intends to commit, is
647 committing, or has committed an unlawful sexual act or an
648 unlawful act of physical force or violence against the child.

649 (3)

650 (b) A person or entity providing electronic communication
651 service to the public may divulge the contents of any such
652 communication:

653 1. As otherwise authorized in paragraph (2)(a) or s.
654 934.08;

655 2. With the lawful consent of the originator or any
656 addressee or intended recipient of such communication;

657 3. To a person employed or authorized, or whose facilities
658 are used, to forward such communication to its destination; or

659 4. Which were inadvertently obtained by the service
660 provider and which appear to pertain to the commission of a
661 crime, if such divulgence is made to a law enforcement agency.

662 Section 5. Subsections (1) and (2) of section 934.07,
663 Florida Statutes, are amended to read:

664 934.07 Authorization for interception of wire, oral, or
665 electronic communications.—

666 (1) The Governor, the Attorney General, the statewide
667 prosecutor, or any state attorney may authorize an application

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668 to a judge of competent jurisdiction for, and such judge may
669 issue ~~grant~~ in conformity with ss. 934.03-934.09, a warrant as
670 required by law or an order authorizing or approving the
671 interception of, wire, oral, or electronic communications by:

672 (a) The Department of Law Enforcement or any law
673 enforcement agency as defined in s. 934.02 having responsibility
674 for the investigation of the offense as to which the application
675 is made when such interception may provide or has provided
676 evidence of the commission of the offense of murder, kidnapping,
677 aircraft piracy, arson, gambling, robbery, burglary, theft,
678 dealing in stolen property, criminal usury, bribery, or
679 extortion; any felony violation of ss. 790.161-790.166,
680 inclusive; any violation of s. 787.06; any violation of chapter
681 893; any violation of the provisions of the Florida Anti-Fencing
682 Act; any violation of chapter 895; any violation of chapter 896;
683 any violation of chapter 815; any violation of chapter 847; any
684 violation of s. 827.071; any violation of s. 944.40; or any
685 conspiracy or solicitation to commit any violation of the laws
686 of this state relating to the crimes specifically enumerated in
687 this paragraph.

688 (b) The Department of Law Enforcement, together with other
689 assisting personnel as authorized and requested by the
690 department under s. 934.09(5), for the investigation of the
691 offense as to which the application is made when such
692 interception may provide or has provided evidence of the
693 commission of any offense that may be an act of terrorism or in
694 furtherance of an act of terrorism or evidence of any conspiracy
695 or solicitation to commit any such violation.

696 (2)(a) If, during the course of an interception of

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communications by a law enforcement agency as authorized under paragraph (1)(a), the law enforcement agency finds that the intercepted communications may provide or have provided evidence of the commission of any offense that may be an act of terrorism or in furtherance of an act of terrorism, or evidence of any conspiracy or solicitation to commit any such violation, the law enforcement agency shall promptly notify the Department of Law Enforcement and apprise the department of the contents of the intercepted communications. The agency notifying the department may continue its previously authorized interception with appropriate minimization, as applicable, and may otherwise assist the department as provided in this section.

(b) Upon its receipt of information of the contents of an intercepted communications from a law enforcement agency, the Department of Law Enforcement shall promptly review the information to determine whether the information relates to an actual or anticipated act of terrorism as defined in this section. If, after reviewing the contents of the intercepted communications, there is probable cause that the contents of the intercepted communications meet the criteria of paragraph (1)(b), the Department of Law Enforcement may make application for the interception of wire, oral, or electronic communications consistent with paragraph (1)(b). The department may make an independent new application for interception based on the contents of the intercepted communications. Alternatively, the department may request the law enforcement agency that provided the information to join with the department in seeking a new warrant as required by law or an amendment of the original interception order, or may seek additional authority to continue

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intercepting communications under the direction of the department. In carrying out its duties under this section, the department may use the provisions for an emergency interception provided in s. 934.09(7) if applicable under statutory criteria.

Section 6. Subsection (5) of section 934.08, Florida Statutes, is amended to read:

934.08 Authorization for disclosure and use of intercepted wire, oral, or electronic communications.—

(5) When an investigative or law enforcement officer, while engaged in intercepting wire, oral, or electronic communications in the manner authorized herein, intercepts wire, oral, or electronic communications relating to offenses other than those specified in the warrant or order of authorization or approval, the contents thereof and evidence derived therefrom may be disclosed or used as provided in subsections (1) and (2). Such contents and any evidence derived therefrom may be used under subsection (3) when authorized or approved by a judge of competent jurisdiction when such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this chapter. Such application shall be made as soon as practicable.

Section 7. Section 934.09, Florida Statutes, is amended to read:

934.09 Procedure for interception of wire, oral, or electronic communications.—

(1) Each application for a warrant ~~an order~~ authorizing or approving the interception of a wire, oral, or electronic communication under ss. 934.03-934.09 shall be made in writing upon oath or affirmation to a judge of competent jurisdiction

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755 and shall state the applicant's authority to make such
 756 application. Each application shall include the following
 757 information:

758 (a) The identity of the investigative or law enforcement
 759 officer making the application and the officer authorizing the
 760 application.

761 (b) A full and complete statement of the facts and
 762 circumstances relied upon by the applicant to justify his or her
 763 belief that a warrant ~~an order~~ should be issued, including:

764 1. Details as to the particular offense that has been, is
 765 being, or is about to be committed.

766 2. Except as provided in subsection (11), a particular
 767 description of the nature and location of the facilities from
 768 which, or the place where, the communications are to be
 769 intercepted.

770 3. A particular description of the type of communications
 771 sought to be intercepted.

772 4. The identity of the person, if known, committing the
 773 offense and whose communications are to be intercepted.

774 (c) A full and complete statement as to whether or not
 775 other investigative procedures have been tried and failed or why
 776 they reasonably appear to be unlikely to succeed if tried or to
 777 be too dangerous.

778 (d) A statement of the period of time for which the
 779 interception is required to be maintained and, if the nature of
 780 the investigation is such that the authorization for
 781 interception should not automatically terminate when the
 782 described type of communication has been first obtained, a
 783 particular description of facts establishing probable cause to

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784 believe that additional communications of the same type will
 785 occur thereafter.

786 (e) A full and complete statement of the facts concerning
 787 all previous applications known to the individual authorizing
 788 and making the application, made to any judge for authorization
 789 to intercept, or for approval of interceptions of, wire, oral,
 790 or electronic communications involving any of the same persons,
 791 facilities, or places specified in the application, and the
 792 action taken by the judge on each such application.

793 (f) When the application is for the extension of a warrant
 794 ~~an order~~, a statement setting forth the results thus far
 795 obtained from the interception or a reasonable explanation of
 796 the failure to obtain such results.

797 (2) The judge may require the applicant to furnish
 798 additional testimony or documentary evidence in support of the
 799 application.

800 (3) Upon such application, the judge may authorize a
 801 warrant ~~enter an~~ ex parte ~~order~~, as requested or as modified,
 802 authorizing or approving interception of wire, oral, or
 803 electronic communications within the territorial jurisdiction of
 804 the court in which the judge is sitting, and outside such
 805 jurisdiction but within the State of Florida in the case of a
 806 mobile interception device authorized by the judge within such
 807 jurisdiction, if the judge determines on the basis of the facts
 808 submitted by the applicant that:

809 (a) There is probable cause for belief that an individual
 810 is committing, has committed, or is about to commit an offense
 811 as provided in s. 934.07.

812 (b) There is probable cause for belief that particular

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813 communications concerning that offense will be obtained through
814 such interception.

815 (c) Normal investigative procedures have been tried and
816 have failed or reasonably appear to be unlikely to succeed if
817 tried or to be too dangerous.

818 (d) Except as provided in subsection (11), there is
819 probable cause for belief that the facilities from which, or the
820 place where, the wire, oral, or electronic communications are to
821 be intercepted are being used, or are about to be used, in
822 connection with the commission of such offense, or are leased
823 to, listed in the name of, or commonly used by such person.

824 (4) Each warrant ~~order~~ authorizing or approving the
825 interception of any wire, oral, or electronic communication
826 shall specify:

827 (a) The identity of the person, if known, whose
828 communications are to be intercepted.

829 (b) The nature and location of the communications
830 facilities as to which, or the place where, authority to
831 intercept is granted.

832 (c) A particular description of the type of communication
833 sought to be intercepted and a statement of the particular
834 offense to which it relates.

835 (d) The identity of the agency authorized to intercept the
836 communications and of the person authorizing the application.

837 (e) The period of time during which such interception is
838 authorized, including a statement as to whether or not the
839 interception shall automatically terminate when the described
840 communication has been first obtained.

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842 A warrant ~~An order~~ authorizing the interception of a wire, oral,
843 or electronic communication shall, upon the request of the
844 applicant, direct that a provider of wire or electronic
845 communication service, landlord, custodian, or other person
846 shall furnish the applicant forthwith all information,
847 facilities, and technical assistance necessary to accomplish the
848 interception unobtrusively and with a minimum of interference
849 with the services that such service provider, landlord,
850 custodian, or person is according the person whose
851 communications are to be intercepted. The obligation of a
852 provider of wire, oral, or electronic communication service
853 under such a warrant ~~an order~~ may include, but is not limited
854 to, conducting an in-progress trace during an interception, or
855 providing other assistance to support the investigation as may
856 be specified in the warrant ~~order~~. Any provider of wire or
857 electronic communication service, landlord, custodian, or other
858 person furnishing such facilities or technical assistance shall
859 be compensated therefor by the applicant for reasonable expenses
860 incurred in providing such facilities or assistance.

861 (5) No warrant ~~order~~ entered under this section may
862 authorize or approve the interception of any wire, oral, or
863 electronic communication for any period longer than is necessary
864 to achieve the objective of the authorization or in any event
865 longer than 30 days. Such 30-day period begins on the day on
866 which the agent or officer of the law enforcement agency first
867 begins to conduct an interception under the warrant ~~order~~ or 10
868 days after the warrant is approved ~~order is entered~~, whichever
869 occurs earlier. Extensions of a warrant ~~an order~~ may be granted
870 but only upon application for an extension made in accordance

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with subsection (1) and upon the court making the findings required by subsection (3). The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than 30 days. Every warrant ~~order~~ and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under ss. 934.03-934.09, and must terminate upon attainment of the authorized objective or in any event in 30 days. If the intercepted communication is in code or foreign language and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under ss. 934.03-934.09 may be conducted in whole or in part by government personnel or by an individual operating under a contract with the government, acting under the supervision of an agent or officer of the law enforcement agency authorized to conduct the interception.

(6) Whenever a warrant ~~an order~~ authorizing interception is granted ~~entered~~ pursuant to ss. 934.03-934.09, the warrant ~~order~~ may require reports to be made to the judge who issued the warrant ~~order~~ showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge may require.

(7) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer specially designated by the Governor, the Attorney General, the statewide

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prosecutor, or a state attorney acting under this chapter, who reasonably determines that:

(a) An emergency exists that:

1. Involves immediate danger of death or serious physical injury to any person, the danger of escape of a prisoner, or conspiratorial activities threatening the security interest of the nation or state; and

2. Requires that a wire, oral, or electronic communication be intercepted before a warrant ~~an order~~ authorizing such interception can, with due diligence, be obtained; and

(b) There are grounds upon which a warrant ~~an order~~ could be entered under this chapter to authorize such interception

may intercept such wire, oral, or electronic communication if an application for a warrant ~~an order~~ approving the interception is made in accordance with this section within 48 hours after the interception has occurred or begins to occur. In the absence of a warrant ~~an order~~, such interception shall immediately terminate when the communication sought is obtained or when the application for the warrant ~~order~~ is denied, whichever is earlier. If such application for approval is denied, or in any other case in which the interception is terminated without a warrant ~~an order~~ having been issued, the contents of any wire, oral, or electronic communication intercepted shall be treated as having been obtained in violation of s. 934.03(4), and an inventory shall be served as provided for in paragraph (8)(e) on the person named in the application.

(8)(a) The contents of any wire, oral, or electronic communication intercepted by any means authorized by ss. 934.03-

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929 934.09 shall, if possible, be recorded on tape or wire or other
 930 comparable device. The recording of the contents of any wire,
 931 oral, or electronic communication under this subsection shall be
 932 kept in such a way as will protect the recording from editing or
 933 other alterations. Immediately upon the expiration of the period
 934 of the warrant order, or extensions thereof, such recordings
 935 shall be made available to the judge approving the warrant
 936 ~~issuing such order~~ and sealed under his or her directions.
 937 Custody of the recordings shall be wherever the judge orders.
 938 They shall not be destroyed except upon an order of the issuing
 939 or denying judge, or that judge's successor in office, and in
 940 any event shall be kept for 10 years. Duplicate recordings may
 941 be made for use or disclosure pursuant to the provisions of s.
 942 934.08(1) and (2) for investigations, or for purposes of
 943 discovery as required by law.

944 (b) The presence of the seal provided for by this
 945 subsection, or a satisfactory explanation for the absence
 946 thereof, shall be a prerequisite for the use or disclosure of
 947 the contents of any wire, oral, or electronic communication or
 948 evidence derived therefrom under s. 934.08(3), as required by
 949 federal law.

950 (c) Applications made and warrants orders granted under ss.
 951 934.03-934.09 shall be sealed by the judge. Custody of the
 952 applications and warrants orders shall be wherever the judge
 953 directs. As required by ~~federal~~ law, such applications and
 954 warrants orders shall be disclosed only for purposes of
 955 discovery or upon a showing of good cause before a judge of
 956 competent jurisdiction and shall not be destroyed except on
 957 order of the issuing or denying judge, or that judge's successor

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958 in office, and in any event shall be kept for 10 years.
 959 (d) Any violation of the provisions of this subsection may
 960 be punished as contempt of the issuing or denying judge.
 961 (e) Within a reasonable time but not later than 90 days
 962 after the termination of the period of a warrant ~~an order~~ or
 963 extensions thereof, the issuing or denying judge shall cause to
 964 be served on the persons named in the warrant order or the
 965 application, and such other parties to intercepted
 966 communications as the judge may determine in his or her
 967 discretion to be in the interest of justice, an inventory which
 968 shall include notice of:

969 1. The fact of the approval of the warrant ~~entry of the~~
 970 ~~order~~ or the application.

971 2. The date of the approval of the warrant ~~entry~~ and the
 972 period of authorized, approved, or disapproved interception, or
 973 the denial of the application.

974 3. The fact that during the period wire, oral, or
 975 electronic communications were or were not intercepted.

976
 977 The judge, upon the filing of a motion, may make available to
 978 such person or the person's counsel for inspection such portions
 979 of the intercepted communications, applications, and warrants
 980 ~~orders~~ as the judge determines to be in the interest of justice.
 981 On an ex parte showing of good cause to a judge of competent
 982 jurisdiction, the serving of the inventory required by this
 983 paragraph may be postponed.

984 (9) ~~As required by federal law,~~ The contents of any
 985 intercepted wire, oral, or electronic communication or evidence
 986 derived therefrom shall not be received in evidence or otherwise

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disclosed in any trial, hearing, or other proceeding unless each party, ~~not less than 10 days before the trial, hearing, or proceeding,~~ has been furnished with a copy of the warrant ~~court order~~ and accompanying application under which the interception was authorized or approved. ~~This 10 day period may be waived by the judge if he or she finds that it was not possible to furnish the party with the above information 10 days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving such information.~~

(10) (a) An aggrieved person before or in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority may move to suppress the contents of any intercepted wire, oral, or electronic communication, or evidence derived therefrom, on the grounds that:

1. The communication was unlawfully intercepted;
2. The warrant ~~order of authorization or approval~~ under which it was intercepted is insufficient on its face; or
3. The interception was not made in conformity with the warrant ~~order of authorization or approval~~.

(b) Except as otherwise provided in the applicable Florida Rules of Criminal Procedure, in a criminal matter:

1. Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion.
2. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of ss. 934.03-934.09 and are not admissible as evidence.

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3. The judge, upon the filing of such motion by the aggrieved person, may make available to the aggrieved person or his or her counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interest of justice.

~~(c) (b)~~ In addition to any other right to appeal, the state shall have the right to appeal from an order granting a motion to suppress made under paragraph (a) or the denial of an application for a warrant ~~an order of approval~~ if the attorney shall certify to the judge or other official granting such motion or denying such application that the appeal is not taken for purposes of delay. Such appeal shall be taken within 30 days after the date the order was entered and shall be diligently prosecuted.

~~(d) (e)~~ The remedies and sanctions described in ss. 934.03-934.10 with respect to the interception of electronic communications are the only judicial remedies and sanctions for violations of those sections involving such communications.

(11) The requirements of subparagraph (1) (b) 2. and paragraph (3) (d) relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if:

(a) In the case of an application with respect to the interception of an oral communication:

1. The application is by an agent or officer of a law enforcement agency and is approved by the Governor, the Attorney General, the statewide prosecutor, or a state attorney.
2. The application contains a full and complete statement as to why such specification is not practical and identifies the

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person committing the offense and whose communications are to be intercepted.

3. The judge finds that such specification is not practical.

(b) In the case of an application with respect to a wire or electronic communication:

1. The application is by an agent or officer of a law enforcement agency and is approved by the Governor, the Attorney General, the statewide prosecutor, or a state attorney.

2. The application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing that there is probable cause to believe that the person's actions could have the effect of thwarting interception from a specified facility or that the person whose communications are to be intercepted has removed, or is likely to remove, himself or herself to another judicial circuit within the state.

3. The judge finds that such showing has been adequately made.

4. The warrant order authorizing or approving the interception is limited to interception only for such time as it is reasonable to presume that the person identified in the application is or was reasonably proximate to the instrument through which such communication will be or was transmitted.

~~Consistent with this paragraph, a judge of competent jurisdiction may authorize interception within this state, whether the interception is within or outside the court's jurisdiction, if the application for the interception makes a~~

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~~showing that some activity or conspiracy believed to be related to, or in furtherance of, the criminal predicate for the requested interception has occurred or will likely occur, or the communication to be intercepted or expected to be intercepted is occurring or will likely occur, in whole or in part, within the jurisdiction of the court where the order is being sought.~~

(12) If an interception of a communication is to be carried out pursuant to subsection (11), such interception may not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided under paragraph (11)(b) may petition the court to modify or quash the order on the ground that the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the state, shall decide such a petition expeditiously.

(13) Consistent with this section, a judge of competent jurisdiction may authorize interception within this state, whether the interception is within or outside the court's jurisdiction, if the application for the interception makes a showing that some activity or conspiracy believed to be related to, or in furtherance of, the criminal predicate for the requested interception has occurred or will likely occur, or the communication to be intercepted or expected to be intercepted is occurring or will likely occur, in whole or in part, within the jurisdiction of the court where the warrant is being sought.

Section 8. Subsection (2) of section 934.10, Florida Statutes, is amended, and subsection (1) of that section is

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1103 republished, to read:

1104 934.10 Civil remedies.—

1105 (1) Any person whose wire, oral, or electronic
1106 communication is intercepted, disclosed, or used in violation of
1107 ss. 934.03-934.09 shall have a civil cause of action against any
1108 person or entity who intercepts, discloses, or uses, or procures
1109 any other person or entity to intercept, disclose, or use, such
1110 communications and shall be entitled to recover from any such
1111 person or entity which engaged in that violation such relief as
1112 may be appropriate, including:

1113 (a) Preliminary or equitable or declaratory relief as may
1114 be appropriate;

1115 (b) Actual damages, but not less than liquidated damages
1116 computed at the rate of \$100 a day for each day of violation or
1117 \$1,000, whichever is higher;

1118 (c) Punitive damages; and

1119 (d) A reasonable attorney's fee and other litigation costs
1120 reasonably incurred.

1121 (2) A good faith reliance on:

1122 (a) A warrant, court order, subpoena, or legislative
1123 authorization as provided in ss. 934.03-934.09;~~it~~

1124 (b) A request of an investigative or law enforcement
1125 officer under s. 934.09(7);~~it~~ or

1126 (c) A good faith determination that Florida or federal law,
1127 other than 18 U.S.C. s. 2511(2) (d), authorized ~~permitted~~ the
1128 conduct complained of,

1129 ~~constitutes shall constitute~~ a complete defense to any civil or
1130 criminal, or administrative action arising out of such conduct
1131

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1132 under the laws of this state.

1133 Section 9. Section 934.21, Florida Statutes, is amended to
1134 read:

1135 934.21 Unlawful access to stored communications;
1136 penalties.—

1137 (1) Except as provided in subsection ~~(4)-(3)~~, whoever:

1138 (a) Intentionally accesses without authorization a facility
1139 through which an electronic communication service is provided,
1140 or

1141 (b) Intentionally exceeds an authorization to access such
1142 facility,

1143
1144 and thereby obtains, alters, or prevents authorized access to a
1145 wire or electronic communication while it is in electronic
1146 storage in such system shall be punished as provided in
1147 subsection (3) ~~(2)~~.

1148 (2) Except as provided in subsection (4), a person who
1149 intentionally and unlawfully accesses without authorization a
1150 cellular phone, portable electronic communication device, or
1151 microphone-enabled household device and thereby obtains wire,
1152 oral, or electronic communications stored within the cellular
1153 phone, portable electronic communication device, or microphone-
1154 enabled household device shall be punished as provided in
1155 subsection (3).

1156 ~~(3)-(2)~~ The punishment for an offense under subsection (1)
1157 or subsection (2) is as follows:

1158 (a) If the offense is committed for purposes of commercial
1159 advantage, malicious destruction or damage, or private
1160 commercial gain, the person ~~is~~:

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1. In the case of a first offense under this subsection, ~~commits guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 934.41.

2. In the case of any subsequent offense under this subsection, ~~commits guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 934.41.

(b) In any other case, the person ~~commits is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

~~(4)(3)~~ Subsection (1) does not apply with respect to conduct authorized:

(a) By the person or entity providing a wire or electronic communications service;

(b) By a user of a wire or electronic communications service with respect to a communication of or intended for that user; or

(c) In s. 934.09, s. 934.23, or s. 934.24.

Section 10. Section 934.42, Florida Statutes, is reordered and amended to read:

934.42 Mobile tracking device and location tracking authorization.—

~~(2)(1)~~ An investigative or law enforcement officer may make application to a judge of competent jurisdiction for a warrant ~~an order~~ authorizing or approving the installation and use of a mobile tracking device or the acquisition of cellular-site location data, precise global positioning satellite location data, or historical global positioning satellite data.

~~(3)(2)~~ An application under subsection (2) ~~(1)~~ of this

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~~section~~ must include:

(a) A statement of the identity of the applicant and the identity of the law enforcement agency conducting the investigation.

(b) A statement setting forth a reasonable length of time that the mobile tracking device may be used. The time may not exceed 45 days after the date the warrant was issued. The court may, for good cause, grant one or more extensions for a reasonable period not to exceed 45 days each ~~A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the investigating agency.~~

(c) A statement of the offense to which the information likely to be obtained relates.

(d) A statement whether it may be necessary to use and monitor the mobile tracking device outside the jurisdiction of the court from which authorization is being sought.

~~(4)(3)~~ Upon application made as provided under subsection (3) (2), the court, if it finds probable cause, ~~that the certification and the statements required by subsection (3) (2)~~ have been made in the application, shall grant a warrant ~~enter an ex parte order~~ authorizing the installation and use of a mobile tracking device. Such warrant order may authorize the use of the device within the jurisdiction of the court and outside that jurisdiction but within the State of Florida if the device is installed within the jurisdiction of the court. The warrant must command the officer to complete any installation authorized by the warrant within a specified timeframe after issuance, to be no longer than 10 calendar days.

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1219 ~~(5)(4)~~ A court may not require greater specificity or
 1220 additional information beyond that which is required by law and
 1221 this section as a requisite for issuing a warrant ~~an order~~.

1222 (6) Within 10 days after the use of the tracking device has
 1223 ended, the officer executing the warrant must return it to the
 1224 judge designated in the warrant. The officer may do so by
 1225 reliable electronic means.

1226 (7) Within 10 days after the use of the tracking device has
 1227 ended, the officer executing a tracking-device warrant must
 1228 serve a copy of the warrant on the person who was tracked or
 1229 whose property was tracked. Service may be accomplished by
 1230 delivering a copy to the person who, or whose property, was
 1231 tracked; or by leaving a copy at the person's residence or usual
 1232 place of abode with an individual of suitable age and discretion
 1233 who resides at that location and by mailing a copy to the
 1234 person's last known address. Upon request by the law enforcement
 1235 agency, the court may delay notice for a period of 90 days as
 1236 provided in s. 934.25.

1237 ~~(8)(5)~~ The standards established by Florida courts and the
 1238 United States Supreme Court for the installation, use, or ~~and~~
 1239 monitoring of mobile tracking devices ~~shall~~ apply to the
 1240 installation, use, or monitoring ~~and use~~ of any device as
 1241 authorized by this section.

1242 ~~(1)(6)~~ As used in this section, the term "mobile tracking
 1243 device" or a "tracking device" means an electronic or mechanical
 1244 device, including a cellular phone or a portable electronic
 1245 communication device, which allows ~~permits~~ the tracking of the
 1246 movement of a person or object and may be used to access
 1247 cellular-site location data, precise global positioning

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1248 satellite location data, and historical global positioning
 1249 satellite data.

1250 (9) (a) Notwithstanding any other provision of this chapter,
 1251 any investigative or law enforcement officer specially
 1252 designated by the Governor, the Attorney General, the statewide
 1253 prosecutor, or a state attorney acting pursuant to this chapter
 1254 who reasonably determines that:

1255 1. An emergency exists which:

1256 a. Involves immediate danger of death or serious physical
 1257 injury to any person or the danger of escape of a prisoner; and
 1258 b. Requires the installation or use of a mobile tracking
 1259 device before a warrant authorizing such installation or use
 1260 can, with due diligence, be obtained; and

1261 2. There are grounds upon which a warrant could be issued
 1262 under this chapter to authorize such installation or use,
 1263 may install or use a mobile tracking device if, within 48 hours
 1264 after the installation or use has occurred or begins to occur, a
 1265 warrant approving the installation or use is issued in
 1266 accordance with this section.

1267 (b) In the absence of an authorizing warrant, such
 1268 installation or use shall immediately terminate when the
 1269 information sought is obtained, when the application for the
 1270 warrant is denied, or when 48 hours have lapsed since the
 1271 installation or use of the mobile tracking device began,
 1272 whichever is earlier.

1273 (c) The knowing installation or use by any investigative or
 1274 law enforcement officer of a mobile tracking device pursuant to
 1275 paragraph (a) without application for the authorizing warrant
 1276

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1277 within 48 hours after the installation or use begins is a
 1278 violation of this subsection.

1279 (d) A person who violates this subsection commits a
 1280 misdemeanor of the first degree, punishable as provided in s.
 1281 775.082, s. 775.083, or s. 775.084.

1282 Section 11. For the purpose of incorporating the amendments
 1283 made by this act to sections 934.03 and 934.07, Florida
 1284 Statutes, in a reference thereto, paragraph (b) of subsection
 1285 (2) of section 934.22, Florida Statutes, is reenacted to read:
 1286 934.22 Voluntary disclosure of customer communications or
 1287 records.—

1288 (2) A provider described in subsection (1) may divulge the
 1289 contents of a communication:

1290 (b) As otherwise authorized in s. 934.03(2)(a), s. 934.07,
 1291 or s. 934.23.

1292 Section 12. For the purpose of incorporating the amendments
 1293 made by this act to sections 934.09 and 934.21, Florida
 1294 Statutes, in references thereto, subsections (1) and (4) of
 1295 section 934.27, Florida Statutes, are reenacted to read:

1296 934.27 Civil action: relief; damages; defenses.—

1297 (1) Except as provided in s. 934.23(5), any provider of
 1298 electronic communication service, or subscriber or customer
 1299 thereof, aggrieved by any violation of ss. 934.21-934.28 in
 1300 which the conduct constituting the violation is engaged in with
 1301 a knowing or intentional state of mind may, in a civil action,
 1302 recover from the person or entity which engaged in that
 1303 violation such relief as is appropriate.

1304 (4) A good faith reliance on any of the following is a
 1305 complete defense to any civil or criminal action brought under

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1306 ss. 934.21-934.28:

1307 (a) A court warrant or order, a subpoena, or a statutory
 1308 authorization, including, but not limited to, a request of an
 1309 investigative or law enforcement officer to preserve records or
 1310 other evidence, as provided in s. 934.23(7).

1311 (b) A request of an investigative or law enforcement
 1312 officer under s. 934.09(7).

1313 (c) A good faith determination that s. 934.03(3) permitted
 1314 the conduct complained of.

1315 Section 13. For the purpose of incorporating the amendment
 1316 made by this act to section 934.21, Florida Statutes, in a
 1317 reference thereto, subsection (6) of section 934.23, Florida
 1318 Statutes, is reenacted to read:
 1319 934.23 Required disclosure of customer communications or
 1320 records.—

1321 (6) No cause of action shall lie in any court against any
 1322 provider of wire or electronic communication service, its
 1323 officers, employees, agents, or other specified persons for
 1324 providing information, facilities, or assistance in accordance
 1325 with the terms of a court order, warrant, subpoena, or
 1326 certification under ss. 934.21-934.28.

1327 Section 14. For the purpose of incorporating the amendment
 1328 made by this act to section 934.21, Florida Statutes, in
 1329 references thereto, subsections (6) and (7) of section 934.24,
 1330 Florida Statutes, are reenacted to read:

1331 934.24 Backup preservation; customer notification;
 1332 challenges by customer.—

1333 (6) Within 14 days after notice by the investigative or law
 1334 enforcement officer to the subscriber or customer under

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subsection (2), the subscriber or customer may file a motion to quash the subpoena or vacate the court order seeking contents of electronic communications, with copies served upon the investigative or law enforcement officer and with written notice of such challenge to the service provider. A motion to vacate a court order must be filed in the court which issued the order. A motion to quash a subpoena must be filed in the circuit court in the circuit from which the subpoena issued. Such motion or application must contain an affidavit or sworn statement:

(a) Stating that the applicant is a subscriber or customer of the service from which the contents of electronic communications maintained for her or him have been sought, and

(b) Stating the applicant's reasons for believing that the records sought are not relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with the provisions of ss. 934.21-934.28 in some other respect.

(7) Except as otherwise obtained under paragraph (3) (a), service must be made under this section upon an investigative or law enforcement officer by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the subscriber or customer has received pursuant to ss. 934.21-934.28. For the purposes of this subsection, the term "delivering" shall be construed in accordance with the definition of "delivery" as provided in Rule 1.080, Florida Rules of Civil Procedure.

Section 15. For the purpose of incorporating the amendment made by this act to section 934.21, Florida Statutes, in a reference thereto, subsection (5) of section 934.25, Florida Statutes, is reenacted to read:

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934.25 Delayed notice.—

(5) Upon the expiration of the period of delay of notification under subsection (1) or subsection (4), the investigative or law enforcement officer must serve upon or deliver by registered or first-class mail to the subscriber or customer a copy of the process or request together with notice which:

(a) States with reasonable specificity the nature of the law enforcement inquiry, and

(b) Informs the subscriber or customer:

1. That information maintained for such subscriber or customer by the service provider named in the process or request was supplied to or requested by the investigative or law enforcement officer and the date on which such information was so supplied or requested.

2. That notification of such subscriber or customer was delayed.

3. What investigative or law enforcement officer or what court made the certification or determination pursuant to which that delay was made.

4. Which provision of ss. 934.21-934.28 allowed such delay.

Section 16. For the purpose of incorporating the amendment made by this act to section 934.21, Florida Statutes, in a reference thereto, section 934.28, Florida Statutes, is reenacted to read:

934.28 Exclusivity of remedies and sanctions.—The remedies and sanctions described in ss. 934.21-934.27 are the only judicial remedies and sanctions for violation of those sections.

Section 17. This act shall take effect July 1, 2018.

THE FLORIDA SENATE
APPEARANCE RECORD

02.06.2018

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

1256

Meeting Date

Bill Number (if applicable)

340722

Topic Search of the Content, Information, and Communications of C

Amendment Barcode (if applicable)

Name SEBASTIAN ALEKSANDER

Job Title Lobbyist

Address 101-B E COLLEGE AVE

Phone 850.459.1559

Street

Tallahassee

FL

32301

City

State

Zip

Email sebastian@aleksandergroup.co

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FACEBOOK

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)

2/6/18

Meeting Date

1254

Bill Number (if applicable)

340722 DE

Amendment Barcode (if applicable)

Topic SEARCH OF CONTENT

Name SLATER BAHLISS

Job Title

Address 204 S. MONROE ST

Street

Phone 222-8900

TALLAHASSEE FL 32301

City

State

Zip

Email subcardenas@parnet.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing TECHNET

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)

2/6/2018

Meeting Date

1256

SB 10586

Bill Number (if applicable)

340722

Amendment Barcode (if applicable)

Topic Search of Content

Name Jennifer C Pritt

Job Title Assistant Commissioner

Address 2331 Phillips Road
Street

Phone 85041070

Tallahassee FL 32306
City State Zip

Email jenniferpritt@talc.state.fl.us

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FDLE

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)

2/8/18

Meeting Date

1256

Bill Number (if applicable)

Topic Search of Cell Phone Contents

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Phone (850) 681-0024

Tallahassee, FL 32301
City State Zip

Email jorge@flapartners.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FACDL

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

Committee Agenda Request

✓

To: Senator Randolph Bracy
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: January 12, 2018

I respectfully request that **Senate Bill #1256**, relating to **Search of the Content, Information, and Communications of Cellular Phones, Portable Electronic Communication Devices, and Microphone-enabled Household Devices**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

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/CS/SB 1418

INTRODUCER: Criminal Justice Committee; Children, Families, and Elder Affairs Committee; and
Senator Rouson

SUBJECT: Substance Abuse Services

DATE: February 6, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
3.	<u></u>	<u></u>	<u>RC</u>	<u></u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1418 modifies requirements for licensed substance abuse service providers offering treatment to individuals living in recovery residences (also known as “sober homes”), which are alcohol and drug-free living environments where individuals with substance use disorder reside while they receive treatment services on an outpatient basis. The bill authorizes providers to accept referrals from noncertified recovery residences when it appears that the resident may benefit from such services, requires certified recovery residences to comply with relevant provisions of the Florida Fire Prevention Code, and prohibits a recovery residence or certain persons from receiving a direct pecuniary benefit in exchange for an authorized referral.

The bill addresses individuals who have been disqualified for employment with substance abuse service providers following a failed background screening. The bill adds offenses for which individuals may seek an exemption from such disqualification, authorizes an agency secretary to grant such exemption to include individuals applying for work providing mental health and substance abuse treatment, requires the Department of Children and Families (DCF) to render a decision on an application for exemption within 60 days of receiving the application, allows an individual to work for up to 90 days while DCF evaluates the application (under certain conditions), and modifies background screening requirements for owners and others who have direct contact with individuals receiving treatment.

The bill will likely have an indeterminate fiscal impact on the state. The bill is effective July 1, 2018.

II. Present Situation:

Substance Abuse

“Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.”¹ Substance use disorder occurs when the chronic use of alcohol or drugs “causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.”² Repeated drug use leads to changes in the brain’s structure and function that can make a person more susceptible to developing a substance use disorder.³ Brain imaging studies of persons with substance use disorder show physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.⁴

Substance Abuse Treatment in Florida

“The provision of substance abuse services is governed by Chapters 394 and 397 of the Florida Statutes, which provide direction for a continuum of community-based services including prevention, treatment, and detoxification services.”⁵ The DCF administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery. SAMH programs include a range of prevention, acute interventions (such as crisis stabilization or detoxification), residential, transitional housing, outpatient treatment, and recovery support services.⁶

The DCF provides treatment for substance abuse through a community-based provider system that serves adolescents and adults affected by substance misuse, abuse, or dependence.⁷ The DCF regulates substance abuse treatment by licensing individual treatment components under ch. 397, F.S., and Rule 65D-30, F.A.C.

The 2017 Legislature passed and the Governor approved HB 807, which made several changes to the DCF’s licensure program for substance abuse treatment providers in ch. 397, F.S.⁸ HB 807

¹ World Health Organization *Substance Abuse*, available at http://www.who.int/topics/substance_abuse/en/ (last visited on Jan. 26, 2018).

² Substance Abuse and Mental Health Services Administration, *Substance Use Disorders*, available at <http://www.samhsa.gov/disorders/substance-use> (last visited on Jan. 26, 2018).

³ National Institute on Drug Abuse, *Drugs, Brains, and Behavior: The Science of Addiction*, available at <https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction> (last visited on Jan. 26, 2018).

⁴ *Id.*

⁵ Department of Children and Families, *Licensure and Regulation*, available at <http://www.myflfamilies.com/service-programs/substance-abuse/licensure-regulation> (last visited on Jan. 26, 2018).

⁶ *Id.*

⁷ Department of Children and Families, *Treatment for Substance Abuse*, available at <http://www.myflfamilies.com/service-programs/substance-abuse/treatment-and-detoxification> (last visited on Jan. 26, 2018).

⁸ Chapter 2017-173, L.O.F.

(2017) revises the licensure application requirements and process and requires applicants to provide detailed information about the clinical services they provide.⁹

Recovery Residences

Recovery residences function under the premise that individuals benefit in their recovery by residing in an alcohol and drug-free environment. Recovery residences are designed to be financially self-sustaining through rent and fees paid by residents, and there is no limit on the length of stay for those who abide by the rules.¹⁰

Section 397.311(37), F.S., defines a recovery residence as a residential dwelling unit, or other form of group housing, offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment. A 2009 Connecticut study notes: “Sober houses do not provide treatment, just a place where people in similar circumstances can support one another in sobriety. Because they do not provide treatment, they typically are not subject to state regulation.”¹¹

Federal Fair Housing Act and Americans with Disabilities Act

The Federal Fair Housing Act of 1988 (FFHA)¹² prohibits discrimination on the basis of a handicap in all types of housing transactions. The FFHA defines a “handicap” to mean mental or physical impairments that substantially limit one or more major life activities. The term “mental or physical impairment” may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term “major life activity” may include seeing, hearing, walking, breathing, performing manual tasks, caring for oneself, learning, speaking, or working. The FFHA also protects persons who have a record of such impairment or are regarded as having such impairment. Persons who are currently using controlled substances illegally, persons convicted of illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders are not considered disabled by virtue of that status under the FFHA.¹³

The Florida Fair Housing Act provides that it is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available.¹⁴ Discrimination includes a refusal to make reasonable accommodations in rules,

⁹ *Id.*

¹⁰ Department of Children and Families, *Recovery Residence Report* (Oct. 1, 2013), available at <http://www.dcf.state.fl.us/programs/samh/docs/SoberHomesPR/DCFProvisoRpt-SoberHomes.pdf> (last visited on Jan. 26, 2018).

¹¹ Office of Legislative Services, Connecticut General Assembly, *Sober Homes*, 2009-R-0316 (Sept. 2, 2009), available at <https://www.cga.ct.gov/2009/rpt/2009-R-0316.htm> (last visited on Jan. 26, 2018).

¹² 42 U.S.C. s. 3601 *et seq.*

¹³ U.S. Department of Justice, *The Fair Housing Act*, available at http://www.justice.gov/crt/about/hce/housing_coverage.php (last visited on Jan. 26, 2018).

¹⁴ Section 760.23(7)(b), F.S.

policies, practices, or services when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.¹⁵

In July 1999, the U.S. Supreme Court in *Olmstead v. L.C.*¹⁶ held that Title II of the Americans with Disabilities Act (ADA)

prohibits the unjustified segregation of individuals with disabilities. The Supreme Court held that public entities are required to provide community-based services to persons with disabilities when (a) such services are appropriate; (b) the affected persons do not oppose community-based treatment; and (c) community-based services can be reasonably accommodated, taking into account the resources available to the entity and the needs of others who are receiving disability services from the entity.¹⁷

“The provisions of the ADA under the *Olmstead* ruling apply to people of all ages with all types of disabilities...”¹⁸ “A former drug addict may be protected under the ADA because the addiction may be considered a substantially limiting impairment.”¹⁹ In addition, in *U.S. v. City of Boca Raton*,²⁰ the court held that the city’s ordinance excluding substance abuse treatment facilities from residential areas violates the FFHA because it unjustifiably prohibits these individuals from enjoying the same rights and access to housing as anyone else.

Based on this protected class status held by individuals in substance abuse recovery, “federal courts have held that conditions placed on housing for people in recovery from either state or sub-state entities, such as licenses or conditional use permits, may in application be overbroad and result in violations of the ... [FFHA] and ADA.”²¹ Additionally, federal courts have invalidated regulations that require registry of housing for protected classes, including recovery residences.²² Further, “federal courts have enjoined state action that is predicated on discriminatory local government decisions.”²³

State and local governments have the authority to “act on the basis of protecting the public health and safety of other individuals.”²⁴ “However, courts have observed that this justification may not be used as a guise to impose additional restrictions on protected classes under the FHA.”²⁵

Further, these regulations “may not single out the disabled, and apply different and unique rules

¹⁵ Section 760.23(9)(b), F.S.

¹⁶ *Olmstead v. L.C.*, 527 U.S. 581 (1999).

¹⁷ U.S. Department of Justice, *Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C.*, available at https://www.ada.gov/olmstead/q&a_olmstead.htm (last visited on Jan. 26, 2018), citing at n. 7 to *Olmstead v. L.C.*, 527 U.S. at 607.

¹⁸ Charles R. Moseley, *The ADA, Olmstead, and Medicaid: Implications for People with Intellectual and Developmental Disabilities* (2013), National Association of State Directors of Developmental Disabilities Services, available at http://www.nasddds.org/uploads/documents/ADA_Olmstead_and_Medicaid.pdf (last visited on Jan. 26, 2018).

¹⁹ U.S. Commission on Civil Rights, *Sharing the Dream: Is the ADA Accommodating All?* (Chapter 4) (Oct. 2000) (citation omitted), available at http://www.usccr.gov/pubs/ada/ch4.htm#_ftn12 (last visited on Jan. 26, 2018).

²⁰ 1008 WL 686689 (S.D. Fla. 2008).

²¹ *Supra*, n. 9, at p. 13-14 and footnote 60 (citing cases). See *Jeffrey O. v. City of Boca Raton*, 511 F. Supp. 2d 1339 (S.D. Fla. 2007).

²² *Supra*, n. 9, at p. 13 and footnotes 54 and 55 (citing cases).

²³ *Supra*, n. 9, at p. 14 and footnote 61 (citing cases).

²⁴ *Supra*, n. 9, at p. 12 and footnote 48 (citing 42 U.S.C. s. 3604(f)(9)).

²⁵ *Supra*, n. 9, at p. 12 and footnote 49 (citing cases).

to housing, when compared to the general population.”²⁶ Instead, the FHA and ADA require “that a reasonable accommodation be made, when necessary to allow a person with a qualifying disability, equal opportunity to use and enjoy a dwelling.”²⁷ The governmental entity bears the burden of proving through objective evidence that a regulation serves to protect the health and safety of the community and is not based upon stereotypes or “unsubstantiated inferences.”²⁸

Voluntary Certification of Recovery Residences in Florida

Florida does not license recovery residences. Instead, in 2015 the Legislature enacted ss. 397.487–397.4872, F.S., which establish voluntary certification programs for recovery residences and recovery residence administrators, implemented by private credentialing entities.²⁹

While certification is voluntary, Florida law incentivizes certification. Florida law prohibits licensed substance abuse service providers from referring patients to a recovery residence unless the recovery residence is certified and is actively managed by a certified recovery residence administrator.³⁰ Referrals by licensed service providers to uncertified recovery residences are limited to: those licensed service providers under contract with a managing entity as defined in s. 394.9082, F.S.; referrals by a recovery residence to a licensed service provider when the recovery residence or its owners, directors, operators, or employees do not benefit, directly or indirectly, from the referral; and referrals before July 1, 2018 by a licensed service provider to that licensed service provider’s wholly owned subsidiary.³¹

The DCF must publish a list of all certified recovery residences and recovery residence administrators on its website.³² As of January 26, 2018, the website listed 335 certified recovery residences in Florida.³³

Background Screening Requirements and Process Under Ch. 435, F.S.

Chapter 435, F.S., addresses background screening requirements for persons seeking employment or for employees in positions that require a background screening. An employer³⁴ may not hire, select, or otherwise allow an employee to have contact with a vulnerable person³⁵ that would place the employee in a role that requires a background screening until the screening process is completed and demonstrates the absence of any grounds for the denial or termination

²⁶ *Supra*, n. 9, at p. 13 and footnote 53 (citing cases).

²⁷ *Supra*, n. 9, at p. 10 and footnote 26 (citing federal statutes, regulations, and cases).

²⁸ *Supra*, n. 9, at p. 12 and footnote 50 (citing cases).

²⁹ Ch. 2015-100, L.O.F.

³⁰ Section 397.4873(1), F.S.

³¹ Section 397.4873(2), F.S.

³² Section 397.4872(3), F.S.

³³ Florida Association of Recovery Residences, *Certified Residences*, available at <http://farronline.org/certification/certified-residences/> (last visited on Jan. 26, 2018).

³⁴ “Employer” means any person or entity required by law to conduct screening of employees pursuant to ch. 435, F.S. Section 435.02(3), F.S.

³⁵ “Vulnerable persons are defined as minors in s. 1.01, F.S., or as vulnerable adults in s. 415.102, F.S.” 2018 *Agency Legislative Bill Analysis* (SB 1418) (Jan. 9, 2018), Department of Children and Families (on file with the Senate Committee on Criminal Justice).

of employment. If the screening process shows any grounds for the denial or termination of employment, the employer may not hire, select, or otherwise allow the employee to have contact with any vulnerable person that would place the employee in a role that requires background screening unless the employee is granted an exemption for disqualification by the agency³⁶ as provided under s. 435.07, F.S.³⁷

If an employer becomes aware that an employee has been arrested for a disqualifying offense, the employer must remove the employee from contact with any vulnerable person that places the employee in a role that requires a background screening until the arrest is resolved in a way that the employer determines that the employee is still eligible for employment under ch. 435, F.S.³⁸ The employer must terminate the employment of any of its personnel found to be in noncompliance with the minimum standards of ch. 435, F.S., or place the employee in a position for which background screening is not required unless the employee is granted an exemption from disqualification pursuant to s. 435.07, F.S.³⁹

An employer may hire an employee to a position that requires a background screening before the employee completes the screening process for training and orientation purposes. However, the employee may not have direct contact with vulnerable persons until the screening process is completed and the employee demonstrates that he or she exhibits no behaviors that warrant the denial or termination of employment.⁴⁰

Sections 435.03 and 435.04, F.S., outline the screening requirements. There are two levels of background screening: level 1 and level 2:

- Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,⁴¹ and may include criminal records checks through local law enforcement agencies.⁴²
- Level 2 screening includes, but, is not limited to, fingerprinting for statewide criminal history records checks through the FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.⁴³

The security background investigations under s. 435.04, F.S., for level 2 screening must ensure that no persons subject to this section have been arrested for and are awaiting final disposition of, have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or

³⁶ “Agency” means any state, county, or municipal agency that grants licenses or registration permitting the operation of an employer or is itself an employer or that otherwise facilitates the screening of employees pursuant to ch. 435, F.S. If there is no state agency or the municipal or county agency chooses not to conduct employment screening, “agency” means the DCF. Section 435.02(1), F.S.

³⁷ Section 435.06(2)(a), F.S.

³⁸ Section 435.06(2)(b), F.S.

³⁹ Section 435.06(2)(c), F.S.

⁴⁰ Section 435.06(2)(d), F.S.

⁴¹ The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site. The website is available at <https://www.nsopw.gov/> (last visited on Jan. 26, 2018).

⁴² Section 435.03(1), F.S.

⁴³ Section 435.04(1)(a), F.S.

guilty to, or have been adjudicated delinquent, and the record has not been sealed or expunged for, any offense listed in s. 435.04(2), F.S., or a similar law of another jurisdiction.⁴⁴

Additionally, such investigations must ensure that no person subject to s. 435.04, F.S., has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to any offense that constitutes domestic violence in s. 741.28, F.S., whether such act was committed in this state or another jurisdiction.⁴⁵

For both levels of screening, the person required to be screened pursuant to ch. 435, F.S., must submit a complete set of information necessary to conduct a screening under ch. 435, F.S.,⁴⁶ and must supply any missing criminal or other necessary information upon request to the requesting employer or agency within 30 days after receiving the request for the information.⁴⁷ Every employee must attest, subject to penalty of perjury, to meeting the requirements for qualifying for employment pursuant to ch. 435, F.S., and agreeing to inform the employer immediately if arrested for any of the disqualifying offenses while employed by the employer.⁴⁸

For level 1 screening, the employer must submit the information necessary for screening to the FDLE within 5 working days after receiving it. The FDLE must conduct a search of its records and respond to the employer or agency. The employer must inform the employee whether screening has revealed any disqualifying information.⁴⁹

For level 2 screening, the employer or agency must submit the information necessary for screening to the FDLE within 5 working days after receiving it. The FDLE must perform a criminal history record check of its records and request that the FBI perform a national criminal history record check of its records for each employee for whom the request is made. The FDLE must respond to the employer or agency, and the employer or agency must inform the employee whether screening has revealed disqualifying information.⁵⁰

Each employer licensed or registered with an agency must conduct level 2 screening and must submit to the agency annually or at the time of license renewal, under penalty of perjury, a signed attestation attesting to compliance with the provisions of ch. 435, F.S.⁵¹

Individuals Requiring Background Screening Under Ch. 397, F.S.

Only certain individuals affiliated with substance abuse treatment providers require background screening. Section 397.4073, F.S., requires all owners, directors, chief financial officers, and clinical supervisors of service providers, as well as all service provider personnel who have direct contact with children receiving services or with adults who are developmentally disabled receiving services to undergo level 2 background screening.

⁴⁴ Section 435.04(2), F.S.

⁴⁵ Section 435.04(3), F.S.

⁴⁶ Section 435.05(1)(a), F.S.

⁴⁷ Section 435.05(1)(d), F.S.

⁴⁸ Section 435.05(2), F.S.

⁴⁹ Section 435.05(1)(b), F.S.

⁵⁰ Section 435.05(1)(c), F.S.

⁵¹ Section 435.05(3), F.S.

Regarding recovery residences, s. 397.487(6), F.S., and s. 397.4871(5), F.S., each require level 2 background screening for all recovery residence owners, directors, and chief financial officers, and for administrators seeking certification.

Exemptions from Disqualification for Employment

Section 435.07(1), F.S., authorizes the head of the appropriate agency to grant to any employee otherwise disqualified from employment due to disqualifying offenses revealed pursuant to a background screening required under ch. 435, F.S., an exemption from such disqualification. For a felony, three years must have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed. No waiting period applies to misdemeanors.

Additionally, s. 435.07(2), F.S., provides that persons employed, or applicants for employment, by treatment providers who treat adolescents 13 years of age and older who are disqualified from employment solely because of crimes under s. 817.563, F.S. (sale of imitation controlled substance), s. 893.13, F.S. (controlled substances offenses, excluding drug trafficking), or s. 893.147, F.S. (drug paraphernalia offenses), may be exempted from disqualification from employment pursuant to ch. 435, F.S., without application of the 3-year waiting period for felony offenses in s. 435.07(1)(a)1., F.S.

Section 397.4073(4), F.S., authorizes the DCF to grant any service provider personnel an exemption from disqualification as provided in s. 435.07, F.S. The DCF may grant exemptions from disqualification to service provider personnel whose backgrounds checks indicate crimes under s. 817.563, F.S., s. 893.13, F.S., or s. 893.147, F.S., or grant exemptions from disqualification which would limit service provider personnel to working with adults in substance abuse treatment facilities.

Section 397.4872(1), F.S., provides that the individual exemptions to staff disqualification or administrator ineligibility may be requested if a recovery residence deems the decision will benefit the program. Requests for exemptions must be submitted in writing to the DCF within 20 days after the denial by the credentialing entity and must include a justification for the exemption. Subsection (2) provides, with some exceptions, the DCF may exempt a person from ss. 397.487(6), and 397.4871(5), F.S., if it has been at least 3 years since the person has completed or been lawfully released from confinement, supervision, or sanction for the disqualifying offense.

As previously noted, substance abuse services are governed by ch. 394, F.S., and ch. 397, F.S.⁵² “The system of care provides services to children and adults with or at-risk of substance misuse/abuse problems or co-occurring substance abuse and mental health problems[.]”⁵³

⁵² *Supra*, n. 5.

⁵³ Department of Children and Families, *Substance Abuse and Mental Health Services Plan 2014-2016*, p. 3, available at <http://www.dcf.state.fl.us/programs/samh/publications/2014-2016%20SAMH%20Services%20Plan.pdf> (last visited on Jan. 26, 2018).

Section 394.4572(1)(a), F.S., requires a level 2 screening for mental health personnel,⁵⁴ and s. 394.4572(1)(a), F.S., authorizes the DCF and the Agency for Health Care Administration (AHCA) to grant exemptions from disqualification as provided in ch. 435, F.S. However, s. 394.4572, F.S., does not specifically authorize the DCF or the AHCA to grant exemptions from disqualification for service provider personnel to work solely in mental health treatment programs or facilities or in programs or facilities that treat co-occurring substance use and mental health disorders.

III. Effect of Proposed Changes:

Section 1 amends s. 394.4572, F.S., relating to screening of mental health personnel, by expanding the group of individuals for whom an agency head can grant exemptions from disqualification to include applicants otherwise disqualified from employment. Specifically, the bill allows the head of the DCF or the AHCA to grant exemptions from disqualification to service provider personnel seeking to work solely in mental health treatment programs or facilities or in programs or facilities that treat co-occurring substance use and mental health disorders.

Section 2 amends s. 397.4073, F.S., relating to personnel background checks, to modify current requirements relating to background screening and exemptions from disqualification from employment to:

- Require level 2 background checks and level 2 background screening through the AHCA under s. 408.809, F.S., for all owners, directors, chief financial officers, and clinical supervisors who have direct contact with individuals receiving treatment;
- Require the DCF to grant or deny an exemption for disqualification within 60 days after receipt of a complete application;
- Authorize an applicant for the exemption to work with adults with substance use disorders under the supervision of persons who meet all personnel requirements of ch. 397, F.S., for up to 90 days after being notified of the disqualification or until the DCF makes a final determination on the request for an exemption, whichever is earlier, if 5 years or more have elapsed since the applicant's most recent disqualifying offense;
- Add the following crimes for which service provider personnel may be exempted from disqualification from employment:
 - Prostitution-related offenses under s. 796.07(2)(e), F.S.;
 - Unarmed burglary of a conveyance or structure under s. 810.02(4), F.S.;
 - Third degree grand theft under s. 812.014(2)(c), F.S.;
 - Forgery under s. 831.01, F.S.;
 - Offenses involving a worthless check or a debit card under s. 832.05(4), F.S.; and
 - Any attempt, solicitation, or conspiracy to commit any of these offenses or any offense currently listed in the section; and
- Authorize the DCF to grant exemptions from disqualification for service provider personnel to work solely in substance abuse treatment programs or facilities or in programs or facilities that treat co-occurring substance use and mental health disorders.

⁵⁴ "Mental health personnel" includes all program directors, professional clinicians, staff members, and volunteers working in public or private mental health programs and facilities who have direct contact with individuals held for examination or admitted for mental health treatment. Section 394.4572(1)(a), F.S.

Section 3 amends s. 397.487, F.S., relating to recovery residences, to require that all certified recovery residences comply with the provisions of the Florida Fire Prevention Code which apply to one-family and two-family dwellings.

Section 4 amends s. 397.4873, F.S., relating to referrals to or from recovery residences, to modify existing restrictions on referrals to or from recovery residences to allow referrals:

- Made before July 1, 2019, by a licensed service provider to that provider's wholly owned subsidiary; and
- By a recovery residence to a licensed service provider when a resident has experienced a recurrence of substance use and, in the best judgment of the recovery residence administrator, it appears that the resident may benefit from clinical treatment services.

The bill also provides that a recovery residence or its owners, directors, operators, employees, or volunteers may not receive a direct pecuniary benefit in exchange for a referral made pursuant to the provisions of s. 397.4873, F.S.

Section 5 amends s. 435.07, F.S., to add the same offenses previously described in Section 2 of the bill to the list of offenses for which a person may be exempted from disqualification, without application of the 3-year waiting period, for employment by a treatment provider who treats adolescents 13 years of age or older.

Section 6 provides an effective date of July 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:

The bill may have an impact on recovery residences which need to modify features of existing physical structures or move to new locations in order to comply with relevant provisions of the Florida Fire Prevention Code. This impact is indeterminate.

C. Government Sector Impact:

The DCF may be impacted by an increased workload associated with the newly added time limit on rendering decisions for employment disqualification exemptions. This impact is not expected to be significant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.4572, 397.4073, 397.487, 397.4873, and 435.07.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS/CS by Criminal Justice on February 6, 2018:

The committee substitute:

- Requires level 2 background checks and level 2 background screening through the AHCA under s. 408.809, F.S., for all owners, directors, chief financial officers, and clinical supervisors who have direct contact with individuals receiving treatment (a prior provision required a level 2 screening for service provider personnel and certain volunteers who have direct contact with the individuals receiving treatment).
- Authorizes an applicant for the exemption to work with adults with substance use disorders under the supervision of persons who meet ch. 397, F.S., personnel requirements for up to 90 days after being notified of the disqualification or until the DCF makes a final determination on the request for an exemption, whichever is earlier, if 5 years or more have elapsed since the applicant's most recent disqualifying offense (a prior provision required that 5 or more years elapse since completion or lawful release from confinement, supervision, or nonmonetary condition).
- Requires that all certified recovery residences comply with the provisions of the Florida Fire Prevention Code which apply to one-family and two-family dwellings (a prior provision required that all certified recovery residences comply with the provisions of the Florida Fire Prevention Code which apply to one-family and two-

family dwellings, public lodging establishments or rooming houses, or other housing facilities, as applicable).

- Modifies existing restrictions on referrals to or from recovery residences to allow referrals made before July 1, 2019, by a licensed service provider to that provider's wholly owned subsidiary.
- Provides that a recovery residence or its owners, directors, operators, employees, or volunteers may not receive a direct pecuniary benefit in exchange for a referral made pursuant to the provisions of s. 397.4873, F.S. (a prior provision specified that a recovery residence or its owners, directors, operators, employees, or volunteers may not benefit from referrals made pursuant to the provisions of s. 397.4873, F.S.).

CS by Children, Families, and Elder Affairs on January 22, 2018:

- Removes the creation of a new licensable component of "treatment with housing overlay" and restores the deletion of day and night treatment with community housing.
- Expands staff and volunteers who are subject to a level 2 background screening to include anyone with direct contact with individuals receiving treatment, and requires these personnel to undergo a background screening under s. 408.809, F.S.
- Expands the offenses for which an individual may receive an exemption from disqualification for employment without the statutorily-imposed waiting period, if the individual is working with adolescents 13 years of age and older and adults with substance use disorders.
- Allows an individual to work under supervision for up to 90 days while the DCF evaluates his or her application for an exemption from disqualification under certain conditions.

B. Amendments:

None.



306102

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2018	.	
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The Committee on Criminal Justice (Rouson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (2) of section 394.4572, Florida
Statutes, is amended to read:

394.4572 Screening of mental health personnel.—

(2)(a) The department or the Agency for Health Care
Administration may grant exemptions from disqualification as
provided in chapter 435.



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(b) The department or the Agency for Health Care Administration, as applicable, may grant exemptions from disqualification for service provider personnel to work solely in mental health treatment programs or facilities or in programs or facilities that treat co-occurring substance use and mental health disorders.

Section 2. Paragraphs (a), (f), and (g) of subsection (1) and subsection (4) of section 397.4073, Florida Statutes, are amended to read:

397.4073 Background checks of service provider personnel.—

(1) PERSONNEL BACKGROUND CHECKS; REQUIREMENTS AND EXCEPTIONS.—

(a) The department shall require level 2 background screening pursuant to chapter 435 for all owners, directors, chief financial officers, and clinical supervisors who have direct contact with individuals receiving treatment. Such screening shall also include background screening as provided in s. 408.809. Background checks shall apply as follows:

~~1. All owners, directors, chief financial officers, and clinical supervisors of service providers are subject to level 2 background screening as provided under chapter 435. Inmate substance abuse programs operated directly or under contract with the Department of Corrections are exempt from background screening requirements under this section this requirement.~~

~~2. All service provider personnel who have direct contact with children receiving services or with adults who are developmentally disabled receiving services are subject to level 2 background screening as provided under chapter 435.~~

(f) Service provider personnel who request an exemption



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from disqualification must submit the request within 30 days after being notified of the disqualification. The department shall grant or deny the exemption from disqualification within 60 days after receipt of a complete application.

(g) If 5 years or more have elapsed since the most recent disqualifying offense, the applicant for the exemption ~~service provider personnel~~ may work with adults with substance use disorders under the supervision of persons who meet all personnel requirements of this chapter for up to 90 days after being notified of the disqualification or until the department a ~~qualified professional licensed under chapter 490 or chapter 491 or a master's-level-certified addictions professional until the agency~~ makes a final determination regarding the request for an exemption from disqualification, whichever is earlier.

(h) ~~(g)~~ The department may not issue a regular license to any service provider that fails to provide proof that background screening information has been submitted in accordance with chapter 435.

(4) EXEMPTIONS FROM DISQUALIFICATION.—

(a) The department may grant to any service provider personnel an exemption from disqualification as provided in s. 435.07.

(b) Since rehabilitated substance abuse impaired persons are effective in the successful treatment and rehabilitation of individuals with substance use disorders, for service providers which treat adolescents 13 years of age and older, service provider personnel whose background checks indicate crimes under s. 796.07(2)(e), s. 810.02(4), s. 812.014(2)(c), s. 817.563, s. 831.01, s. 831.02, s. 832.05(4), s. 893.13, or s. 893.147, and



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any related criminal attempt, solicitation, or conspiracy under s. 777.04, may be exempted from disqualification from employment pursuant to this paragraph.

(c) The department may grant exemptions from disqualification for service provider personnel to work solely in substance abuse treatment programs or facilities or in programs or facilities that treat co-occurring substance use and mental health disorders. The department may further limit such ~~grant exemptions from disqualification which would limit service provider personnel~~ to working with adults in substance abuse treatment facilities.

Section 3. Subsection (1), paragraph (m) of subsection (3), and subsection (6) of section 397.487, Florida Statutes, are amended to read:

397.487 Voluntary certification of recovery residences.—

(1) The Legislature finds that a person suffering from addiction has a higher success rate of achieving long-lasting sobriety when given the opportunity to build a stronger foundation by living in a recovery residence while receiving treatment or after completing treatment. The Legislature further finds that this state and its subdivisions have a legitimate state interest in protecting these persons, who represent a vulnerable consumer population in need of adequate housing. It is the intent of the Legislature to protect persons who reside in a recovery residence.

(3) A credentialing entity shall require the recovery residence to submit the following documents with the completed application and fee:

(m) Proof of satisfactory fire, safety, and health



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inspections. A recovery residence must comply with the provisions of the Florida Fire Prevention Code which apply to one-family and two-family dwellings.

(6) All owners, directors, and chief financial officers of an applicant recovery residence are subject to level 2 background screening as provided under chapter 435 and s. 408.809. A recovery residence is ineligible for certification, and a credentialing entity shall deny a recovery residence's application, if any owner, director, or chief financial officer has been found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 408.809(4) or s. 435.04(2) unless the department has issued an exemption under s. 397.4073 or s. 397.4872. In accordance with s. 435.04, the department shall notify the credentialing agency of an owner's, director's, or chief financial officer's eligibility based on the results of his or her background screening.

Section 4. Section 397.4873, Florida Statutes, is amended to read:

397.4873 Referrals to or from recovery residences; prohibitions; penalties.—

(1) A service provider licensed under this part may not make a referral of a prospective, current, or discharged patient to, or accept a referral of such a patient from, a recovery residence unless the recovery residence holds a valid certificate of compliance as provided in s. 397.487 and is actively managed by a certified recovery residence administrator as provided in s. 397.4871.

(2) Subsection (1) does not apply to:



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127 (a) A licensed service provider under contract with a
128 managing entity as defined in s. 394.9082.

129 (b) Referrals by a recovery residence to a licensed service
130 provider when a resident has experienced a recurrence of
131 substance use and, in the best judgment of the recovery
132 residence administrator, it appears that the resident may
133 benefit from clinical treatment services ~~the recovery residence~~
134 ~~or its owners, directors, operators, or employees do not~~
135 ~~benefit, directly or indirectly, from the referral.~~

136 (c) Referrals made before July 1, 2019 ~~July 1, 2018~~, by a
137 licensed service provider to that licensed service provider's
138 wholly owned subsidiary.

139 (3) A recovery residence or its owners, directors,
140 operators, employees, or volunteers may not receive a direct
141 pecuniary benefit in exchange for a referral made pursuant to
142 subsection (1) or subsection (2).

143 (4) ~~(3)~~ For purposes of this section, a licensed service
144 provider or recovery residence shall be considered to have made
145 a referral if the provider or recovery residence has informed a
146 patient by any means about the name, address, or other details
147 of a recovery residence or licensed service provider, or
148 informed a licensed service provider or a recovery residence of
149 any identifying details about a patient.

150 (5) ~~(4)~~ A licensed service provider shall maintain records
151 of referrals to or from recovery residences as may be prescribed
152 by the department in rule.

153 (6) ~~(5)~~ After June 30, 2019, a licensed service provider
154 violating this section shall be subject to an administrative
155 fine of \$1,000 per occurrence. Repeat violations of this section



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may subject a provider to license suspension or revocation pursuant to s. 397.415.

~~(7)(6)~~ Nothing in this section requires a licensed service provider to refer a patient to or to accept a referral of a patient from a recovery residence.

Section 5. Subsection (2) of section 435.07, Florida Statutes, is amended to read:

435.07 Exemptions from disqualification.—Unless otherwise provided by law, the provisions of this section apply to exemptions from disqualification for disqualifying offenses revealed pursuant to background screenings required under this chapter, regardless of whether those disqualifying offenses are listed in this chapter or other laws.

(2) Persons employed, or applicants for employment, by treatment providers who treat adolescents 13 years of age and older who are disqualified from employment solely because of crimes under s. 796.07(2)(e), s. 810.02(4), s. 812.014(2)(c), s. 817.563, s. 831.01, s. 831.02, s. 832.05(4), s. 893.13, or s. 893.147, and any related criminal attempt, solicitation, or conspiracy under s. 777.04, may be exempted from disqualification from employment pursuant to this chapter without application of the waiting period in subparagraph (1)(a)1.

Section 6. This act shall take effect July 1, 2018.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:



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A bill to be entitled
An act relating to substance abuse services; amending
s. 394.4572, F.S.; authorizing the Department of
Health or the Agency for Health Care Administration,
as applicable, to grant exemptions from
disqualification for service provider personnel to
work solely in certain treatment programs and
facilities; amending s. 397.4073, F.S.; revising
provisions relating to background checks and
exemptions from disqualification for certain service
provider personnel; requiring the Department of
Children and Families to grant or deny an exemption
from disqualification within a certain timeframe;
authorizing certain applicants for an exemption to
work under the supervision of certain persons for a
specified period of time while his or her application
is pending; authorizing certain persons to be exempted
from disqualification from employment; authorizing the
department to grant exemptions from disqualification
for service provider personnel to work solely in
certain treatment programs and facilities; amending s.
397.487, F.S.; revising legislative findings relating
to voluntary certification of recovery residences;
requiring recovery residences to comply with specified
Florida Fire Prevention Code provisions; revising
background screening requirements for owners,
directors, and chief financial officers of recovery
residences; amending s. 397.4873, F.S.; providing
exceptions to limitations on referrals by recovery



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214 residences to licensed service providers; prohibiting
215 recovery residences and specified affiliated
216 individuals from benefitting from certain referrals;
217 providing penalties; amending s. 435.07, F.S.;
218 authorizing the exemption of certain persons from
219 disqualification from employment; providing an
220 effective date.

By the Committee on Children, Families, and Elder Affairs; and
Senator Rouson

586-02343-18

20181418c1

1 A bill to be entitled
2 An act relating to substance abuse services; amending
3 s. 394.4572, F.S.; authorizing the Department of
4 Health or the Agency for Health Care Administration,
5 as applicable, to grant exemptions from
6 disqualification for service provider personnel to
7 work solely in certain treatment programs and
8 facilities; amending s. 397.4073, F.S.; revising
9 provisions relating to background checks and
10 exemptions from disqualification for certain service
11 provider personnel and volunteers; requiring the
12 Department of Children and Families to grant or deny
13 an exemption from disqualification within a certain
14 timeframe; authorizing certain applicants for an
15 exemption to work under the supervision of certain
16 persons for a specified period of time while his or
17 her application is pending; authorizing certain
18 persons to be exempted from disqualification from
19 employment; authorizing the department to grant
20 exemptions from disqualification for service provider
21 personnel to work solely in certain treatment programs
22 and facilities; amending s. 397.487, F.S.; revising
23 legislative findings relating to voluntary
24 certification of recovery residences; requiring
25 recovery residences to comply with specified Florida
26 Fire Prevention Code provisions; revising background
27 screening requirements for owners, directors, and
28 chief financial officers of recovery residences;
29 amending s. 397.4873, F.S.; providing exceptions to

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

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30 limitations on referrals by recovery residences to
31 licensed service providers; prohibiting recovery
32 residences and specified affiliated individuals from
33 benefitting from certain referrals; providing
34 penalties; amending s. 435.07, F.S.; authorizing the
35 exemption of certain persons from disqualification
36 from employment; providing an effective date.
37

38 Be It Enacted by the Legislature of the State of Florida:
39

40 Section 1. Subsection (2) of section 394.4572, Florida
41 Statutes, is amended to read:

42 394.4572 Screening of mental health personnel.—

43 (2) (a) The department or the Agency for Health Care
44 Administration may grant exemptions from disqualification as
45 provided in chapter 435.

46 (b) The department or the Agency for Health Care
47 Administration, as applicable, may grant exemptions from
48 disqualification for service provider personnel to work solely
49 in mental health treatment programs or facilities or in programs
50 or facilities that treat co-occurring substance use and mental
51 health disorders.

52 Section 2. Paragraphs (a), (f), and (g) of subsection (1)
53 and subsection (4) of section 397.4073, Florida Statutes, are
54 amended to read:

55 397.4073 Background checks of service provider personnel.—

56 (1) PERSONNEL BACKGROUND CHECKS; REQUIREMENTS AND
57 EXCEPTIONS.—

58 (a) The department shall require level 2 background

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

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screening pursuant to chapter 435 for all owners, directors, chief financial officers, and clinical supervisors, and for service provider personnel and volunteers, except as provided in paragraph (c), who have direct contact with individuals receiving treatment. Such screening shall also include background screening as provided in s. 408.809. Background checks shall apply as follows:

1. ~~All owners, directors, chief financial officers, and clinical supervisors of service providers are subject to level 2 background screening as provided under chapter 435. Inmate substance abuse programs operated directly or under contract with the Department of Corrections are exempt from background screening requirements under this section this requirement.~~

2. ~~All service provider personnel who have direct contact with children receiving services or with adults who are developmentally disabled receiving services are subject to level 2 background screening as provided under chapter 435.~~

(f) Service provider personnel who request an exemption from disqualification must submit the request within 30 days after being notified of the disqualification. The department shall grant or deny the exemption from disqualification within 60 days after receipt of a complete application.

(g) If 5 years or more have elapsed since the applicant for the exemption completed or was lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the most recent disqualifying offense, such applicant ~~service provider personnel~~ may work with adults with substance use disorders under the supervision of persons who meet all personnel requirements of this chapter for up to 90

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days after being notified of the disqualification or until the department ~~a qualified professional licensed under chapter 490 or chapter 491 or a master's level certified addictions professional until the agency~~ makes a final determination regarding the request for an exemption from disqualification, whichever is earlier.

(h) ~~(g)~~ The department may not issue a regular license to any service provider that fails to provide proof that background screening information has been submitted in accordance with chapter 435.

(4) EXEMPTIONS FROM DISQUALIFICATION.—

(a) The department may grant to any service provider personnel an exemption from disqualification as provided in s. 435.07.

(b) Since rehabilitated substance abuse impaired persons are effective in the successful treatment and rehabilitation of individuals with substance use disorders, for service providers which treat adolescents 13 years of age and older, service provider personnel whose background checks indicate crimes under s. 796.07(2)(e), s. 810.02(4), s. 812.014(2)(c), s. 817.563, s. 831.01, s. 831.02, s. 832.05(4), s. 893.13, or s. 893.147, and any related criminal attempt, solicitation, or conspiracy under s. 777.04, may be exempted from disqualification from employment pursuant to this paragraph.

(c) The department may grant exemptions from disqualification for service provider personnel to work solely in substance abuse treatment programs or facilities or in programs or facilities that treat co-occurring substance use and mental health disorders. The department may further limit such

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117 ~~grant exemptions from disqualification which would limit service~~
 118 ~~provider personnel~~ to working with adults in substance abuse
 119 treatment facilities.

120 Section 3. Subsection (1), paragraph (m) of subsection (3),
 121 and subsection (6) of section 397.487, Florida Statutes, are
 122 amended to read:

123 397.487 Voluntary certification of recovery residences.—

124 (1) The Legislature finds that a person suffering from
 125 addiction has a higher success rate of achieving long-lasting
 126 sobriety when given the opportunity to build a stronger
 127 foundation by living in a recovery residence while receiving
 128 treatment or after completing treatment. The Legislature further
 129 finds that this state and its subdivisions have a legitimate
 130 state interest in protecting these persons, who represent a
 131 vulnerable consumer population in need of adequate housing. It
 132 is the intent of the Legislature to protect persons who reside
 133 in a recovery residence.

134 (3) A credentialing entity shall require the recovery
 135 residence to submit the following documents with the completed
 136 application and fee:

137 (m) Proof of satisfactory fire, safety, and health
 138 inspections. A recovery residence must comply with the
 139 provisions of the Florida Fire Prevention Code which apply to
 140 one-family and two-family dwellings, public lodging
 141 establishments, or rooming houses, or other housing facilities,
 142 as applicable.

143 (6) All owners, directors, and chief financial officers of
 144 an applicant recovery residence are subject to level 2
 145 background screening as provided under chapter 435 and s.

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146 408.809. A recovery residence is ineligible for certification,
 147 and a credentialing entity shall deny a recovery residence's
 148 application, if any owner, director, or chief financial officer
 149 has been found guilty of, or has entered a plea of guilty or
 150 nolo contendere to, regardless of adjudication, any offense
 151 listed in s. 408.809(4) or s. 435.04(2) unless the department
 152 has issued an exemption under s. 397.4073 or s. 397.4872. In
 153 accordance with s. 435.04, the department shall notify the
 154 credentialing agency of an owner's, director's, or chief
 155 financial officer's eligibility based on the results of his or
 156 her background screening.

157 Section 4. Section 397.4873, Florida Statutes, is amended
 158 to read:

159 397.4873 Referrals to or from recovery residences;
 160 prohibitions; penalties.—

161 (1) A service provider licensed under this part may not
 162 make a referral of a prospective, current, or discharged patient
 163 to, or accept a referral of such a patient from, a recovery
 164 residence unless the recovery residence holds a valid
 165 certificate of compliance as provided in s. 397.487 and is
 166 actively managed by a certified recovery residence administrator
 167 as provided in s. 397.4871.

168 (2) Subsection (1) does not apply to:

169 (a) A licensed service provider under contract with a
 170 managing entity as defined in s. 394.9082.

171 (b) Referrals by a recovery residence to a licensed service
 172 provider when a resident has experienced a recurrence of
 173 substance use and, in the best judgment of the recovery
 174 residence administrator, it appears that the resident may

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~~benefit from clinical treatment services the recovery residence or its owners, directors, operators, or employees do not benefit, directly or indirectly, from the referral.~~

(c) Referrals made before July 1, 2018, by a licensed service provider to that licensed service provider's wholly owned subsidiary.

(3) A recovery residence or its owners, directors, operators, employees, or volunteers may not benefit, directly or indirectly, from a referral made pursuant to subsection (1) or subsection (2).

(4)~~(3)~~ For purposes of this section, a licensed service provider or recovery residence shall be considered to have made a referral if the provider or recovery residence has informed a patient by any means about the name, address, or other details of a recovery residence or licensed service provider, or informed a licensed service provider or a recovery residence of any identifying details about a patient.

(5)~~(4)~~ A licensed service provider shall maintain records of referrals to or from recovery residences as may be prescribed by the department in rule.

(6)~~(5)~~ After June 30, 2019, a licensed service provider violating this section shall be subject to an administrative fine of \$1,000 per occurrence. Repeat violations of this section may subject a provider to license suspension or revocation pursuant to s. 397.415.

(7)~~(6)~~ Nothing in this section requires a licensed service provider to refer a patient to or to accept a referral of a patient from a recovery residence.

Section 5. Subsection (2) of section 435.07, Florida

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Statutes, is amended to read:

435.07 Exemptions from disqualification.—Unless otherwise provided by law, the provisions of this section apply to exemptions from disqualification for disqualifying offenses revealed pursuant to background screenings required under this chapter, regardless of whether those disqualifying offenses are listed in this chapter or other laws.

(2) Persons employed, or applicants for employment, by treatment providers who treat adolescents 13 years of age and older who are disqualified from employment solely because of crimes under s. 796.07(2)(e), s. 810.02(4), s. 812.014(2)(c), s. 817.563, s. 831.01, s. 831.02, s. 832.05(4), s. 893.13, or s. 893.147, and any related criminal attempt, solicitation, or conspiracy under s. 777.04, may be exempted from disqualification from employment pursuant to this chapter without application of the waiting period in subparagraph (1)(a)1.

Section 6. This act shall take effect July 1, 2018.

APPEARANCE RECORD

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

2/6/18
Meeting DateSB 1418
Bill Number (if applicable)

Topic sober Homes / Substance Abuse

Amendment Barcode (if applicable)

Name Rebecca Salasosa

Job Title Legislative Affairs Director

Address 301 N. Olive Ave., 1101.3

Phone 860.284.7235

Street West Palm Beach, FL 33401

Email rdelarosa@pbngov.org

Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Palm Beach County

Appearing at request of Chair: ☐ Yes ☐ NoLobbyist 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)

APPEARANCE RECORD

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

waive in support

2/6/18
1418
Meeting Date

1418
Bill Number (if applicable)

Topic Substance Abuse

Amendment Barcode (if applicable)

Name Alisa LaPorte

Job Title Executive Director

Address PO Box 961

Phone 850-671-4445

Street

City

State

Zip

Email alisa@namiFlorida.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing National Alliance on Mental Illness - 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

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

2/6/18

Meeting Date

1418

Bill Number (if applicable)

Topic SUBSTANCE ABUSE SERVICES

Amendment Barcode (if applicable)

Name DAPHNEE SAINVIL

Job Title POLICY ADVISOR

Address 115 S. ANDREWS AVE.

Phone 954-253-7320

Street

FT. LAUDERDALE

FL

33301

City

State

Zip

Email dsainvil@broward.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing BROWARD COUNTY GOV'T

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

16 Feb 2017

Meeting Date

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

1418

Bill Number (if applicable)

Topic SA Programs / Recovery Residences

Amendment Barcode (if applicable)

Name Mark Fontaine

Job Title CEO

Address 2868 Mahan Dr

Phone 850 878 2196

Street

Tallahassee

State

FL

Zip

32308

Email mfontaine@fada.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Behavioral Health 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

Committee Agenda Request

To: Senator Randolph Bracy, Chair
Criminal Justice Committee

Subject: Committee Agenda Request

Date: February 2, 2018

I respectfully request that **Senate Bill # 1418**, relating to Substance Abuse, be placed on the:

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

A handwritten signature in cursive script that reads "Darryl Rouson".

Senator Darryl Rouson
Florida Senate, District 19

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 1490

INTRODUCER: Senator Bracy

SUBJECT: Determining Bail

DATE: January 26, 2018

REVISED: _____

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

I. Summary:

SB 1490 amends a variety of provisions related to bond and pretrial release. The purpose of and legislative findings applicable to bail and pretrial detention are amended to focus on defendants charged with violent crimes, rather than defendants charged with any crime. The bill creates a presumption that a defendant charged with a nonviolent misdemeanor will be released on nonmonetary conditions. A nonviolent misdemeanor is defined in the bill to exclude assault as defined in s. 784.011, F.S.

The bill deletes two circumstances from s. 907.041(4)(c), F.S., that the court can find when determining whether a defendant charged with driving under the influence manslaughter poses a threat of harm to the community and must therefore be detained pretrial.

The bill amends s. 903.0471, F.S., limiting the court's authority to revoke a defendant's bond or pretrial release conditions to circumstances where the court finds probable cause that he or she committed a new violent or dangerous crime while on pretrial release, rather than the probable cause that he or she committed *any* new offense.

The bill is effective July 1, 2018.

II. Present Situation:

Upon being arrested for a crime in Florida, a person is taken to the county jail for processing.¹ An arrestee must be brought before a judge for a first appearance hearing within 24 hours of

¹ See s. 907.04, F.S.

arrest.² The Florida Constitution provides that every person charged with a crime is entitled to pretrial release with reasonable conditions.³

Types of Pretrial Release

There are three types of pretrial release for a person who is awaiting trial: the posting of a bail or surety bond, pretrial release conditions, or the release on his or her own recognizance.⁴

Bail and Surety Bond

The purpose of a bail determination in criminal proceedings is to ensure the appearance of a defendant, regardless of the severity of his or her crime, at subsequent proceedings and to protect the community against unreasonable danger from the defendant.⁵ Bail is a common monetary condition of pretrial release, governed by ch. 903, F.S.⁶ For the defendant to be released from jail, a court may require bail by a defendant to provide security, such as cash or a bond to ensure that he or she will return for trial and any other required court appearances.⁷

As an alternative to posting the entire bail amount, a defendant may provide a criminal surety bail bond⁸ executed by a bail bond agent. Generally, the defendant or another person on the defendant's behalf pays the bail bond agent a nonrefundable fee equal to 10 percent of the bond amount set by the court. If the defendant does not appear in court, the bail bond agent is responsible for paying the entire amount of the bond.⁹

Pretrial Release Conditions

A judge can release a defendant with any combination of the following pretrial release conditions:

- Release on the defendant's own recognizance;
- Execute an unsecured appearance bond in an amount specified by the judge;
- Comply with any court-imposed restrictions on travel, association, or place of abode during the period of release;
- Be placed in the custody of a designated person or organization agreeing to supervise the defendant;
- Have a designate execute a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

² Rules 3.130(a) and 3.132(a), Fla. R. Crim. Pro. Rule 3.130 further provides that at the first hearing the court must advise the defendant about the criminal charge; appoint counsel, if the defendant is indigent, or allow the defendant to have his or her hired counsel present; and determine terms of pretrial release.

³ Article I, s. 14, FLA CONST. This right does not apply to persons charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great. *Id.*

⁴ See art. I, s. 14, Fla. Const.; See also ss. 903.046 and 907.041, F.S.

⁵ Section 903.046(1), F.S.

⁶ "Bail," Black's Law Dictionary (3rd Pocket Edition). The purpose of a bail bond is to guarantee the defendant's presence in court to face criminal charges.

⁷ *Universal Bail Bonds v. State*, 929 So.2d 697, 699 (Fla. 3d DCA 2006).

⁸ Sections 903.011 and 903.105, F.S.

⁹ Office of Program Policy Analysis & Gov't Accountability, *County Pretrial Release Programs: Calendar Year 2016*, Report No. 17-12, at 2. (Dec. 2017) available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1712rpt.pdf> (last visited January 24, 2018).

- Comply with any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.¹⁰

A judge also can release a defendant to a pretrial release program. Generally, judges allow a defendant to be released to a pretrial release program without posting a bond, however a judge can require a defendant to post a bond and participate in the program.¹¹ Specifically, s. 907.041, F.S., provides a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release unless such person is charged with a dangerous crime.¹² These programs supervise defendants with various methods, from phone contact, to electronic monitoring.¹³

Release on Recognizance

A defendant released on his or her own recognizance is released without a monetary requirement and without any conditions of release or supervision of any type.¹⁴

A Court's Determination of Pretrial Release

The judge must consider all available relevant factors during the first appearance hearing to determine what form of release is necessary to assure the defendant's appearance and the community's safety, including, but not limited to:

- The nature and circumstances of the offense charged.
- The weight of the evidence against the defendant.
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition.
- The defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings.
- The nature and probability of danger which the defendant's release poses to the community.
- The source of funds used to post bail or procure an appearance bond, particularly whether the proffered funds, real property, property, or any proposed collateral or bond premium may be

¹⁰ Rule 3.131(b)(1), Fla. R. Crim. Pro.

¹¹ *Id.* If a monetary bail is required, the judge must determine a separate amount for each charge or offense. Rule 3.131(b)(2), Fla. R. Crim. Pro.

¹² Section 907.041, F.S., defines a dangerous crime to mean any of the following: Arson; Aggravated assault; Aggravated battery; Illegal use of explosives; Child abuse or aggravated child abuse; Abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult; Aircraft piracy; Kidnapping; Homicide; Manslaughter; Sexual battery; Robbery; Carjacking; Lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; Sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; Burglary of a dwelling; Stalking and aggravated stalking; Act of domestic violence as defined in s. 741.28, F.S.; Home invasion robbery; Act of terrorism as defined in s. 775.30, F.S.; Manufacturing any substances in violation of ch. 893, F.S.; Attempting or conspiring to commit any such crime; and Human trafficking.

¹³ *Supra* n. 9.

¹⁴ Release on recognizance is defined to mean the pretrial release of an arrested person who promises, usually in writing, but without supplying a surety of posting bond, to appear for trial at a later date. BLACK'S LAW DICTIONARY 606 (3d Pocket ed. 2006).

linked to or derived from the crime alleged to have been committed or from any other criminal or illicit activities.¹⁵

- Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence.
- The street value of any drug or controlled substance connected to or involved in the criminal charge.
- The nature and probability of intimidation and danger to victims.
- Whether there is probable cause to believe that the defendant committed a new crime while on pretrial release.
- Any other facts that the court considers relevant.¹⁶

Section 903.047, F.S., provides additional conditions that a defendant must comply with upon release from custody pending trial, including:

- Refrain from criminal activity of any kind;
- Refrain from contact of any type with the victim, except through pretrial discovery pursuant to the Florida Rules of Criminal Procedure, if applicable;¹⁷ and
- Comply with all conditions of pretrial release.

Standard Bond Schedule

Florida does not have a statewide bond schedule, but each circuit has developed a standard bond schedule. Courts create uniform bail bond schedules to ensure that alleged offenders are provided equal treatment when charged with similar crimes and generally apply to all felonies, misdemeanors and county or municipal ordinance violations as the presumptive bond to be set unless ordered differently by a judge.¹⁸ Even though a county may have an established standard

¹⁵ Section 903.046(2)(f), F.S., places the burden on the defendant to establish that the funds, real property, property, or any proposed collateral or bond premium is not involved in or derived from criminal or other illicit activity.

¹⁶ Section 903.046(2), F.S. *See also* Rule 3.131(b)(3), Fla. R. Crim. Pro.

¹⁷ Section 903.047(1)(b), F.S., provides that in a case where the court imposes a no contact order, the defendant must be informed in writing of the order of no contact, including the specified prohibited acts, before the defendant is released from custody on pretrial release. No contact includes: a) communicating orally or in any written form in a variety of modes, including either directly or indirectly through a third person, with the victim or any other person named in the order. However, if the defendant and victim have children in common, the court may designate an appropriate third person to contact the victim for the sole purpose of facilitating the defendant's contact with the children; b) having physical or violent contact with the victim or other named person or his or her property; c) being within 500 feet of the victim's or other named person's residence, even if the defendant and the victim or other named person share the residence; and d) being within 500 feet of the victim's or other named person's vehicle, place of employment, or a specified place frequented regularly by such person. Section 903.047(2), F.S., also provides that a no contact order may be modified by the court upon motion of the defendant.

¹⁸ Some common ways to address the bond schedules are to either have a standard based on the degree of the offense (for example a \$5,000 bond for all second degree felonies, as seen in the Tenth Judicial Circuit) or a specific amount agreed upon for a specific offense, as seen in the Sixth Judicial Circuit. *See* Tenth Judicial Circuit, In and For Hardee, Highlands, and Polk Counties, *Administrative Order IN RE: Uniform Bond Schedule*, available at <http://jud10.flcourts.org/sites/all/files/docs/2-49.8.pdf>; Wakulla Sheriff's Office, Corrections, *Bond Schedule*, available at <http://www.wcso.org/bond-schedule/>; Sixth Judicial Circuit, In and For Pasco and Pinellas Counties, *Administrative Order NO. 2009-021 PA-CIR, RE: Uniform Bond Schedule – Pasco County*, available at <http://www.jud6.org/LegalCommunity/LegalPractice/AOSAndRules/aos/aos2009/2009-021.htm> (last visited all sites January 22, 2018).

bond schedule, a judge has the discretion to impose a bond that is above or below such schedule if he or she deems it is necessary based upon the circumstances of the case.¹⁹

Pretrial Detention

If the court believes that there are no conditions of release that can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.²⁰

Section 907.041(4)(c), F.S., provides that a defendant may be detained pretrial if the court finds with substantial probability, based on a defendant's history, any of the following circumstances exist, including, in part:

- The defendant, with the intent to obstruct the judicial process, has threatened, intimidated, or injured any victim, potential witness, juror, or judicial officer, or has attempted or conspired to do so, and that no condition of release will reasonably prevent the obstruction of the judicial process;
- The defendant is charged with DUI manslaughter, as defined by s. 316.193, F.S., and that there is a substantial probability that the defendant committed the crime and that the defendant poses a threat of harm to the community, which can be supported by a finding that the defendant poses a threat of harm to the community based upon the presence of any of the following:
 - The defendant has previously been convicted of any crime under s. 316.193, F.S., or of any crime in any other state or territory of the United States that is substantially similar to any crime under s. 316.193, F.S.;
 - The defendant was driving with a suspended driver license when the charged crime was committed; or
 - The defendant has previously been found guilty of, or has had adjudication of guilt withheld for, driving while the defendant's driver license was suspended or revoked in violation of s. 322.34, F.S.; or
- The defendant was on probation, parole, or other release pending completion of sentence or on pretrial release for a dangerous crime at the time the current offense was committed.²¹

An arresting agency is required to notify the state attorney when a person is arrested for a crime for which pretrial detention could be ordered. The notification to the state attorney from the arresting agency must provide specified information related to the offense, evidence, and the defendant's criminal history and ties to the community.²² The arresting agency is authorized to detain such a defendant for up to 24 hours before the state attorney files a motion seeking pretrial

¹⁹ *Mehaffie v. Rutherford*, 143 So.3d 432 at 434 (Fla. 1st DCA 2014). Section 903.286, F.S., authorizes the clerk of the court is to withhold from the return of a cash bond posted on behalf of a criminal defendant sufficient funds to pay any unpaid costs of prosecution, costs of representation, court fees, court costs, and criminal penalties. If sufficient funds are not available to pay all unpaid costs associated with the criminal case, the clerk of the court must immediately obtain payment from the defendant or enroll the defendant in a payment plan. This section does not apply to the portion that is paid by a licensed bail bond agent.

²⁰ Rule 3.131(a), Fla. R. Crim. Pro.

²¹ Section 907.041(4)(g), F.S., provides that the state attorney has the burden of showing the need for pretrial detention.

²² Section 907.041(4)(d), F.S.

detention.²³ The pretrial detention hearing must be held within five days of the filing by the state attorney of a complaint to seek pretrial detention and the defendant may be detained pending the hearing. The defendant may request a continuance, but the continuance may not be more than five days unless there are extenuating circumstances. The state attorney is entitled to one continuance for good cause.²⁴

For the hearing to determine whether the defendant will be detained pretrial, the defendant is entitled to be represented by counsel, to present witnesses and evidence, and to cross-examine witnesses. The court may admit relevant evidence without complying with the rules of evidence, but evidence secured in violation of the Constitution is not be admissible. Any testimony provided by the defendant cannot be admitted to prove guilt at any other judicial proceeding, but such testimony may be admitted in an action for perjury, based upon the defendant's statements made at the pretrial detention hearing, or for impeachment.²⁵

The pretrial detention order of the court must be based solely upon evidence produced at the hearing and be justified by findings of fact and conclusions of law. The order must be made in writing or orally on the record within 24 hours of the pretrial detention hearing.²⁶

Violation of Pretrial Release Conditions

A defendant that does not comply with the terms of the pretrial release can have his or her bond forfeited if certain factors are proven.²⁷ Section 903.0471, F.S., authorizes the court to, on its own motion, revoke pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new crime while on pretrial release.²⁸

III. Effect of Proposed Changes:

Bail

The bill amends the purpose of bail provided for in s. 903.046, F.S., to apply to violent criminal defendants, rather than all criminal defendants. Thus, the purpose of bail is limited to ensuring the appearance in court of a violent criminal defendant and protecting the community against danger from the violent criminal defendant.

²³ Section 907.041(4)(e), F.S.

²⁴ Section 907.041(4)(f), F.S.

²⁵ Section 907.041(4)(h), F.S.

²⁶ Section 907.041(4)(i), F.S.

²⁷ See s. 903.26, F.S. Rule 3.131(c)(1), Fla. R. Crim. Pro., further provides that a defendant who willfully fails to appear and breaches a bond is not eligible for recognizance bond. Rule 3.131(c)(2), Fla. R. Crim. Pro., provides that if the defendant fails to appear and is arrested, he or she is not eligible for a recognizance bond or any form of bond that does not require a monetary undertaking or commitment equal to or greater than \$2,000 or twice the value of the monetary commitment or undertaking of the original bond, whichever is greater. Also, s. 903.046(2)(d), F.S., provides that any defendant that has failed to appear on the day of any required court proceeding in the case at issue, but who had later voluntarily appeared or surrendered, is not eligible for a recognizance bond; and any defendant who failed to appear on the day of any required court proceeding in the case at issue and who was later arrested is not eligible for a recognizance bond or for any form of bond which does not require a monetary undertaking or commitment equal to or greater than \$2,000 or twice the value of the monetary commitment or undertaking of the original bond, whichever is greater. But, the court has discretion in determining conditions of release if the defendant proves circumstances beyond his or her control for the failure to appear.

²⁸ This discretion is provided regardless of the conditions for granting pretrial release provided for in s. 907.041, F.S.

The bill adds language in s. 903.046, F.S., providing that there is a presumption that an individual arrested for a nonviolent misdemeanor must be released on nonmonetary conditions pending trial. For this section of the bill, a nonviolent misdemeanor is defined to exclude assault as defined in s. 784.011, F.S.

Pretrial Release Conditions

Currently, s. 907.041, F.S., provides a presumption in favor of release on nonmonetary conditions for persons who are granted pretrial release unless the person is charged with a dangerous crime. The bill provides that it is the intent of the Legislature that persons arrested for a nonviolent misdemeanor who do not pose a threat to the safety of the community must be released on nonmonetary conditions while awaiting trial. Thus, s. 907.041, F.S., no longer contains a presumption of release on nonmonetary conditions for any person granted pretrial release.

The bill does not define a nonviolent misdemeanor offense in s. 907.041, F.S.

Pretrial Detention

The bill amends s. 907.041(4)(c), F.S., deleting several of the above-described circumstances that the court can find when making a pretrial detention determination. Specifically, a court can consider certain conditions for a defendant who is charged with driving under the influence manslaughter when determining if he or she poses a threat of harm to the community. The bill removes the following conditions, including that the defendant:

- Was driving with a suspended driver license when the charged crime was committed; and
- Has previously been found guilty of, or has had adjudication of guilt withheld for, driving while the defendant's driver license was suspended or revoked in violation of s. 322.34, F.S.

Violation of Pretrial Release Conditions

The bill amends s. 903.0471, F.S., limiting the court's authority to revoke a defendant's bond or pretrial release conditions to only if the court finds probable cause that he or she committed a new violent or dangerous crime while on pretrial release, rather than the probable cause that he or she committed any new offense.

Legislative Findings Supporting Pretrial Release

The legislative intent language found in s. 907.041, F.S., is amended to provide that a defendant who commits a nonviolent misdemeanor offense and who does not pose a risk of threat to the community must be released until adjudication is determined.

The bill also amends the legislative intent language providing that the primary consideration for detaining a defendant is whether the individual presents risk of physical harm to persons.

The bill amends s. 790.065, F.S., correcting cross-reference changes made by the act.

The bill is effective July 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 creates a presumption that a person charged with nonviolent misdemeanors is to be released on nonmonetary conditions while awaiting trial. To the extent that this results in more defendants being released that are currently unable to be released from custody pretrial, the bill may result in a positive jail bed impact (i.e. a reduction in the number of jail bed used) and a positive fiscal impact on sheriff's offices who do not have to pay the per diem for such defendants.

Additionally, the bill removes two conditions related to driving offenses that the court can use to make a finding of danger to the community for pretrial detention. To the extent this results in fewer defendants being detained pretrial, the bill will likely result in a positive jail bed impact (i.e. a reduction in the number of jail bed used) and a positive fiscal impact on sheriff's offices who do not have to pay the per diem for such defendants.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 903.046, 903.0471, 907.041, and 790.065.

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.



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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/06/2018	.	
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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. Present subsection (2) of section 903.046 is
redesignated as subsection (3), and a new subsection (2) is
added to that section, to read:

903.046 Purpose of, presumption in, and criteria for bail
determination.—

(2) There is a presumption that an individual arrested for



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committing a nonviolent misdemeanor crime shall be released on nonmonetary conditions while he or she awaits trial. As used in this section, the term "nonviolent misdemeanor" means any misdemeanor offense other than battery, assault, or stalking.

Section 2. Section 903.0471, Florida Statutes, is amended to read:

903.0471 Violation of condition of pretrial release.—

~~Notwithstanding s. 907.041,~~ A court may, on its own motion, revoke pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new dangerous crime, as defined in s. 907.041, while on pretrial release.

Section 3. Paragraph (a) of subsection (3), paragraphs (b) and (c) of subsection (4) of section 907.041, Florida Statutes, is amended to read:

907.041 Pretrial detention and release.—

(3) RELEASE ON NONMONETARY CONDITIONS.—

(a)1. It is the intent of the Legislature to create a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release unless such person is charged with a dangerous crime as defined in subsection (4). Such person shall be released on monetary conditions if it is determined that such monetary conditions are necessary to assure the presence of the person at trial or at other proceedings, to protect the community from risk of physical harm to persons, to assure the presence of the accused at trial, or to assure the integrity of the judicial process.

2. It is the intent of the Legislature that a person arrested for a nonviolent misdemeanor who is determined to not



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pose a threat to the safety of the community shall be released on nonmonetary conditions until adjudication has been determined. For purposes of this section, a "nonviolent misdemeanor" means any misdemeanor offense other than battery, assault, or stalking.

(4) PRETRIAL DETENTION.—

(b) ~~A No~~ person charged with a dangerous crime may not ~~shall~~ be granted nonmonetary pretrial release at a first appearance hearing; however, the court may release ~~shall retain the discretion to release~~ an accused person on electronic monitoring or on recognizance bond if the findings on the record of facts and circumstances warrant such a release.

(c) The court may order pretrial detention if it finds a substantial probability, based on a defendant's past and present patterns of behavior, the criteria in s. 903.046, and any other relevant facts, that any of the following circumstances exist:

1. The defendant has previously violated conditions of release and that no further conditions of release are reasonably likely to assure the defendant's appearance at subsequent proceedings;

2. The defendant, with the intent to obstruct the judicial process, has threatened, intimidated, or injured any victim, potential witness, juror, or judicial officer, or has attempted or conspired to do so, and that no condition of release will reasonably prevent the obstruction of the judicial process;

3. The defendant is charged with trafficking in controlled substances as defined by s. 893.135, that there is a substantial probability that the defendant has committed the offense, and that no conditions of release will reasonably assure the



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defendant's appearance at subsequent criminal proceedings;

4. The defendant is charged with DUI manslaughter, as defined by s. 316.193, and that there is a substantial probability that the defendant committed the crime and that the defendant poses a threat of harm to the community; a condition ~~conditions~~ that would support a finding by the court pursuant to this subparagraph that the defendant poses a threat of harm to the community is if ~~include, but are not limited to, any of the following:~~

~~a. the defendant has previously been convicted of any crime under s. 316.193, or of any crime in any other state or territory of the United States that is substantially similar to any crime under s. 316.193.~~

~~b. The defendant was driving with a suspended driver license when the charged crime was committed; or~~

~~c. The defendant has previously been found guilty of, or has had adjudication of guilt withheld for, driving while the defendant's driver license was suspended or revoked in violation of s. 322.34;~~

5. The defendant poses the threat of harm to the community. The court may so conclude, if it finds that the defendant is presently charged with a dangerous crime as defined in paragraph (b), that there is a substantial probability that the defendant committed such crime, that the factual circumstances of the crime indicate a disregard for the safety of the community, and that there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons;

6. The defendant was on probation, parole, or other release pending completion of sentence or on pretrial release for a



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dangerous crime at the time the current offense was committed;

7. The defendant has violated one or more conditions of pretrial release or bond for the offense currently before the court and the violation, in the discretion of the court, supports a finding that no conditions of release can reasonably protect the community from risk of physical harm to persons or assure the presence of the accused at trial; or

8.a. The defendant has ever been sentenced pursuant to s. 775.082(9) or s. 775.084 as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal, or the state attorney files a notice seeking that the defendant be sentenced pursuant to s. 775.082(9) or s. 775.084, as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal;

b. There is a substantial probability that the defendant committed the offense; and

c. There are no conditions of release that can reasonably protect the community from risk of physical harm or ensure the presence of the accused at trial.

Section 4. Section 907.042, Florida Statutes, is created to read:

907.042 Supervised bond program.-

(1) LEGISLATIVE FINDINGS.-The Legislature finds that there is a need to use evidence-based methods to identify defendants that can successfully comply with specified pretrial release conditions. The Legislature finds that the use of actuarial instruments that evaluate criminogenic based needs and classify defendants according to levels of risk provides a more



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127 consistent and accurate assessment of a defendant's risk of
128 noncompliance while on pretrial release pending trial. The
129 Legislature also finds that both the community and a defendant
130 are better served when a defendant, who poses a low risk to
131 society, is provided the opportunity to fulfill employment and
132 familial responsibilities in the community under a structured
133 pretrial release plan that ensures the best chance of remaining
134 compliant with all pretrial conditions rather than remaining in
135 custody. The Legislature finds that there is a need to establish
136 a supervised bond program in each county for the purpose of
137 providing pretrial release to certain defendants who may not
138 otherwise be eligible for pretrial release on unsupervised
139 nonmonetary conditions and who do not have the ability to
140 satisfy the bond imposed by the court. The Legislature finds
141 that the creation of such a program will reduce the likelihood
142 of persons remaining unnecessarily in custody pending trial.

143 (2) CREATION.—A supervised bond program shall be
144 established in each county by March 1, 2019, with the terms of
145 each program to be developed with concurrence of the chief judge
146 of the circuit, the chief county correctional officer, the state
147 attorney, and the public defender.

148 (3) EXCEPTION.—

149 (a) Counties or municipalities which have already adopted a
150 supervised bond program that meets the requirements contained in
151 this section, or have chosen to opt out of this section in the
152 manner provided herein, are exempt from the requirement to
153 establish such a program.

154 (b) The governing body of a fiscally constrained county as
155 defined in this section may elect to opt out of the requirements



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of this section, by a 60 percent vote of the voting members of the governing board, notwithstanding a contrary decision of the governing body of a county. Any local government that has properly opted out of this section but subsequently chooses to establish a supervised bond program may do so only pursuant to the requirements of this section and may not deviate from such requirements.

(c) For purposes of this section, the term "fiscally constrained county" means a county within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656 or each county for which the value of a mill will raise no more than \$5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., from the previous July 1.

(4) PROGRAM REQUIREMENTS.—A supervised bond program, at a minimum, shall:

(a) Require the county's chief correctional officer to administer the supervised bond program.

(b) Require the county's chief correctional officer, or his or her designate, to administer the risk assessment instrument to a potential defendant.

(c) Utilize a risk assessment instrument to determine eligible defendants and determine an appropriate level of supervision for each defendant upon release.

(d) Provide for the reduction of the court-ordered bond, up to its entirety, upon the court's verification that a risk assessment instrument has been administered and, as a result of such assessment, the chief county correctional officer is prepared to accept the defendant into the supervised bond



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program.

(e) Provide that the findings of the risk assessment instrument will be used to create an individualized supervision plan for each defendant that is tailored to the defendant's risk level and needs.

(f) Require, as part of the individualized supervision plan, any defendant released in the supervised bond program to be placed on active electronic monitoring or active continuous alcohol monitoring, or both, dependent upon the level of risk indicated by the risk assessment instrument.

(g) Require weekly communication between the office of the chief county correctional officer and the defendant as part of the individualized supervision plan, which can be satisfied via telephone or in person contact, dependent upon the level of risk indicated by the risk assessment instrument.

(h) Establish procedures for addressing defendants who do not comply with the terms of the individualized supervision plan imposed through the supervised bond program.

(5) RISK ASSESSMENT INSTRUMENT.—

(a) The risk assessment instrument must consider, but need not be limited to, the following criteria:

1. The nature and circumstances of the offense the defendant is alleged to have committed.

2. The nature and extent of the defendant's prior criminal history, if any.

3. Any prior history of the defendant failing to appear in court.

4. The defendant's employment history, employability skills, and employment interests.



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5. The defendant's educational, vocational, and technical training.

6. The defendant's background, including his or her family, home, and community environment.

7. The defendant's physical and mental health history, including any substance use.

8. An evaluation of the defendant's criminal thinking, criminal associates, and social awareness.

(b) A county must use an independently validated risk assessment instrument that contains the criteria enumerated in paragraph (a).

(6) REPORTING.—Each county shall provide an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1 of each year which details the results of the administration of the risk assessment instrument, programming used for defendants who received the assessment and were accepted into the supervised bond program, the success rate of such program, and savings realized by each county as a result of such defendants being released from custody pending trial. The first report shall be submitted no later than October 1, 2020.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to pretrial release; amending s.
903.046, F.S.; creating a presumption that individuals



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arrested for allegedly committing nonviolent misdemeanors be released on nonmonetary conditions; defining the term "nonviolent misdemeanor"; amending s. 903.0471, F.S.; authorizing a court to revoke pretrial release and order pretrial detention if the court finds probable cause to believe that the defendant committed a new dangerous crime while on pretrial release; amending s. 907.041, F.S.; providing that it is the intent of the Legislature that individuals arrested for allegedly committing nonviolent misdemeanors be released on nonmonetary conditions; defining the term "nonviolent misdemeanor"; making technical changes; deleting conditions that the court may use to determine that a defendant charged with DUI manslaughter poses a threat to the community; creating s. 907.042, F.S.; providing legislative findings; creating a supervised bond release program in each county; establishing the program with the concurrence of the chief judge, chief county correctional officer, state attorney, and public defender; providing exceptions for county establishing a program; authorizing a fiscally constrained county to the opt out of establishing a program; defining "fiscally constrained county"; providing specified program components; providing guidelines for the risk assessment instrument; requiring each county to submit a report annually by a certain date to the Governor, President of the Senate, and Speaker of the House of Representatives; providing



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reporting requirements; providing an effective date.



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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/06/2018	.	
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The Committee on Criminal Justice (Bracy) recommended the following:

Senate Amendment to Amendment (648186)

Delete lines 90 - 142
and insert:
presently charged with a dangerous crime, that there is a
substantial probability that the defendant committed such crime,
that the factual circumstances of the crime indicate a disregard
for the safety of the community, and that there are no
conditions of release reasonably sufficient to protect the
community from the risk of physical harm to persons;



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6. The defendant was on probation, parole, or other release pending completion of sentence or on pretrial release for a dangerous crime at the time the current offense was committed;

7. The defendant has violated one or more conditions of pretrial release or bond for the offense currently before the court and the violation, in the discretion of the court, supports a finding that no conditions of release can reasonably protect the community from risk of physical harm to persons or assure the presence of the accused at trial; or

8.a. The defendant has ever been sentenced pursuant to s. 775.082(9) or s. 775.084 as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal, or the state attorney files a notice seeking that the defendant be sentenced pursuant to s. 775.082(9) or s. 775.084, as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal;

b. There is a substantial probability that the defendant committed the offense; and

c. There are no conditions of release that can reasonably protect the community from risk of physical harm or ensure the presence of the accused at trial.

Section 4. Section 907.042, Florida Statutes, is created to read:

907.042 Supervised bond program.-

(1) LEGISLATIVE FINDINGS.-The Legislature finds that there is a need to use evidence-based methods to identify defendants that can successfully comply with specified pretrial release conditions. The Legislature finds that the use of actuarial



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40 instruments that evaluate criminogenic based needs and classify
41 defendants according to levels of risk provides a more
42 consistent and accurate assessment of a defendant's risk of
43 noncompliance while on pretrial release pending trial. The
44 Legislature also finds that both the community and a defendant
45 are better served when a defendant, who poses a low risk to
46 society, is provided the opportunity to fulfill employment and
47 familial responsibilities in the community under a structured
48 pretrial release plan that ensures the best chance of remaining
49 compliant with all pretrial conditions rather than remaining in
50 custody. The Legislature finds that there is a need to establish
51 a supervised bond program in each county for the purpose of
52 providing pretrial release to certain defendants who may not
53 otherwise be eligible for pretrial release on unsupervised
54 nonmonetary conditions and who do not have the ability to
55 satisfy the bond imposed by the court. The Legislature finds
56 that the creation of such a program will reduce the likelihood
57 of defendants remaining unnecessarily in custody pending trial.

By Senator Bracy

11-01367-18

20181490__

1 A bill to be entitled
 2 An act relating to determining bail; amending s.
 3 903.046, F.S.; revising the purpose of a bail
 4 determination; creating a presumption that individuals
 5 arrested for allegedly committing nonviolent
 6 misdemeanors be released on nonmonetary conditions or
 7 nonmonetary restrictions; defining the term
 8 "nonviolent misdemeanor"; restricting the
 9 determinations a court must consider for bail or other
 10 conditions for persons committing crimes other than
 11 nonviolent misdemeanor offenses; amending s. 903.0471,
 12 F.S.; authorizing a court to revoke pretrial release
 13 and order pretrial detention if the court finds
 14 probable cause to believe that the defendant committed
 15 a new violent crime or a new dangerous crime while on
 16 pretrial release; amending s. 907.041, F.S.; revising
 17 legislative intent; making technical changes; amending
 18 s. 790.065, F.S.; conforming a cross-reference;
 19 providing an effective date.
 20
 21 Be It Enacted by the Legislature of the State of Florida:
 22
 23 Section 1. Section 903.046, Florida Statutes, is amended to
 24 read:
 25 903.046 Purpose of, presumption in, and criteria for bail
 26 determination.—
 27 (1) The purpose of a bail determination in criminal
 28 proceedings is to ensure the appearance of a violent ~~the~~
 29 criminal defendant at subsequent proceedings and to protect the

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30 community against ~~unreasonable~~ danger from the violent criminal
 31 defendant.
 32 (2) There is a presumption that an individual arrested for
 33 allegedly committing a nonviolent misdemeanor crime will be
 34 released on nonmonetary conditions or nonmonetary restrictions
 35 while he or she awaits trial. As used in this subsection, the
 36 term "nonviolent misdemeanor" excludes assault as defined in s.
 37 784.011.
 38 (3)(2) For an individual who is alleged to have committed a
 39 crime not included in subsection (2), when determining whether
 40 to release a defendant on bail or other conditions, and what
 41 that bail or those conditions may be, the court shall consider:
 42 (a) The nature and circumstances of the offense charged.
 43 (b) The weight of the evidence against the defendant.
 44 (c) The defendant's family ties, length of residence in the
 45 community, employment history, financial resources, and mental
 46 condition.
 47 (d) The defendant's past and present conduct, including any
 48 record of convictions, previous flight to avoid prosecution, or
 49 failure to appear at court proceedings. However, any defendant
 50 who had failed to appear on the day of any required court
 51 proceeding in the case at issue, but who had later voluntarily
 52 appeared or surrendered, shall not be eligible for a
 53 recognizance bond; and any defendant who failed to appear on the
 54 day of any required court proceeding in the case at issue and
 55 who was later arrested shall not be eligible for a recognizance
 56 bond or for any form of bond which does not require a monetary
 57 undertaking or commitment equal to or greater than \$2,000 or
 58 twice the value of the monetary commitment or undertaking of the

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original bond, whichever is greater. Notwithstanding anything in this section, the court has discretion in determining conditions of release if the defendant proves circumstances beyond his or her control for the failure to appear. This section may not be construed as imposing additional duties or obligations on a governmental entity related to monetary bonds.

(e) The nature and probability of danger which the defendant's release poses to the community.

(f) The source of funds used to post bail or procure an appearance bond, particularly whether the proffered funds, real property, property, or any proposed collateral or bond premium may be linked to or derived from the crime alleged to have been committed or from any other criminal or illicit activities. The burden of establishing the noninvolvement in or nonderivation from criminal or other illicit activity of such proffered funds, real property, property, or any proposed collateral or bond premium falls upon the defendant or other person proffering them to obtain the defendant's release.

(g) Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence.

(h) The street value of any drug or controlled substance connected to or involved in the criminal charge. It is the finding and intent of the Legislature that crimes involving drugs and other controlled substances are of serious social concern, that the flight of defendants to avoid prosecution is of similar serious social concern, and that frequently such defendants are able to post monetary bail using the proceeds of their unlawful enterprises to defeat the social utility of

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pretrial bail. Therefore, the courts should carefully consider the utility and necessity of substantial bail in relation to the street value of the drugs or controlled substances involved.

(i) The nature and probability of intimidation and danger to victims.

(j) Whether there is probable cause to believe that the defendant committed a new crime while on pretrial release.

(k) Any other facts that the court considers relevant.

(l) Whether the crime charged is a violation of chapter 874 or alleged to be subject to enhanced punishment under chapter 874 or reclassification under s. 843.22. If any such violation is charged against a defendant or if the defendant is charged with a crime that is alleged to be subject to such enhancement or reclassification, he or she is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

(m) Whether the defendant, other than a defendant whose only criminal charge is a misdemeanor offense under chapter 316, is required to register as a sexual offender under s. 943.0435 or a sexual predator under s. 775.21; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.

Section 2. Section 903.0471, Florida Statutes, is amended to read:

903.0471 Violation of condition of pretrial release.—
~~Notwithstanding s. 907.041,~~ A court may, on its own motion, revoke pretrial release and order pretrial detention if the

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117 court finds probable cause to believe that the defendant
 118 committed a new violent crime or a new dangerous crime, as
 119 defined in s. 907.041, while on pretrial release.

120 Section 3. Subsection (1), paragraph (a) of subsection (3),
 121 and paragraphs (a), (b), and (c) of subsection (4) of section
 122 907.041, Florida Statutes, are amended to read:

123 907.041 Pretrial detention and release.—

124 (1) LEGISLATIVE INTENT.—It is the policy of this state that
 125 persons committing violent or serious criminal offenses, posing
 126 a threat to the safety of the community or the integrity of the
 127 judicial process, or failing to appear at trial be detained upon
 128 arrest. However, persons committing nonviolent misdemeanor
 129 offenses and not posing a threat to the safety of the community
 130 found to meet specified criteria shall be released under certain
 131 conditions until proceedings are concluded and adjudication has
 132 been determined. The Legislature finds that this policy of
 133 pretrial detention and release will assure the detention of
 134 those persons posing a threat to society while reducing the
 135 costs for incarceration by releasing, until trial, those persons
 136 not considered a danger to the community who meet certain
 137 criteria. It is the intent of the Legislature that the primary
 138 consideration for detaining an individual is whether the
 139 individual presents a ~~be the protection of the community from~~
 140 risk of physical harm to persons.

141 (3) RELEASE ON NONMONETARY CONDITIONS.—

142 (a) It is the intent of the Legislature that individuals
 143 arrested for nonviolent misdemeanors who do not pose a threat to
 144 the safety of the community shall be released to create a
 145 presumption in favor of release on nonmonetary conditions while

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146 ~~they await trial for any person who is granted pretrial release~~
 147 ~~unless such person is charged with a dangerous crime as defined~~
 148 ~~in subsection (4). Such person shall be released on monetary~~
 149 ~~conditions if it is determined that such monetary conditions are~~
 150 ~~necessary to assure the presence of the person at trial or at~~
 151 ~~other proceedings, to protect the community from risk of~~
 152 ~~physical harm to persons, to assure the presence of the accused~~
 153 ~~at trial, or to assure the integrity of the judicial process.~~

154 (4) PRETRIAL DETENTION.—

155 (a) A person charged with a dangerous crime, as defined in
 156 paragraph (b), may not be granted pretrial release at a first
 157 appearance hearing; however, the court may release the accused
 158 person on electronic monitoring or on recognizance bond if the
 159 findings on the record of facts and circumstances warrant such a
 160 release.

161 (b) As used in this subsection, "dangerous crime" means any
 162 of the following:

- 163 1. Arson;
- 164 2. Aggravated assault;
- 165 3. Aggravated battery;
- 166 4. Illegal use of explosives;
- 167 5. Child abuse or aggravated child abuse;
- 168 6. Abuse of an elderly person or disabled adult, or
- 169 aggravated abuse of an elderly person or disabled adult;
- 170 7. Aircraft piracy;
- 171 8. Kidnapping;
- 172 9. Homicide;
- 173 10. Manslaughter;
- 174 11. Sexual battery;

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- 175 12. Robbery;
- 176 13. Carjacking;
- 177 14. Lewd, lascivious, or indecent assault or act upon or in
- 178 presence of a child under the age of 16 years;
- 179 15. Sexual activity with a child, who is 12 years of age or
- 180 older but less than 18 years of age, by or at solicitation of
- 181 person in familial or custodial authority;
- 182 16. Burglary of a dwelling;
- 183 17. Stalking and aggravated stalking;
- 184 18. Act of domestic violence as defined in s. 741.28;
- 185 19. Home invasion robbery;
- 186 20. Act of terrorism as defined in s. 775.30;
- 187 21. Manufacturing any substances in violation of chapter
- 188 893;
- 189 22. Attempting or conspiring to commit any such crime; and
- 190 23. Human trafficking.
- 191 ~~(b) No person charged with a dangerous crime shall be~~
- 192 ~~granted nonmonetary pretrial release at a first appearance~~
- 193 ~~hearing; however, the court shall retain the discretion to~~
- 194 ~~release an accused on electronic monitoring or on recognizance~~
- 195 ~~bond if the findings on the record of facts and circumstances~~
- 196 ~~warrant such a release.~~
- 197 (c) The court may order pretrial detention if it finds a
- 198 substantial probability, based on a defendant's past and present
- 199 patterns of behavior, the criteria in s. 903.046, and any other
- 200 relevant facts, that any of the following circumstances exist:
- 201 1. The defendant has previously violated conditions of
- 202 release and that no further conditions of release are reasonably
- 203 likely to assure the defendant's appearance at subsequent

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- 204 proceedings;
- 205 2. The defendant, with the intent to obstruct the judicial
- 206 process, has threatened, intimidated, or injured any victim,
- 207 potential witness, juror, or judicial officer, or has attempted
- 208 or conspired to do so, and that no condition of release will
- 209 reasonably prevent the obstruction of the judicial process;
- 210 3. The defendant is charged with trafficking in controlled
- 211 substances as defined by s. 893.135, that there is a substantial
- 212 probability that the defendant has committed the offense, and
- 213 that no conditions of release will reasonably assure the
- 214 defendant's appearance at subsequent criminal proceedings;
- 215 4. The defendant is charged with DUI manslaughter, as
- 216 defined by s. 316.193, and that there is a substantial
- 217 probability that the defendant committed the crime and that the
- 218 defendant poses a threat of harm to the community; a condition
- 219 ~~conditions~~ that would support a finding by the court pursuant to
- 220 this subparagraph that the defendant poses a threat of harm to
- 221 the community is if include, but are not limited to, any of the
- 222 following:
- 223 a. the defendant has previously been convicted of any crime
- 224 under s. 316.193, or of any crime in any other state or
- 225 territory of the United States that is substantially similar to
- 226 any crime under s. 316.193;
- 227 ~~b. The defendant was driving with a suspended driver~~
- 228 ~~license when the charged crime was committed; or~~
- 229 ~~c. The defendant has previously been found guilty of, or~~
- 230 ~~has had adjudication of guilt withheld for, driving while the~~
- 231 ~~defendant's driver license was suspended or revoked in violation~~
- 232 ~~of s. 322.34;~~

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233 5. The defendant poses the threat of harm to the community.
 234 The court may so conclude, if it finds that the defendant is
 235 presently charged with a dangerous crime as defined in paragraph
 236 (b), that there is a substantial probability that the defendant
 237 committed such crime, that the factual circumstances of the
 238 crime indicate a disregard for the safety of the community, and
 239 that there are no conditions of release reasonably sufficient to
 240 protect the community from the risk of physical harm to persons;

241 6. The defendant was on probation, parole, or other release
 242 pending completion of sentence or on pretrial release for a
 243 dangerous crime at the time the current offense was committed;

244 7. The defendant has violated one or more conditions of
 245 pretrial release or bond for the offense currently before the
 246 court and the violation, in the discretion of the court,
 247 supports a finding that no conditions of release can reasonably
 248 protect the community from risk of physical harm to persons or
 249 assure the presence of the accused at trial; or

250 8.a. The defendant has ever been sentenced pursuant to s.
 251 775.082(9) or s. 775.084 as a prison releasee reoffender,
 252 habitual violent felony offender, three-time violent felony
 253 offender, or violent career criminal, or the state attorney
 254 files a notice seeking that the defendant be sentenced pursuant
 255 to s. 775.082(9) or s. 775.084, as a prison releasee reoffender,
 256 habitual violent felony offender, three-time violent felony
 257 offender, or violent career criminal;

258 b. There is a substantial probability that the defendant
 259 committed the offense; and

260 c. There are no conditions of release that can reasonably
 261 protect the community from risk of physical harm or ensure the

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262 presence of the accused at trial.

263 Section 4. Paragraph (c) of subsection (2) of section
 264 790.065, Florida Statutes, is amended to read:

265 790.065 Sale and delivery of firearms.—

266 (2) Upon receipt of a request for a criminal history record
 267 check, the Department of Law Enforcement shall, during the
 268 licensee's call or by return call, forthwith:

269 (c)1. Review any records available to it to determine
 270 whether the potential buyer or transferee has been indicted or
 271 has had an information filed against her or him for an offense
 272 that is a felony under either state or federal law, or, as
 273 mandated by federal law, has had an injunction for protection
 274 against domestic violence entered against the potential buyer or
 275 transferee under s. 741.30, has had an injunction for protection
 276 against repeat violence entered against the potential buyer or
 277 transferee under s. 784.046, or has been arrested for a
 278 dangerous crime as specified in s. 907.041(4)(b) ~~or~~
 279 ~~907.041(4)(a)~~ or for any of the following enumerated offenses:

280 a. Criminal anarchy under ss. 876.01 and 876.02.

281 b. Extortion under s. 836.05.

282 c. Explosives violations under s. 552.22(1) and (2).

283 d. Controlled substances violations under chapter 893.

284 e. Resisting an officer with violence under s. 843.01.

285 f. Weapons and firearms violations under this chapter.

286 g. Treason under s. 876.32.

287 h. Assisting self-murder under s. 782.08.

288 i. Sabotage under s. 876.38.

289 j. Stalking or aggravated stalking under s. 784.048.

290

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291 If the review indicates any such indictment, information, or
 292 arrest, the department shall provide to the licensee a
 293 conditional nonapproval number.
 294 2. Within 24 working hours, the department shall determine
 295 the disposition of the indictment, information, or arrest and
 296 inform the licensee as to whether the potential buyer is
 297 prohibited from receiving or possessing a firearm. For purposes
 298 of this paragraph, "working hours" means the hours from 8 a.m.
 299 to 5 p.m. Monday through Friday, excluding legal holidays.
 300 3. The office of the clerk of court, at no charge to the
 301 department, shall respond to any department request for data on
 302 the disposition of the indictment, information, or arrest as
 303 soon as possible, but in no event later than 8 working hours.
 304 4. The department shall determine as quickly as possible
 305 within the allotted time period whether the potential buyer is
 306 prohibited from receiving or possessing a firearm.
 307 5. If the potential buyer is not so prohibited, or if the
 308 department cannot determine the disposition information within
 309 the allotted time period, the department shall provide the
 310 licensee with a conditional approval number.
 311 6. If the buyer is so prohibited, the conditional
 312 nonapproval number shall become a nonapproval number.
 313 7. The department shall continue its attempts to obtain the
 314 disposition information and may retain a record of all approval
 315 numbers granted without sufficient disposition information. If
 316 the department later obtains disposition information which
 317 indicates:
 318 a. That the potential buyer is not prohibited from owning a
 319 firearm, it shall treat the record of the transaction in

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320 accordance with this section; or
 321 b. That the potential buyer is prohibited from owning a
 322 firearm, it shall immediately revoke the conditional approval
 323 number and notify local law enforcement.
 324 8. During the time that disposition of the indictment,
 325 information, or arrest is pending and until the department is
 326 notified by the potential buyer that there has been a final
 327 disposition of the indictment, information, or arrest, the
 328 conditional nonapproval number shall remain in effect.
 329 Section 5. This act shall take effect July 1, 2018.

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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)

2.6.18

Meeting Date

1490

Bill Number (if applicable)

Topic Determining Bail

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

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)

APPEARANCE RECORD

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

2/6/18

Meeting Date

SB 1490

Bill Number (if applicable)

Topic SB 1490

Amendment Barcode (if applicable)

Name Scott Miller

Job Title Director

Address 1303 San Antonio St #720

Phone _____

Street

Austin

City

TX

State

78701

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Financial Casualty & Surety

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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APPEARANCE RECORD

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

2/6/18

Meeting Date

1490

Bill Number (if applicable)

Topic Supervised Bond

Amendment Barcode (if applicable)

Name Pat TuthillJob Title CEO Victim's AdvocateAddress 1005 E 17th AvenuePhone 850 585-6041

Street

Tallahassee

City

State FL

Zip

Email tuthillfoundation@gmail.comSpeaking: ☐ For ☐ Against ☒ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist 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)

2/6/17
Meeting Date

SB 1490
Bill Number (if applicable)

Topic Determining Bail

Amendment Barcode (if applicable)

Name Shawn Foster

Job Title Lobbyist

Address 5957 Riviera Lane
Street

Phone 727-808-4131

New Port Richy, FL 34653
City State Zip

Email foster@scgroup.us

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Bail Agents 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)

APPEARANCE RECORD

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2-7-18

Meeting Date

1490

Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Matthew JonesJob Title PresidentAddress 312 Mary St
StreetPhone 239-896-2811Punta Gorda FL 33950
City State Zip

Email _____

Speaking: ☐ For ☒ Against ☒ InformationWaive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)Representing Florida Bail Agents AssociationAppearing at request of Chair: ☐ Yes ☒ NoLobbyist 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)

2/6/2018

1490

Meeting Date

Bill Number (if applicable)

Topic Determining Bail

Amendment Barcode (if applicable)

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

Street

Tallahassee

FL

32302

City

State

Zip

Email scott.mccoy@splcenter.org

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Southern Poverty Law Center & Florida Campaign for Criminal Justice Reform

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)

2/6/18

Meeting Date

1490

Bill Number (if applicable)

Topic Bail

Amendment Barcode (if applicable)

Name Jeff Kottkamp

Job Title _____

Address _____

Phone _____

Street

10110 Hassock

FL

City

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Financial Casualty & Surety

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)

02/06/2018

Meeting Date

SB 1490

Bill Number (if applicable)

Topic Determining Bail

Amendment Barcode (if applicable)

Name Kristina Wiggins

Job Title Executive Director

Address 103 N. Gadsden Street

Phone 85-488-6850

Street

Tallahassee

FL

32301

Email ndaniels@flpda.org

City

State

Zip

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.

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

S-001 (10/14/14)

APPEARANCE RECORD

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

2/6/18

Meeting Date

1490

Bill Number (if applicable)

Topic Bail

Amendment Barcode (if applicable)

Name Greg David

Job Title _____

Address Largo Fl.

Phone _____

Street

Largo

City

Fl.

State

33173

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.

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

S-001 (10/14/14)

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 1548

INTRODUCER: Education Committee and Senator Book

SUBJECT: K-12 Student Safety

DATE: February 5, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Androff	Graf	ED	Fav/CS
2.	Erickson	Jones	CJ	Favorable
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1548 modifies Florida law regarding educator certification requirements and district school board duties relating to school safety. Specifically, the bill:

- Expands the applicability of certain employment disqualification criteria to include all positions that require direct contact with students.
- Grants the Department of Education and the Education Practices Commission additional authority to enforce the educator certification requirements and impose penalties against persons who do not comply with certification requirements.
- Requires the holder of a Florida educator certification to agree to inform his or her employer within 48 hours if arrested for any disqualifying offense while employed in a position that requires the certification.
- Provides that persons employed as part-time teachers by the district school board are not exempt from the certification requirements for all school-based personnel.
- Specifies that an adjunct teaching certificate may not be used to fulfill the certification requirements for a person who is employed and renders service as an athletic coach in any public school in Florida.
- Requires an educator who has been placed on probation to immediately notify the investigative office in the DOE upon separation from employment in any public or private position requiring a Florida educator's certificate.

The bill takes effect July 1, 2018.

II. Present Situation:

Educator Certification Requirements

The purpose of Florida educator certification is to protect the educational interest of students, parents, and the public at large by assuring that Florida educators are professionally qualified for highly effective instruction.¹ The Legislature has established certification requirements to assure that educational personnel in public schools possess appropriate skills in reading, writing, and mathematics, and adequate pedagogical knowledge, including the use of technology to enhance student learning, and relevant subject matter competence so as to demonstrate an acceptable level of professional performance.² Further, the Legislature has established a certificate renewal process which promotes the continuing professional improvement of school personnel, thereby enhancing public education in all areas of the state.³

Florida law provides that a person who has been convicted of an offense specified in law is ineligible for educator certification, and instructional personnel and school administrators are ineligible for employment in any position that requires direct contact with students in a district school system, charter school, or private school that accepts certain state scholarship students.⁴

Florida law also requires each person who has obtained an educator certification to agree, under penalty of perjury, to inform his or her employer if convicted of any disqualifying offense while he or she is employed in a position for which such certification is required.⁵

Educator Discipline

The Education Practices Commission (Commission) is established in Florida law to interpret and apply the standards of professional practice established by the State Board of Education (SBE).⁶ At least once each year, the Commission must report to and meet with the SBE.⁷ The Commission is authorized to revoke or suspend a certificate or take other appropriate action as provided in law.⁸

Specifically, the Commission may take, revoke, or suspend the educator certification if the person:

- Obtained or attempted to obtain an educator certificate by fraudulent means.
- Knowingly failed to report actual or suspected child abuse or report alleged misconduct by instructional personnel or school administrators that affects the health, safety, or welfare of a student.
- Has proved to be incompetent to teach or perform duties as an employee of the public school system or to teach in or operate a private school.

¹ Section 1012.54, F.S.

² *Id.*

³ *Id.*

⁴ Section 1012.315(1), F.S.

⁵ Section 1012.56(10)(b), F.S.

⁶ Section 1012.79(7)(a), F.S. The SBE has established principles for professional conduct for the Education Profession in rule. Rule 6A-10.081, F.A.C.

⁷ Section 1012.79(7)(c), F.S.

⁸ Section 1012.79(7)(b), F.S.

- Has been guilty of gross immorality or an act involving moral turpitude as defined by SBE rule.
- Has had an educator certificate sanctioned by revocation, suspension, or surrender in another state.
- Has been convicted or found guilty of, or entered a plea of guilty to, regardless of adjudication of guilt, a misdemeanor, felony, or any other criminal charge, other than a minor traffic violation.⁹

Florida law provides that the Department of Education (DOE) may deny an applicant a certificate if the department possesses evidence satisfactory to it that the applicant has committed an act or acts, or that a situation exists, for which the Education Practices Commission would be authorized to revoke a teaching certificate.¹⁰ The decision of the DOE is subject to review by the Education Practices Commission upon the filing of a written request from the applicant within 20 days after receipt of notice of denial.¹¹

Educator Certification Reporting Requirements

Each district school superintendent and the governing authority of each university lab school, state-supported school, private school, and the Florida High School Athletic Association must report to the DOE the name of any Florida certified educator who:

- Has been convicted of, or who has pled nolo contendere to, a misdemeanor, felony, or any other criminal charge, other than a minor traffic infraction;
- That official has reason to believe has committed, or is found to have committed, any act which would be a ground for revocation or suspension of a Florida Educator Certification;
- Has been dismissed or severed from employment because of conduct involving any immoral, unnatural, or lascivious act.¹²

Part-time Teachers

Florida law authorizes district school boards to hire certified and qualified personnel to teach a specified number of periods, which may be less than a full school day or less than a full school year.¹³ The district school board must adopt rules to allow for the issuance of an adjunct teaching certificate to any applicant who meets specified eligibility requirements¹⁴ and who has expertise in the subject area to be taught. The adjunct teaching certificate shall be used for part-time teaching positions.¹⁵

District School Board Duties Relating to Student Discipline and School Safety

A district school board is responsible for the proper accounting for all students, for the attendance and control of students at school, and for proper attention to the health, safety, and

⁹ Section 1012.795(1), F.S.

¹⁰ Section 1012.56(12)(a), F.S.

¹¹ Section 1012.56(12)(b), F.S.

¹² Section 1012.795(5), F.S.

¹³ Section 1012.36(1), F.S.

¹⁴ Section 1012.57(1), F.S.

¹⁵ *Id.*

welfare of students.¹⁶ Specifically, a district school board must use the Safety and Security Best Practices developed by the Office of Program Policy Analysis and Government Accountability to conduct a self-assessment of the school districts' current safety and security practices.¹⁷ Based on these self-assessment findings, the district school superintendent must provide recommendations to the district school board which identify strategies and activities that the district school board should implement in order to improve school safety and security.¹⁸ Annually, each district school board must receive the self-assessment results at a publicly noticed district school board meeting to provide the public an opportunity to hear the district school board members discuss and take action on the report findings.¹⁹ Each district superintendent must report the self-assessment results and school board action to the commissioner within 30 days.²⁰

III. Effect of Proposed Changes:

The bill modifies Florida law regarding educator certification requirements and district school board duties relating to school safety. Specifically, the bill:

- Expands the applicability of certain employment disqualification criteria to include all positions that require direct contact with students.
- Grants the Department of Education and the Education Practices Commission with additional authority to enforce the educator certification requirements and impose penalties against persons who do not comply with certification requirements.
- Requires the holder of a Florida educator certification to agree to inform his or her employer within 48 hours if arrested for any disqualifying offense while employed in a position that requires the certification.
- Provides that persons employed as part-time teachers by the district school board are not exempt from the certification requirements for all school-based personnel.
- Specifies that an adjunct teaching certificate may not be used to fulfill the certification requirements for a person who is employed and renders service as an athletic coach in any public school in Florida.
- Requires an educator who has been placed on probation to immediately notify the investigative office in the DOE upon separation from employment in any public or private position requiring a Florida educator's certificate.

Educator Certification Requirements

The bill amends s. 1012.315, F.S., to expand the conditions for disqualification from employment to clarify that if a person has been convicted of an offense specified in law, the person is ineligible for educator certification or employment in any position that requires direct contact with students in a district school system, charter school, or private school that accepts specified state scholarship students. Accordingly, these changes may assist the school districts with their efforts to maintain a safe learning environment for students. The bill also modifies s. 1012.56, F.S., to require the holder of a Florida educator certification to agree to inform his or her employer within 48 hours if *arrested* for any disqualifying offense while employed in a

¹⁶ Section 1006.07, F.S.

¹⁷ Section 1006.07(6), F.S.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

position that requires the certification. Current s. 1012.56, F.S., requires an educator certificate holder to provide such information if he or she is *convicted* of any disqualifying offense while employed in a position that requires the certification.

Educator Discipline

The bill amends s. 1012.795, F.S., to authorize the Education Practices Commission (Commission) to *deny* an application for certification in addition to the Commission's existing authority to *suspend* an educator certificate of any educator certificate holder. The bill modifies the conditions under which the Commission is authorized to take disciplinary action to provide that the Commission is authorized to discipline a person who:

- Has had any professional license sanctioned by Florida or any other state, or has had the authority to practice the regulated profession revoked, suspended, or otherwise acted against, including a denial of certification or licensure, by the licensing or certifying authority of any jurisdiction, including its agencies and subdivision. The licensing or certifying authority's acceptance of a relinquishment, stipulation, consent order, other settlement offered in response to or in anticipation of the filing of charges against the licensee or certificateholder shall be construed as action against the license or certificate.
- Regardless of adjudication, has been convicted or found guilty of, or entered a plea of guilty or nolo contendere to a misdemeanor, a felony, or any other criminal charge other than a minor traffic violation.
- Has violated test security rules as provided in law.²¹

The authorization to *deny* an application for certification also applies to existing conditions under which the Commission is authorized to take disciplinary action.²²

The bill amends s. 1012.56, F.S., to authorize the DOE to deny an applicant a certificate if DOE possesses evidence satisfactory to it that the applicant has committed, or that a situation exists for which the Education Practices Commission would be authorized to discipline a certified educator. As provided in current law, the decision of the DOE is reviewable upon the filing of a written request from the applicant within 20 days after receipt of notice of denial.²³ The bill provides that, upon review of the DOE's decision, the Commission may impose one or more of the following penalties:

- Denial of an application.
- Bar from reapplication.
- Probation for a period of time.
- Restriction of the scope of practice.
- Issuance of a letter of reprimand.
- Referral of the teacher, administrator, or supervisor to the recovery network program under such terms and conditions as the commission may specify.
- An administrative fine not to exceed \$2,000 for each count or separate offense.

²¹ Section 1008.24, F.S., specifies the test administration and security rules.

²² See s. 1012.795(1), F.S.

²³ *Supra*, n. 11.

The bill amends s. 1011.62, F.S., to provide that a teacher may not be awarded a Career and Professional Education (CAPE) industry certification bonus if the teacher fails to maintain the security of any CAPE industry certification examination or otherwise violates the security or administration protocol of any assessment instrument that may result in a bonus being awarded to the teacher. Additionally, the bill authorizes the SBE to adopt rules to establish the criteria under which a student's industry certification or grade may be rescinded.

Accordingly, the bill provides the DOE and the Commission with additional authority to enforce the educator certification requirements and impose penalties against persons who do not comply with the specified certification requirements.

Educator Certification Reporting Requirements

The bill amends s. 1012.795, F.S., to modify the information that each district school superintendent and the governing authority of each university lab school, state-supported school, private school and the Florida High School Athletic Association must report to the DOE to add the name of any educator certificateholder who has been found *guilty of*, who has had *adjudication withheld*, or who has *pled guilty* to a misdemeanor, a felony, or any other criminal charge, other than a minor traffic infraction. These changes may assist the school districts with their efforts to maintain a safe learning environment for students.

Part-time Teachers

The bill amends s. 1012.36, F.S., to specify that persons employed as part-time teachers by the district school board are not exempt from the certification requirements for all school-based personnel. The bill amends s. 1012.57, F.S., to provide that an adjunct teaching certificate may not be used to fulfill the certification requirements for a person who is employed and renders service as an athletic coach in any public school in any district in Florida.

These changes may require certain persons currently employed as part-time teachers by district school boards to comply with certification requirements. Accordingly, any current athletic coaches with an adjunct teaching certificate, to meet the educator certification requirement, must satisfy the educator certification requirements specified in law.

District School Board Duties Relating to Student Discipline and School Safety

The bill amends s. 1006.07, F.S., to require each school district to conduct a security risk assessment at each public school and conduct a self-assessment of the school districts' current safety and security practices using a format prescribed by the DOE. The bill also deletes an outdated reference in current law to the Safety and Security Best Practices developed by the Office of Program Policy Analysis and Government Accountability.²⁴ The bill also provides that the school board must receive the findings of the required assessments and the superintendent's recommendations at a publicly noticed district school board meeting. Consequently, the public may be informed about school districts' safety and security practices.

²⁴ In 2014, the Legislature repealed the Best Financial Management Practices Review that authorized the Office of Program Policy Analysis and Government Accountability to develop best practices. Section 76, ch. 2014-39, L.O.F.

Notification by Educator on Probation

Currently, s. 1012.796, F.S., requires an educator who has been placed on probation to immediately notify the investigative office in the DOE upon employment or termination of employment in the state in any public or private position requiring a Florida educator's certification. The bill does not delete reference to "employment" but modifies the reference to "termination of employment in the state" to specify "separation from employment." Therefore, the educator on probation must immediately notify the investigative office in the DOE upon separation from employment in any public or private position requiring a Florida educator's certificate.

The bill takes effect July 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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1006.07, 1011.62, 1012.315, 1012.36, 1012.56, 1012.57, 1012.795, and 1012.796.

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 Education on January 22, 2018:

The committee substitute removes from the bill the provision that exempted from background screening employees of the Division of Vocational Rehabilitation who work as service providers for the school district.

- B. **Amendments:**

None.

By the Committee on Education; and Senator Book

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1 A bill to be entitled
 2 An act relating to K-12 student safety; amending s.
 3 1006.07, F.S.; revising district school board duties
 4 to include security risk assessments; requiring
 5 certain self-assessments to be in a specified format;
 6 amending s. 1011.62, F.S.; prohibiting certain
 7 teachers from receiving bonuses related to specified
 8 FTE student membership calculations; authorizing the
 9 State Board of Education to adopt rules for rescinding
 10 certain certifications or grades; amending s.
 11 1012.315, F.S.; providing that certain persons are
 12 ineligible for employment in a school district under
 13 specified circumstances; amending s. 1012.36, F.S.;
 14 providing that certain persons are not exempt from
 15 specified certification requirements; amending s.
 16 1012.56, F.S.; requiring certified educators to inform
 17 their employers within a specified time period after
 18 being arrested for, rather than convicted of, certain
 19 offenses; authorizing the Department of Education to
 20 deny applicants for certification if the applicant
 21 could be disciplined by the Education Practices
 22 Commission; authorizing the commission to impose
 23 specified penalties on such applicants under certain
 24 circumstances; amending s. 1012.57, F.S.; providing
 25 that an adjunct teaching certificate does not fulfill
 26 specified certification requirements; amending s.
 27 1012.795, F.S.; authorizing the commission to take
 28 certain actions against persons who meet specified
 29 criteria; amending s. 1012.796, F.S.; requiring

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30 certified educators who are placed on probation to
 31 immediately notify a specified office upon separation
 32 from, rather than termination of, employment;
 33 providing an effective date.
 34
 35 Be It Enacted by the Legislature of the State of Florida:
 36
 37 Section 1. Subsection (6) of section 1006.07, Florida
 38 Statutes, is amended to read:
 39 1006.07 District school board duties relating to student
 40 discipline and school safety.—The district school board shall
 41 provide for the proper accounting for all students, for the
 42 attendance and control of students at school, and for proper
 43 attention to health, safety, and other matters relating to the
 44 welfare of students, including:
 45 (6) SAFETY AND SECURITY BEST PRACTICES.—Each school
 46 district shall ~~Use the Safety and Security Best Practices~~
 47 ~~developed by the Office of Program Policy Analysis and~~
 48 ~~Government Accountability to~~ conduct a security risk assessment
 49 at each public school and conduct a self-assessment of the
 50 school districts' current safety and security practices using a
 51 format prescribed by the department. Based on these assessment
 52 ~~self-assessment~~ findings, the district school superintendent
 53 shall provide recommendations to the district school board which
 54 identify strategies and activities that the district school
 55 board should implement in order to improve school safety and
 56 security. Annually, each district school board must receive such
 57 findings and the superintendent's recommendations ~~the self-~~
 58 ~~assessment results~~ at a publicly noticed district school board

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meeting to provide the public an opportunity to hear the district school board members discuss and take action on the ~~report~~ findings and recommendations. Each district school superintendent shall report such findings ~~the self-assessment results~~ and school board action to the commissioner within 30 days after the district school board meeting.

Section 2. Paragraphs (o) and (t) of subsection (1) of section 1011.62, Florida Statutes, are amended to read:

1011.62 Funds for operation of schools.—If the annual allocation from the Florida Education Finance Program to each district for operation of schools is not determined in the annual appropriations act or the substantive bill implementing the annual appropriations act, it shall be determined as follows:

(1) COMPUTATION OF THE BASIC AMOUNT TO BE INCLUDED FOR OPERATION.—The following procedure shall be followed in determining the annual allocation to each district for operation:

(o) *Calculation of additional full-time equivalent membership based on successful completion of a career-themed course pursuant to ss. 1003.491, 1003.492, and 1003.493, or courses with embedded CAPE industry certifications or CAPE Digital Tool certificates, and issuance of industry certification identified on the CAPE Industry Certification Funding List pursuant to rules adopted by the State Board of Education or CAPE Digital Tool certificates pursuant to s. 1003.4203.—*

1.a. A value of 0.025 full-time equivalent student membership shall be calculated for CAPE Digital Tool

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certificates earned by students in elementary and middle school grades.

b. A value of 0.1 or 0.2 full-time equivalent student membership shall be calculated for each student who completes a course as defined in s. 1003.493(1)(b) or courses with embedded CAPE industry certifications and who is issued an industry certification identified annually on the CAPE Industry Certification Funding List approved under rules adopted by the State Board of Education. A value of 0.2 full-time equivalent membership shall be calculated for each student who is issued a CAPE industry certification that has a statewide articulation agreement for college credit approved by the State Board of Education. For CAPE industry certifications that do not articulate for college credit, the Department of Education shall assign a full-time equivalent value of 0.1 for each certification. Middle grades students who earn additional FTE membership for a CAPE Digital Tool certificate pursuant to sub-subparagraph a. may not use the previously funded examination to satisfy the requirements for earning an industry certification under this sub-subparagraph. Additional FTE membership for an elementary or middle grades student may not exceed 0.1 for certificates or certifications earned within the same fiscal year. The State Board of Education shall include the assigned values on the CAPE Industry Certification Funding List under rules adopted by the state board. Such value shall be added to the total full-time equivalent student membership for grades 6 through 12 in the subsequent year. CAPE industry certifications earned through dual enrollment must be reported and funded pursuant to s. 1011.80. However, if a student earns a

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certification through a dual enrollment course and the certification is not a fundable certification on the postsecondary certification funding list, or the dual enrollment certification is earned as a result of an agreement between a school district and a nonpublic postsecondary institution, the bonus value shall be funded in the same manner as other nondual enrollment course industry certifications. In such cases, the school district may provide for an agreement between the high school and the technical center, or the school district and the postsecondary institution may enter into an agreement for equitable distribution of the bonus funds.

c. A value of 0.3 full-time equivalent student membership shall be calculated for student completion of the courses and the embedded certifications identified on the CAPE Industry Certification Funding List and approved by the commissioner pursuant to ss. 1003.4203(5)(a) and 1008.44.

d. A value of 0.5 full-time equivalent student membership shall be calculated for CAPE Acceleration Industry Certifications that articulate for 15 to 29 college credit hours, and 1.0 full-time equivalent student membership shall be calculated for CAPE Acceleration Industry Certifications that articulate for 30 or more college credit hours pursuant to CAPE Acceleration Industry Certifications approved by the commissioner pursuant to ss. 1003.4203(5)(b) and 1008.44.

2. Each district must allocate at least 80 percent of the funds provided for CAPE industry certification, in accordance with this paragraph, to the program that generated the funds. This allocation may not be used to supplant funds provided for basic operation of the program.

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3. For CAPE industry certifications earned in the 2013-2014 school year and in subsequent years, the school district shall distribute to each classroom teacher who provided direct instruction toward the attainment of a CAPE industry certification that qualified for additional full-time equivalent membership under subparagraph 1.:

a. A bonus of \$25 for each student taught by a teacher who provided instruction in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.1.

b. A bonus of \$50 for each student taught by a teacher who provided instruction in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.2.

c. A bonus of \$75 for each student taught by a teacher who provided instruction in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.3.

d. A bonus of \$100 for each student taught by a teacher who provided instruction in a course that led to the attainment of a CAPE industry certification on the CAPE Industry Certification Funding List with a weight of 0.5 or 1.0.

Bonuses awarded pursuant to this paragraph shall be provided to teachers who are employed by the district in the year in which the additional FTE membership calculation is included in the calculation. Bonuses shall be calculated based upon the associated weight of a CAPE industry certification on the CAPE Industry Certification Funding List for the year in which the

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certification is earned by the student. Any bonus awarded to a teacher pursuant to ~~under~~ this paragraph is in addition to any regular wage or other bonus the teacher received or is scheduled to receive. A bonus may not be awarded to a teacher who fails to maintain the security of any CAPE industry certification examination or who otherwise violates the security or administration protocol of any assessment instrument that may result in a bonus being awarded to the teacher under this paragraph.

(t) *Computation for funding through the Florida Education Finance Program.*—The State Board of Education may adopt rules establishing programs, industry certifications, and courses for which the student may earn credit toward high school graduation and the criteria under which a student's industry certification or grade may be rescinded.

Section 3. Section 1012.315, Florida Statutes, is amended to read:

1012.315 Disqualification from employment.—A person is ineligible for educator certification or, and instructional personnel and school administrators, as defined in s. 1012.01, ~~are ineligible for~~ employment in any position that requires direct contact with students in a district school system, charter school, or private school that accepts scholarship students under s. 1002.39 or s. 1002.395, if the person, ~~instructional personnel, or school administrator~~ has been convicted of:

(1) Any felony offense prohibited under any of the following statutes:

(a) Section 393.135, relating to sexual misconduct with

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certain developmentally disabled clients and reporting of such sexual misconduct.

(b) Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.

(c) Section 415.111, relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.

(d) Section 782.04, relating to murder.

(e) Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, or aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.

(f) Section 784.021, relating to aggravated assault.

(g) Section 784.045, relating to aggravated battery.

(h) Section 784.075, relating to battery on a detention or commitment facility staff member or a juvenile probation officer.

(i) Section 787.01, relating to kidnapping.

(j) Section 787.02, relating to false imprisonment.

(k) Section 787.025, relating to luring or enticing a child.

(l) Section 787.04(2), relating to leading, taking, enticing, or removing a minor beyond the state limits, or concealing the location of a minor, with criminal intent pending custody proceedings.

(m) Section 787.04(3), relating to leading, taking, enticing, or removing a minor beyond the state limits, or concealing the location of a minor, with criminal intent pending

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233 dependency proceedings or proceedings concerning alleged abuse
 234 or neglect of a minor.
 235 (n) Section 790.115(1), relating to exhibiting firearms or
 236 weapons at a school-sponsored event, on school property, or
 237 within 1,000 feet of a school.
 238 (o) Section 790.115(2)(b), relating to possessing an
 239 electric weapon or device, destructive device, or other weapon
 240 at a school-sponsored event or on school property.
 241 (p) Section 794.011, relating to sexual battery.
 242 (q) Former s. 794.041, relating to sexual activity with or
 243 solicitation of a child by a person in familial or custodial
 244 authority.
 245 (r) Section 794.05, relating to unlawful sexual activity
 246 with certain minors.
 247 (s) Section 794.08, relating to female genital mutilation.
 248 (t) Chapter 796, relating to prostitution.
 249 (u) Chapter 800, relating to lewdness and indecent
 250 exposure.
 251 (v) Section 806.01, relating to arson.
 252 (w) Section 810.14, relating to voyeurism.
 253 (x) Section 810.145, relating to video voyeurism.
 254 (y) Section 812.014(6), relating to coordinating the
 255 commission of theft in excess of \$3,000.
 256 (z) Section 812.0145, relating to theft from persons 65
 257 years of age or older.
 258 (aa) Section 812.019, relating to dealing in stolen
 259 property.
 260 (bb) Section 812.13, relating to robbery.
 261 (cc) Section 812.131, relating to robbery by sudden

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262 snatching.
 263 (dd) Section 812.133, relating to carjacking.
 264 (ee) Section 812.135, relating to home-invasion robbery.
 265 (ff) Section 817.563, relating to fraudulent sale of
 266 controlled substances.
 267 (gg) Section 825.102, relating to abuse, aggravated abuse,
 268 or neglect of an elderly person or disabled adult.
 269 (hh) Section 825.103, relating to exploitation of an
 270 elderly person or disabled adult.
 271 (ii) Section 825.1025, relating to lewd or lascivious
 272 offenses committed upon or in the presence of an elderly person
 273 or disabled person.
 274 (jj) Section 826.04, relating to incest.
 275 (kk) Section 827.03, relating to child abuse, aggravated
 276 child abuse, or neglect of a child.
 277 (ll) Section 827.04, relating to contributing to the
 278 delinquency or dependency of a child.
 279 (mm) Section 827.071, relating to sexual performance by a
 280 child.
 281 (nn) Section 843.01, relating to resisting arrest with
 282 violence.
 283 (oo) Chapter 847, relating to obscenity.
 284 (pp) Section 874.05, relating to causing, encouraging,
 285 soliciting, or recruiting another to join a criminal street
 286 gang.
 287 (qq) Chapter 893, relating to drug abuse prevention and
 288 control, if the offense was a felony of the second degree or
 289 greater severity.
 290 (rr) Section 916.1075, relating to sexual misconduct with

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291 certain forensic clients and reporting of such sexual
 292 misconduct.
 293 (ss) Section 944.47, relating to introduction, removal, or
 294 possession of contraband at a correctional facility.
 295 (tt) Section 985.701, relating to sexual misconduct in
 296 juvenile justice programs.
 297 (uu) Section 985.711, relating to introduction, removal, or
 298 possession of contraband at a juvenile detention facility or
 299 commitment program.
 300 (2) Any misdemeanor offense prohibited under any of the
 301 following statutes:
 302 (a) Section 784.03, relating to battery, if the victim of
 303 the offense was a minor.
 304 (b) Section 787.025, relating to luring or enticing a
 305 child.
 306 (3) Any criminal act committed in another state or under
 307 federal law which, if committed in this state, constitutes an
 308 offense prohibited under any statute listed in subsection (1) or
 309 subsection (2).
 310 (4) Any delinquent act committed in this state or any
 311 delinquent or criminal act committed in another state or under
 312 federal law which, if committed in this state, qualifies an
 313 individual for inclusion on the Registered Juvenile Sex Offender
 314 List under s. 943.0435(1)(h)1.d.
 315 Section 4. Subsection (3) is added to section 1012.36,
 316 Florida Statutes, to read:
 317 1012.36 Part-time teachers.—
 318 (3) Persons employed under the provisions of this section
 319 are not exempt from the requirements of s. 1012.55(2)(a).

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320 Section 5. Paragraph (b) of subsection (10) and subsection
 321 (12) of section 1012.56, Florida Statutes, are amended to read:
 322 1012.56 Educator certification requirements.—
 323 (10) BACKGROUND SCREENING REQUIRED, INITIALLY AND
 324 PERIODICALLY.—
 325 (b) A person may not receive a certificate under this
 326 chapter until the person's screening under s. 1012.32 is
 327 completed and the results have been submitted to the Department
 328 of Education or to the district school superintendent of the
 329 school district that employs the person. Every 5 years after
 330 obtaining initial certification, each person who is required to
 331 be certified under this chapter must be rescreened in accordance
 332 with s. 1012.32, at which time the school district shall request
 333 the Department of Law Enforcement to forward the fingerprints to
 334 the Federal Bureau of Investigation for federal criminal records
 335 checks. If, for any reason after obtaining initial
 336 certification, the fingerprints of a person who is required to
 337 be certified under this chapter are not retained by the
 338 Department of Law Enforcement under s. 1012.32(3)(a) and (b),
 339 the person must file a complete set of fingerprints with the
 340 district school superintendent of the employing school district.
 341 Upon submission of fingerprints for this purpose, the school
 342 district shall request the Department of Law Enforcement to
 343 forward the fingerprints to the Federal Bureau of Investigation
 344 for federal criminal records checks, and the fingerprints shall
 345 be retained by the Department of Law Enforcement under s.
 346 1012.32(3)(a) and (b). The cost of the state and federal
 347 criminal history checks required by paragraph (a) and this
 348 paragraph may be borne by the district school board or the

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employee. Under penalty of perjury, each person who is certified under this chapter must agree to inform his or her employer within 48 hours if ~~arrested for convicted of~~ any disqualifying offense while he or she is employed in a position for which such certification is required.

(12) DENIAL OF CERTIFICATE.—

(a) The Department of Education may deny an applicant a certificate if the department possesses evidence satisfactory to it that the applicant has committed an act or acts, or that a situation exists, for which the Education Practices Commission would be authorized to discipline a certified educator ~~revoke a teaching certificate~~.

(b) The decision of the department is subject to review by the Education Practices Commission upon the filing of a written request from the applicant within 20 days after receipt of the notice of denial. Upon review, the commission may impose one or more of the following penalties pursuant to s. 1012.796(7):

1. Denial of an application.

2. Bar from reapplication.

3. Probation for a period of time.

4. Restriction of the scope of practice.

5. Issuance of a letter of reprimand.

6. Referral of the teacher, administrator, or supervisor to the recovery network program provided in s. 1012.798 under such terms and conditions as the commission may specify.

7. An administrative fine not to exceed \$2,000 for each count or separate offense.

Section 6. Subsection (1) of section 1012.57, Florida Statutes, is amended to read:

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1012.57 Certification of adjunct educators.—

(1) Notwithstanding ~~the provisions of~~ ss. 1012.32, 1012.55, and 1012.56, or any other provision of law or rule to the contrary, district school boards shall adopt rules to allow for the issuance of an adjunct teaching certificate to any applicant who fulfills the requirements of s. 1012.56(2)(a)-(f) and (10) and who has expertise in the subject area to be taught. An applicant shall be considered to have expertise in the subject area to be taught if the applicant demonstrates sufficient subject area mastery through passage of a subject area test. The adjunct teaching certificate shall be used for part-time teaching positions. The adjunct teaching certificate may not be used to fulfill the requirements of s. 1012.55(2)(a).

Section 7. Subsections (1) and (5) of section 1012.795, Florida Statutes, are amended to read:

1012.795 Education Practices Commission; authority to discipline.—

(1) The Education Practices Commission may deny an application for certification; may suspend the educator certificates ~~certificate~~ of any instructional personnel or school administrators, person as defined in s. 1012.01(2) or (3), for up to 5 years, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students for that period of time, after which the person holder may return to teaching as provided in subsection (4); may revoke the educator certificate of any person, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct

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contact with students for up to 10 years, with reinstatement subject to ~~the provisions of~~ subsection (4); may permanently revoke ~~permanently~~ the educator certificate of any person, thereby denying that person the right to teach or otherwise be employed by a district school board or public school in any capacity requiring direct contact with students; may suspend a person's ~~the~~ educator certificate, upon an order of the court or notice by the Department of Revenue relating to the payment of child support; or may impose any other penalty provided by law, if the person:

(a) Obtained or attempted to obtain an educator certificate by fraudulent means.

(b) Knowingly failed to report actual or suspected child abuse as required in s. 1006.061 or report alleged misconduct by instructional personnel or school administrators which affects the health, safety, or welfare of a student as required in s. 1012.796.

(c) Has proved to be incompetent to teach or to perform duties as an employee of the public school system or to teach in or to operate a private school.

(d) Has been guilty of gross immorality or an act involving moral turpitude as defined by rule of the State Board of Education.

(e) Has had an educator certificate or other professional license sanctioned by this or any other ~~revocation, suspension, or surrender in another state~~ or has had the authority to practice the regulated profession revoked, suspended, or otherwise acted against, including a denial of certification or licensure, by the licensing or certifying authority of any

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jurisdiction, including its agencies and subdivisions. The licensing or certifying authority's acceptance of a relinquishment, stipulation, consent order, or other settlement offered in response to or in anticipation of the filing of charges against the licensee or certificateholder shall be construed as action against the license or certificate.

(f) Regardless of adjudication, has been convicted or found guilty of, or entered a plea of guilty or nolo contendere to, ~~regardless of adjudication of guilt,~~ a misdemeanor, a felony, or any other criminal charge, other than a minor traffic violation.

(g) Upon investigation, has been found guilty of personal conduct that seriously reduces that person's effectiveness as an employee of the district school board.

(h) Has breached a contract, as provided in s. 1012.33(2) or s. 1012.335.

(i) Has been the subject of a court order or notice by the Department of Revenue pursuant to s. 409.2598 directing the Education Practices Commission to suspend the certificate as a result of noncompliance with a child support order, a subpoena, an order to show cause, or a written agreement with the Department of Revenue.

(j) Has violated the Principles of Professional Conduct for the Education Profession prescribed by State Board of Education rules.

(k) Has otherwise violated the provisions of law, the penalty for which is the revocation of the educator certificate.

(l) Has violated any order of the Education Practices Commission.

(m) Has been the subject of a court order or plea agreement

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in any jurisdiction which requires the certificateholder to surrender or otherwise relinquish his or her educator's certificate. A surrender or relinquishment shall be for permanent revocation of the certificate. A person may not surrender or otherwise relinquish his or her certificate prior to a finding of probable cause by the commissioner as provided in s. 1012.796.

(n) Has been disqualified from educator certification under s. 1012.315.

(o) Has committed a third recruiting offense as determined by the Florida High School Athletic Association (FHSAA) pursuant to s. 1006.20(2)(b).

(p) Has violated test security rules as provided in s. 1008.24.

(5) Each district school superintendent and the governing authority of each university lab school, state-supported school, private school, and the FHSAA shall report to the department the name of any person certified pursuant to this chapter ~~or employed and qualified pursuant to s. 1012.39:~~

(a) Who has been convicted or found guilty of, who has had adjudication withheld, or who has pled guilty or nolo contendere to, a misdemeanor, a felony, or any other criminal charge, other than a minor traffic infraction;

(b) Who that official has reason to believe has committed or is found to have committed any act which would be a ground for revocation or suspension under subsection (1); or

(c) Who has been dismissed or severed from employment because of conduct involving any immoral, unnatural, or lascivious act.

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Section 8. Paragraphs (a) and (d) of subsection (7) of section 1012.796, Florida Statutes, are amended to read:

1012.796 Complaints against teachers and administrators; procedure; penalties.—

(7) A panel of the commission shall enter a final order either dismissing the complaint or imposing one or more of the following penalties:

(a) Denial of an application for a ~~teaching~~ certificate or for an administrative or supervisory endorsement on a teaching certificate. The denial may provide that the applicant may not reapply for certification, and that the department may refuse to consider that applicant's application, for a specified period of time or permanently.

(d) Placement of the teacher, administrator, or supervisor on probation for a period of time and subject to such conditions as the commission may specify, including requiring the certified teacher, administrator, or supervisor to complete additional appropriate college courses or work with another certified educator, with the administrative costs of monitoring the probation assessed to the educator placed on probation. An educator who has been placed on probation shall, at a minimum:

1. Immediately notify the investigative office in the Department of Education upon employment or separation from ~~termination of~~ employment in the state in any public or private position requiring a Florida educator's certificate.

2. Have his or her immediate supervisor submit annual performance reports to the investigative office in the Department of Education.

3. Pay to the commission within the first 6 months of each

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523 probation year the administrative costs of monitoring probation
524 assessed to the educator.

525 4. Violate no law and fully comply with all district school
526 board policies, school rules, and State Board of Education
527 rules.

528 5. Satisfactorily perform his or her assigned duties in a
529 competent, professional manner.

530 6. Bear all costs of complying with the terms of a final
531 order entered by the commission.

532
533 The penalties imposed under this subsection are in addition to,
534 and not in lieu of, the penalties required for a third
535 recruiting offense pursuant to s. 1006.20(2)(b).

536 Section 9. 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)

2/6/18

Meeting Date

SB 1548

Bill Number (if applicable)

N/A

Topic SB 1548- K-12 Student Safety

Amendment Barcode (if applicable)

Name Tanya Cooper

Job Title Director, Governmental Relations

Address 325 W. Gaines Street

Phone 850-245-9633

Street

Tallahassee

FL

32399

City

State

Zip

Email Tanya.Cooper@fldoe.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Department of Education

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)

2.6.18

Meeting Date

1548

Bill Number (if applicable)

Topic K-12 Student Safety

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

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

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on the
Environment and Natural Resources, *Chair*
Appropriations
Appropriations Subcommittee on Health and
Human Services
Education
Environmental Preservation and
Conservation
Health Policy
Rules

SENATOR LAUREN BOOK

Democratic Leader Pro Tempore
32nd District

January 26, 2018

Chair Randolph Bracy
Committee on Criminal Justice
510 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Bracy,

I respectfully request that you place SB 1548, relating to K-12 Student Safety, on the agenda of the Committee on Criminal Justice at your earliest convenience.

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

Thank you,

A handwritten signature in cursive script that reads "Lauren Book".

Senator Lauren Book
Senate District 32

cc: Lauren Jones, Staff Director
Sue Arnold, Administrative Assistant

REPLY TO:

- ☐ 967 Nob Hill Road, Plantation, Florida 33324 (954) 424-6674
- ☐ 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

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 1552

INTRODUCER: Senator Bracy

SUBJECT: Juvenile Justice

DATE: February 5, 2018

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Storch	Jones	CJ	Favorable
2. _____	_____	ACJ	_____
3. _____	_____	AP	_____

I. Summary:

SB 1552 makes numerous changes relating to juvenile justice.

Specifically, the bill:

- Requires a prolific juvenile offender (PJO) who violates conditions of his or her nonsecure detention to be held in secure detention until a detention hearing is held;
- Requires the court to consider a predisposition report (PDR) if the court determines that adjudication and commitment to the Department of Juvenile Justice (DJJ) are appropriate and prohibits any party or agreement from waiving a PDR;
- Changes the minimum age in which a juvenile qualifies for transfer to adult court in the following ways:
 - Involuntary judicial waiver – from 14 to 15 years of age;
 - Discretionary direct file:
 - 15 or 16 years of age (currently 14 or 15) and charged with an enumerated felony;
 - 17 years of age (currently 16 or 17) at the time any felony was committed;
 - 17 years of age (currently 16 or 17) at the time a misdemeanor was committed, provided the juvenile has had at least two previous adjudications withheld for delinquent acts, one of which was a felony.
 - Mandatory direct file – from 16 or 17 years of age to 17 years of age.

The bill also reenacts statutory authority (s. 985.672, F.S.) for the DJJ to establish a direct-support organization (DSO) to provide assistance, funding, and support to assist the DJJ in furthering its goals. The bill amends a provision that repeals s. 985.672, F.S., on October 1, 2018, unless the repeal date is amended and the statute is reenacted. The bill requires the DJJ to appoint members to the DSO's board of directors according to the DSO's bylaws.

The bill requires the DJJ to collect and annually report data to the Governor, President of the Senate, and Speaker of the House of Representatives regarding juveniles who qualify for prosecution as adults. The DJJ must work with the Office of Program Policy Analysis and Government Accountability (OPPAGA) to aggregate the data and create a report.

The bill will likely have a negative fiscal impact on the DJJ. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2018.

II. Present Situation:

Juvenile Detention

When a juvenile is taken into custody by law enforcement or the court, the DJJ must determine whether detention care is appropriate.¹ Detention is the temporary custody status for juveniles who are held pursuant to a court order or after being taken into custody for a violation of law.² A juvenile is held in detention pending a court adjudication or disposition or execution of a court order.³ If detention care is deemed necessary by the DJJ, a decision between secure or nonsecure detention must be made.

Secure detention is the temporary custody of the juvenile while the juvenile is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.⁴ Nonsecure detention is the temporary, nonsecure custody of the juvenile while the juvenile is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment while under the supervision of the DJJ staff pending adjudication, disposition, or placement.⁵

The initial decision as to the juvenile's placement into detention care is made by the DJJ and is based on a risk assessment according to procedures developed by the DJJ.⁶ However, a juvenile must be placed in secure detention until the detention hearing if the juvenile:

- Is classified as a PJO pursuant to s. 985.255(1)(j), F.S.;
- Is charged with possessing or discharging a firearm on school property in violation of s. 790.115, F.S.; or
- Has been taken into custody on three or more separate occasions within a 60-day period.⁷

¹ Section 985.25(1), F.S.

² Florida Department of Juvenile Justice, *Detention Services*, available at <http://www.djj.state.fl.us/services/detention> (last visited January 26, 2018).

³ Section 985.03(18), F.S.

⁴ Section 985.03(18)(a), F.S.

⁵ Forms of nonsecure detention include, but are not limited to: home detention, electronic monitoring, day reporting centers, evening reporting centers, and nonsecure shelters. Nonsecure detention may include other requirements imposed by the court. See s. 985.03(18)(b), F.S.

⁶ Section 985.25(1)(b), F.S.

⁷ Section 985.25(1)(a)-(b), F.S.

A juvenile may not be placed into or held in detention care for longer than 24 hours unless the court determines there is a need for continued detention and subsequently makes a special detention order.⁸

A juvenile may not be held in detention care under a special detention order for more than 21 days unless:

- An adjudicatory hearing for the case has been commenced in good faith by the court;
- Good cause is shown that the nature of the charge requires additional time for the prosecution or defense of the case; or
- The juvenile is classified as a PJO.⁹

Prolific Juvenile Offender

The PJO designation was established to apply to youth with excessively high recidivism.¹⁰ A juvenile is classified as a PJO if he or she:

- Is charged with a delinquent act that would be a felony if committed by an adult;
- Has been adjudicated or had adjudication withheld for a felony offense, or delinquent act that would be a felony if committed by an adult, prior to the charge for which they are currently appearing; and
- Has five or more of any of the following, three of which must have been for felony offenses or delinquent acts that would have been felonies if committed by an adult:
 - An arrest event¹¹ for which a disposition¹² has not been entered;
 - An adjudication; or
 - An adjudication withheld.¹³

A juvenile who has been classified as a PJO is treated differently for purposes of detention care while awaiting disposition. While awaiting disposition, a PJO must be placed on nonsecure detention care with electronic monitoring or in secure detention care under a special detention order.¹⁴

⁸ Section 985.26(1), F.S.

⁹ Section 985.26(2)(a)-(c), F.S.

¹⁰ Section 985.255(1)(j), F.S., was created in 2017 by ch. 2017-164, L.O.F.

¹¹ “Arrest event” is an arrest or referral for one or more criminal offenses or delinquent acts arising out of the same episode, act, or transaction. Section 985.255(1)(j), F.S.

¹² “Disposition” is a declination to file under s. 985.15(1)(h), F.S.; the entry of nolle prosequi for the charges; the filing of an indictment under s. 985.56, F.S., or an information under s. 985.557, F.S.; a dismissal of the case; or an order of final disposition by the court. Section 985.26(2)(c), F.S.

¹³ Section 985.255(1)(j), F.S.

¹⁴ Section 985.26(2)(c), F.S.

If the court orders secure detention care, it must not exceed:

- 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court or the period is extended by the court pursuant to s. 985.26(2)(b), F.S.;¹⁵ or
- 15 days after the entry of an order of adjudication.¹⁶

Disposition Hearings

Following placement in either secure or nonsecure detention, a juvenile will have an adjudicatory hearing (non-jury trial), where a judge will determine whether the juvenile committed a delinquent act or violation of law.¹⁷

If the judge finds that the juvenile committed a delinquent act or violation of law, the court then must determine the appropriate sanctions. In making this determination, the court must take into account recommendations made by the DJJ, which may include a PDR.¹⁸ A PDR must be ordered for any juvenile for whom a residential commitment disposition is anticipated or recommended by the court or the DJJ.¹⁹ The PDR is prepared by a DJJ probation officer in preparation for a disposition of a juvenile's case and provides a recommendation of the most appropriate placement for a juvenile.²⁰

The PDR must include evaluation of the following:

- The seriousness of the offense to the community;
- Whether the protection of the community requires adjudication and commitment to the DJJ;
- Whether the offense was committed in an aggressive, violent, premeditated, or willful manner;
- Whether the offense was against persons or against property;
- The sophistication and maturity of the juvenile;
- The record and previous criminal history of the juvenile;²¹
- The juvenile's educational status;²² and
- The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile if committed to a community services program or facility.²³

¹⁵ Upon good cause being shown that the nature of the charge requires additional time for the prosecution or defense of the case, the court may extend the length of detention for an additional nine days if the juvenile is charged with an offense that would be, if committed by an adult, a capital felony, a life felony, a felony of the first degree, or a felony of the second degree involving violence against any individual. Section 985.26(2)(b), F.S.

¹⁶ Section 985.26(2)(c)1. and 2., F.S.

¹⁷ Section 985.35, F.S.

¹⁸ Section 985.433(6), F.S.

¹⁹ Section 985.43(1)(a), F.S.

²⁰ Section 985.43, F.S.

²¹ This includes: previous contacts with the DJJ, the former Department of Health and Rehabilitative Services, the Department of Children and Families, the Department of Corrections, other law enforcement agencies, and courts; prior periods of probation; prior adjudications of delinquency; and prior commitments to institutions. *See* s. 985.433(6)(f)1.-4., F.S.

²² This includes, but is not limited to: the juvenile's strengths, abilities, and unmet and special educational needs. The PDR shall identify appropriate educational and career goals for the juvenile. Examples of appropriate goals include: attainment of a high school diploma or its equivalent; successful completion of literacy courses; successful completion of career and technical education courses; successful attendance and completion of the juvenile's current grade or recovery of credits of classes the juvenile previously failed, if enrolled in school; and enrollment in an apprenticeship or a similar program. *See* s. 985.433(6)(h)1.-5., F.S.

²³ Section 985.433(6)(a)-(h), F.S.

Current law permits a juvenile to waive the PDR.²⁴ This enables the court to commit a juvenile without obtaining the DJJ's recommendation in the PDR, which has resulted in a significant increase in residential commitments.²⁵

Transferring of a Juvenile to Adult Court

There are three methods of transferring a juvenile to adult court for prosecution: judicial waiver, indictment by a grand jury, or direct filing an information.

Judicial Waiver

The judicial waiver process allows juvenile courts to waive jurisdiction to adult court on a case-by-case basis. To transfer a juvenile pursuant to judicial waiver, the state attorney must file a motion and the court must approve of the transfer.²⁶ Section 985.556, F.S., provides three types of judicial waivers:

- Voluntary Waiver – the juvenile requests to have his or her case transferred to adult court;²⁷
- Involuntary Discretionary Waiver – the state attorney may file a motion requesting the court to transfer any case where the juvenile is 14 years of age or older at the time the alleged delinquent act or violation of law was committed;²⁸ and
- Involuntary Mandatory Waiver – the state attorney must request the transfer of a juvenile 14 years of age or older if the juvenile:
 - Has been previously adjudicated delinquent for an enumerated felony²⁹ and the juvenile is currently charged with a second or subsequent violent crime against a person; or
 - Was 14 years of age or older at the time of commission of a fourth or subsequent felony offense and was previously adjudicated delinquent or had adjudication withheld for three felony offenses, one or more of which involved the use or possession of a firearm or violence against a person.³⁰

Indictment by a Grand Jury

Section 985.56, F.S., specifies that a juvenile of any age who is charged with an offense punishable by death or life imprisonment is subject to the jurisdiction of the juvenile courts unless and until an indictment by a grand jury. If the grand jury returns an indictment on the charge, the juvenile's case must be transferred to adult court.³¹

²⁴ See *A.L.M. v. State*, 176 So.3d 1026 (Fla. 1st DCA 2015) and *K.D.G. v. State*, 787 So.2d 56 (Fla. 2d DCA 2001).

²⁵ Department of Juvenile Justice, *2018 Bill Analysis for SB 1552*, (February 1, 2018) (on file with the Senate Criminal Justice Committee).

²⁶ Section 985.556, F.S.

²⁷ Section 985.556(1), F.S.

²⁸ Section 985.556(2), F.S.

²⁹ The enumerated felonies are: murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, aggravated assault, or burglary with an assault or battery. See s. 985.556(3)(a), F.S.

³⁰ Section 985.556(3), F.S.

³¹ Section 985.56(1), F.S.

Direct File

Direct file is when a state attorney files an information charging a juvenile in adult court. Direct file under s. 985.557, F.S., can be either discretionary or mandatory, and is accomplished exclusively by the state attorney without requiring the court's approval.³² Direct file is the predominant transfer method to adult court, accounting for 97.7 percent of the transfers in 2016-17.³³

Discretionary Direct File

Section 985.557(1), F.S., provides the state attorney with discretion to file a case in adult court for certain cases when he or she believes the offense requires that adult sanctions be considered or imposed. Specifically, the state attorney may file an information (direct file a juvenile) in adult court when a juvenile is:

- 14 or 15 years of age and is charged with one of the following felony offenses:
 - Arson;
 - Sexual battery;
 - Robbery;
 - Kidnapping;
 - Aggravated juvenile abuse;
 - Aggravated assault;
 - Aggravated stalking;
 - Murder;
 - Manslaughter;
 - Unlawful throwing, placing, or discharging of a destructive device or bomb;
 - Armed burglary in violation of s. 810.02(2)(b), F.S.;
 - Burglary of a dwelling or structure in violation of s. 810.02(2)(c), F.S.;
 - Burglary with an assault or battery in violation of s. 810.02(2)(a), F.S.;
 - Aggravated battery;
 - Any lewd or lascivious offense committed upon or in the presence of a person less than 16;
 - Carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony;
 - Grand theft in violation of s. 812.014(2)(a), F.S.;
 - Possessing or discharging any weapon or firearm on school property in violation of s. 790.115, F.S.;
 - Home invasion robbery;
 - Carjacking;
 - Grand theft of a motor vehicle in violation of s. 812.014(2)(c)6., F.S.; or
 - Grand theft of a motor vehicle valued at \$20,000 or more in violation of s. 812.014(2)(b), F.S., if the juvenile has a previous adjudication for grand theft of a motor vehicle in violation of s. 812.014(2)(c)6. or (2)(b), F.S.³⁴
- 16 or 17 years of age and is charged with any felony offense;³⁵ or

³² Section 985.557, F.S.

³³ Department of Juvenile Justice, *2018 Bill Analysis for SB 1552*, (February 1, 2018) (on file with the Senate Criminal Justice Committee).

³⁴ Section 985.557(1)(a)1.-19., F.S.

³⁵ Section 985.557(1)(b), F.S.

- 16 or 17 years of age and is charged with a misdemeanor, provided the juvenile has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which was a felony.³⁶

Mandatory Direct File

Section 985.557(2), F.S., requires the state attorney to file a case in adult court when the juvenile is:

- 16 or 17 years of age at the time of the alleged offense and:
 - Is charged with a second or subsequent violent crime against a person and has been previously adjudicated delinquent for an enumerated felony;³⁷
 - Is charged with a forcible felony³⁸ and has been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred at least 45 days apart from each other;³⁹ or
 - Is charged with committing or attempting to commit an offense listed in s. 775.087(2)1.a.-p., F.S.,⁴⁰ and during the commission of the offense the juvenile actually possessed or discharged a firearm or destructive device;⁴¹ or
- Any age and is alleged to have committed an act that involves stealing a vehicle in which the juvenile, while possessing the vehicle, caused serious bodily injury or death to a person who was not involved in the underlying offense.

Department of Juvenile Justice Direct-Support Organization

Citizen support organizations (CSOs) and direct-support organizations (DSOs) are statutorily-created private entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes. The purpose and functions of a CSO or DSO are prescribed by its enacting statute and, for most, by a written contract with the agency the CSO or DSO was created to support.

³⁶ *Id.*

³⁷ The enumerated felonies include: murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, or aggravated assault. *See* s. 985.557(2)(a), F.S.

³⁸ Section 776.08, F.S., defines “forcible felony” as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the threat of physical force or violence against any individual.

³⁹ Section 985.557(2)(b), F.S., provides that this provision does not apply when the state attorney has good cause to believe that exceptional circumstances exist which preclude the just prosecution of the juvenile in adult court.

⁴⁰ The offenses include murder; sexual battery; robbery; burglary; arson; aggravated battery; kidnapping; escape; aircraft piracy; aggravated juvenile abuse; aggravated abuse of an elderly person or disabled adult; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; home-invasion robbery; aggravated stalking; trafficking in cannabis; trafficking in cocaine; capital importation of cocaine; trafficking in illegal drugs; capital importation of illegal drugs; trafficking in phencyclidine; capital importation of phencyclidine; trafficking in methaqualone; capital importation of methaqualone; trafficking in amphetamine; capital importation of amphetamine; trafficking in flunitrazepam; trafficking in gamma-hydroxybutyric acid (GHB); trafficking in 1,4-Butanediol; trafficking in Phenethylamines; or other violation of s. 893.135(1), F.S. Section 775.087(2)(a)1.a.-p., F.S.

⁴¹ The terms “firearm” and “destructive device” are defined in s. 790.001, F.S.

Florida Juvenile Justice Foundation, Inc.

From 1994-1999, the DJJ had an ongoing partnership with the Florida Business Partners for Prevention (FBPP). At the time, the DJJ lacked statutory authority to have a DSO. In 1999, the Legislature created s. 985.672, F.S., authorizing the DJJ to establish a DSO to provide assistance, funding, and support for the DJJ in carrying out its mission.⁴² In 2000, the FBPP incorporated by the name of Florida Business Partners for Juvenile Justice, Inc., to provide such assistance, funding, and support to the DJJ.⁴³ The name was changed to the Florida Juvenile Justice Foundation, Inc. (Foundation) in 2006.⁴⁴

Repeal of s. 985.672, F.S., and DSO Compliance Review

Section 20.058(5), F.S., provides that laws creating or authorizing a CSO or DSO repeal on October 1 of the fifth year after enactment, unless reviewed and saved from repeal by the Legislature. This subsection further provides that CSOs or DSOs in existence prior to July 1, 2014, must be reviewed by the Legislature by July 1, 2019. Section 985.672, F.S., provides that the section is repealed October 1, 2018, unless reviewed and saved from repeal by the Legislature.

Staff of the Senate Committee on Criminal Justice reviewed relevant materials to determine if the DJJ and the Foundation comply with the requirements of s. 985.672, F.S., and with other statutory requirements for DSOs: s. 20.058, F.S. (CSO/DSO Transparency and Reporting Requirements); s. 215.981, F.S. (CSO/DSO Audit Requirements); and s. 112.3251, F.S. (CSO/DSO Ethics Code Requirements). Staff finds that the DJJ and the Foundation are in compliance with most of the relevant DSO statutory requirements.

Staff Review of Compliance with s. 985.672, F.S. (DSO to Florida Department of Juvenile Justice)**Establishment of DSO**

Section 985.672, F.S., authorizes the DJJ to establish a DSO whose sole purpose is to support the juvenile justice system. For purposes of s. 985.672, F.S., “direct-support organization” means an organization that is:

- A corporation not-for-profit incorporated under ch. 617, F.S., and approved by the Department of State;
- Organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of moneys; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and make expenditures to or for the direct or indirect benefit of the DJJ or the juvenile justice system operated by a county commission or a circuit board; and
- Determined by the DJJ to be consistent with the goals of the juvenile justice system, in the best interest of the state, and in accordance with the adopted goals and mission of the DJJ.⁴⁵

⁴² Section 985.672, F.S., was created in 1999 by ch. 1999-284, L.O.F.

⁴³ Articles of Incorporation of Florida Business Partners for Juvenile Justice, Inc. (Approved and filed January 28, 2000) (on file with the Senate Criminal Justice Committee).

⁴⁴ Articles of Amendment to Articles of Incorporation of Florida Business Partners for Juvenile Justice, Inc. (Filed February 8, 2006) (on file with the Senate Criminal Justice Committee).

⁴⁵ Section 985.672(1)(a)-(c), F.S.

Staff Finding: Compliance. The Foundation meets the definition of “direct-support organization.” In 2000, the Foundation was established.⁴⁶ The Foundation is a Florida non-profit corporation under ch. 617, F.S., and is approved by the Department of State.⁴⁷ The DJJ’s mission is, “to increase public safety by reducing juvenile delinquency through effective prevention, intervention and treatment services that strengthen families and turn around the lives of troubled youth.”⁴⁸ The Foundation works toward advancing the DJJ’s mission by funding programs such as the Youth Investment Award program, which provides financial assistance designed to further the education and employability of juvenile justice-involved youth. Additionally, the Foundation funds back-to-school drives, Youth Success Week, the Human Trafficking Summit, in addition to running a national grant to support the Juvenile Detention Alternatives initiative.⁴⁹

Expenditures of the Foundation

Section 985.672(1), F.S., provides that expenditures of the DSO shall be used for the prevention and amelioration of juvenile delinquency and may not be used for the purpose of lobbying as defined in s. 11.045, F.S.

Staff findings: Compliance. The Foundation’s IRS Form 990 for 2015-16 shows that the majority of expenditures were for conferences, conventions, meetings, and youth programs. Additionally, the form shows that there were no expenditures made for the purposes of lobbying.⁵⁰

Contractual Agreement Between the DJJ and the Foundation

Section 985.672(2), F.S., provides that the DSO must operate under a written contract with the DJJ and the contract must include certain provisions.

Approval of the Articles of Incorporation and Bylaws

The contract must provide for approval of the articles of incorporation and bylaws of the DSO by the DJJ.⁵¹

Staff findings: Compliance. The contract between the DJJ and the Foundation provides for the approval of the Foundation’s articles of incorporation and bylaws by the DJJ prior to adoption by the Foundation.⁵²

⁴⁶ *Supra*, n. 43.

⁴⁷ The Foundation’s information is available at <http://search.sunbiz.org/Inquiry/CorporationSearch/ByName> by searching Florida Juvenile Justice Foundation, Inc. (last visited February 2, 2018).

⁴⁸ Florida Department of Juvenile Justice, *Mission*, available at <http://www.djj.state.fl.us/about-us/mission> (last visited February 2, 2018).

⁴⁹ Transmittal letter dated August 15, 2017, from the DJJ Secretary Christina K. Daly to Senate President Joe Negron, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=16596&DocType=PDF> (last visited February 2, 2018).

⁵⁰ The IRS Form 990 for 2015-16 is the most recent tax form provided by the DJJ and the Foundation. According to DJJ staff, this is because the deadline for the submission of the tax form is in September, while the deadline to report information pursuant to DSO requirements found in s. 20.058, F.S. (described *infra*) is August. E-mail from DJJ staff to staff of the Senate Criminal Justice Committee, dated August 17, 2017 (on file with the Senate Criminal Justice Committee). *See also* IRS Form 990 for the Florida Juvenile Justice Foundation, Inc. (on file with the Senate Criminal Justice Committee).

⁵¹ Section 985.672(2)(a), F.S.

⁵² Contract between the Florida Department of Juvenile Justice and the Florida Juvenile Justice Foundation, Inc. (executed June 4, 2009) (on file with the Senate Criminal Justice Committee).

Submission of an Annual Budget

The contract must provide for the DSO to submit an annual budget for the approval of the DJJ.⁵³

Staff findings: Compliance. The contract between the DJJ and the Foundation provides for the review and approval of the Foundation's annual budget prior to adoption by the Foundation.⁵⁴

Certification by the DJJ that the DSO is in Compliance

The contract must provide for certification by the DJJ that the DSO is complying with the terms of the contract and in a manner consistent with the goals and purposes of the DJJ and in the best interest of the state. Such certification must be made annually and reported in the official minutes of a meeting of the DSO.⁵⁵

Staff findings: Not in compliance. The contract between the DJJ and the Foundation provides for such annual certification of the Foundation by the DJJ. However, the contract does not provide for the annual certification to be reported in the official minutes of a meeting of the Foundation and such certification has not been made in the minutes of a meeting as prescribed.⁵⁶

Staff recommendation: The contract between the DJJ and the Foundation should be amended to provide for such annual certification to be reported in the official minutes of a meeting of the Foundation. Subsequently, the board of directors must report such annual certification in the official minutes of a meeting of the Foundation.

Reversion of Moneys and Property

The contract must provide for the reversion of moneys and property held in trust by the DSO for the benefit of the juvenile justice system to the state if the DJJ ceases to exist or to the DJJ if the DSO is no longer approved to operate for the DJJ, a county commission, or a circuit board or if the DSO ceases to exist.⁵⁷

Staff findings: Compliance. The contract between the DJJ and the Foundation provides for such reversion of moneys and property.⁵⁸

Fiscal Year of the DSO

The contract must provide for the fiscal year of the DSO to begin July 1 of each year and end June 30 of the following year.⁵⁹

⁵³ Section 985.672(2)(b), F.S.

⁵⁴ *Supra*, n. 52.

⁵⁵ Section 985.672(2)(c), F.S.

⁵⁶ *Supra*, n. 52. Board meeting minutes of the Florida Juvenile Justice Foundation, Inc. (on file with the Senate Criminal Justice Committee).

⁵⁷ Section 985.672(2)(d), F.S.

⁵⁸ *Supra*, n. 52.

⁵⁹ Section 985.672(2)(e), F.S.

Staff findings: Compliance. The contract between the DJJ and the Foundation provides for such information.⁶⁰

Disclosure Made to Donors

The contract must provide for the disclosure of material provisions of the contract, and the distinction between the DJJ and the DSO, to donors of gifts, contributions, or bequests, including such disclosure on all promotional and fundraising publications.⁶¹

Staff findings: Compliance. The contract provides that the Foundation must distinguish itself as “the 501(c)(3) direct-support organization for the Florida Department of Juvenile Justice” to all donors of gifts, contributions, or bequests, including such disclosure on all promotional and fundraising publications. The contract further provides for the disclosure of material provisions of the contract to donors of gifts, contributions, or bequests.⁶²

Board of Directors

Section 985.672(3), F.S., requires the Secretary of the DJJ to appoint a board of directors for the DSO. The board’s membership must consist of representatives from businesses, representatives from each of the juvenile justice service districts, and one representative appointed at large.⁶³

Staff findings: Not in compliance. The board’s membership is not in compliance with the statute’s requirements because the juvenile justice system no longer utilizes service districts. Thus, the membership is not made up of representatives from each district.

Staff recommendation: Section 985.672(3), F.S., should be amended to reflect the current organization of the DJJ in order for the board membership to comply. Alternatively, the statute could be amended to provide the DJJ with broad discretion to appoint members to the board, without regard to specific representation as the statute currently prescribes.

Use of Property

Section 985.672(4), F.S., provides that the DJJ may permit, without charge, appropriate use by the DSO of fixed property, facilities, and personnel services of the juvenile justice system. The DJJ may prescribe any condition with which the DSO must comply in order to use such fixed property or facilities of the juvenile justice system. The DJJ may not permit the use of any fixed property or facilities of the juvenile justice system by the DSO if it does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin. The DJJ must adopt rules prescribing the procedures by which the DSO is governed and any conditions with which a DSO must comply to use property or facilities of the DJJ.⁶⁴

⁶⁰ *Supra*, n. 52.

⁶¹ Section 985.672(2)(f), F.S.

⁶² *Supra*, n. 52.

⁶³ Section 985.672(3), F.S.

⁶⁴ Section 985.672(4)(a)-(c), F.S.

Staff findings: Compliance. The contract between the DJJ and the Foundation provides permission for the Foundation's use of the DJJ's property, facilities, and personnel services. However, the contract is silent on prohibiting the Foundation's use of the DJJ's property and facilities if the Foundation does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin.⁶⁵ Further, the DJJ adopted rules prescribing the conditions in which the Foundation may use the DJJ's property, facilities, and personnel services.⁶⁶

Staff recommendation: The contract between the DJJ and the Foundation should be amended to include language that prohibits the Foundation's use of the DJJ's fixed property or facilities if the Foundation does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin. This language is not required to be in the contract, but its inclusion would enable the DJJ and the Foundation to be in compliance with s. 985.672(4)(b), F.S., because it would apply broadly to the required practices of the Foundation.

Deposit of Funds

Section 985.672(5), F.S., provides that money may be held in a separate depository account in the name of the DSO and subject to the provisions of the contract with the DJJ.⁶⁷

Staff findings: Not in compliance. The Foundation has a separate depository account in their name.⁶⁸ However, the contract between the DJJ and the Foundation does not include any provisions regarding the separate depository account.⁶⁹

Staff recommendation: The contract between the DJJ and the Foundation should be amended to include provisions addressing the separate depository account.

Annual Financial Audit

Section 985.672(6), F.S., requires the DSO to provide for an annual financial audit in accordance with s. 215.981, F.S.

Staff findings: Not currently applicable. Section 215.981, F.S., requires each CSO and DSO created or authorized pursuant to law with annual expenditures in excess of \$100,000 to provide for an annual financial audit of its accounts and records.⁷⁰ The audit must be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General and the state agency that created, approved, or administers the CSO or DSO. The audit report must be submitted within nine months after the end of the fiscal year to the Auditor General and

⁶⁵ *Supra*, n. 52.

⁶⁶ Fla. Admin. Code R. 63J-1.002 (2007).

⁶⁷ Section 985.672(5), F.S.

⁶⁸ E-mail from DJJ staff to staff of the Senate Criminal Justice Committee, dated January 16, 2017 (on file with the Senate Criminal Justice Committee).

⁶⁹ *Supra*, n. 52.

⁷⁰ The independent audit requirement does not apply to a CSO or DSO for a university, district board of trustees of a community college, or district school board. Section 215.981(1), F.S. Additionally, the expenditure threshold for an independent audit is \$300,000 for a CSO or DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services. Section 215.981(2), F.S.

to the state agency the CSO or DSO supports. Additionally, the Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements of a CSO's or DSO's accounts and records.⁷¹

The Foundation does not have annual expenditures in excess of \$100,000.⁷² Therefore, the Foundation is not currently subject to the auditing requirements of s. 215.981, F.S.⁷³

Staff Review of Compliance with s. 20.058, F.S. (CSO/DSO Transparency and Reporting Requirements)

Section 20.058, F.S., establishes a comprehensive set of transparency and reporting requirements for CSOs and DSOs.

Reporting Requirements

Section 20.058(1), F.S., requires each CSO and DSO to annually submit, by August 1, the following information to the agency it supports:

- The CSO or DSO's name, mailing address, telephone number, and website address;
- The statutory authority or executive order that created the CSO or DSO;
- A brief description of the mission and results obtained by the CSO or DSO;
- A brief description of the CSO or DSO's plans for the next three fiscal years;
- A copy of the CSO or DSO's code of ethics; and
- A copy of the CSO or DSO's most recent Internal Revenue Service (IRS) Form 990.⁷⁴

Staff findings: Compliance. In 2017, the Foundation reported all of the information required by s. 20.058(1), F.S.⁷⁵

Transparency of Reported CSO or DSO Information

Section 20.058(2), F.S., provides that each agency receiving information from a CSO or DSO pursuant to s. 20.058(1), F.S., shall make such information available to the public through the agency's website. If the organization maintains a website, the agency's website must provide a link to the organization's website.

⁷¹ Section 11.45(3)(d), F.S.

⁷² Total expenditures for 2015-16 were \$97,254. IRS Form 990 for Florida Juvenile Justice Foundation, Inc. (on file with the Senate Criminal Justice Committee).

⁷³ While the Foundation's expenditures do not currently exceed \$100,000 and thus, the Foundation is not currently subjected to an annual financial audit pursuant to s. 215.981, F.S., the contract between the DJJ and the Foundation provides that the Foundation must provide a copy of its annual financial audit to the DJJ. *Supra*, n. 52.

⁷⁴ The IRS Form 990 is the an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. s. 501. The most recent Form 990 provided by the Foundation is from 2015-16 because the deadline for the form is September, while the deadline for the submission of the required information is August.

⁷⁵ Transmittal letter dated August 1, 2017, from Foundation Executive Director Caroline Ray to the DJJ Secretary Christina K. Daly, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=16596&DocType=PDF> (last visited February 2, 2018).

Staff findings: Compliance. The information required in s. 20.058(1), F.S., is available to the public through the DJJ’s website.⁷⁶ Additionally, the DJJ provides a link to the Foundation’s website.⁷⁷

Section 20.058(3), F.S., provides that, by August 15 of each year, each agency shall report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability the information provided by each CSO and DSO. The report must also include a recommendation by the agency, with supporting rationale, to continue, terminate, or modify the agency’s association with each organization.

Staff findings: Compliance. The DJJ submitted its report by August 15, 2017, and the DJJ Secretary Daly expressed her strong recommendation for the continued collaboration and association between the DJJ and the Foundation. The letter explained that the DJJ and the Foundation share a long history of working together to improve the lives of at-risk juveniles and their families. The Foundation promotes delinquency prevention, intervention, and educational opportunities for youth, in addition to stewarding all funds raised to enhance the activities of the DJJ. “The Foundation is an integral part of the Department of Juvenile Justice and shares a long and collaborative relationship that is rare amongst direct-support organizations.”⁷⁸

Contract Requirements

Section 20.058(4), F.S., provides that any contract between an agency and a CSO or DSO must be contingent upon the CSO or DSO submitting and posting information pursuant to s. 20.058(1) and (2), F.S. The contract must also include a provision for the orderly cessation of operations and reversion to the state of state funds held in trust by the organization within 30 days after its authorizing statute is repealed, the contract is terminated, or the organization is dissolved. If an organization fails to submit the required information for two consecutive years, the agency head shall terminate any contract between the agency and the organization.

Staff findings: Not in compliance. The contract between the DJJ and the Foundation is not contingent upon the Foundation’s submission and posting of the information pursuant to s. 20.058(1) and (2), F.S. The contract also does not provide for the orderly cessation of operations and reversion to the state of state funds held in trust by the Foundation *within 30 days* after its authorizing statute is repealed, the contract is terminated, or the organization is dissolved. The contract also does not provide for the DJJ Secretary to terminate the contract between the DJJ and the Foundation in the event that the Foundation fails to submit the required information for two consecutive years.⁷⁹

Staff recommendation: The DJJ and the Foundation should execute a revised contract that includes the requirements prescribed by s. 20.058(4), F.S. The contract between the DJJ and the

⁷⁶ Florida Juvenile Justice Foundation, *2017 Annual Report*, available at <http://www.djj.state.fl.us/fjff/resources> (last visited February 2, 2018).

⁷⁷ Florida Department of Juvenile Justice, “Get Involved” available at <http://www.djj.state.fl.us/fjff/foundation> (last visited February 2, 2018).

⁷⁸ *Supra*, n. 49.

⁷⁹ *Supra*, n. 52.

Foundation was executed in 2009, while s. 20.058, F.S., was enacted by the Legislature in 2014.⁸⁰ Additionally, the contract provides that, “The parties agree to renegotiate this agreement and any affected agreements if revisions of any applicable laws or regulations make changes in this agreement necessary.”⁸¹

Staff Review of Compliance with s. 215.981, F.S. (CSO/DSO Audit Requirements)

As previously noted, s. 215.981(1), F.S., requires each CSO and DSO created or authorized pursuant to law with annual expenditures in excess of \$100,000 to provide for an annual financial audit of its accounts and records. (For a full description of the statute, see discussion, *supra*, of s. 985.672(6), F.S. (annual financial audit)).

Staff findings: Not currently applicable. As previously noted, the Foundation does not have annual expenditures in excess of \$100,000. Therefore, the Foundation is not currently subject to the auditing requirements of s. 215.981, F.S.⁸²

Staff Review of Compliance with s. 112.3251, F.S. (CSO/DSO Ethics Code Requirement)

Section 112.3251, F.S., requires a CSO or DSO created or authorized pursuant to law to adopt its own ethics code. The ethics code must contain the specified standards of conduct and disclosures provided in ss. 112.313 and 112.3143(2), F.S.⁸³ A CSO or DSO may adopt additional or more stringent standards of conduct and disclosure requirements and must conspicuously post its code of ethics on its website.⁸⁴

Staff findings: Not in compliance. The Foundation has a code of ethics which is conspicuously posted on its website.⁸⁵ However, the Foundation’s code of ethics is not in compliance with s. 112.313(2), (4), (5), and (8), F.S.

Staff recommendation: The Foundation should adopt a revised code of ethics to include requirements prescribed by s. 112.3251, F.S.

III. Effect of Proposed Changes:

Prolific Juvenile Offender Violations of Nonsecure Detention (Section 1, amending s. 985.26, F.S.)

Current law contemplates the general treatment of PJOs awaiting a disposition hearing. However, the law does not address the treatment of PJOs who violate the terms of nonsecure detention. The bill provides that a PJO who is taken into custody for a violation of the conditions

⁸⁰ Section 20.058, F.S., was created in 2014 by ch. 2014-96, L.O.F.

⁸¹ *Supra*, n. 52.

⁸² *Supra*, n. 72.

⁸³ Some of the standards of conduct and disclosures in ss. 112.313 and 112.3143(2), F.S., include misuse of public position, solicitation or acceptance of gifts, unauthorized compensation, and voting conflicts.

⁸⁴ Section 112.3251, F.S.

⁸⁵ *Supra*, n. 76.

of his or her nonsecure detention must be held in secure detention until a detention hearing is held.⁸⁶

Disposition Hearings in Delinquency Cases (Section 2, amending s. 985.433, F.S.)

Current law permits the court to proceed with adjudication and commitment of a juvenile without consideration of a PDR if it is waived by a juvenile. The bill requires the court to consider a PDR before committing a juvenile if the court determines that adjudication and commitment to the DJJ are suitable. The bill deems the PDR as an indispensable prerequisite to commitment and prohibits any party or any agreement of the parties from waiving the consideration of the PDR.

Judicial Waiver (Section 3, amending s. 985.556, F.S.)

The bill changes the age in which a juvenile can be transferred to adult court by involuntary judicial waiver from 14 to 15 years of age.

Direct File (Section 4, amending s. 985.557, F.S.)

Current law provides a state attorney with discretion to direct file a juvenile who was 14 or 15 years of age at the time the alleged offense was committed for enumerated offenses.⁸⁷ The bill changes the age in which a juvenile can be transferred to adult court by discretionary direct file for the commitment of those offenses from 14 or 15 years of age to 15 or 16 years of age.

A state attorney also has discretion to direct file a juvenile who was 16 or 17 years of age at the time the alleged offense was committed and is charged with:

- Any felony offense; or
- A misdemeanor, provided the juvenile has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which was a felony.

The bill limits the discretion afforded to state attorneys in these scenarios by requiring the juvenile to be 17 years of age in order to be transferred to adult court.

The bill also limits the age in which a juvenile must be transferred to adult court pursuant to mandatory direct file from 16 or 17 years of age to 17 years of age.

⁸⁶ The PJO would be held in secure detention for up to 24 hours until his or her detention hearing when the judge would decide whether the PJO will be released back to nonsecure detention or rather placed in secure detention. Section 985.255, F.S. *See also* Department of Juvenile Justice, *2018 Bill Analysis for SB 1552*, (February 1, 2018) (on file with the Senate Criminal Justice Committee).

⁸⁷ The enumerated felonies are arson; sexual battery; robbery; kidnapping; aggravated juvenile abuse; aggravated assault; aggravated stalking; murder; manslaughter; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary in violation of s. 810.02(2)(b), F.S.; burglary of a dwelling or structure in violation of s. 810.02(2)(c), F.S.; burglary with an assault or battery in violation of s. 810.02(2)(a), F.S.; aggravated battery; any lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age; carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony; grand theft in violation of s. 812.014(2)(a), F.S.; possessing or discharging any weapon or firearm on school property in violation of s. 790.115, F.S.; home invasion robbery; carjacking; grand theft of a motor vehicle in violation of s. 812.014(2)(c)6., F.S.; or grand theft of a motor vehicle valued at \$20,000 or more in violation of s. 812.014(2)(b), F.S., if the juvenile has a previous adjudication for grand theft of a motor vehicle in violation of ss. 812.014(2)(c)6., or 812.014(2)(b), F.S. *See* s. 985.557(1)(a)1.-19., F.S.

The bill requires the DOC to make every reasonable effort to ensure that a juvenile of any age who is transferred to adult court by direct file and subsequently convicted and sentenced be completely separated from adult offenders in the facility to ensure there is no physical contact.

Data Collection Relating to Direct File (Section 4, amending s. 985.557, F.S.)

The bill requires the DJJ, beginning March 1, 2019, to collect data relating to juveniles who qualify to be prosecuted as adults pursuant to judicial waiver or direct file. This data includes, but is not limited to:

- Age;
- Race and ethnicity;
- Gender;
- Circuit and county of residence and commitment of offense;
- Prior adjudications or adjudications withheld;
- Prior periods of probation, including any violations of probation;
- Previous contacts with law enforcement agencies or the court which resulted in a civil citation, arrest, or charges being filed with the state;
- Initial charges;
- Charges at disposition;
- Whether juvenile codefendants were involved who were transferred to adult court;
- Whether the juvenile was represented by counsel or whether counsel was waived;
- Risk assessment instrument score;
- The juvenile's medical, mental health, substance abuse, and trauma history;
- The juvenile's history of abuse, neglect, mental impairment or disability-related accommodations;
- The juvenile's history of foster care placements, including the number of prior placements;
- Whether the juvenile has below-average intellectual functioning;
- Whether the juvenile has received mental health services or treatment;
- Whether the juvenile has been the subject of a juvenile-in-need-of-services or families-in-need-of-services petition or a dependency petition;
- Whether the juvenile was transferred for criminal prosecution as an adult and, if transferred, the provision of direct file under which the prosecution is proceeding or proceeded;
- The case resolution in juvenile court; and
- The case resolution in adult court.

Beginning March 1, 2019, the DJJ must also collect the following data relating to juveniles transferred to adult court:

- Disposition data, including, but not limited to:
 - Whether the juvenile received adult sanctions, juvenile sanctions, or diversion; and
 - If sentenced to prison, the length of the prison sentence or the enhanced sentence.
- Whether the juvenile was previously found incompetent to proceed in juvenile court.

The DJJ must work with the OPPAGA to generate a report analyzing all data listed above for every juvenile case transferred between July 1, 2017, and June 30, 2018. Such report must be provided to the Governor, the President of the Senate, and the Speaker of the House of

Representatives by January 31, 2019, and such report must be generated and provided annually to such persons no later than January 31 of the following calendar year.

Department of Juvenile Justice DSO (Section 5, amending s. 985.672, F.S.)

The bill reenacts statutory authority (s. 985.672, F.S.) for the DJJ to establish a DSO to provide assistance, funding, and support to assist the DJJ in furthering its goals. The DSO is set to sunset October 1, 2018, unless reviewed and saved from repeal by the Legislature. The bill amends the repeal date to October 1, 2028.

Current law requires the DSO's board of directors to consist of representatives from businesses, each juvenile justice service district, and one representative appointed at large. The bill amends the requirements relating to the DSO's board representation to permit the DJJ to appoint members to the DSO's board of directors pursuant to the DSO's bylaws.

Other (Sections 6-14)

The bill also reenacts ss. 790.22(8), 985.115(2), 985.13(2), 985.15(1), 985.255(2) and (3)(a) and (3)(c), 985.26(2)(c), 985.265(5), 985.35(1)(a), and 985.565(4), F.S., to incorporate amendments made by this act.

The bill is effective July 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:

By saving s. 985.672, F.S., from repeal, the DJJ's DSO sustains a source of financial and other direct assistance for advancing the DJJ's mission to increase public safety by reducing juvenile delinquency.

C. Government Sector Impact:**Prolific Juvenile Offender Costs for Violations Secure Detention**

The Criminal Justice Impact Conference has not provided an estimate of the bill's impact. The DJJ estimates that while the requirement for requiring PJOs who violate non-secure detention to be held in secure detention overnight could result in increased utilization of secure detention, this change is not expected to have a substantive fiscal impact.⁸⁸ Of the 256 PJOs throughout the state, 86 are in nonsecure detention.⁸⁹ In the event that every PJO in nonsecure detention violated his or her conditions of detention, the DJJ would be able to provide accommodations to such juveniles and absorb such costs with existing resources.⁹⁰

Reduction in Juveniles Transferred to Adult Court

Additionally, the bill is likely to reduce the number of juveniles transferred to the adult system, thus increasing the DJJ's population, which will likely result in a significant negative prison bed impact (a decrease in the number of prison beds) on the DOC and a significant positive residential bed impact (an increase in the number of beds) on the DJJ. The DJJ estimates that the bill would result in 132 juveniles being ineligible for transfer to adult court and the cost for detention and treatment for these additional juveniles would be \$12,270,113.⁹¹

The bill also requires the DJJ to collect data on juveniles eligible for transfer to adult court for review and analysis which would require modification of the Juvenile Justice Information System at an estimated cost of \$93,600.⁹² Tasks assigned to the OPPAGA in the proposed legislation may be accomplished with existing resources.⁹³

Funding and Support to the DJJ from the DSO

Additionally, by saving s. 985.672, F.S., from repeal, the DSO may continue to provide assistance, funding, and support for activities authorized by the DJJ. If s. 985.672, F.S., is not saved from repeal, the DJJ may need to assume the responsibilities of the DSO or find another entity to assume those responsibilities.

VI. Technical Deficiencies:

None.

⁸⁸ Department of Juvenile Justice, *2018 Bill Analysis for SB 1552*, (February 1, 2018) (on file with the Senate Criminal Justice Committee).

⁸⁹ Department of Juvenile Justice, *PJO Statewide Report*, (last updated January 22, 2018) (on file with the Senate Criminal Justice Committee).

⁹⁰ Department of Juvenile Justice, *2018 Bill Analysis for SB 1552*, (February 1, 2018) (on file with the Senate Criminal Justice Committee).

⁹¹ *Id.*

⁹² *Id.*

⁹³ CS/SB 936 is a similar bill relating to data collection. Office of Program Policy Analysis and Government Accountability, *2018 Bill Analysis for SB 936*, (December 6, 2017) (on file with the Senate Criminal Justice Committee).

VII. Related Issues:

The bill amends the repeal date for the statutory authority for the DSO (s. 985.672, F.S.) from October 1, 2018, to October 1, 2028. Staff recommends eliminating the scheduled repeal date altogether pertaining to the DSO.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 985.26, 985.433, 985.556, 985.557, and 985.672.

This bill reenacts the following sections of the Florida Statutes: 790.22, 985.115, 985.13, 985.15, 985.255, 985.265, 985.35, and 985.565.

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.

By Senator Bracy

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1 A bill to be entitled
 2 An act relating to juvenile justice; amending s.
 3 985.26, F.S.; requiring that a prolific juvenile
 4 offender be held in secure detention until a detention
 5 hearing is held if the juvenile violated the
 6 conditions of nonsecure detention; amending s.
 7 985.433, F.S.; requiring a court to receive and
 8 consider a predisposition report before committing a
 9 child if the court determines that adjudication and
 10 commitment to the Department of Juvenile Justice is
 11 appropriate; conforming a cross-reference; amending s.
 12 985.556, F.S.; increasing the age of a child at which
 13 a state attorney may, or is required to, request a
 14 court to transfer the child to adult court for
 15 criminal prosecution; amending s. 985.557, F.S.;
 16 increasing the age of a child at which a state
 17 attorney may, or is required to, file an information
 18 against the child for prosecution as an adult; making
 19 a technical change; requiring the department to begin
 20 collecting on a certain date specified information
 21 relating to children who qualify for prosecution as
 22 adults and for children who are transferred to adult
 23 court for criminal prosecution; requiring the
 24 department to work with the Office of Program Policy
 25 Analysis and Government Accountability (OPPAGA) to
 26 generate a report analyzing the data on juveniles
 27 transferred for criminal prosecution as adults during
 28 a certain period; requiring the department to provide
 29 the report to the Governor and the Legislature by a

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30 certain date; requiring the department to work with
 31 OPPAGA to generate an annual report that includes
 32 certain information, and to provide the report to the
 33 Governor and the Legislature by a specified date;
 34 amending s. 985.672, F.S.; requiring that a board of
 35 directors for the department's direct-support
 36 organization be appointed according to the
 37 organization's established bylaws; deleting a
 38 provision relating to membership of the organization;
 39 extending the date of a future repeal; reenacting ss.
 40 790.22(8), 985.115(2), 985.13(2), 985.255(2) and
 41 (3)(a) and (c), and 985.35(1)(a), F.S., relating to
 42 detention of a minor for committing a crime and using
 43 or possessing a firearm, releasing and delivery of a
 44 child from custody, probable cause affidavits,
 45 detention criteria and detention hearings, and
 46 adjudicatory hearings, respectively, to incorporate
 47 the amendment made to s. 985.26, F.S., in references
 48 thereto; reenacting s. 985.15(1), F.S., relating to
 49 filing decisions, to incorporate the amendment made to
 50 s. 985.556, F.S., in a reference thereto; reenacting
 51 ss. 985.265(5) and 985.565(4), F.S., relating to
 52 children in adult jails and sentencing alternatives
 53 for juveniles prosecuted as adults, respectively, to
 54 incorporate the amendments made to ss. 985.556 and
 55 985.557, F.S., in references thereto; reenacting s.
 56 985.26(2)(c), F.S., relating to the length of
 57 detention, to incorporate the amendment made to s.
 58 985.557, F.S., in a reference thereto; providing an

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effective date.

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

Section 1. Subsection (2) of section 985.26, Florida Statutes, is amended, and subsections (3) and (4) of that section are republished, to read:

985.26 Length of detention.—

(2)(a) Except as provided in paragraph (b) or paragraph (c), a child may not be held in detention care under a special detention order for more than 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court.

(b) Upon good cause being shown that the nature of the charge requires additional time for the prosecution or defense of the case, the court may extend the length of detention for an additional 9 days if the child is charged with an offense that would be, if committed by an adult, a capital felony, a life felony, a felony of the first degree, or a felony of the second degree involving violence against any individual.

(c)1. A prolific juvenile offender under s. 985.255(1)(j) shall be placed on nonsecure detention care with electronic monitoring or in secure detention care under a special detention order until disposition. If secure detention care is ordered by the court, it must be authorized under this part and may not exceed:

a.1. Twenty-one days unless an adjudicatory hearing for the case has been commenced in good faith by the court or the period is extended by the court pursuant to paragraph (b); or

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~~b.2.~~ Fifteen days after the entry of an order of adjudication.

2. A prolific juvenile offender who is taken into custody for a violation of the conditions of his or her nonsecure detention must be held in secure detention until a detention hearing is held.

As used in this paragraph, the term "disposition" means a declination to file under s. 985.15(1)(h), the entry of nolle prosequi for the charges, the filing of an indictment under s. 985.56 or an information under s. 985.557, a dismissal of the case, or an order of final disposition by the court.

(3) Except as provided in subsection (2), a child may not be held in detention care for more than 15 days following the entry of an order of adjudication.

(4)(a) The time limits in subsections (2) and (3) do not include periods of delay resulting from a continuance granted by the court for cause on motion of the child or his or her counsel or of the state. Upon the issuance of an order granting a continuance for cause on a motion by either the child, the child's counsel, or the state, the court shall conduct a hearing at the end of each 72-hour period, excluding Saturdays, Sundays, and legal holidays, to determine the need for continued detention of the child and the need for further continuance of proceedings for the child or the state.

(b) The period for nonsecure detention care under this section is tolled on the date that the department or a law enforcement officer alleges that the child has violated a condition of the child's nonsecure detention care until the

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117 court enters a ruling on the violation. Notwithstanding the
 118 tolling of nonsecure detention care, the court retains
 119 jurisdiction over the child for a violation of a condition of
 120 nonsecure detention care during the tolling period. If the court
 121 finds that a child has violated his or her nonsecure detention
 122 care, the number of days that the child served in any type of
 123 detention care before commission of the violation shall be
 124 excluded from the time limits under subsections (2) and (3).

125 Section 2. Present subsections (7) through (10) of section
 126 985.433, Florida Statutes, are redesignated as subsections (8)
 127 through (11), respectively, a new subsection (7) is added to
 128 that section, and paragraph (c) of present subsection (7) is
 129 amended, to read:

130 985.433 Disposition hearings in delinquency cases.—When a
 131 child has been found to have committed a delinquent act, the
 132 following procedures shall be applicable to the disposition of
 133 the case:

134 (7) If the court determines that adjudication and
 135 commitment to the department are suitable, the court must
 136 receive and consider a predisposition report, including the
 137 department's recommendation, before committing the child. The
 138 predisposition report is an indispensable prerequisite to
 139 commitment which cannot be waived by any party or by agreement
 140 of the parties.

141 ~~(8)(7)~~ If the court determines that the child should be
 142 adjudicated as having committed a delinquent act and should be
 143 committed to the department, such determination shall be in
 144 writing or on the record of the hearing. The determination shall
 145 include a specific finding of the reasons for the decision to

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146 adjudicate and to commit the child to the department, including
 147 any determination that the child was a member of a criminal
 148 gang.

149 (c) The court may also require that the child be placed in
 150 a probation program following the child's discharge from
 151 commitment. Community-based sanctions under subsection (9) ~~(8)~~
 152 may be imposed by the court at the disposition hearing or at any
 153 time before ~~prior to~~ the child's release from commitment.

154 Section 3. Subsections (2) and (3) of section 985.556,
 155 Florida Statutes, are amended to read:

156 985.556 Waiver of juvenile court jurisdiction; hearing.—

157 (2) INVOLUNTARY DISCRETIONARY WAIVER.—Except as provided in
 158 subsection (3), the state attorney may file a motion requesting
 159 the court to transfer the child for criminal prosecution if the
 160 child was 15 ~~14~~ years of age or older at the time the alleged
 161 delinquent act or violation of law was committed.

162 (3) INVOLUNTARY MANDATORY WAIVER.—

163 (a) If the child was 15 ~~14~~ years of age or older, and if
 164 the child has been previously adjudicated delinquent for an act
 165 classified as a felony, which adjudication was for the
 166 commission of, attempt to commit, or conspiracy to commit
 167 murder, sexual battery, armed or strong-armed robbery,
 168 carjacking, home-invasion robbery, aggravated battery,
 169 aggravated assault, or burglary with an assault or battery, and
 170 the child is currently charged with a second or subsequent
 171 violent crime against a person; or

172 (b) If the child was 15 ~~14~~ years of age or older at the
 173 time of commission of a fourth or subsequent alleged felony
 174 offense and the child was previously adjudicated delinquent or

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175 had adjudication withheld for or was found to have committed, or
 176 to have attempted or conspired to commit, three offenses that
 177 are felony offenses if committed by an adult, and one or more of
 178 such felony offenses involved the use or possession of a firearm
 179 or violence against a person;

180
 181 the state attorney shall request the court to transfer and
 182 certify the child for prosecution as an adult or shall provide
 183 written reasons to the court for not making such request, or
 184 proceed under s. 985.557(1). Upon the state attorney's request,
 185 the court shall either enter an order transferring the case and
 186 certifying the case for trial as if the child were an adult or
 187 provide written reasons for not issuing such an order.

188 Section 4. Subsection (1) and paragraphs (a), (b), and (d)
 189 of subsection (2) of section 985.557, Florida Statutes, are
 190 amended, and subsection (5) is added to that section, to read:

191 985.557 Direct filing of an information; discretionary and
 192 mandatory criteria.—

193 (1) DISCRETIONARY DIRECT FILE.—

194 (a) With respect to any child who was ~~14 or~~ 15 or 16 years
 195 of age at the time the alleged offense was committed, the state
 196 attorney may file an information when in the state attorney's
 197 judgment and discretion the public interest requires that adult
 198 sanctions be considered or imposed and when the offense charged
 199 is for the commission of, attempt to commit, or conspiracy to
 200 commit:

- 201 1. Arson;
- 202 2. Sexual battery;
- 203 3. Robbery;

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- 204 4. Kidnapping;
- 205 5. Aggravated child abuse;
- 206 6. Aggravated assault;
- 207 7. Aggravated stalking;
- 208 8. Murder;
- 209 9. Manslaughter;
- 210 10. Unlawful throwing, placing, or discharging of a
211 destructive device or bomb;
- 212 11. Armed burglary in violation of s. 810.02(2)(b) or
213 specified burglary of a dwelling or structure in violation of s.
214 810.02(2)(c), or burglary with an assault or battery in
215 violation of s. 810.02(2)(a);
- 216 12. Aggravated battery;
- 217 13. Any lewd or lascivious offense committed upon or in the
218 presence of a person less than 16 years of age;
- 219 14. Carrying, displaying, using, threatening, or attempting
220 to use a weapon or firearm during the commission of a felony;
- 221 15. Grand theft in violation of s. 812.014(2)(a);
- 222 16. Possessing or discharging any weapon or firearm on
223 school property in violation of s. 790.115;
- 224 17. Home invasion robbery;
- 225 18. Carjacking; or
- 226 19. Grand theft of a motor vehicle in violation of s.
227 812.014(2)(c)6. or grand theft of a motor vehicle valued at
228 \$20,000 or more in violation of s. 812.014(2)(b) if the child
229 has a previous adjudication for grand theft of a motor vehicle
230 in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).
- 231 (b) With respect to any child who was ~~16 or~~ 17 years of age
232 at the time the alleged offense was committed, the state

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attorney may file an information when in the state attorney's judgment and discretion the public interest requires that adult sanctions be considered or imposed. However, the state attorney may not file an information on a child charged with a misdemeanor, unless the child has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which involved an offense classified as a felony under state law.

(2) MANDATORY DIRECT FILE.—

(a) With respect to any child who was ~~16 or~~ 17 years of age at the time the alleged offense was committed, the state attorney shall file an information if the child has been previously adjudicated delinquent for an act classified as a felony, which adjudication was for the commission of, attempt to commit, or conspiracy to commit murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, or aggravated assault, and the child is currently charged with a second or subsequent violent crime against a person.

(b) With respect to any child ~~16 or~~ 17 years of age at the time an offense classified as a forcible felony, as defined in s. 776.08, was committed, the state attorney shall file an information if the child has previously been adjudicated delinquent or had adjudication withheld for three acts classified as felonies each of which occurred at least 45 days apart from each other. This paragraph does not apply when the state attorney has good cause to believe that exceptional circumstances exist which preclude the just prosecution of the juvenile in adult court.

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(d)1. With respect to any child who was ~~16 or~~ 17 years of age at the time the alleged offense was committed, the state attorney shall file an information if the child has been charged with committing or attempting to commit an offense listed in s. 775.087(2)(a)1.a.-p., and, during the commission of or attempt to commit the offense, the child:

a. Actually possessed a firearm or destructive device, as those terms are defined in s. 790.001.

b. Discharged a firearm or destructive device, as described in s. 775.087(2)(a)2.

c. Discharged a firearm or destructive device, as described in s. 775.087(2)(a)3., and, as a result of the discharge, death or great bodily harm was inflicted upon any person.

2. Upon transfer, any child who is:

a. Charged under sub-subparagraph 1.a. and who has been previously adjudicated or had adjudication withheld for a forcible felony offense or any offense involving a firearm, or who has been previously placed in a residential commitment program, shall be subject to sentencing under s. 775.087(2)(a), notwithstanding s. 985.565.

b. Charged under sub-subparagraph 1.b. or sub-subparagraph 1.c., shall be subject to sentencing under s. 775.087(2)(a), notwithstanding s. 985.565.

3. Upon transfer, any child who is charged under this paragraph, but who does not meet the requirements specified in subparagraph 2., shall be sentenced under s. 985.565; however, if the court imposes a juvenile sanction, the court must commit the child to a high-risk or maximum-risk juvenile facility.

4. This paragraph shall not apply if the state attorney has

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291 good cause to believe that exceptional circumstances exist that
 292 preclude the just prosecution of the child in adult court.

293 5. The Department of Corrections shall make every
 294 reasonable effort to ensure that any child ~~16 or 17 years of age~~
 295 who is convicted and sentenced under this paragraph be
 296 completely separated such that there is no physical contact with
 297 adult offenders in the facility, to the extent that it is
 298 consistent with chapter 958.

299 (5) DATA COLLECTION RELATING TO DIRECT FILE.-
 300 (a) Beginning March 1, 2019, the department shall collect
 301 data relating to children who qualify to be prosecuted as adults
 302 under s. 985.556 and this section, regardless of the outcome of
 303 the case, including, but not limited to:

304 1. Age.
 305 2. Race and ethnicity.
 306 3. Gender.
 307 4. Circuit and county of residence.
 308 5. Circuit and county where the offense was committed.
 309 6. Prior adjudications or adjudications withheld.
 310 7. Prior periods of probation, including any violations of
 311 probation.
 312 8. Previous contacts with law enforcement agencies or the
 313 court which resulted in a civil citation, arrest, or charges
 314 being filed with the state.
 315 9. Initial charges.
 316 10. Charges at disposition.
 317 11. Whether child codefendants were involved who were
 318 transferred to adult court.
 319 12. Whether the child was represented by counsel or whether

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320 the child waived counsel.
 321 13. Risk assessment instrument score.
 322 14. The child's medical, mental health, substance abuse,
 323 and trauma history.
 324 15. The child's history of mental impairment or disability-
 325 related accommodations.
 326 16. The child's history of abuse or neglect.
 327 17. The child's history of foster care placements,
 328 including the number of prior placements.
 329 18. Whether the child has below-average intellectual
 330 functioning.
 331 19. Whether the child has received mental health services
 332 or treatment.
 333 20. Whether the child has been the subject of a child-in-
 334 need-of-services or families-in-need-of-services petition or a
 335 dependency petition.
 336 21. Whether the child was transferred for criminal
 337 prosecution as an adult and, if transferred, the provision of
 338 this section under which the prosecution is proceeding or
 339 proceeded.
 340 22. The case resolution in juvenile court.
 341 23. The case resolution in adult court.
 342 (b) Beginning March 1, 2019, for a child transferred for
 343 criminal prosecution as an adult, the department shall also
 344 collect:
 345 1. Disposition data, including, but not limited to, whether
 346 the child received adult sanctions, juvenile sanctions, or
 347 diversion and, if sentenced to prison, the length of the prison
 348 sentence or the enhanced sentence; and

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349 2. Whether the child was previously found incompetent to
 350 proceed in juvenile court.

351 (c) For every juvenile case transferred to adult court
 352 between July 1, 2017, and June 30, 2018, the department shall
 353 work with the Office of Program Policy Analysis and Government
 354 Accountability to generate a report analyzing the data in
 355 paragraphs (a) and (b). The department must provide this report
 356 to the Governor, the President of the Senate, and the Speaker of
 357 the House of Representatives by January 31, 2019.

358 (d) The department shall work with the Office of Program
 359 Policy Analysis and Government Accountability to generate a
 360 report analyzing the aggregated data collected under paragraphs
 361 (a) and (b) on an annual basis. The department must provide this
 362 report annually to the Governor, the President of the Senate,
 363 and the Speaker of the House of Representatives no later than
 364 January 31 of the following calendar year.

365 Section 5. Subsections (3) and (7) of section 985.672,
 366 Florida Statutes, are amended to read:

367 985.672 Direct-support organization; definition; use of
 368 property; board of directors; audit.—

369 (3) BOARD OF DIRECTORS.—The Secretary of Juvenile Justice
 370 shall appoint a board of directors of the direct-support
 371 organization according to the direct-support organization's
 372 established bylaws. Members of the organization must include
 373 ~~representatives from businesses, representatives from each of~~
 374 ~~the juvenile justice service districts, and one representative~~
 375 ~~appointed at large.~~

376 (7) REPEAL.—This section is repealed October 1, 2028 ~~2018~~,
 377 unless reviewed and saved from repeal by the Legislature.

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378 Section 6. For the purpose of incorporating the amendment
 379 made by this act to section 985.26, Florida Statutes, in a
 380 reference thereto, subsection (8) of section 790.22, Florida
 381 Statutes, is reenacted to read:

382 790.22 Use of BB guns, air or gas-operated guns, or
 383 electric weapons or devices by minor under 16; limitation;
 384 possession of firearms by minor under 18 prohibited; penalties.—

385 (8) Notwithstanding s. 985.24 or s. 985.25(1), if a minor
 386 is charged with an offense that involves the use or possession
 387 of a firearm, including a violation of subsection (3), or is
 388 charged for any offense during the commission of which the minor
 389 possessed a firearm, the minor shall be detained in secure
 390 detention, unless the state attorney authorizes the release of
 391 the minor, and shall be given a hearing within 24 hours after
 392 being taken into custody. At the hearing, the court may order
 393 that the minor continue to be held in secure detention in
 394 accordance with the applicable time periods specified in s.
 395 985.26(1)–(5), if the court finds that the minor meets the
 396 criteria specified in s. 985.255, or if the court finds by clear
 397 and convincing evidence that the minor is a clear and present
 398 danger to himself or herself or the community. The Department of
 399 Juvenile Justice shall prepare a form for all minors charged
 400 under this subsection which states the period of detention and
 401 the relevant demographic information, including, but not limited
 402 to, the gender, age, and race of the minor; whether or not the
 403 minor was represented by private counsel or a public defender;
 404 the current offense; and the minor's complete prior record,
 405 including any pending cases. The form shall be provided to the
 406 judge for determining whether the minor should be continued in

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secure detention under this subsection. An order placing a minor in secure detention because the minor is a clear and present danger to himself or herself or the community must be in writing, must specify the need for detention and the benefits derived by the minor or the community by placing the minor in secure detention, and must include a copy of the form provided by the department.

Section 7. For the purpose of incorporating the amendment made by this act to section 985.26, Florida Statutes, in a reference thereto, subsection (2) of section 985.115, Florida Statutes, is reenacted to read:

985.115 Release or delivery from custody.—

(2) Unless otherwise ordered by the court under s. 985.255 or s. 985.26, and unless there is a need to hold the child, a person taking a child into custody shall attempt to release the child as follows:

(a) To the child's parent, guardian, or legal custodian or, if the child's parent, guardian, or legal custodian is unavailable, unwilling, or unable to provide supervision for the child, to any responsible adult. Prior to releasing the child to a responsible adult, other than the parent, guardian, or legal custodian, the person taking the child into custody may conduct a criminal history background check of the person to whom the child is to be released. If the person has a prior felony conviction, or a conviction for child abuse, drug trafficking, or prostitution, that person is not a responsible adult for the purposes of this section. The person to whom the child is released shall agree to inform the department or the person releasing the child of the child's subsequent change of address

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and to produce the child in court at such time as the court may direct, and the child shall join in the agreement.

(b) Contingent upon specific appropriation, to a shelter approved by the department or to an authorized agent.

(c) If the child is believed to be suffering from a serious physical condition which requires either prompt diagnosis or prompt treatment, to a law enforcement officer who shall deliver the child to a hospital for necessary evaluation and treatment.

(d) If the child is believed to be mentally ill as defined in s. 394.463(1), to a law enforcement officer who shall take the child to a designated public receiving facility as defined in s. 394.455 for examination under s. 394.463.

(e) If the child appears to be intoxicated and has threatened, attempted, or inflicted physical harm on himself or herself or another, or is incapacitated by substance abuse, to a law enforcement officer who shall deliver the child to a hospital, addictions receiving facility, or treatment resource.

(f) If available, to a juvenile assessment center equipped and staffed to assume custody of the child for the purpose of assessing the needs of the child in custody. The center may then release or deliver the child under this section with a copy of the assessment.

Section 8. For the purpose of incorporating the amendment made by this act to section 985.26, Florida Statutes, in a reference thereto, subsection (2) of section 985.13, Florida Statutes, is reenacted to read:

985.13 Probable cause affidavits.—

(2) A person taking a child into custody who determines, under part V, that the child should be detained or released to a

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shelter designated by the department, shall make a reasonable effort to immediately notify the parent, guardian, or legal custodian of the child and shall, without unreasonable delay, deliver the child to the appropriate juvenile probation officer or, if the court has so ordered under s. 985.255 or s. 985.26, to a detention center or facility. Upon delivery of the child, the person taking the child into custody shall make a written report or probable cause affidavit to the appropriate juvenile probation officer. Such written report or probable cause affidavit must:

(a) Identify the child and, if known, the parents, guardian, or legal custodian.

(b) Establish that the child was legally taken into custody, with sufficient information to establish the jurisdiction of the court and to make a prima facie showing that the child has committed a violation of law.

Section 9. For the purpose of incorporating the amendment made by this act to section 985.26, Florida Statutes, in a reference thereto, subsection (2) and paragraphs (a) and (c) of subsection (3) of section 985.255, Florida Statutes, are reenacted to read:

985.255 Detention criteria; detention hearing.—

(2) A child who is charged with committing an offense that is classified as an act of domestic violence as defined in s. 741.28 and whose risk assessment instrument indicates secure detention is not appropriate may be held in secure detention if the court makes specific written findings that:

(a) Respite care for the child is not available.

(b) It is necessary to place the child in secure detention

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in order to protect the victim from injury.

The child may not be held in secure detention under this subsection for more than 48 hours unless ordered by the court. After 48 hours, the court shall hold a hearing if the state attorney or victim requests that secure detention be continued. The child may continue to be held in detention care if the court makes a specific, written finding that detention care is necessary to protect the victim from injury. However, the child may not be held in detention care beyond the time limits set forth in this section or s. 985.26.

(3) (a) The purpose of the detention hearing required under subsection (1) is to determine the existence of probable cause that the child has committed the delinquent act or violation of law that he or she is charged with and the need for continued detention. Unless a child is detained under paragraph (1) (d) or paragraph (1) (e), the court shall use the results of the risk assessment performed by the department and, based on the criteria in subsection (1), shall determine the need for continued detention. If the child is a prolific juvenile offender who is detained under s. 985.26(2) (c), the court shall use the results of the risk assessment performed by the department and the criteria in subsection (1) or subsection (2) only to determine whether the prolific juvenile offender should be held in secure detention.

(c) Except as provided in s. 790.22(8) or s. 985.27, when a child is placed into detention care, or into a respite home or other placement pursuant to a court order following a hearing, the court order must include specific instructions that direct

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the release of the child from such placement no later than 5 p.m. on the last day of the detention period specified in s. 985.26 or s. 985.27, whichever is applicable, unless the requirements of such applicable provision have been met or an order of continuance has been granted under s. 985.26(4). If the court order does not include a release date, the release date shall be requested from the court on the same date that the child is placed in detention care. If a subsequent hearing is needed to provide additional information to the court for safety planning, the initial order placing the child in detention care shall reflect the next detention review hearing, which shall be held within 3 calendar days after the child's initial detention placement.

Section 10. For the purpose of incorporating the amendment made by this act to section 985.26, Florida Statutes, in a reference thereto, paragraph (a) of subsection (1) of section 985.35, Florida Statutes, is reenacted to read:

985.35 Adjudicatory hearings; withheld adjudications; orders of adjudication.—

(1)(a) Except as provided in paragraph (b), the adjudicatory hearing must be held as soon as practicable after the petition alleging that a child has committed a delinquent act or violation of law is filed and in accordance with the Florida Rules of Juvenile Procedure; but reasonable delay for the purpose of investigation, discovery, or procuring counsel or witnesses shall be granted. If the child is being detained, the time limitations in s. 985.26(2) and (3) apply.

Section 11. For the purpose of incorporating the amendment made by this act to section 985.556, Florida Statutes, in a

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reference thereto, subsection (1) of section 985.15, Florida Statutes, is reenacted to read:

985.15 Filing decisions.—

(1) The state attorney may in all cases take action independent of the action or lack of action of the juvenile probation officer and shall determine the action that is in the best interest of the public and the child. If the child meets the criteria requiring prosecution as an adult under s. 985.556, the state attorney shall request the court to transfer and certify the child for prosecution as an adult or shall provide written reasons to the court for not making such a request. In all other cases, the state attorney may:

(a) File a petition for dependency;

(b) File a petition under chapter 984;

(c) File a petition for delinquency;

(d) File a petition for delinquency with a motion to transfer and certify the child for prosecution as an adult;

(e) File an information under s. 985.557;

(f) Refer the case to a grand jury;

(g) Refer the child to a diversionary, pretrial intervention, arbitration, or mediation program, or to some other treatment or care program if such program commitment is voluntarily accepted by the child or the child's parents or legal guardian; or

(h) Decline to file.

Section 12. For the purpose of incorporating the amendments made by this act to sections 985.556 and 985.557, Florida Statutes, in references thereto, subsection (5) of section 985.265, Florida Statutes, is reenacted to read:

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581 985.265 Detention transfer and release; education; adult
 582 jails.-

583 (5) The court shall order the delivery of a child to a jail
 584 or other facility intended or used for the detention of adults:

585 (a) When the child has been transferred or indicted for
 586 criminal prosecution as an adult under part X, except that the
 587 court may not order or allow a child alleged to have committed a
 588 misdemeanor who is being transferred for criminal prosecution
 589 pursuant to either s. 985.556 or s. 985.557 to be detained or
 590 held in a jail or other facility intended or used for the
 591 detention of adults; however, such child may be held temporarily
 592 in a detention facility; or

593 (b) When a child taken into custody in this state is wanted
 594 by another jurisdiction for prosecution as an adult.

595

596 The child shall be housed separately from adult inmates to
 597 prohibit a child from having regular contact with incarcerated
 598 adults, including trustees. "Regular contact" means sight and
 599 sound contact. Separation of children from adults shall permit
 600 no more than haphazard or accidental contact. The receiving jail
 601 or other facility shall contain a separate section for children
 602 and shall have an adequate staff to supervise and monitor the
 603 child's activities at all times. Supervision and monitoring of
 604 children includes physical observation and documented checks by
 605 jail or receiving facility supervisory personnel at intervals
 606 not to exceed 10 minutes. This subsection does not prohibit
 607 placing two or more children in the same cell. Under no
 608 circumstances shall a child be placed in the same cell with an
 609 adult.

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610 Section 13. For the purpose of incorporating the amendments
 611 made by this act to sections 985.556 and 985.557, Florida
 612 Statutes, in references thereto, subsection (4) of section
 613 985.565, Florida Statutes, is reenacted to read:

614 985.565 Sentencing powers; procedures; alternatives for
 615 juveniles prosecuted as adults.-

616 (4) SENTENCING ALTERNATIVES.-

617 (a) *Adult sanctions*.-

618 1. Cases prosecuted on indictment.-If the child is found to
 619 have committed the offense punishable by death or life
 620 imprisonment, the child shall be sentenced as an adult. If the
 621 juvenile is not found to have committed the indictable offense
 622 but is found to have committed a lesser included offense or any
 623 other offense for which he or she was indicted as a part of the
 624 criminal episode, the court may sentence as follows:

625 a. As an adult;

626 b. Under chapter 958; or

627 c. As a juvenile under this section.

628 2. Other cases.-If a child who has been transferred for
 629 criminal prosecution pursuant to information or waiver of
 630 juvenile court jurisdiction is found to have committed a
 631 violation of state law or a lesser included offense for which he
 632 or she was charged as a part of the criminal episode, the court
 633 may sentence as follows:

634 a. As an adult;

635 b. Under chapter 958; or

636 c. As a juvenile under this section.

637 3. Notwithstanding any other provision to the contrary, if
 638 the state attorney is required to file a motion to transfer and

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certify the juvenile for prosecution as an adult under s. 985.556(3) and that motion is granted, or if the state attorney is required to file an information under s. 985.557(2)(a) or (b), the court must impose adult sanctions.

4. Any sentence imposing adult sanctions is presumed appropriate, and the court is not required to set forth specific findings or enumerate the criteria in this subsection as any basis for its decision to impose adult sanctions.

5. When a child has been transferred for criminal prosecution as an adult and has been found to have committed a violation of state law, the disposition of the case may include the enforcement of any restitution ordered in any juvenile proceeding.

(b) *Juvenile sanctions.*—For juveniles transferred to adult court but who do not qualify for such transfer under s. 985.556(3) or s. 985.557(2)(a) or (b), the court may impose juvenile sanctions under this paragraph. If juvenile sentences are imposed, the court shall, under this paragraph, adjudge the child to have committed a delinquent act. Adjudication of delinquency shall not be deemed a conviction, nor shall it operate to impose any of the civil disabilities ordinarily resulting from a conviction. The court shall impose an adult sanction or a juvenile sanction and may not sentence the child to a combination of adult and juvenile punishments. An adult sanction or a juvenile sanction may include enforcement of an order of restitution or probation previously ordered in any juvenile proceeding. However, if the court imposes a juvenile sanction and the department determines that the sanction is unsuitable for the child, the department shall return custody of

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the child to the sentencing court for further proceedings, including the imposition of adult sanctions. Upon adjudicating a child delinquent under subsection (1), the court may:

1. Place the child in a probation program under the supervision of the department for an indeterminate period of time until the child reaches the age of 19 years or sooner if discharged by order of the court.

2. Commit the child to the department for treatment in an appropriate program for children for an indeterminate period of time until the child is 21 or sooner if discharged by the department. The department shall notify the court of its intent to discharge no later than 14 days prior to discharge. Failure of the court to timely respond to the department's notice shall be considered approval for discharge.

3. Order disposition under ss. 985.435, 985.437, 985.439, 985.441, 985.45, and 985.455 as an alternative to youthful offender or adult sentencing if the court determines not to impose youthful offender or adult sanctions.

(c) *Adult sanctions upon failure of juvenile sanctions.*—If a child proves not to be suitable to a commitment program, juvenile probation program, or treatment program under paragraph (b), the department shall provide the sentencing court with a written report outlining the basis for its objections to the juvenile sanction and shall simultaneously provide a copy of the report to the state attorney and the defense counsel. The department shall schedule a hearing within 30 days. Upon hearing, the court may revoke the previous adjudication, impose an adjudication of guilt, and impose any sentence which it may lawfully impose, giving credit for all time spent by the child

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697 in the department. The court may also classify the child as a
 698 youthful offender under s. 958.04, if appropriate. For purposes
 699 of this paragraph, a child may be found not suitable to a
 700 commitment program, community control program, or treatment
 701 program under paragraph (b) if the child commits a new violation
 702 of law while under juvenile sanctions, if the child commits any
 703 other violation of the conditions of juvenile sanctions, or if
 704 the child's actions are otherwise determined by the court to
 705 demonstrate a failure of juvenile sanctions.

706 (d) *Further proceedings heard in adult court.*—When a child
 707 is sentenced to juvenile sanctions, further proceedings
 708 involving those sanctions shall continue to be heard in the
 709 adult court.

710 (e) *School attendance.*—If the child is attending or is
 711 eligible to attend public school and the court finds that the
 712 victim or a sibling of the victim in the case is attending or
 713 may attend the same school as the child, the court placement
 714 order shall include a finding pursuant to the proceeding
 715 described in s. 985.455(2), regardless of whether adjudication
 716 is withheld.

717
 718 It is the intent of the Legislature that the criteria and
 719 guidelines in this subsection are mandatory and that a
 720 determination of disposition under this subsection is subject to
 721 the right of the child to appellate review under s. 985.534.

722 Section 14. For the purpose of incorporating the amendment
 723 made by this act to section 985.557, Florida Statutes, in a
 724 reference thereto, paragraph (c) of subsection (2) of section
 725 985.26, Florida Statutes, is reenacted to read:

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

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726 985.26 Length of detention.—

727 (2)

728 (c) A prolific juvenile offender under s. 985.255(1)(j)
 729 shall be placed on nonsecure detention care with electronic
 730 monitoring or in secure detention care under a special detention
 731 order until disposition. If secure detention care is ordered by
 732 the court, it must be authorized under this part and may not
 733 exceed:

734 1. Twenty-one days unless an adjudicatory hearing for the
 735 case has been commenced in good faith by the court or the period
 736 is extended by the court pursuant to paragraph (b); or

737 2. Fifteen days after the entry of an order of
 738 adjudication.

739
 740 As used in this paragraph, the term "disposition" means a
 741 declination to file under s. 985.15(1)(h), the entry of nolle
 742 prosequi for the charges, the filing of an indictment under s.
 743 985.56 or an information under s. 985.557, a dismissal of the
 744 case, or an order of final disposition by the court.

745 Section 15. This act shall take effect July 1, 2018.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2.6.18

Meeting Date

1552

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

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)

2/6/2018

Meeting Date

1552

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

Street

Tallahassee

FL

32302

City

State

Zip

Email scott.mccoy@splcenter.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Southern Poverty Law 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.

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

S-001 (10/14/14)

CourtSmart Tag Report

Room: LL 37

Case No.:

Type:

Caption: Senate Criminal Justice Committee

Judge:

Started: 2/6/2018 9:03:02 AM

Ends: 2/6/2018 10:17:12 AM

Length: 01:14:11

9:03:03 AM Meeting called to order by Chair Bracy
9:03:07 AM Roll call by Administrative Assistant Sue Arnold
9:03:11 AM Quorum present announced
9:03:16 AM Comments from Chair Bracy
9:04:10 AM Chair passed to Senator Baxley
9:04:41 AM Introduction of SB 1490 by Senator Bracy
9:05:11 AM Comments from Chair Baxley
9:05:46 AM Speaker Barney Bishop, CEO, Florida Smart Justice Alliance
9:07:05 AM Scott Miller, Director, Financial Casualty & Surety waives in opposition
9:07:51 AM Speaker Pat Tuthill, CEO Victim's Advocate
9:11:40 AM Speaker Shawn Foster, Florida Bail Agents Association
9:13:53 AM Speaker Matthew Jones, President, Florida Bank Association
9:15:10 AM Motion made by Senator Bracy to TP SB 1490
9:15:28 AM Introduction of SB 1230 by Chair Bracy
9:15:53 AM Explanation of SB 1230, Criminal Judgments by Senator Baxley
9:16:08 AM Amendment Barcode No. 135342 introduced by Chair Bracy
9:16:24 AM Explanation of Amendment Barcode No. 135342 by Senator Baxley
9:16:38 AM Kristina Wiggins, Executive Director, Florida Public Defender Association waives in support
9:16:45 AM Closure waived on Amendment and Amendment Barcode No. 135342 adopted
9:16:54 AM Jennifer Pritt, Assistant Commissioner, FDLE waives in support
9:17:01 AM Barney Bishop, CEO, Florida Smart Justice Alliance waives in support
9:17:06 AM Sarah Naf Biehl, Chief of Legislative Affairs, State Courts Systems waives in support
9:17:10 AM Closure waived
9:17:18 AM Roll call on CS/SB 1230
9:17:30 AM CS/SB 1230 reported favorably
9:17:39 AM Introduction of SB 588 by Chair Bracy
9:18:01 AM Explanation of SB 588, Crimes Evidencing Prejudice by Senator Rader
9:21:18 AM Speaker J.R. Harding, Persons with Disabilities
9:21:54 AM Speaker Scott McCoy, Senior Policy Counsel, Southern Poverty Law Center
9:22:55 AM Speaker Greg Pound
9:25:13 AM Speaker Savannah Middlebrooks, Data Analyst, PFLAG
9:27:48 AM Speaker Dr. Petra Dean, Professor at FSU, Transaction Initiative - Equality Florida
9:30:00 AM Speaker Jon Harris Maurer, Government Affairs Manager, Equality Florida
9:31:17 AM Lakey Love, Graduate Teaching Assistant waives in support
9:31:23 AM Barney Bishop, Florida Smart Justice Alliance waives in support
9:31:33 AM Barbara DeVane, FL NOW waives in support
9:32:07 AM Speaker David Bacury, Anti-Deformation League
9:33:58 AM Closure by Senator Rader
9:34:39 AM SB 588 TP'd vote for a later vote by Chair Bracy
9:34:56 AM Introduction of SB 1548 by Chair Bracy
9:35:19 AM Explanation of CS/SB 1548, Student Safety by Senator Book
9:36:09 AM Barney Bishop, Florida Smart Justice Alliance waives in support
9:36:15 AM Tanya Cooper, Director, Governmental Relations, Department of Education waives in support
9:36:25 AM Senator Bean in debate
9:36:50 AM Closure waived by Senator Book
9:36:53 AM Roll call
9:37:06 AM CS/SB 1548 reported favorably
9:37:15 AM Introduction of SB 1226 by Chair Bracy
9:37:30 AM Explanation of SB 1226, Sexual Predators by Senator Book
9:39:16 AM Amendment Barcode No. 669362 introduced by Chair Bracy
9:39:41 AM Explanation of Amendment Barcode No. 669362 by Senator Book
9:39:47 AM Closure waived on Amendment
9:39:51 AM Amendment Barcode No. 669362 adopted

9:39:59 AM Amendment Barcode No. 196412 introduced by Chair Bracy
9:40:07 AM Explanation of Amendment Barcode No. 196412 by Senator Book
9:40:14 AM Closure waived
9:40:18 AM Amendment Barcode No. 196412 adopted
9:40:50 AM Speaker Jess McCarty, Assistant County Attorney, Miami-Dade County
9:41:12 AM Barney Bishop, Florida Smart Justice Alliance waives in support
9:41:25 AM Closure waived by Senator Book
9:41:39 AM Roll call on CS/SB 1226
9:41:48 AM CS/SB 1226 reported favorably
9:41:57 AM SB 706 introduced by Chair Bracy
9:42:26 AM Explanation of SB 706, Crime Stoppers Organization by Senator Steube
9:42:44 AM Amendment Barcode No. 612416 introduced by Chair Bracy
9:42:49 AM Explanation of Amendment Barcode No. 612416 by Senator Steube
9:42:58 AM Closure waived
9:43:04 AM Amendment Barcode No. 612416 adopted
9:43:09 AM Phil Archer, State Attorney, Florida Prosecuting Attorneys Association waives in support
9:43:12 AM Closure waived
9:43:14 AM Roll call
9:43:25 AM CS/SB 706 reported favorably
9:43:33 AM SB 952 introduced by Chair Bracy
9:43:54 AM Explanation of SB 952, Animals by Senator Steube
9:44:23 AM Question from Senator Rouson
9:44:54 AM Chief Stephan Dembinsky, Chief of Police, Daytona Beach Shores Police Department waives in support
9:45:01 AM Barney Bishop, Florida Smart Justice Alliance waives in support
9:45:05 AM Diana Ferguson, Attorney, Animal Law Section of the Florida Bar waives in support
9:45:11 AM Dena DeCamp, President, Florida Federation of Republican Women waives in support
9:45:15 AM Jennifer Hobgood, ASPCA waives in support
9:45:36 AM Senator Steube in closure
9:45:43 AM Roll call on SB 952
9:45:51 AM SB 952 reported favorably
9:46:01 AM SB 1142 introduced by Chair Bracy
9:46:19 AM Explanation of SB 1142, Expunction of Criminal History Records by Senator Steube
9:46:38 AM Nancy Daniels, Legislative Consultant waives in support
9:46:43 AM Jorge Chamizo, FACDL waives in support
9:46:54 AM Barney Bishop, Florida Smart Justice Alliance waives in support
9:47:02 AM Closure waived
9:47:06 AM Roll call
9:47:14 AM SB 1142 reported favorably
9:47:33 AM CS/SB 820 introduced by Chair Bracy
9:47:54 AM Explanation of CS/SB 820, Firesafety Inspectors by Senator Powell
9:48:42 AM Jeff Branch, Legislative Advocate, Florida League of Cities waives in support
9:48:50 AM Ray Colburn, Executive Director, Florida Fire Chiefs' Association waives in support
9:48:58 AM Closure waived
9:49:00 AM Roll call
9:49:11 AM CS/SB 820 reported favorably
9:49:25 AM CS/SB 1418 introduced by Chair Bracy
9:49:39 AM Explanation of CS/SB 1418, Substance Abuse Services by Senator Rouson
9:49:52 AM Late-filed Amendment Barcode No. 306102 introduced by Chair Bracy
9:50:13 AM Explanation of Late-filed Amendment No. 306102 by Senator Rouson
9:51:19 AM Closure on Amendment by Senator Rouson
9:52:06 AM Late-filed Amendment 306102 adopted
9:52:17 AM Mark Fontaine, CEO, Florida Behavioral Health Association waives in support
9:52:22 AM Daphnee Sainvil, Policy Advisor Broward County Government waives in support
9:52:26 AM ALisa LaPolt, Executive Director, National Alliance on Mental Illness - Florida waives in support
9:52:32 AM Rebecca DeLaRosa, Legislative Affairs Director, Palm Beach County waives in support
9:52:40 AM Closure waived
9:52:43 AM Roll call
9:52:56 AM CS/SB 1418 reported favorably
9:53:15 AM Chair passed to Senator Rouson
9:53:27 AM SB 1552 introduced by Chair Rouson
9:53:40 AM Explanation of SB 1552, Juvenile Justice by Senator Bracy
9:54:30 AM Question from Senator Bean
9:54:57 AM Response from Senator Bracy

9:58:01 AM Speaker Scott McCoy, Senior Policy Counsel, Southern Poverty Law Center
 10:01:16 AM Barney Bishop, Florida Smart Justice Alliance states no position on bill
 10:01:27 AM Senator Bean in Debate
 10:01:57 AM Closure by Senator Bracy
 10:02:03 AM Roll call
 10:02:36 AM SB 1552 reported favorably
 10:02:48 AM Chair passed back to Senator Bracy
 10:03:01 AM Senator Bean Shown as voting favorable CS/SB 1230
 10:03:13 AM SB 1222 introduced by Chair Bracy
 10:03:29 AM Explanation of SB 1222, Inmate Reentry Program by Senator Brandes
 10:04:21 AM Amendment Barcode No. 415846 introduced by Chair Bracy
 10:04:49 AM Explanation of Amendment Barcode No. 415846 by Senator Brandes
 10:04:56 AM Question from Senator Rouson
 10:05:30 AM Response from Senator Brandes
 10:05:49 AM Closure waived on amendment
 10:05:53 AM Amendment adopted
 10:06:14 AM Speaker Mark Fontaine, CEO, Florida Behavioral Health Association in support
 10:06:20 AM Barney Bishop, Florida Smart Justice Alliance waives in support
 10:06:26 AM Matt Sacco, Campaign for Criminal Justice waives in support
 10:06:33 AM Jorge Chamizo, Florida Association of Criminal Defense Lawyers waives in support
 10:06:37 AM Daphnee Sainvil, Policy Advisor, Broward County Government waives in support
 10:06:42 AM Mia Diaz, Executive Assistant, Office Manager, Florida Tax Watch waives in support
 10:06:48 AM Alisa LaPolt, Executive Director, National Alliance on Mental Illness - Florida waives in support
 10:07:00 AM Closure waived
 10:07:05 AM Roll call
 10:07:17 AM CS/SB 1222 reported favorably
 10:07:40 AM Return to SB 588 by Senator Rader per Chair Bracy for a vote
 10:07:43 AM Roll call
 10:07:57 AM SB 588 reported favorably
 10:08:11 AM Introduction of SB 1256 by Chair Bracy
 10:08:25 AM Explanation of SB 1256, Search of Content, Information, and Communications of Cellular Phones, Portable Electronic Communication Devices, and Microphone-enabled Household Devices by Senator Brandes
 10:08:58 AM Amendment Barcode No. 340722 introduced by Chair Bracy
 10:09:18 AM Explanation of Amendment Barcode No. 340722 by Senator Brandes
 10:09:29 AM Jennifer Pritt, Assistant Commissioner, FDLE waives in support
 10:09:34 AM Slater Bayliss, Technet waives in support
 10:09:40 AM Sebastian Aleksander, Facebook waives in support
 10:09:53 AM Closure waived
 10:09:56 AM Amendment Barcode No. 340722 adopted
 10:10:03 AM Jorge Chamizo, FACDL waives in support
 10:10:08 AM Closure waived
 10:10:15 AM Roll call
 10:10:31 AM CS/SB 1256 reported favorably
 10:11:07 AM Chair passed to Senator Rouson
 10:11:15 AM Introduction of SB 870 by Chair Rouson
 10:11:35 AM Explanation of SB 870, Capital Felonies by Senator Bracy
 10:13:08 AM Question from Senator Bean
 10:13:21 AM Response from Senator Bracy
 10:14:09 AM Neal Dupree, Capital Collateral Regional Counsels waives in support
 10:14:14 AM Scott McCoy, Senior Policy Counsel, Southern Poverty Law Center waives in support
 10:14:21 AM Barney Bishop, Florida Smart Justice Alliance waives in opposition
 10:14:27 AM Nancy Daniels, Legislative Consultant waives in support
 10:14:37 AM Ingrid Delgado, Associate Director for Life & Social Concerns, Florida Conference of Catholic Bishops waives in support
 10:14:57 AM Closure by Senator Bracy
 10:15:25 AM Debate by Senator Brandes
 10:16:02 AM Roll call
 10:16:17 AM SB 870 reported favorably
 10:16:28 AM Chair passed back to Senator Bracy
 10:16:54 AM Senator Rouson moves that staff make necessary changes on CS' as necessary
 10:17:06 AM Senator Brandes moves to rise, meeting adjourned