

<b>Tab 1 SB 22 by Montford; (Identical to H 3511) Relief of Angela Sanford by Leon County</b>						
529976	A	S	RCS	FP, Sachs	Delete L.21 - 49:	02/18 09:09 AM
<b>Tab 2 CS/SB 44 by CA, Garcia; (Similar to CS/H 3509) Relief of Susana Castillo by the City of Hialeah</b>						
286084	A	S	RCS	FP, Hukill	Delete L.18:	02/18 09:09 AM
<b>Tab 3 CS/SB 132 by HP, Grimsley (CO-INTRODUCERS) Gaetz; (Similar to CS/CS/H 0037) Direct Primary Care</b>						
753626	A	S	RCS	FP, Legg	Delete L.56 - 75:	02/18 09:09 AM
<b>Tab 4 CS/SB 204 by HP, Clemens; (Identical to CS/H 0571) Music Therapists</b>						
204224	A	S	RCS	FP, Clemens	Delete L.17 - 19:	02/18 09:09 AM
<b>Tab 5 SB 268 by Ring; (Similar to CS/H 0229) Bullying and Harassment Policies in Schools</b>						
632060	A	S		FP, Clemens	btw L.19 - 20:	02/17 09:12 AM
292820	A	S		FP, Clemens	Delete L.33 - 53:	02/16 03:33 PM
<b>Tab 6 SB 532 by Gibson; (Similar to H 0369) Provisional Ballots</b>						
<b>Tab 7 SB 550 by Dean; (Similar to H 0255) Volunteer Rural Firefighting</b>						
<b>Tab 8 CS/CS/SB 562 by CM, BI, Stargel (CO-INTRODUCERS) Gaetz; (Similar to CS/H 0713) Consumer Debt Collection</b>						
216992	D	S		FP, Stargel	Delete everything after	02/16 03:34 PM
<b>Tab 9 SB 620 by Grimsley; (Similar to CS/H 0315) Medical Examiners</b>						
789460	A	S	RCS	FP, Margolis	Delete L.30:	02/18 09:09 AM
927632	AA	S	RCS	FP, Margolis	Delete L.6:	02/18 09:09 AM
<del>336552</del>	A	S	WD	FP, Bean	Delete L.34:	02/18 09:09 AM
639124	AA	S	00	FP, Sachs	Delete L.9:	02/18 09:09 AM
<b>Tab 10 SB 700 by Soto; (Similar to CS/CS/H 0293) Public Records/Juvenile Criminal History Information</b>						
365564	PCS	S	RCS	FP, ACJ		02/18 09:09 AM
<b>Tab 11 SB 764 by Hays; (Identical to H 0633) Public Food Service Establishments</b>						
<b>Tab 12 CS/SB 784 by CJ, Flores; (Identical to CS/CS/H 0545) Human Trafficking</b>						
<b>Tab 13 CS/SB 818 by HP, Latvala (CO-INTRODUCERS) Sobel, Abruzzo, Soto; (Compare to H 0469) Instruction on Human Trafficking</b>						
<b>Tab 14 CS/SB 912 by CJ, Flores (CO-INTRODUCERS) Soto; (Similar to CS/H 0761) Fraudulent Activities Associated with Payment Systems</b>						
261112	A	S	RCS	FP, Flores	Delete L.103 - 174:	02/18 09:09 AM
<b>Tab 15 CS/SB 948 by CM, Richter; (Similar to CS/H 0739) Secondhand Dealers</b>						
776422	A	S	RS	FP, Bean	Delete L.103 - 127:	02/18 09:09 AM
818396	SD	S	RCS	FP, Bean	Delete everything after	02/18 09:09 AM

<b>Tab 16</b>	<b>CS/SB 954</b> by <b>CJ, Simmons</b> ; (Identical to CS/CS/H 0075) Electronic Monitoring Devices						
707340	A	S	RCS	FP, Bradley	Delete L.31:	02/18 09:09 AM	

<b>Tab 17</b>	<b>CS/CS/SB 1220</b> by <b>JU, GO, Garcia</b> ; (Similar to H 1021) Public Records						
670232	D	S	RCS	FP, Sachs	Delete everything after	02/18 09:09 AM	

<b>Tab 18</b>	<b>SB 1226</b> by <b>Ring</b> ; (Identical to H 0981) Administrative Procedures						
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<b>Tab 19</b>	<b>SB 1300</b> by <b>Dean</b> ; (Similar to H 7025) At-risk Vessels						
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<b>Tab 20</b>	<b>CS/CS/SB 1318</b> by <b>EP, AG, Dean</b> ; (Identical to CS/CS/H 0489) Shellfish Harvesting						
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<b>Tab 21</b>	<b>CS/CS/SB 1602</b> by <b>CA, RI, Galvano</b> ; (Similar to CS/H 1289) Elevators						
243006	A	S	RCS	FP, Bean	btw L.83 - 84:	02/18 09:09 AM	
586396	AA	S	RCS	FP, Bean	Delete L.5:	02/18 09:09 AM	

<b>Tab 22</b>	<b>SB 7036</b> by <b>GO</b> ; School District Purchasing						
163570	PCS	S		FP, AED		02/02 11:51 AM	

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**FISCAL POLICY**  
**Senator Flores, Chair**  
**Senator Bradley, Vice Chair**

**MEETING DATE:** Wednesday, February 17, 2016  
**TIME:** 4:00—6:00 p.m.  
**PLACE:** Pat Thomas Committee Room, 412 Knott Building

**MEMBERS:** Senator Flores, Chair; Senator Bradley, Vice Chair; Senators Abruzzo, Bean, Clemens, Hays, Hukill, Legg, Margolis, Sachs, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 22</b> Montford (Identical H 3511)	Relief of Angela Sanford by Leon County; Providing for the relief of Angela Sanford by Leon County; providing for an appropriation to compensate her for injuries and damages sustained as a result of the negligence of an employee of Leon County; providing that certain payments and the appropriation satisfy all present and future claims related to the negligent act; providing a limitation on the payment of compensation, fees, and costs, etc.  SM JU 01/26/2016 Favorable CA 02/09/2016 Favorable FP 02/17/2016 Fav/CS	Fav/CS Yeas 10 Nays 1
2	<b>CS/SB 44</b> Community Affairs / Garcia (Similar CS/H 3509)	Relief of Susana Castillo by the City of Hialeah; Providing for the relief of Susana Castillo, as personal representative of the Estate of Andrea Castillo; providing for an appropriation to compensate the Estate of Andrea Castillo for her death as a result of the negligence of the City of Hialeah; providing a limitation on the payment of fees and costs; providing that the amounts awarded are intended to provide the sole compensation for all present and future claims related to the wrongful death of Andrea Castillo, etc.  SM JU 01/26/2016 Favorable CA 02/09/2016 Fav/CS FP 02/17/2016 Fav/CS	Fav/CS Yeas 10 Nays 1
3	<b>CS/SB 132</b> Health Policy / Grimsley (Similar CS/CS/H 37)	Direct Primary Care; Specifying that a direct primary care agreement does not constitute insurance and is not subject to provisions relating to prepaid limited health service organizations and discount medical plan organizations, or any other chapter of the Florida Insurance Code; providing that certain certificates of authority and licenses are not required to market, sell, or offer to sell a direct primary care agreement, etc.  HP 02/01/2016 Fav/CS BI 02/09/2016 Favorable FP 02/17/2016 Fav/CS	Fav/CS Yeas 11 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Fiscal Policy

Wednesday, February 17, 2016, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>CS/SB 204</b> Health Policy / Clemens (Identical CS/H 571)	Music Therapists; Establishing requirements for registration as a music therapist; prohibiting the practice of music therapy unless the therapist is registered; authorizing the Department of Health to adopt rules and take disciplinary action against an applicant or registrant who violates the act, etc.  HP 01/19/2016 Fav/CS AHS 02/11/2016 Favorable FP 02/17/2016 Fav/CS	Fav/CS Yeas 9 Nays 2
With subcommittee recommendation – Health and Human Services			
5	<b>SB 268</b> Ring (Similar CS/H 229)	Bullying and Harassment Policies in Schools; Requiring school districts to revise their bullying and harassment policy at specified intervals; requiring the policy to include mandatory reporting procedures and a list of authorized programs that provide bullying and harassment identification, prevention, and response instruction, etc.  ED 02/02/2016 Favorable AED 02/11/2016 Favorable FP 02/17/2016 Not Considered	Not Considered
With subcommittee recommendation – Education			
6	<b>SB 532</b> Gibson (Similar H 369)	Provisional Ballots; Requiring the supervisor of elections to allow a person who voted a provisional ballot to submit an affidavit to cure an unsigned Provisional Ballot Voter's Certificate and Affirmation; prescribing the form and content of the affidavit; providing instructions to accompany each affidavit; requiring the affidavit, instructions, and the supervisor's contact information to be posted on specified websites; requiring the supervisor to attach a received affidavit to the corresponding provisional ballot envelope, etc.  EE 01/26/2016 Favorable ATD 02/11/2016 Favorable FP 02/17/2016 Favorable	Favorable Yeas 10 Nays 1
With subcommittee recommendation – Transportation, Tourism, and Economic Development			

**COMMITTEE MEETING EXPANDED AGENDA**

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	<b>SB 550</b> Dean (Similar H 255)	Volunteer Rural Firefighting; Authorizing the Division of State Fire Marshal within the Department of Financial Services to award a Volunteer Rural Firefighter Certificate of Completion; requiring the division to establish by rule courses and course examinations to provide training required to obtain the certificate; revising the circumstances under which a fire service provider may retain the services of a volunteer firefighter, etc.  BI 02/01/2016 Favorable CA 02/09/2016 Favorable FP 02/17/2016 Favorable	Favorable Yeas 11 Nays 0
8	<b>CS/CS/SB 562</b> Commerce and Tourism / Banking and Insurance / Stargel (Similar CS/H 713)	Consumer Debt Collection; Authorizing a debtor to individually notify a person that is represented by an attorney under certain circumstances; providing that an original creditor is not liable for a violation of prohibited communication practices if the debtor or the debtor's attorney fails to provide certain notice or information; providing that an original creditor must cease direct communication with the debtor under certain circumstances, etc.  BI 01/19/2016 Fav/CS CM 02/01/2016 Fav/CS FP 02/17/2016 Not Considered	Not Considered
9	<b>SB 620</b> Grimsley (Similar CS/H 315)	Medical Examiners; Providing that a member of the public may not be charged for certain examinations, investigations, or autopsies; authorizing a county to charge a medical examiner approval fee under certain circumstances, etc.  HP 02/01/2016 Favorable CA 02/09/2016 Favorable FP 02/17/2016 Fav/CS	Fav/CS Yeas 11 Nays 0
<b>A proposed committee substitute</b> for the following bill (SB 700) is available:			
10	<b>SB 700</b> Soto (Similar CS/CS/H 293, Compare CS/H 129, S 314, S 558)	Public Records/Juvenile Criminal History Information; Specifying that certain confidential information obtained under chapter 985, F.S., relating to juvenile justice, is exempt from public records requirements; providing for future review and repeal of such applicability provisions; providing an exemption from public records requirements for juvenile information compiled by the Criminal Justice Information Program from intrastate sources; providing for future review and repeal of the exemption; providing a statement of public necessity, etc.  CJ 02/01/2016 Favorable ACJ 02/11/2016 Fav/CS FP 02/17/2016 Fav/CS	Fav/CS Yeas 11 Nays 0

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
With subcommittee recommendation – Criminal and Civil Justice			
11	<b>SB 764</b> Hays (Identical H 633)	Public Food Service Establishments; Revising the definition of the term “public food service establishment” to exclude certain events; clarifying that a food service license is not required to be obtained if an event is excluded under the definition of the term “public food service establishment”, etc.  HP 01/26/2016 Favorable RI 02/02/2016 Favorable FP 02/17/2016 Not Considered	Not Considered
12	<b>CS/SB 784</b> Criminal Justice / Flores (Identical CS/CS/H 545, Compare H 1367, H 4033, S 874, S 1294)	Human Trafficking; Revising the definition of the term “sexual abuse of a child” to delete a reference to a child being arrested or prosecuted for specified offenses; creating an increased penalty for causing great bodily harm, permanent disability, or permanent disfigurement; requiring the Department of Health to issue an emergency order suspending the license of a massage therapist or massage establishment if the therapist or a specified person connected to the establishment is convicted of owning, establishing, maintaining, or operating a place, structure, building, or conveyance for lewdness, assignation, or prostitution in conjunction with the establishment; requiring a person convicted of specified racketeering offenses to register as a sexual predator or sexual offender under certain circumstances, etc.  CJ 01/25/2016 Fav/CS ACJ 02/11/2016 Favorable FP 02/17/2016 Favorable	Favorable Yeas 11 Nays 0
With subcommittee recommendation – Criminal and Civil Justice			
13	<b>CS/SB 818</b> Health Policy / Latvala (Compare H 469)	Instruction on Human Trafficking; Providing that certain licensing boards must require specified licensees to complete a specified continuing education course that includes a section on human trafficking as a condition of relicensure or recertification, etc.  HP 01/26/2016 Fav/CS AHS 02/11/2016 Favorable FP 02/17/2016 Favorable	Favorable Yeas 11 Nays 0
With subcommittee recommendation – Health and Human Services			

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	<b>CS/SB 912</b> Criminal Justice / Flores (Similar CS/H 761)	Fraudulent Activities Associated with Payment Systems; Revising the felony classification for unlawful conveyance of fuel; requiring retail petroleum fuel measuring devices fitted with scanning devices to have certain security measures; requiring the owner or operator of a device to have certain security measures in place within a specified timeframe upon notice from the Department of Agriculture and Consumer Services; requiring the Department of Agriculture and Consumer Services to enforce provisions; reducing the number of counterfeit credit cards that a person can be in possession of to qualify as unlawful, etc.  CJ 01/25/2016 Fav/CS AGG 02/11/2016 Favorable FP 02/17/2016 Fav/CS	Fav/CS Yeas 11 Nays 0
With subcommittee recommendation – General Government			
15	<b>CS/SB 948</b> Commerce and Tourism / Richter (Similar CS/H 739)	Secondhand Dealers; Requiring that the record of a secondhand dealer transaction include digital photos of the items; authorizing an action in replevin against a secondhand dealer based on a right of possession to stolen goods; providing that a secondhand dealer commits a noncriminal violation when an owner or lienor prevails in a replevin action under certain circumstances, etc.  CM 01/19/2016 Fav/CS JU 02/09/2016 Favorable FP 02/17/2016 Fav/CS	Fav/CS Yeas 11 Nays 0
16	<b>CS/SB 954</b> Criminal Justice / Simmons (Identical CS/CS/H 75)	Electronic Monitoring Devices; Prohibiting a person from removing, destroying, altering, tampering with, damaging, or circumventing the operation of an electronic monitoring device being worn or used pursuant to any court order or an order by the Florida Commission on Offender Review; specifying that the Department of Corrections may electronically monitor an offender sentenced to community control when the court has imposed electronic monitoring as a condition of community control, etc.  CJ 01/25/2016 Fav/CS ACJ 02/11/2016 Favorable FP 02/17/2016 Fav/CS	Fav/CS Yeas 11 Nays 0
With subcommittee recommendation – Criminal and Civil Justice			

**COMMITTEE MEETING EXPANDED AGENDA**

Fiscal Policy

Wednesday, February 17, 2016, 4:00—6:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
17	<b>CS/CS/SB 1220</b> Judiciary / Governmental Oversight and Accountability / Garcia (Similar H 1021)	Public Records; Requiring a complainant to provide specified written notice to an agency's custodian of public records in order to be awarded the reasonable costs of enforcement in a civil action for enforcement of ch. 119, F.S.; specifying circumstances under which a court may not assess and award the reasonable costs of enforcement against a responsible agency; providing an exception to the requirement that a complainant provide written notice before filing a civil action, etc.  GO 01/26/2016 Fav/CS JU 02/09/2016 Fav/CS FP 02/17/2016 Fav/CS	Fav/CS Yeas 11 Nays 0
18	<b>SB 1226</b> Ring (Identical H 981)	Administrative Procedures; Providing additional requirements for the calculation of estimated adverse impacts and regulatory costs, etc.  GO 01/26/2016 Favorable AGG 02/11/2016 Favorable FP 02/17/2016 Not Considered	Not Considered
With subcommittee recommendation – General Government			
19	<b>SB 1300</b> Dean (Similar H 7025)	At-risk Vessels; Prohibiting a vessel that is at risk of becoming derelict from anchoring on, mooring on, or occupying the waters of this state; providing that a person who anchors or moors such a vessel or allows it to occupy waters of this state commits a noncriminal infraction, etc.  EP 01/27/2016 Favorable AGG 02/11/2016 Favorable FP 02/17/2016 Favorable	Favorable Yeas 11 Nays 0
With subcommittee recommendation – General Government			

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**COMMITTEE MEETING EXPANDED AGENDA**

Fiscal Policy

Wednesday, February 17, 2016, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
20	<b>CS/CS/SB 1318</b> Environmental Preservation and Conservation / Agriculture / Dean (Similar CS/H 489, Compare S 1564)	Shellfish Harvesting; Revising provisions directing the Department of Agriculture and Consumer Services, in cooperation with the Fish and Wildlife Conservation Commission and the Department of Environmental Protection, to protect specified shellfish beds, grounds, and reefs; providing for the Board of Trustees of the Internal Improvement Trust Fund to authorize the use of dredges or mechanical harvesting devices as special lease conditions of sovereign submerged land leases under certain circumstances; authorizing the department, rather than requiring, to designate areas for the taking of oysters and clams to be planted on public lands, etc.  AG 02/01/2016 Fav/CS EP 02/09/2016 Fav/CS FP 02/17/2016 Favorable	Favorable Yeas 11 Nays 0
21	<b>CS/CS/SB 1602</b> Community Affairs / Regulated Industries / Galvano (Similar CS/H 1289)	Elevators; Creating the "Maxwell Erik 'Max' Grablin Act"; providing clearance requirements for elevators installed in private residences; requiring certain doors and gates to withstand a specified amount of force; requiring certain doors to reject a sphere of a specified size under certain circumstances, etc.  RI 01/27/2016 Fav/CS CA 02/09/2016 Fav/CS FP 02/17/2016 Fav/CS	Fav/CS Yeas 11 Nays 0
<b>A proposed committee substitute</b> for the following bill (SB 7036) is available:			
22	<b>SB 7036</b> Governmental Oversight and Accountability (Compare CS/S 350)	School District Purchasing; Requiring each district school board to use certain agreements and contracts for purchasing nonacademic commodities and contractual services under certain circumstances; requiring a district school board to post a written justification for certain determinations on the board's website, etc.  AED 01/21/2016 Temporarily Postponed AED 01/28/2016 Fav/CS FP 02/10/2016 Not Considered FP 02/17/2016 Not Considered	Not Considered

With subcommittee recommendation – Education

Other Related Meeting Documents

An electronic copy of the Appearance Request form is available to download from any Senate Committee page on the Senate's website, [www.flsenate.gov](http://www.flsenate.gov).



## THE FLORIDA SENATE

### SPECIAL MASTER ON CLAIM BILLS

**Location**

402 Senate Office Building

**Mailing Address**

404 South Monroe Street  
Tallahassee, Florida 32399-1100  
(850) 487-5237

DATE	COMM	ACTION
12/22/15	SM	Favorable
01/26/16	JU	Favorable
02/09/16	CA	Favorable
02/18/16	FP	Fav/CS

December 22, 2015

The Honorable Andy Gardiner  
President, The Florida Senate  
Suite 409, The Capitol  
Tallahassee, Florida 32399-1100

Re: **CS/SB 22** – Senator Bill Montford  
**HB 3511** – Representative Halsey Beshears  
Relief of Angela Sanford by Leon County

### SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM IN THE AMOUNT OF \$1.15 MILLION AGAINST LEON COUNTY FOR INJURIES AND DAMAGES SUFFERED BY ANGELA SANFORD WHEN THE VEHICLE SHE WAS TRAVELING IN WAS STRUCK BY A LEON COUNTY AMBULANCE ON SEPTEMBER 5, 2013.

#### FINDINGS OF FACT:

This matter arises out of a motor vehicle crash that occurred on September 5, 2013, in Tallahassee, Florida, at the intersection of North Martin Luther King Jr., Boulevard (MLK Blvd.) and West Tharpe Street. The intersection of North MLK Blvd. and West Tharpe Street is four way intersection controlled by an overhead traffic signal. Both North MLK Blvd. and West Tharpe Street are four-lane highways. On the southeast corner of the intersection there are several trees that could obstruct the view of westbound traffic on West Tharpe Street from the northbound traffic on North MLK Blvd. At the time of the accident there was also at least one advertisement sign hung on the fence leading up the intersection that could obstruct the view of northbound traffic on North MLK Blvd. of any westbound traffic on West Tharpe Street.

### **The Accident**

At approximately 11:28 pm Patrick Sanford was driving north on North MLK Blvd in a 2011 Buick Enclave. Mr. Sanford's wife, Angela Sanford, was in the front passenger seat and friend Daniel McNair was behind Mrs. Sanford, in the rear passenger seat. The posted speed limit on North MLK Blvd. was 30 mph. At the time of the crash Mr. Sanford was traveling at 42 mph. The light at North MLK Blvd. was green for Mr. Sanford as he approached the intersection of North MLK Blvd. and West Tharpe Street, when he entered the intersection, and when the crash occurred.

Also at approximately 11:28 pm a Leon County Emergency Medical Services (LCEMS) Ambulance, owned by Leon County, was traveling westbound on West Tharpe Street. Benjamin Hunter was working for LCEMS that night and driving the ambulance. Christina Wagner was also working for LCEMS that night and was the front seat passenger. The posted speed limit on West Tharpe Street was 35 mph.

The camera on the ambulance recorded what occurred before, during, and after the crash. The ambulance was first traveling at approximately 29 mph down West Tharpe Street with only its emergency lights activated. Approximately 4 seconds before the crash, and 277 feet from entering the intersection, the ambulance's siren was activated. At this time the ambulance was traveling at approximately 40 mph. When the crash occurred the ambulance was traveling at approximately 44 mph. The video footage shows that the ambulance had a red light as it approached the intersection, when the ambulance entered the intersection, and when the crash occurred.

The computer system in Mr. Sanford's Buick noted that the brake was engaged two seconds before the crash. Mr. Sanford admits that he did not hear or see the ambulance's lights or sirens before the collision. However, he recalls seeing the ambulance once he had already entered the intersection.

The ambulance hit the front right passenger side of the Buick. As a result, the Buick spun and collided with a concrete pole on the northwest corner of the intersection.

The crash was witnessed by a number of individuals. The first witness, Ms. Nix, was traveling south on MLK Blvd., the

opposite direction of Mr. Sanford. Ms. Nix heard the sirens from the ambulance and stopped at the intersection of MLK Blvd. and West Tharpe Street because she did not know where the sirens were coming from. Ms. Nix then saw the ambulance traveling west down West Tharpe Street and the Buick traveling north on North MLK Blvd. Ms. Nix said that neither the Buick nor the ambulance stopped before entering the intersection. Ms. Nix acknowledged that she had a green light at time she reached the intersection of MLK Blvd. and West Tharpe Street but stopped because she heard the sirens.

Another witness, Mr. Fernbach, was traveling behind Mr. Sanford's Buick on North MLK Blvd. Mr. Fernbach also confirmed that the light was green as he and the Buick approached the intersection of North MLK Blvd. and West Tharpe Street. Mr. Fernbach acknowledged hearing the sirens before reaching the intersection, however he was unable to determine where the sirens were coming from.

Ms. Wagner, the passenger of the ambulance, stated that the ambulance was headed to an accident with injuries on West Tharpe Street with only its emergency lights on. Prior to reaching the intersection of North MLK Blvd. and West Tharpe Street, she and Mr. Hunter were advised to upgrade, meaning to turn on both the lights and sirens, as they traveled to the accident. Mr. Hunter then turned on the sirens of the ambulance. As Ms. Wagner was attempting to look up the report of the call they were traveling to, the crash occurred.

Mrs. Sanford and Mr. McNair do not have any memory of the crash.

All occupants of both vehicles were restrained in safety belts.

### **Injuries**

After the crash Mr. Hunter and Ms. Wagner were able to exit the ambulance and render aid to occupants of the Buick. Mr. Hunter and Ms. Wagner were not injured in the crash.

All of the occupants of the Buick, Mr. Sanford, Mrs. Sanford, and Mr. McNair were injured. Mr. Sanford sustained a bulging disc to disc #4 in his back and disc #5 in his back was blown. Mr. Sanford underwent surgery to repair his back injuries. Mr.

McNair suffered a cut to his right hand, a broken bone in his left hand, and a bone chip in his left wrist.

Mrs. Sanford sustained the most severe injuries from the crash. When she arrived at Tallahassee Memorial Hospital, she was in a coma. The totality of her injuries include:

- A traumatic brain injury (subdural and intracranial bleeding);
- A collapsed lung;
- A ruptured bladder (requiring two surgical repairs);
- A lacerated liver;
- 13 fractured ribs;
- Four lumbar spine fractures;
- Two cervical spine fractures;
- A fractured clavicle;
- A fractured sternum;
- A fractured fibula;
- A fractured knee;
- A fractured scapula (requiring surgical hardware insertion);
- A fractured pelvis (requiring surgical hardware insertion);
- A fractured hip sockets (requiring surgical hardware insertions);
- A fractured sacroiliac joints (requiring surgical hardware insertions);
- A fracture femur (requiring surgical hardware insertion);
- Double vision from an injured cranial nerve;
- Drop foot from an injured peroneal nerve;
- Bursitis and pain from the injured hip; and
- Cognitive and problem-solving deficits due to the brain injury.

Mrs. Sanford spent 25 days in the intensive care unit, and during the first two weeks in the hospital she was kept in a medically induced coma. Afterwards, she was transferred to inpatient rehabilitation in Jacksonville, Florida, where she spent 31 days. Mrs. Sanford then continued her rehabilitation back in Tallahassee.

Before the accident, Mrs. Sanford was an active stay-at-home mother of three. She was considering returning to work as a

teacher when her youngest child was old enough to attend school.

Since the accident, Mrs. Sanford has made a remarkable recovery and is now able to drive during the day. She can care for her kids and her house. However, Mrs. Sanford still has some ongoing effects from the accident. She is experiencing foot drop in her right foot and double vision when she looks down. Because of the injuries sustained in the collision, Mrs. Sanford will likely need a hip replacement in the future, have issues with posttraumatic arthritis, and possibly experience further cognitive issues as a result of her traumatic brain injury.

### **Before the Accident**

In the 24-hour period before the crash Mr. and Mrs. Sanford and Mr. McNair, the occupants of the Buick, attended a concert at the Leon County Civic Center. The day before the crash, Mr. Sanford worked the evening of September 4, 2013, and returned home at an unknown hour on September 5, 2013. Mr. Sanford believes he had only 3 hours of sleep after coming home from work on September 5, 2013.

Before the concert, Mr. Sanford had one beer at the house with Mr. McNair. Mr. Sanford admits to bringing and finishing the beer in the car on the way to the restaurant. An empty Bud Light Lime Beer bottle was found in the Buick after the collision. Mr. Sanford also admits to having one beer at the restaurant where he also ate some appetizers while waiting for the food to arrive. The food never came and they all left the restaurant without eating dinner. Once arriving at the concert, Mr. Sanford had another beer and some food because he hadn't eaten dinner at the restaurant.

In the 24-hour period before the crash Mr. Hunter worked on the evening of September 4, 2013. Mr. Hunter got home from work in the morning of September 5, 2013, and went to sleep for approximately 8.5 hours. Mr. Hunter then ate at home before reporting to work at 5 pm on September 5, 2013.

### **After the Accident**

After the crash Mr. Sanford went to Tallahassee Memorial Hospital to be with his injured wife. While at the hospital Deputy McCarthy from the Leon County Sheriff's Office spoke with Mr. Sanford in two different locations. He first spoke to

Mr. Sanford in the hospital garage where Deputy McCarthy smelled a slight odor of an alcoholic beverage but was unable to determine if it was coming from Mr. Sanford or some other person in the garage. Deputy McCarthy then spoke with Mr. Sanford again in a private emergency room and did not smell an odor of an alcoholic beverage. Mr. Sanford was asked to consent to a blood sample because he was driving the Buick and was involved in a collision involving serious bodily injury. Mr. Sanford refused to give a blood sample for testing.

Officer Mordica of the Tallahassee Police Department was one of the first officers on the scene of the crash and noticed that Mr. Sanford was wearing a green wrist band and she smelled the odor of an alcoholic beverage, but did not notice any other signs of impairment. Mr. Sanford stated that he was given the wrist band when he purchased the beer at the concert.

A blood sample was requested from Mr. Hunter because he was operating the ambulance that was involved in a crash involving serious bodily injury. Mr. Hunter agreed to the blood sample being taken and was transported Tallahassee Memorial Hospital for the blood draw. No drugs or alcohol were found in Mr. Hunter's blood.

The Leon County's Sheriff's Office found Mr. Hunter at fault for the crash, however the State Attorney's Office recommended that no citations should be issued. Therefore a citation was not issued against Mr. Hunter.

LCEMS disciplined Mr. Hunter and he was suspended without pay for three 12-hour shifts.

CLAIMANT'S ARGUMENTS:

Mrs. Sanford argues that Leon County is liable for the negligence of its employee, Mr. Hunter, when he failed to stop at the red light at the intersection of North MLK Blvd. and West Tharpe Street, violating s. 316.072(5)(b)2., F.S., and the LCEMS Standard Operating Guidelines.

RESPONDENT'S ARGUMENTS:

Leon County argues that the claim bill should be denied and the statutory caps enforced. Leon County believes that the statutory limits set forth in s. 768.28, F.S., serve a valuable purpose and the County is entitled to the full protections of the statute. Leon County argues that if the statutory caps are to have meaning or effect, they should be enforced.

Leon County also argues that the accident was caused by Mr. Sanford's negligence because he was speeding, tired, and had three beers before the accident.

Leon County entered into a Mediation Settlement Agreement with Mrs. Sanford for the amount of \$1.15 million. The agreement also afforded the County the right to contest any filed claim bill. A Final Judgment in favor of Mrs. Sanford for the same amount was signed and entered into the circuit court's record on April 13, 2015.

CONCLUSIONS OF LAW:

Leon County owned the ambulance driven by Mr. Hunter on September 5, 2013, and is covered by the provisions of s. 768.28, F.S. Section 768.28, F.S., generally allows injured parties to sue the state or local governments for damages caused by their negligence or the negligence of their employees by waiving the government's sovereign immunity from tort action. However, the statute limits the amount of damages that a plaintiff can collect from a judgment against or settlement with a government entity to \$200,000 per person and \$300,000 for all claims or judgments arising out of the same incident. Funds can be paid in excess of these limits only upon the approval of a claim bill by the Legislature. Thus, Mrs. Sanford will not receive the full benefit of the settlement agreement with Leon County unless the Legislature approves a claim bill authorizing the additional payment.

In a negligence action, a plaintiff bears the burden of proof to establish the four elements of negligence. These elements are duty, breach, causation, and damage. *Charron v. Birge*, 37 So.3d 292, 296 (Fla. 5th DCA 2010).

Section 768.81, F.S., Florida's comparative fault statute, allows damages in negligence cases to be apportioned against each liable party. The Florida Supreme Court has found that "in determining noneconomic damages fault must be apportioned among all responsible entities who contribute to an accident even though not all of them have been joined at defendants." *Nash v. Wells Fargo Guard Servs.*, 678 So.2d 1262, 1263 (Fla. 1996).

The driver of a motor vehicle has a duty to use reasonable care, in light of the attendant circumstances, to prevent injuring persons within the vehicle's path. *Gowdy v. Bell*, 993 So.2d 585, 586 (Fla. 1st DCA 2008). Reasonable care is the

degree of care a reasonably careful person would have used under like circumstances. *Foster v. State*, 603 So.2d 1312, 1316 (Fla. 1st DCA 1992).

### **Mr. Hunter's Negligence**

Section 316.072(5)(b)2., F.S., allows a driver of an ambulance, when responding to an emergency call, to proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation. Section 316.072(5)(c), F.S., reiterates that the driver of an ambulance has a duty to drive with due regard for the safety of all persons and does not protect the driver from the consequences of his or her reckless disregard for the safety of others.

Mr. Hunter breached his duty to operate the ambulance with reasonable care and violated s. 316.072(5)(b)2., F.S., when he did not slow down at the red light at the intersection of North MLK Blvd. and West Tharpe Street on September 5, 2013. Mr. Hunter's negligence and breach of duty of care was a cause of the accident and the damages suffered by Mrs. Sanford.

Leon County, as the employer of Mr. Hunter, is liable for his negligent act. The long-standing doctrine of *respondeat superior* provides that an employer is liable for an employee's acts committed within the course and scope of employment. *City of Boynton Beach v. Weiss*, 120 So.3d 606, 611 (Fla. 4th DCA 2013). Florida's dangerous instrumentality doctrine imposes "vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another." *Aurbach v. Gallina*, 753 So.2d 60, 62 (Fla. 2000). Motor vehicles have been considered dangerous instrumentalities under Florida law for over a century. See *Anderson v. S. Cotton Oil Co.*, 74 So. 975, 978 (Fla.1917).

Florida law also provides that an employer's safety rules and procedures governing the conduct of its employees is relevant evidence of the standard of care required. *Mayo v. Publix*, 686 So.2d. 801, 802 (Fla. 4th DCA 1997). LCEMS has Standard Operating Guidelines for the safe operation of its vehicles. Specifically, the guidelines require all ambulance drivers when driving to an emergency to come to a full and complete stop at all red lights and stop signs. Once the driver

determines that all other traffic has yielded to the emergency vehicle, the ambulance may proceed through the intersection with due regard for the safety of others.

Mr. Hunter violated LCEMS Standard Operating Guidelines when he did not stop at the red light at the intersection of North MLK Blvd. and West Tharpe Street.

On September 5, 2013, Mr. Hunter, an employee of LCEMS, drove an ambulance owned by Leon County during the course of his normal workday. Therefore, Leon County is liable for the negligence of Mr. Hunter and the damages caused to Mrs. Sanford.

### **Mr. Sanford's Negligence**

As the driver of the Buick, Mr. Sanford also had a duty to use reasonable care. Section 316.126(1)(a), F.S. provides:

Upon the immediate approach of an authorized emergency vehicle, while en route to meet an existing emergency, the driver of every other vehicle shall, when such emergency vehicle is giving audible signals by siren ... or visible signals by the use of displayed blue or red lights, yield the right-of way to the emergency vehicle and shall immediately proceed to a position of parallel to, and as close as reasonable to the closest edge of the curb of the roadway, clear of any intersection and shall stop and remain in position until the authorized emergency vehicle has passed, unless otherwise directed by a law enforcement officer.

On the day of the accident, the trees and signs could have obstructed Mr. Sanford's view of the ambulance, which was traveling westbound on West Tharpe Street. The ambulance's siren was activated 4 seconds before the collision which likely did not afford Mr. Sanford adequate time react and avoid the collision. Moreover, the evidence presented was insufficient to show that the three beers Mr. Sanford consumed in the hours before the accident or his lack of sleep contributed to the accident.

However, Mr. Sanford was traveling at 42 mph on North MLK Blvd. at the time of the crash, 12 mph faster than the posted speed limit of 30 mph. Mr. Sanford breached his duty to drive with reasonable care by failing to stop for the ambulance

because of his excessive speed. Despite the fact that he had a green light at the intersection, Mr. Sanford is partially at fault for the accident.

Section 316.126(5), F.S., specifies that s. 316.126, F.S., which Mr. Sanford violated, does not relieve the Mr. Hunter of the duty to drive with due regard for the safety of all persons using the highway, which he did failed to do.

### **Conclusion**

Florida's comparative fault statute, s. 768.81, F.S., applies to this case because Mr. Hunter and Mr. Sanford were both at fault in the accident.

Mr. Hunter is at fault for:

- Failing to operate the ambulance with reasonable care;
- Violating s. 316.072(5)(b)2., F.S., when he did not slow down at the red light; and
- Violating LCEMS Standard Operating Guidelines when he did not stop at the red light at the intersection.

Mr. Sanford is at fault for:

- Violating s. 316.126(1)(a), F.S., by failing to stop for the ambulance because of his excessive speed.

While both Mr. Hunter and Mr. Sanford were partially at fault in this matter, Mr. Hunter's negligence far outweighs Mr. Sanford's negligence.

Mrs. Sanford suffered substantial injuries as a result of Mr. Hunter's negligence and has outstanding medical bills because of these injuries. Mrs. Sanford has made a remarkable recovery but still has some ongoing effects from the accident. Mrs. Sanford experiences foot drop in her right foot and double vision when she looks down. Because of the injuries sustained in the collision, Mrs. Sanford will likely need a hip replacement in the future, have issues with posttraumatic arthritis, and possibly experience further cognitive issues as a result of her traumatic brain injury. Mrs. Sanford may have a reduced future earning capacity because of her ongoing physical impairments. She will likely have future medical expenses as a direct result of the accident. Therefore, the undersigned finds that the damages of \$1.15

million sought by Mrs. Sanford are reasonable and justly apportionable to Leon County as a result of Mr. Hunter's negligence.

The parties participated in mediation and reached a Mediation Settlement Agreement for \$1.15 million, the same amount as the claim bill. A Final Judgment in favor of Mrs. Sanford for the \$1.15 million was signed and entered into the circuit court's record on April 13, 2015. The Mediation Settlement Agreement afforded Mrs. Sanford the right to pursue a claim bill from the Legislature for \$1.15 million and also allowed Leon County the right to contest any filed claim bill.

At the Special Master Hearing attorneys for both parties agreed that all evidence and arguments presented at the hearing were also taken into consideration at mediation. The attorneys also agreed that no new evidence was presented to the undersigned at the hearing.

The undersigned finds that at mediation the parties presented all of the facts and arguments described above. The parties also took into account the fault of Mr. Hunter and Mr. Sanford as well as Mrs. Sanford's recovery and her future medical needs. Therefore, the undersigned finds that the Mediation Settlement Agreement was both reasonable and responsible.

LEGISLATIVE HISTORY:

This is the first claim bill presented to the Senate in this matter.

ATTORNEYS FEES:

Mrs. Sanford's attorney has agreed to limit his fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), F.S. The bill provides that the total amount paid for lobbying fees, costs, and other similar expenses relating to the claim are included in the 25 percent limit.

FISCAL IMPACT:

Leon County is insured and has received no indication from its insurer that the entire amount of the claim bill, if passed, will not be paid.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 22 (2016) be reported FAVORABLY.

Respectfully submitted,

Lauren Jones  
Senate Special Master

cc: Secretary of the Senate

**CS by Fiscal Policy:**

Makes technical changes and updates the facts of the claim bill.



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Sachs) recommended the following:

**Senate Amendment**

Delete lines 21 - 49  
and insert:

WHEREAS, the ambulance broadsided the passenger side of the car in which Angela Sanford was traveling and struck the passenger side door at a speed in excess of 40 miles per hour, and

WHEREAS, Mr. Hunter failed to operate his ambulance in a reasonably safe manner and conducted himself in direct violation



11 of the Leon County Emergency Medical Services Standard Operating  
12 Guidelines, which specifically requires all emergency vehicles  
13 to come to a full and complete stop at a red light, and

14 WHEREAS, although Mr. Hunter later claimed that the light  
15 was yellow, the video from the ambulance's onboard camera  
16 clearly showed that the light was red for the entire 8 seconds  
17 of the video, and

18 WHEREAS, the investigation conducted by the Leon County  
19 Sheriff's Office concluded that Mr. Hunter was the sole person  
20 at fault in the accident, and

21 WHEREAS, Mr. Hunter also admitted, and the evidence showed,  
22 that fences, trees, and buildings at the corner of the  
23 intersection blocked the other driver's view of the ambulance as  
24 it approached the intersection, and

25 WHEREAS, as a result of the crash, Angela Sanford sustained  
26 life-threatening injuries that left her in a coma, including a  
27 traumatic brain bleed that resulted in permanent cognitive and  
28 depressive disorders, a lacerated liver, a ruptured bladder, a  
29 cranial nerve injury resulting in permanent double vision, a  
30 fractured pelvis requiring hardware insertion, a fractured  
31 clavicle requiring hardware insertion, bilateral hip socket  
32 fractures requiring hardware insertion, a fractured knee, a  
33 fractured shoulder blade, thirteen fractured ribs, permanent

By Senator Montford

3-00120A-16

201622\_\_

1 A bill to be entitled  
 2 An act for the relief of Angela Sanford by Leon  
 3 County; providing for an appropriation to compensate  
 4 her for injuries and damages sustained as a result of  
 5 the negligence of an employee of Leon County;  
 6 providing that certain payments and the appropriation  
 7 satisfy all present and future claims related to the  
 8 negligent act; providing a limitation on the payment  
 9 of compensation, fees, and costs; providing an  
 10 effective date.

11  
 12 WHEREAS, on September 5, 2013, Angela Sanford was a belted  
 13 front-seat passenger in a car that was traveling on a green  
 14 light through the intersection of West Tharpe Street and North  
 15 Martin Luther King, Jr., Boulevard in Tallahassee, Florida, and

16 WHEREAS, at the same time, a Leon County ambulance operated  
 17 by Leon County employee Benjamin Hunter entered the intersection  
 18 despite a red light displayed on the traffic signal, which was  
 19 clearly visible the entire time Mr. Hunter approached the  
 20 intersection, and

21 WHEREAS, the ambulance broadsided the passenger's side of  
 22 the car in which Angela Sanford was traveling in and struck the  
 23 passenger side door at a speed in excess of 40 miles per hour,  
 24 and

25 WHEREAS, Mr. Hunter failed to operate his ambulance in a  
 26 reasonably safe manner and conducted himself in direct violation  
 27 of the Leon County Emergency Medical Services Standard Operating  
 28 Guideline, which specifically requires all emergency vehicles to  
 29 come to a full and complete stop at a red light, and

Page 1 of 3

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

3-00120A-16

201622\_\_

30 WHEREAS, although Mr. Hunter later claimed that the light  
 31 was yellow, the video from the ambulance's onboard camera  
 32 clearly showed that the light was red for the entire 8 seconds  
 33 of the video, and

34 WHEREAS, the investigation conducted by the Leon County  
 35 Sheriff's Office concluded that Mr. Hunter was the sole person  
 36 at fault in the accident, and

37 WHEREAS, Mr. Hunter also admitted, and the evidence showed,  
 38 that fences, trees, and buildings at the corner of the  
 39 intersection blocked the other driver's view of the ambulance as  
 40 it approached the intersection, and

41 WHEREAS, as a result of the crash, Angela Sanford sustained  
 42 life-threatening injuries that left her in a coma, including a  
 43 traumatic brain bleed that resulted in permanent cognitive and  
 44 depressive disorders, a lacerated liver, a ruptured bladder, a  
 45 cranial nerve injury resulting in permanent double vision, a  
 46 fractured pelvis requiring hardware insertion, a fractured  
 47 clavicle requiring hardware insertion, bilateral hip socket  
 48 fractures requiring hardware insertion, a fractured knee, a  
 49 fractured shoulder blade, eleven fractured ribs, permanent  
 50 peroneal nerve palsy known as foot drop, and numerous other  
 51 injuries that have now left her totally disabled and unable to  
 52 ever return to her career as an elementary school teacher, and

53 WHEREAS, Angela Sanford's medical expenses at the time of  
 54 judgment exceeded \$744,000, and

55 WHEREAS, on April 13, 2015, a final judgment in the amount  
 56 of \$1.15 million was entered by the trial court for Angela  
 57 Sanford against Leon County, and

58 WHEREAS, Leon County carried liability insurance with

Page 2 of 3

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

3-00120A-16

201622\_\_

59 OneBeacon Insurance Group, Ltd., a Bermuda-domiciled company,  
60 which will pay 100 percent of any appropriation up to the policy  
61 limit of \$3 million, and

62 WHEREAS, Leon County has already paid out \$300,000 to other  
63 persons injured in this accident in satisfaction of sovereign  
64 immunity limits set forth in s. 768.28, Florida Statutes, NOW,  
65 THEREFORE,

66

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

68

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

71 Section 2. Leon County is authorized and directed to  
72 appropriate from funds of the county not otherwise appropriated,  
73 or from the county's liability insurance coverage, and to draw a  
74 warrant in the sum of \$1.15 million, payable to Angela Sanford  
75 as compensation for injuries and damages sustained.

76 Section 3. The amount paid by Leon County pursuant to s.  
77 768.28, Florida Statutes, and the amount awarded under this act  
78 are intended to provide the sole compensation for all present  
79 and future claims arising out of the factual situation described  
80 in this act which resulted in injuries and damages to Angela  
81 Sanford. The total amount paid for attorney fees, lobbying fees,  
82 costs, and similar expenses relating to this claim may not  
83 exceed 25 percent of the total amount awarded under this act.

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Agriculture, *Chair*  
Appropriations Subcommittee on Education, *Vice Chair*  
Appropriations  
Banking and Insurance  
Education Pre-K - 12  
Reapportionment  
Rules

### SENATOR BILL MONTFORD

3rd District

February 10, 2016

Senator Anitere Flores, Chair  
Senate Committee on Fiscal Policy  
225 Knott Building  
Tallahassee, Florida 32399-1100

Dear Chair Flores:

I respectfully request that the following bill be placed on the next agenda for the Senate Committee on Fiscal Policy:

SB 22 Relief for Angela Sandford

Your consideration in the matter would be greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Bill Montford".

William "Bill" Montford  
State Senator, District 3

WM/md

#### REPLY TO:

- 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
- 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



## THE FLORIDA SENATE

### SPECIAL MASTER ON CLAIM BILLS

**Location**

402 Senate Office Building

**Mailing Address**

404 South Monroe Street  
Tallahassee, Florida 32399-1100  
(850) 487-5237

DATE	COMM	ACTION
01/08/16	SM	Favorable
01/22/16	JU	Favorable
02/09/16	CA	Fav/CS
02/18/16	FP	Fav/CS

February 8, 2016

The Honorable Andy Gardiner  
President, The Florida Senate  
Suite 409, The Capitol  
Tallahassee, Florida 32399-1100

Re: **CS/CS/SB 44** – Community Affairs Committee and Senator Garcia  
**HB 3509** – Representative Nunez  
Relief of Susana Castillo by the City of Hialeah

### SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$455,000 BASED ON A SETTLEMENT AGREEMENT WITH THE CITY OF HIALEAH FOR THE DEATH OF ANDREA CASTILLO DUE TO THE NEGLIGENT OPERATION OF A PATROL VEHICLE BY ONE OF ITS POLICE OFFICERS.

#### FINDINGS OF FACT:

At approximately 9:45 p.m. on October 19, 2012, Marco Barrios (Barrios) stopped his 2012 Jeep Compass facing north at the stop sign on E. 9<sup>th</sup> Court at the intersection with E. 49<sup>th</sup> Street in Hialeah, FL., waiting to turn left on E. 49<sup>th</sup> Street. Twenty-one year old Andrea Castillo was seated in the front passenger seat of the vehicle being operated by her boyfriend, Barrios.

At the same time, Officer Raul Somarriba (Officer Somarriba), an on-duty patrolman with the Hialeah Police Department, was traveling between 20 and 22 miles an hour over the posted speed limit of 40 miles per hour eastbound on E. 49<sup>th</sup> Street, Hialeah, FL., toward the intersection of E. 9<sup>th</sup> Court in an unmarked patrol car. Officer Somarriba had activated the car's emergency visor lights, but he had not activated the emergency siren.

After stopping and then proceeding into the intersection of E. 49<sup>th</sup> Street and E. 9<sup>th</sup> Court, the Barrios vehicle was struck on the driver's side by the City of Hialeah unmarked patrol car being driven by Officer Somarriba as Barrios was crossing the eastbound lanes of E. 49<sup>th</sup> Street. There was no evidence that Officer Somarriba applied his brakes or took any evasive action prior to the impact with Barrios' vehicle.

The severe impact of the collision caused Barrios' vehicle to flip repeatedly and collide with several vehicles parked at an adjacent car dealership before coming to rest on its side.

The impact of the crash was so great that Marco Barrios was severely injured and Andrea Castillo was internally ejected from her seat and later discovered in the back hatch area of the vehicle with massive blunt trauma injuries to her head and torso. On October 21, 2012, Andrea Castillo died as a result of her injuries.

A witness confirmed that Officer Somarriba's siren was not activated prior to the crash with the Barrios vehicle.

The City of Hialeah's Traffic Homicide Investigation Report and an investigation by the Office of the State Attorney, Eleventh Judicial Circuit, established that Officer Somarriba was traveling at approximately 62 miles per hour, over the posted speed limit of 40 miles per hour at the time of the crash.

General Order No. 17.06 of the City of Hialeah Police Department Vehicle Pursuit Protocol (City Pursuit Protocol) establishes policy and guidelines for emergency vehicle pursuits.

The definition of the term "emergency equipment" contained in Section I (Definitions) of the City Pursuit Protocol means "siren and flashing or revolving red and/or blue lights" on vehicles.

The definition of the term "emergency response" contained in Section I (Definitions) of the City Pursuit Protocol provides, in part, that "vehicles involved in an emergency response shall have in operation all emergency equipment including emergency lights (light bar), siren, and headlights. Emergency

vehicle operations and response codes are governed under General Order 22.04.”

The definition of the term “vehicle pursuit” contained in Section I (Definitions) of the City Pursuit Protocol provides, in part, that the “authorized police vehicle [is] utilizing flashing emergency lights, siren, and headlights to apprehend the occupant(s) of another moving vehicle . . .”

Section II (Decision to Pursue) of the City Pursuit Protocol dictates that officers “may engage in pursuits when they have a reasonable belief that the fleeing suspect has committed or attempted to commit a forcible felony.”

Section III (Vehicle Pursuit Procedures) of the City Pursuit Protocol dictates that the decision to initiate a pursuit must be based on the officer’s or supervisor’s conclusion that “the immediate danger to the public created by the pursuit is less than the immediate or potential danger to the public should the suspect remain at large.”

Section III (Vehicle Pursuit Procedures) of the City Pursuit Protocol also requires that the officer “shall be required to activate their vehicle headlights (no constant high beams) and all emergency equipment prior to beginning the pursuit.”

Section III (Vehicle Pursuit Procedures) of the City Pursuit Protocol further requires the “officer initiating a pursuit will, in all cases, immediately notify the Communications Dispatcher, via radio, that a pursuit is underway and provide the following, if possible:

- Unit number;
- Location, direction of travel, and estimated speed;
- Description of vehicle being pursued, including tag number, and number of occupants, if known;
- Number and description of occupants, if identifiable; and
- Specific reason(s) for the pursuit.”

There was no evidence from witnesses that Officer Somarriba was in pursuit of a fleeing suspect engaged in a felony. Officer Somarriba did not recall being in hot pursuit of any suspect or vehicle at the time of the collision with the Barrios vehicle, and records and dispatch communications do not indicate otherwise. No call was ever placed to dispatch by Officer

Somarriba indicating that he was initiating a pursuit, nor did Officer Somarriba run a vehicle tag in the minutes before the crash.

Officer Somarriba violated Section III (Vehicle Pursuit Procedures) of the City Pursuit Protocol by:

- Failing to activate all of the vehicle's emergency equipment before the pursuit was initiated. Officer Somarriba did not activate the siren before or during the pursuit, only the emergency lights were activated; and
- Failing to immediately contact the Communications Dispatcher that a pursuit was underway and provide his location, direction of travel, estimated speed, description of vehicle being pursued, including tag number, number and description of occupants, and the specific reason for the pursuit. There was no evidence that Officer Somarriba contacted the Communication Dispatcher prior to the crash.

Additionally, General Order No. 22.04 of the City of Hialeah Police Department Emergency Vehicle Operation and Response Code Protocol (City Emergency Vehicle Operation Protocol) requires that an officer in pursuit must:

- Notify the Communications Dispatcher, as soon as possible, of having responded in an emergency mode and that a pursuit is underway; and
- Activate all emergency equipment, including both siren and flashing or revolving red and blue lights; and
- Refrain from exceeding the posted speed limit by more than 10 miles per hour for a code "2" call (situations involving felonies in progress, potential dangers to citizens, and conditions which indicates there probably are individuals injured or will be injured); or
- Refrain from exceeding the posted speed limit by more than 20 miles per hour for a code "3" call (situations involving imminent loss of life or physical suffering requiring immediate response); and
- Terminate the pursuit if it is determined to be solely for a traffic infraction (like speeding).

Officer Somarriba violated the City Emergency Vehicle Operations Protocol by:

- Failing to notify the Communications Dispatcher that a pursuit was underway;
- Failing to activate all of the vehicle's emergency equipment before the pursuit was initiated. Officer Somarriba did not activate the siren before or during the pursuit, only the emergency lights were activated;
- Exceeding the posted speed limit of 40 miles per hour by more than 10 miles an hour for a code "2" call. Officer Somarriba was traveling at 62 miles per hour at the time of impact with Barrios' vehicle, and he exceeded the speed limit by 22 miles per hour; and
- Exceeding the posted speed limit of 40 miles per hour by more than 20 miles an hour for a code "3" call. Officer Somarriba was traveling at 62 miles per hour at the time of impact with Barrios' vehicle, he exceeding the speed limit by 22 miles per hour.

Even if there was some evidence that Officer Somarriba was engaged in an emergency pursuit of either a code 2 or code 3 emergency call, he violated the City Pursuit Protocol and the City Emergency Vehicle Operations Protocol as to how to initiate and safely conduct such a pursuit.

At the conclusion of the traffic homicide investigation into the death of Andrea Castillo conducted by the City of Hialeah Police Department and a companion investigation conducted by the Office of the State Attorney, Eleventh Judicial Circuit, the Hialeah Police Department and Office of the State Attorney concluded that Marco Barrios duly observed the stop sign at the intersection of E. 49<sup>th</sup> Street and E. 9<sup>th</sup> Court and that Officer Somarriba's speed was a contributing factor in the fatal crash.

A toxicology test conducted during the course of the investigation determined that Marco Barrios was not impaired by alcohol or any other substance at the time of the crash. There was no evidence of a toxicology report for Officer Somarriba.

Andrea Castillo is survived by her mother, Susana Castillo, with whom she lived. She is also survived by her younger brother, Kevin Castillo. At the time of her death, Andrea Castillo was enrolled in college to obtain a degree in education to follow in the footsteps of her grandmother who was a

teacher and her mother who serves on the Miami-Dade County School Board.

In 2013, the Claimant, Susana Castillo, as the Personal Representative of the Estate of Andrea Castillo, filed a wrongful death claim in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, against the City of Hialeah and Somarriba, individually. In a related case, Barrios, individually, filed suit against the City of Hialeah for injuries sustained in the October 19, 2012, accident.

On June 9, 2015, Susana Castillo, as the Personal Representative of the Estate of Andrea Castillo, and Marco Barrios entered into a settlement agreement that was approved by the Hialeah City Council. The settlement agreement required the parties to dismiss their cases with prejudice and provide a full release of liability to the City of Hialeah and its employees, in exchange for payments by the City of Hialeah totaling \$750,000.

The City of Hialeah has already paid \$295,000 for this incident (\$150,000 of which was paid to Marco Barrios for his injuries and \$145,000 to the Estate of Andrea Castillo), leaving an unpaid balance of \$455,000. Claimants' attorneys received \$37,500 in attorney fees, and the Estate of Andrea Castillo was charged \$48,879.29 for costs and expenses.

As part of the settlement agreement, the City of Hialeah agreed to support the passage of a claim bill and to pay the remaining balance of \$455,000 in annual installments of \$150,000 in 2016, \$150,000 in 2017, and \$155,000 in 2018. As noted in the Settlement Agreement and General Release, along with the incorporated Terms of Settlement, the Estate of Andrea Castillo and Barrios entered into a separate agreement regarding the allotment of the \$750,000 to be paid by the City of Hialeah. The remaining balance of the \$455,000 settlement from the City of Hialeah will be paid to the Estate of Andrea Castillo upon passage of the claim bill.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding to determine whether the City of Hialeah is liable in negligence for damages suffered by the Claimant and, if so, whether the amount of the claim is reasonable. This report is based on the evidence presented to the Special Master prior to and during the hearing.

Officer Somarriba had a duty to operate his vehicle at all times with consideration for the safety of other drivers. See City of Pinellas Park v. Brown, 604 So. 2d 1222, 1226 (Fla. 1992) (holding officers conducting a high-speed chase of a man who ran a red light had a duty to reasonably safeguard surrounding motorists); Brown v. Miami-Dade Cnty., 837 So. 2d 414, 417 (Fla. 3d DCA 2001) ("Florida courts have found that police officers do owe a duty to exercise reasonable care to protect innocent bystanders . . . when their law enforcement activities create a foreseeable zone of risk").

General Order No. 17.06 of the City of Hialeah Police Department (City Pursuit Protocol) and General Order No. 22.04 (City Emergency Vehicle Operations Protocol) require officers to activate all emergency equipment (siren and flashing or revolving red and/or blue lights) before initiating a pursuit, to contact the Communications Dispatcher that a pursuit is underway and provide specified information, and to refrain from exceeding the posted speed limit by more than 10 or 20 miles per hour in accordance with applicable response codes. These protocols establish the standard of care for police officers of the City of Hialeah.

Officer Somarriba had a duty to operate his vehicle with consideration for the safety of other drivers and in compliance with the City Pursuit Protocol and the City Emergency Vehicle Operations Protocol. It was entirely foreseeable that injuries to motorists, such as Andrea Castillo, resulting in death could occur when Officer Somarriba violated these duties by entering an intersection at a high rate of speed over the posted speed limit, without slowing and without his siren activated. Officer Somarriba breached his duty of care, and the breach was the proximate cause of the death of Andrea Castillo.

Officer Somarriba was acting within the course and scope of his employment with the City of Hialeah at the time of the crash. The City of Hialeah, as Officer Somarriba's employer, is liable for his negligent act. Mercury Motors Express v. Smith, 393 So. 2d 545, 549 (Fla. 1981) (holding that an employer is vicariously liable for compensatory damages resulting from the negligent acts of employees committed within the scope of their employment).

After considering all of the factors in this case, I conclude that the amount of this claims bill is appropriate.

ATTORNEYS FEES:

The Claimant's attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), Florida Statutes. No lobbyist fees will be paid.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 44 (2016) be reported FAVORABLY.

Respectfully submitted,

John Ashley Peacock  
Senate Special Master

cc: Secretary of the Senate

**CS/CS by Fiscal Policy:**

Corrects a drafting error in the bill.

**CS by Community Affairs:**

Amends the title with technical updates that reflect the events of the accident.



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
	.	
	.	
	.	

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The Committee on Fiscal Policy (Hukill) recommended the following:

- 1       **Senate Amendment**
- 2
- 3       Delete line 18
- 4       and insert:
- 5       WHEREAS, at the same time Officer Raul Somarriba, an on-
- 6       duty

By the Committee on Community Affairs; and Senator Garcia

578-03239-16

201644c1

1 A bill to be entitled  
 2 An act for the relief of Susana Castillo, as personal  
 3 representative of the Estate of Andrea Castillo;  
 4 providing for an appropriation to compensate the  
 5 Estate of Andrea Castillo for her death as a result of  
 6 the negligence of the City of Hialeah; providing a  
 7 limitation on the payment of fees and costs; providing  
 8 that the amounts awarded are intended to provide the  
 9 sole compensation for all present and future claims  
 10 related to the wrongful death of Andrea Castillo;  
 11 providing an effective date.  
 12  
 13 WHEREAS, on October 19, 2012, at about 9:45 p.m., 21-year-  
 14 old Andrea Castillo was traveling as a passenger in a 2012 Jeep  
 15 Compass being operated by her boyfriend, Marco Barrios, at or  
 16 near the intersection of E 49th Street and E 9th Court in the  
 17 City of Hialeah, and  
 18 WHEREAS, at the same time Officer Raul Somarriba, an on-duty  
 19 patrolman with the Hialeah Police Department was traveling  
 20 between 20 and 22 miles per hour over the posted speed limit of  
 21 40 miles per hour eastbound on E 49th Street toward the  
 22 intersection of E 9th Court in an unmarked patrol car, and  
 23 WHEREAS, Officer Somarriba activated the emergency lights,  
 24 but he did not activate the emergency siren, and  
 25 WHEREAS, Officer Somarriba does not recall being in pursuit  
 26 of any suspect or vehicle, and records do not indicate that he  
 27 contacted dispatch communications, and,  
 28 WHEREAS, by traveling at least 20 miles per hour over the  
 29 posted speed limit and by failing to activate his emergency  
 30 siren and to contact dispatch communications, Officer Somarriba  
 31 violated General Order No. 22.04 of the City of Hialeah Police  
 32 Department Emergency Vehicle Operation and Response Code

Page 1 of 5

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

578-03239-16

201644c1

33 Protocol and General Order No. 17.06 of the City of Hialeah  
 34 Police Department Vehicle Pursuit Protocol, and  
 35 WHEREAS, Officer Somarriba, while traveling significantly  
 36 over the speed limit and without his emergency siren activated,  
 37 crashed into the driver's side of the Jeep Compass driven by  
 38 Marco Barrios while the Jeep was crossing the eastbound lanes of  
 39 E 49th Street, and  
 40 WHEREAS, the severe impact of the collision forced the Jeep  
 41 to flip repeatedly and collide with several vehicles parked at  
 42 an adjacent car dealership before coming to rest on its side,  
 43 and  
 44 WHEREAS, the force of the crash was so great that Marco  
 45 Barrios was gravely injured and Andrea Castillo was ejected from  
 46 her seat and landed in the back hatch area of the vehicle with  
 47 massive blunt trauma injuries to her head and torso, and  
 48 WHEREAS, Andrea Castillo died as a result of her injuries  
 49 within days of the crash, and  
 50 WHEREAS, at the conclusion of the traffic homicide  
 51 investigation into the death of Andrea Castillo and a companion  
 52 investigation by the state attorney, the Hialeah Police  
 53 Department and other investigating agencies concluded that Marco  
 54 Barrios duly observed the stop sign at the intersection of E  
 55 49th Street and E 9th Court and that Officer Somarriba's speed  
 56 was a contributing factor to the fatal crash, and  
 57 WHEREAS, a toxicology test conducted in the course of the  
 58 homicide investigation determined that Marco Barrios was not  
 59 impaired by alcohol or any other substance at the time of the  
 60 crash, and  
 61 WHEREAS, there was no toxicology report for Officer

Page 2 of 5

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

578-03239-16

201644c1

62 Somarriba, and

63 WHEREAS, Andrea Castillo was the only daughter of Susana  
64 and Osvaldo Castillo and is survived by them, her younger  
65 brother, Kevin Castillo, and her grandparents, all of whom were  
66 emotionally dependent upon her and loved her dearly, and

67 WHEREAS, at the time of her death, Andrea Castillo was  
68 enrolled in college to obtain her degree in education in order  
69 to follow in the footsteps of her grandmother, May Garcia-  
70 Clissent, who served as a teacher in Cuba and, for 35 years,  
71 with the Miami-Dade County Public Schools, and her mother,  
72 Susana Castillo, who serves on the Miami-Dade County School  
73 Board, and

74 WHEREAS, the Andrea Castillo Foundation has been created in  
75 Andrea's honor in order to raise funds for students who do not  
76 have the financial means to pursue a degree in education, and

77 WHEREAS, in 2012, Susana Castillo, individually and as  
78 personal representative of the Estate of Andrea Castillo, filed  
79 a wrongful death lawsuit in the 11th Judicial Circuit Court in  
80 and for Miami-Dade County, *Susana Vicaria Castillo, as personal*  
81 *representative of the Estate of Andrea Nicole Castillo,*  
82 *deceased, v. City of Hialeah, Florida, a municipality and*  
83 *subdivision of the State of Florida, and Raul Somarriba,*  
84 *individually, Case No. 13-16278 CA 10, and*

85 WHEREAS, in 2012, Marco Barrios filed a lawsuit in the 11th  
86 Judicial Circuit Court in and for Miami-Dade County, *Marco*  
87 *Barrios, individually, v. City of Hialeah, Florida, a Florida*  
88 *municipal governmental entity, Case No. 13-15659 CA 10, and*

89 WHEREAS, following litigation and mediation of their  
90 disputes, the parties to such actions on June 9, 2015, entered

Page 3 of 5

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578-03239-16

201644c1

91 into a settlement agreement, which agreement was approved by the  
92 Hialeah City Council, and

93 WHEREAS, the terms of the settlement agreement required the  
94 claimants, Marco Barrios and the Estate of Andrea Castillo, to  
95 dismiss their cases with prejudice and provide a full release of  
96 liability to the City of Hialeah and its employees, which the  
97 claimants have done, in exchange for payments by the City of  
98 Hialeah totaling \$750,000, inclusive of all claimants, and

99 WHEREAS, pursuant to the settlement agreement, the City of  
100 Hialeah has paid \$295,000 to the claimants, leaving an unpaid  
101 balance of \$455,000, and

102 WHEREAS, as part of the terms of the settlement agreement  
103 and general release, the City of Hialeah has agreed to support  
104 the passage of a claim bill and to pay the remaining balance of  
105 \$455,000 in installments, with the last payment to be made on  
106 May 1, 2018, NOW, THEREFORE,

107  
108  
109 Be It Enacted by the Legislature of the State of Florida:

110  
111 Section 1. The facts stated in the preamble to this act are  
112 found and declared to be true.

113 Section 2. The City of Hialeah is authorized and directed  
114 to appropriate from funds of the city not otherwise appropriated  
115 and to draw warrants totaling the amount of \$455,000, payable to  
116 the law firm of Silva & Silva, P.A., Trust Account for the  
117 benefit of Susana Castillo, as personal representative of the  
118 Estate of Andrea Nicole Castillo, as compensation for injuries  
119 and damages sustained as a result of the death of Andrea

Page 4 of 5

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

578-03239-16

201644c1

120 Castillo. The amount of \$150,000 shall be paid on May 1, 2016,  
121 the amount of \$150,000 shall be paid on May 1, 2017, and the  
122 final payment amount of \$155,000 shall be paid on May 1, 2018.

123 Section 3. The total amount paid for attorney fees,  
124 lobbying fees, costs, and other similar expenses relating to the  
125 claims may not exceed 25 percent of the total amount awarded  
126 under this act.

127 Section 4. The amounts awarded pursuant to the waiver of  
128 sovereign immunity under s. 768.28, Florida Statutes, and under  
129 this act are intended to provide the sole compensation for all  
130 present and future claims arising out of the factual situation  
131 described in the preamble to this act which resulted in the  
132 death of Andrea Castillo.

133 Section 5. This act shall take effect upon becoming a law.  
134

**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

---

BILL: CS/CS/SB 132

INTRODUCER: Fiscal Policy Committee; Health Policy Committee; and Senator Grimsley and others

SUBJECT: Direct Primary Care

DATE: February 18, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	Fav/CS
2.	Johnson	Knudson	BI	Favorable
3.	Pace	Hrdlicka	FP	Fav/CS

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/CS/SB 132 creates a new section of Florida Statutes related to the application of the Florida Insurance Code for direct primary care agreements. The bill provides that a direct primary care agreement is not insurance and is not subject to the Florida Insurance Code. The bill defines the terms, “direct primary care agreement,” “primary care provider,” and “primary care service,” and specifies certain provisions that must be included in a direct primary care agreement.

**II. Present Situation:**

**Direct Primary Care**

Direct primary care (DPC) is a primary care medical practice model that eliminates third party payers from the primary care provider-patient relationship. Through a contractual agreement, a patient pays a monthly fee, usually between \$50 and \$100 per individual,<sup>1</sup> to the primary care provider for defined primary care services, such as:

- Office visits;

---

<sup>1</sup> Approximately two-thirds of DPC practices charge less than \$135 per month. See Jen Wieczner, *Is Obamacare Driving Doctors to Refuse Insurance?*, Wall St. J. Marketwatch, (Nov. 12, 2013) available at: <http://www.marketwatch.com/story/is-direct-primary-care-for-you-2013-11-12> (last visited Feb. 9, 2016). A recent study of 141 DCP practices found the average monthly fee to be \$77.38. See Phillip M. Eskew and Kathleen Klink, *Direct Primary Care: Practice Distribution and Cost Across the Nation*, Journal of the Amer. Bd. of Family Med. (Nov.-Dec. 2015) Vol. 28, No. 6, p. 797, available at: <http://www.jabfm.org/content/28/6/793.full.pdf> (last visited Feb. 9, 2016).

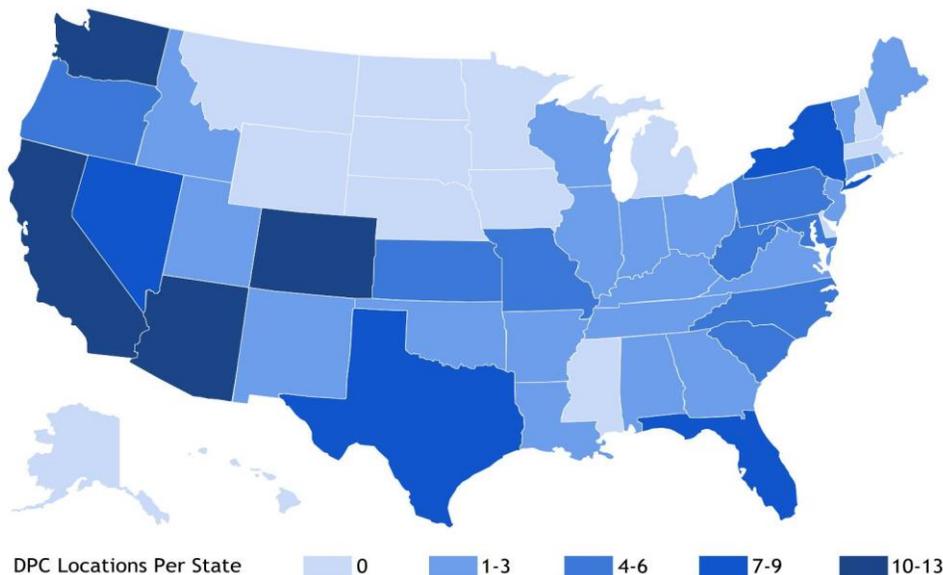
- Annual physical examination;
- Routine laboratory tests;
- Vaccinations;
- Wound care;
- Splinting or casting of fractured or broken bones; or
- Other routine testing, e.g. echocardiogram and colon cancer screening.

After paying the fee, a patient can access all services under the agreement at no extra charge. Some DPC practices also include routine preventative services, like lab tests, mammograms, Pap screenings, and vaccinations. A primary care provider DPC model can be designed to address most health care issues, including women’s health services, pediatric care, urgent care, wellness education, and chronic disease management.

In the DPC practice model, the primary care provider eliminates overhead costs associated with insurance filing claims, coding, refiling claims, write-offs, appealing denials, and employing billing staff. The cost and time savings can be reinvested in the practice, allowing more time with patients to address their primary care needs.<sup>2</sup>

The following chart illustrates the concentration of DPC practices in the United States:<sup>3</sup>

### Direct Primary Care Practice Distribution



In 2014, the American Academy of Private Physicians (AAPP) estimated that approximately 5,500 physicians operate under some type of direct financial relationship with their patients,

<sup>2</sup> DPC practices claim to reduce overhead by more than 40% by eliminating administrative staff resources associated with third-party billing. See Eskew, *supra* note 1, p. 794.

<sup>3</sup> Jay Keese, Executive Director, Direct Primary Care Coalition, *Direct Primary Care*, PowerPoint presentation before the House of Representatives Health Innovation Subcommittee (Feb. 17, 2015), slide 2, available at: <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2859&Session=2015&DocumentType=Meeting Packets&FileName=his 2-17-15.pdf> (last visited Feb. 9, 2016).

outside of standard insurance coverage. According to the AAPP that number has increased around 25 percent per year since 2010.<sup>4</sup>

### **DPC and Health Care Reform**

The Patient Protection and Affordable Care Act (PPACA)<sup>5</sup> addresses the DPC practice model as part of health care reform. A qualified health plan under the PPACA is permitted to offer coverage through a DPC medical home plan if it provides essential health benefits and meets all other criteria in the law.<sup>6</sup> Patients who are enrolled in a DPC medical home plan may be exempt from the individual mandate if they have coverage for other services, such as a wraparound catastrophic health policy to cover treatment for serious illnesses, like cancer, or severe injuries that require lengthy hospital stays and rehabilitation.<sup>7</sup> In Colorado and Washington, qualified health plans offer DPC medical home coverage on the state-based health insurance exchange.<sup>8</sup>

Currently, there are no state laws regulating direct primary care agreements in Florida.

### **III. Effect of Proposed Changes:**

The bill creates s. 624.27, F.S., relating to the application of the Florida Insurance Code (code) to direct primary care agreements. The bill creates the following definitions:

- “Direct primary care agreement” is a contract between a primary care provider and a patient, the patient’s legal representative, or an employer which must satisfy certain requirements within the bill and does not indemnify for services provided by a third party.
- “Primary care provider” is a licensed health care practitioner under ch. 458 (medical doctor or physician assistant), ch. 459 (osteopathic doctor or physician assistant), ch. 460 (chiropractic physician), or ch. 464, F.S., (nurses and advanced registered nurse practitioners), or a primary care group practice that provides medical services which are commonly provided without referral from another health care provider.
- “Primary care service” is the screening, assessment, diagnosis, and treatment of a patient for the purpose of promoting health or detecting and managing disease or injury within the competency and training of the primary care provider.

The bill provides that a direct primary care agreement is not insurance and entering into such an agreement is not the business of insurance. The bill exempts both the agreement and the activity of entering into a direct primary care agreement from the code. Through the exemption, the bill eliminates any authority of Office of Insurance Regulation to regulate a direct primary care agreement or the act of entering into such an agreement. The bill also exempts a primary care provider, or his or her agent, from certification or licensing requirements under the code to market, sell, or offer to sell a direct primary care agreement.

---

<sup>4</sup> David Twiddy, *Practice Transformation: Taking the Direct Primary Care Route*, Family Practice Management, No. 3, (May-June 2014), available at: <http://www.aafp.org/fpm/2014/0500/p10.html> (last visited Feb. 9, 2016).

<sup>5</sup> Pub. Law No. 111-148, H.R. 3590, 111<sup>th</sup> Cong. (Mar. 23, 2010).

<sup>6</sup> 42 U.S.C. s. 18021(a)(3); 45 C.F.R. s. 156.245.

<sup>7</sup> See 42 U.S.C. ss. 18021(a)(3) and 18022.

<sup>8</sup> Keese, *supra* note 2, slide 4.

The bill requires a direct primary care agreement to:

- Be in writing;
- Be signed by the primary care provider, or his or her agent, and the patient, or the patient's legal representative, or an employer;
- Allow a party to terminate the agreement by giving the other party at least 30 days advanced written notice;
- Provide for the immediate termination of the agreement if the physician-patient relationship is violated or a party breaches the terms of the agreement;
- Describe the scope of services that are covered by the monthly fee;
- Specify the monthly fee and any fees for primary care services not covered by the monthly fee;
- Specify the duration of the agreement and any automatic renewal provisions; and
- Provide for a refund to the patient of monthly fees paid in advance if the primary care provider stops offering primary care services for any reason.

The bill also requires the agreement to contain in contrasting color and 12-point or larger type, and on the same page as the applicant's signature, the following statements:

- The agreement is not health insurance and the primary care provider will not file any claims against any health insurance or reimbursement plans the patient may have for any primary care services covered by the agreement; and
- The agreement does not qualify as minimum essential coverage to satisfy the individual shared responsibility provision of the federal Patient Protection and Affordable Care Act.

The bill is effective July 1, 2016.

#### **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 removes regulatory uncertainty for health care providers by stating that the direct primary care agreement is not insurance and as a result not regulated by the Office of Insurance Regulation. Additional primary care providers may elect to pursue a direct primary care model and establish direct primary care practices which may increase access to affordable primary care services.

**C. Government Sector Impact:**

None.<sup>9</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 624.27 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/CS by Fiscal Policy on February 17, 2016:**

The committee substitute:

- Allows a party to terminate the agreement by giving the other party 30 days advanced written notice;
- Allows a party to immediately terminate the agreement for a violation of the physician-patient relationship or breach of terms of the agreement; and
- Requires certain statements to be on the same page as the applicant's signature, in contrasting color, and in not less than 12-point type.

**CS by Health Policy on February 1, 2016:**

The committee substitute expands the definition of a primary care provider to include a chiropractic physician and conforms the description of the licensed persons to health care practitioners as opposed to health care providers.

---

<sup>9</sup> The Revenue Estimating Conference determined that the impact from the bill is zero-negative indeterminate; the number of doctors under such arrangements nationwide is small. See Office of Economic and Demographic Research, *Revenue Estimating Conference*, HB 37/SB 132 (Dec. 4, 2015).

B. Amendments:

None.

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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	.	
02/18/2016	.	
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	.	

The Committee on Fiscal Policy (Legg) recommended the following:

**Senate Amendment**

Delete lines 56 - 75  
and insert:

(c) Allow a party to terminate the agreement by giving the other party at least 30 days' advance written notice. The agreement may provide for immediate termination due to a violation of the physician-patient relationship or a breach of the terms of the agreement.

(d) Describe the scope of primary care services that are covered by the monthly fee.



12 (e) Specify the monthly fee and any fees for primary care  
13 services not covered by the monthly fee.  
14 (f) Specify the duration of the agreement and any automatic  
15 renewal provisions.  
16 (g) Offer a refund to the patient of monthly fees paid in  
17 advance if the primary care provider ceases to offer primary  
18 care services for any reason.  
19 (h) Contain in contrasting color and in not less than 12-  
20 point type the following statements on the same page as the  
21 applicant's signature:  
22 1. The agreement is not health insurance and the primary  
23 care provider will not file any claims against the patient's  
24 health insurance policy or plan for reimbursement of any primary  
25 care services covered by the agreement.  
26 2. The agreement does not qualify as minimum essential  
27 coverage to satisfy the individual shared responsibility  
28 provision of the Patient Protection and Affordable Care Act, 26  
29 U.S.C. s. 5000A.

By the Committee on Health Policy; and Senators Grimsley and Gaetz

588-02883-16

2016132c1

A bill to be entitled

An act relating to direct primary care; creating s. 624.27, F.S.; defining terms; specifying that a direct primary care agreement does not constitute insurance and is not subject to ch. 636, F.S., relating to prepaid limited health service organizations and discount medical plan organizations, or any other chapter of the Florida Insurance Code; specifying that entering into a direct primary care agreement does not constitute the business of insurance and is not subject to ch. 636, F.S., or any other chapter of the code; providing that certain certificates of authority and licenses are not required to market, sell, or offer to sell a direct primary care agreement; specifying requirements for a direct primary care agreement; providing an effective date.

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

Section 1. Section 624.27, Florida Statutes, is created to read:

624.27 Application of code as to direct primary care agreements.—

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

(a) "Direct primary care agreement" means a contract between a primary care provider and a patient, the patient's legal representative, or an employer which meets the requirements specified under subsection (4) and does not indemnify for services provided by a third party.

(b) "Primary care provider" means a health care practitioner licensed under chapter 458, chapter 459, chapter

Page 1 of 3

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

588-02883-16

2016132c1

460, or chapter 464, or a primary care group practice that provides medical services to patients which are commonly provided without referral from another health care provider.

(c) "Primary care service" means the screening, assessment, diagnosis, and treatment of a patient for the purpose of promoting health or detecting and managing disease or injury within the competency and training of the primary care provider.

(2) A direct primary care agreement does not constitute insurance and is not subject to chapter 636 or any other chapter of the Florida Insurance Code. The act of entering into a direct primary care agreement does not constitute the business of insurance and is not subject to chapter 636 or any other chapter of the Florida Insurance Code.

(3) A primary care provider or an agent of a primary care provider is not required to obtain a certificate of authority or license under chapter 636 or any other chapter of the Florida Insurance Code to market, sell, or offer to sell a direct primary care agreement.

(4) For purposes of this section, a direct primary care agreement must:

(a) Be in writing.

(b) Be signed by the primary care provider or an agent of the primary care provider and the patient, the patient's legal representative, or an employer.

(c) Allow a party to terminate the agreement by written notice to the other party after a period specified in the agreement.

(d) Describe the scope of primary care services that are covered by the monthly fee.

Page 2 of 3

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

588-02883-16

2016132c1

61 (e) Specify the monthly fee and any fees for primary care  
62 services not covered by the monthly fee.

63 (f) Specify the duration of the agreement and any automatic  
64 renewal provisions.

65 (g) Offer a refund to the patient of monthly fees paid in  
66 advance if the primary care provider ceases to offer primary  
67 care services for any reason.

68 (h) State that the agreement is not health insurance and  
69 that the primary care provider will not file any claims against  
70 the patient's health insurance policy or plan for reimbursement  
71 for any primary care services covered by the agreement.

72 (i) State that the agreement does not qualify as minimum  
73 essential coverage to satisfy the individual shared  
74 responsibility provision of the Patient Protection and  
75 Affordable Care Act pursuant to 26 U.S.C. s. 5000A.

76 Section 2. This act shall take effect July 1, 2016.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2 / 17 / 2016

Meeting Date

Topic \_\_\_\_\_

Bill Number 132

(if applicable)

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-17-16

Meeting Date

132

Bill Number (if applicable)

Topic Direct Primary Care

Amendment Barcode (if applicable)

Name Catherine Baer

Job Title Chair

Address 1421 Woodgate Way

Phone

Street

Tallahassee

Fl

32308

Email

City

State

Zip

Speaking: [ ] For [ ] Against [ ] Information

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

Representing

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [ ] Yes [x] No

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

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)

2/17/16

Meeting Date

132

Bill Number (if applicable)

Topic Direct Primary Care

Amendment Barcode (if applicable)

Name Mary Thomas

Job Title Assistant General Counsel

Address 1430 Piedmont Dr E

Phone 850 224 6496

ILH FL 32308

City

State

Zip

Email MThomas@flmedical.org

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Florida Medical Association

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [x] 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)

2/17/16

Meeting Date

132

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name PAUL LAMBERT

Job Title \_\_\_\_\_

Address 263 Rosehill Drive North  
Street  
Tallahassee FL 32312  
City State Zip

Phone 850 597-2696

Email PLAMBERT@PAULLAMBERTLAW.COM

Speaking:  For  Against  Information

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

Representing Florida Chiropractic Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-17-16

Meeting Date

132  
Bill Number (if applicable)

Topic Direct Primary Care

Amendment Barcode (if applicable)

Name John Hallman

Job Title Legislative Affairs Director

Address P.O. Box 2349

Phone \_\_\_\_\_

Street

Bushnell FL 33513

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Liberty First Network

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2.17.

Meeting Date

132

Bill Number (if applicable)

Topic DIRECT PRIMARY CARE

Amendment Barcode (if applicable)

Name SAZ NUZZO

Job Title VP POLICY

Address 100 N. DUVAL Street

Phone 856-322-9941

TALLAHASSEE FL 32301 City State Zip

Email SNZZO@JAMESMADISON.org

Speaking: [X] For [ ] Against [ ] Information

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

Representing THE JAMES MADISON INST.

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2-17-16

Meeting Date

SB132

Bill Number (if applicable)

Topic Direct Primary Care

Amendment Barcode (if applicable)

Name Dr. Lee Gross

Job Title Physician - Direct Primary Care Provider

Address 2975 Bobcat Village Center Rd #100

Phone 941-423-9936

Street

North Port

FL

34288

City

State

Zip

Email lee.gross@msn.com

Speaking:  For  Against  Information

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

Representing Epiphany Health Direct Primary Care

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-17-16  
Meeting Date

132  
Bill Number (if applicable)

Topic Direct Primary Care

Amendment Barcode (if applicable)

Name Tim Nungesser (Nun-Guess-er)

Job Title Legislative Director

Address 110 E. Jefferson St.

Phone 800-445-5367

Street

Tallahassee

FL

32301

City

State

Zip

Email tim.nungesser@nfib.org

Speaking:  For  Against  Information

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

Representing NFIB

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/16

Meeting Date

132

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Chris Nland

Job Title \_\_\_\_\_

Address 1000 Riverside Ave

Phone 904-233-3051

Street

Jacksonville, FL

32204

Email nlandlaw@aol.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Chapter, American College of Physicians

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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/CS/SB 204

INTRODUCER: Fiscal Policy Committee; Health Policy Committee; and Senator Clemens

SUBJECT: Music Therapists

DATE: February 18, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto Van Winkle	Stovall	HP	<b>Fav/CS</b>
2.	Brown	Pigott	AHS	<b>Recommend: Favorable</b>
3.	Pace	Hrdlicka	FP	<b>Fav/CS</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 204 creates a new regulated profession, music therapists, in ch. 468, F.S., relating to clinical, counseling, and psychotherapy services. The bill requires music therapists to be regulated by the Department of Health (DOH) through a registration process in order to practice music therapy or hold oneself out as a music therapist, with certain exceptions. The bill requires biennial renewal of a music therapist's registration and authorizes the DOH to deny or revoke the registration or renewal for violations of s. 468.85, F.S.

The bill has an indeterminate but likely insignificant fiscal impact.

**II. Present Situation:**

**The Sunrise Act and Sunrise Questionnaire**

The Sunrise Act (the act), codified in s. 11.62, F.S., requires the Legislature to consider specific factors in determining whether to regulate a new profession or occupation. The act specifies that it is the intent of the Legislature that:

- No profession or occupation be subject to regulation unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage and that the state's police power be exercised only to the extent necessary for that purpose; and

- No profession or occupation be regulated in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the services to the public.

Under the act, the Legislature must review all legislation proposing regulation of a previously unregulated profession or occupation and make a determination for regulation based on consideration of the following:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;
- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

The act requires the proponents of legislation for the regulation of a profession or occupation to provide specific information in writing to the state agency that is proposed to have jurisdiction over the regulation and to the legislative committees of reference.<sup>1</sup> This required information is traditionally compiled in a “Sunrise Questionnaire.”

### **Music Therapists<sup>2</sup>**

Currently, music therapists are not regulated in Florida. The primary proponent seeking regulation of music therapists in Florida is the Florida Music Therapy State Task Force (task force). The task force has completed a Sunrise Questionnaire to provide information concerning the proposed regulation of a currently unregulated profession.

“Music therapy” is defined by the task force to mean “the clinical and evidence-based use of music interventions to accomplish individualized goals for people of all ages and ability levels within a therapeutic relationship by a credentialed professional who has completed an approved music therapy program.” Music therapists serve clinical populations ranging in age from neonates in a hospital’s neonatal intensive care unit to older adults in hospice care. Music therapy services are provided in a variety of clinical settings, including:

- Psychiatric hospitals;
- Rehabilitative facilities;
- Medical hospitals;
- Outpatient clinics;

---

<sup>1</sup> See s. 11.62(4)(a)-(m), F.S.

<sup>2</sup> Information in this portion of this Bill Analysis is from the Florida Senate Sunrise Questionnaire completed by the Florida Music Therapy State Task Force (on file with the Senate Committee on Health Policy).

- Day care treatment centers;
- Agencies serving persons with developmental disabilities;
- Community mental health centers;
- Drug and alcohol programs;
- Senior centers;
- Nursing homes;
- Hospice programs;
- Correctional facilities;
- Halfway houses;
- Schools; and
- Private practice.<sup>3</sup>

### ***Education Programs***

Music therapy degree programs are offered at approximately 73 colleges and universities in the United States. These programs are accredited by the American Music Therapy Association (AMTA). To become a music therapist, a student must earn a bachelor's degree or higher in music therapy from an AMTA-approved college or university. These programs require academic coursework and 1,200 hours of clinical training, including an approved supervised internship. An internship may be approved by the academic institution or the AMTA. Qualified supervision of clinical training is required and must be coordinated or verified by the academic institution. Internship supervisors must meet minimum requirements outlined by the AMTA Education and Clinical Training Standards.<sup>4</sup>

Currently in Florida, Florida State University (FSU) and the University of Miami (UM) have the only accredited music therapy programs. FSU and UM both offer bachelor's, master's, and doctoral degrees in music therapy. FSU graduates approximately 37 students annually and UM graduates approximately 11 students annually. Additionally, Florida Gulf Coast University is developing a music therapy program and is in the accreditation process.<sup>5</sup>

### ***National Certification of Music Therapists***

There are two national organizations that recognize the music therapy profession: the AMTA and the Certification Board for Music Therapists (CBMT). The CBMT is the only organization that credentials music therapists nationally. The professional credential for a board-certified music therapist (MT-BC) is granted by the CBMT to individuals who have successfully completed an AMTA-approved academic and clinical training program and have passed a written national examination.<sup>6</sup>

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<sup>3</sup> *Id.* at p. 5.

<sup>4</sup> A music therapy internship supervisor must have a clinical practice in music therapy (either private or institutional) and demonstrate the following: all professional level competencies; effectiveness as a music therapy clinician in at least one area of practice; general understanding of the supervisory needs of internship students, and established skills in supervision. See AMTA, *Standards for Education and Clinical Training*, available at: <http://www.musictherapy.org/members/edctstan/> (last visited Feb. 11, 2016). See also *supra* note 2 at p. 25.

<sup>5</sup> *Id.* at p. 26.

<sup>6</sup> *Id.* at p. 13.

Currently, the majority of music therapists hold the MT-BC credential. Other credentials that a music therapist may have are: registered music therapist (RMT), certified music therapist (CMT), or advanced certified music therapist (ACMT). The RMT, CMT, and ACMT credentials were granted prior to 1998 and will expire in 2020.<sup>7</sup>

The task force estimates that there are 253 board-certified music therapists (MT-BC), four registered music therapists (RMT), and four certified music therapists (CMT) in Florida.<sup>8</sup>

### ***Regulation of Music Therapists in Other States***

Currently eight states regulate music therapists through either licensure or registration.<sup>9</sup> The first state to regulate music therapists was Wisconsin in 1998, which provided a state registry for music therapists through the Wisconsin Department of Regulation and Licensing. The Wisconsin law prohibits the use of the title Wisconsin Music Therapist – Registered (WMTR) unless a music therapist is registered with the state of Wisconsin. Wisconsin does not license music therapists, and registration is voluntary.<sup>10</sup> Music therapists are licensed in North Dakota, Nevada, Georgia, Rhode Island, Utah, Oregon and New York.<sup>11</sup>

### **Licensure of Health Care Practitioners in Florida Legislature**

The DOH is responsible for the licensure of most health care practitioners in the state. In addition to the regulatory authority in the specific practice acts for each profession or occupation, ch. 456, F.S., provides general regulatory provisions for health care professions within the DOH.

Section 456.001, F.S., defines “health care practitioner” as any person licensed under chs. 457 (acupuncture); 458 (medicine); 459 (osteopathic medicine); 460 (chiropractic medicine); 461 (podiatric medicine); 462 (naturopathic medicine); 463 (optometry); 464 (nursing); 465 (pharmacy); 466 (dentistry and dental hygiene); 467 (midwifery); 478 (electrology or electrolysis); 480 (massage therapy); 484 (opticianry and hearing aid specialists); 486 (physical therapy); 490 (psychology); 491 (psychotherapy), F.S., or parts III or IV of ch. 483 (clinical laboratory personnel or medical physics), F.S.

Additionally, speech-language pathology and audiology; nursing home administration; occupational therapy; respiratory therapy; dietetics and nutrition practice; athletic trainers; and orthotics, prosthetics, and pedorthics regulated under ch. 468, F.S., are considered health care practitioners under s. 456.001, F.S.

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<sup>7</sup> *Supra* note 2 at p. 10.

<sup>8</sup> *Supra* note 2 at p. 3. Information about the number of MT-BCs was retrieved from the Certification Board for Music Therapists. Information about the number of RMTs and CMTs was retrieved from the National Music Therapy Registry.

<sup>9</sup> Certification Board for Music Therapists, *State Licensure*, available at: <http://www.cbmt.org/examination/state-licensure/> (last visited Feb. 11, 2016).

<sup>10</sup> See Wisconsin Chapter for Music Therapy, *Wisconsin Music Therapy Registry* (2015), available at <http://musictherapywisconsin.org/about-us/wmtr/> (last visited Feb. 11 2016).

<sup>11</sup> See *supra* note 9.

### III. Effect of Proposed Changes:

The bill creates s. 468.85, F.S., to recognize that music therapy affects the health, safety, and welfare of the public, and that the practice of music therapy should be subject to regulation to protect the public from the practice of music therapy by unregistered persons.

The bill provides the following definitions related to music therapists:

- “Board-certified music therapist” means a person who has completed the education and clinical training requirements established by the American Music Therapy Association and who holds current board certification from the national Certification Board for Music Therapists;
- “Music therapist” means a person registered to practice music therapy pursuant to s. 491.017, F.S.; and
- “Music therapy” means the clinical and evidence-based use of music interventions by a board-certified music therapist to accomplish individualized goals for people of all ages and ability levels within a therapeutic relationship.

Under the bill, music therapy interventions may include music improvisation, receptive music listening, song writing, lyric discussion, music and imagery, singing, music performance, learning through music, music combined with other arts, music-assisted relaxation, music-based patient education, electronic music technology, adapted music intervention, and movement to music.

The practice of music therapy does not include the diagnosis or assessment of any physical, mental, or communication disorder.

The bill requires a person to register as a music therapist to practice music therapy or to use the title “music therapist” in Florida. The bill authorizes certain exceptions for a person who does not hold himself or herself out as a music therapist, including:

- A person who is licensed, certified, or regulated to practice a profession or occupation in Florida, or personnel supervised by a licensed professional in this state performing work, including the use of music, incidental to the practice of his or her licensed, certified, or regulated profession or occupation;
- A person whose training and national certification attests to the person’s preparation and ability to practice his or her certified profession or occupation;
- A student practicing music therapy as a part of an accredited music therapy program; or
- A person practicing music therapy under the supervision of a registered music therapist.

The bill authorizes registered music therapists to:

- Accept referrals for services from medical, developmental, mental health, or education professionals; family members; clients; caregivers; or other persons authorized to provide client services;
- Collaborate with a client’s primary care provider or treatment team before providing services to a client with an identified clinical or developmental need;

- Conduct a music therapy assessment of a client and, if treatment is indicated, collect information to determine the appropriateness and type of music therapy services to provide the client;
- Develop an individualized treatment plan for the client that is based on the results of the music therapy assessment and consistent with any other developmental, rehabilitative, habilitative, medical, mental health, preventive, wellness, or educational services being provided to the client;
- Evaluate the client's response to music therapy and modify the music therapy treatment plan, as appropriate;
- Develop a plan for determining when music therapy services are no longer needed;
- Minimize barriers to ensure that the client receives music therapy services in the least restrictive environment;
- Collaborate with and educate the client and the client's family members, caregivers, and any other appropriate persons regarding the needs of the client that are being addressed in music therapy and the manner in which the music therapy treatment addresses those needs; and
- Use appropriate knowledge and skills to determine appropriate actions in the context of each specific clinical setting.

A person must register with the DOH and renew his or her registration every 2 years. The DOH must establish application, registration, and renewal fees, not to exceed \$50. The DOH is authorized to deny or revoke a registration or renewal of registration for violations of s. 468.85, F.S. A registered music therapist must notify the DOH within 10 days of a change in address or status as a board certified music therapist.

The bill authorizes the DOH to adopt rules to implement the bill.

The bill is effective on July 1, 2016.

#### **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:**

The bill requires music therapists to pay fees associated with application, registration, and renewal, not to exceed \$50 each.

**B. Private Sector Impact:**

Music therapists are required to pay an application fee, an initial registration fee, and a biennial renewal fee.

**C. Government Sector Impact:**

The DOH will experience an indeterminate increase in revenues based on music therapist application, registration, and renewal fees. The DOH will also incur an indeterminate increase in workload and costs associated with the regulation of music therapists and educating the public concerning music therapy and licensure.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill provides rulemaking authority to the DOH to implement the bill, including the application, registration, and renewal fee for music therapists.

**VIII. Statutes Affected:**

This bill creates section 468.85 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/CS by Fiscal Policy on February 17, 2016:**

The committee substitute establishes the registration of music therapists within Part XVII of ch. 468, F.S.

**CS by Health Policy on January 19, 2016:**

The CS establishes a title protection act for Music Therapists rather than a full licensure and regulatory structure. Application fees, and registration and renewal fees, are limited to \$50 each. Registration as a music therapist is predicated on passing a board certification examination and maintaining that certification.

**B. Amendments:**

None.



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Clemens) recommended the following:

1       **Senate Amendment (with title amendment)**

2  
3       Delete lines 17 - 19

4       and insert:

5       Section 1. Part XVII of chapter 468, Florida Statutes,  
6       consisting of section 468.85, Florida Statutes, is created to  
7       read:

8                       PART XVII

9                       MUSIC THERAPISTS

10       468.85 Registration of music therapists.-



11

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

13       And the title is amended as follows:

14               Delete lines 2 - 3

15       and insert:

16               An act relating to music therapists; creating part

17               XVII of ch. 468, F.S.; creating s. 468.85, F.S.;

18               providing legislative intent; providing

By the Committee on Health Policy; and Senator Clemens

588-02319-16

2016204c1

1 A bill to be entitled  
 2 An act relating to music therapists; creating s.  
 3 491.017, F.S.; providing legislative intent; providing  
 4 definitions; establishing requirements for  
 5 registration as a music therapist; providing  
 6 responsibilities of a music therapist; requiring  
 7 biennial renewal of registration; prohibiting the  
 8 practice of music therapy unless the therapist is  
 9 registered; providing exemptions to registration;  
 10 authorizing the Department of Health to adopt rules  
 11 and take disciplinary action against an applicant or  
 12 registrant who violates the act; providing an  
 13 effective date.

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

16  
 17 Section 1. Section 491.017, Florida Statutes, is created to  
 18 read:

19 491.017 Registration of music therapists.-

20 (1) LEGISLATIVE INTENT.-It is the intent of this section to  
 21 recognize that music therapy affects the health, safety, and  
 22 welfare of the public, and that the practice of music therapy  
 23 should be subject to regulation to protect the public from the  
 24 practice of music therapy by unregistered persons.

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

26 (a) "Board-certified music therapist" means a person who  
 27 has completed the education and clinical training requirements  
 28 established by the American Music Therapy Association and who  
 29 holds current board certification from the national  
 30 Certification Board for Music Therapists.

31 (b) "Music therapist" means a person registered to practice  
 32 music therapy pursuant to this section.

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33 (c) "Music therapy" means the clinical and evidence-based  
 34 use of music interventions by a board-certified music therapist  
 35 to accomplish individualized goals for people of all ages and  
 36 ability levels within a therapeutic relationship. The music  
 37 therapy interventions may include music improvisation, receptive  
 38 music listening, song writing, lyric discussion, music and  
 39 imagery, singing, music performance, learning through music,  
 40 music combined with other arts, music-assisted relaxation,  
 41 music-based patient education, electronic music technology,  
 42 adapted music intervention, and movement to music. The practice  
 43 of music therapy does not include the diagnosis or assessment of  
 44 any physical, mental, or communication disorder.

45 (3) REGISTRATION.-

46 (a) The department shall register an applicant as a music  
 47 therapist when the applicant submits to the department:

- 48 1. A completed application form issued by the department;  
 49 2. Application and registration fees; and  
 50 3. Proof of passing the examination for board certification

51 offered by the national Certification Board for Music  
 52 Therapists, or any successor organization, or proof of being  
 53 transitioned into board certification, and provides proof that  
 54 the applicant is currently a board-certified music therapist.

55 (b) A registration issued under this section must be  
 56 renewed biennially by submitting to the department a renewal fee  
 57 and proof that the applicant holds an active certificate as a  
 58 board-certified music therapist.

59 (c) A registrant shall inform the department within 10 days  
 60 after a change of the registrant's address or a change in the  
 61 registrant's status as a board-certified music therapist.

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62 (4) RESPONSIBILITIES OF A MUSIC THERAPIST.—A music  
 63 therapist is authorized to:

64 (a) Accept referrals for music therapy services from  
 65 medical, developmental, mental health, or education  
 66 professionals; family members; clients; caregivers; or other  
 67 persons authorized to provide client services.

68 (b) Collaborate with a client's primary care provider to  
 69 review the client's diagnosis, treatment needs, and treatment  
 70 plan before providing services to a client with an identified  
 71 clinical or developmental need or collaborate with the client's  
 72 treatment team while providing music therapy services to the  
 73 client.

74 (c) Conduct a music therapy assessment of a client to  
 75 determine if treatment is indicated and, if treatment is  
 76 indicated, collect systematic, comprehensive, and accurate  
 77 information to determine the appropriateness and type of music  
 78 therapy services to provide for the client.

79 (d) Develop an individualized music therapy treatment plan,  
 80 including individualized goals, objectives, and specific music  
 81 therapy approaches or interventions, for the client that is  
 82 based on the results of the music therapy assessment and is  
 83 consistent with any other developmental, rehabilitative,  
 84 habilitative, medical, mental health, preventive, wellness, or  
 85 educational services being provided to the client.

86 (e) Evaluate the client's response to music therapy and the  
 87 music therapy treatment plan, documenting change and progress  
 88 and suggesting modifications, as appropriate.

89 (f) Develop a plan for determining when music therapy  
 90 services are no longer needed, in collaboration with the client

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91 and the client's physician or other provider of health care or  
 92 education to the client, family members of the client, and any  
 93 other appropriate person upon whom the client relies for  
 94 support.

95 (g) Minimize barriers to ensure that the client receives  
 96 music therapy services in the least restrictive environment.

97 (h) Collaborate with and educate the client and the  
 98 client's family members, caregivers, and any other appropriate  
 99 persons regarding the needs of the client that are being  
 100 addressed in music therapy and the manner in which the music  
 101 therapy treatment addresses those needs.

102 (i) Use appropriate knowledge and skills to inform  
 103 practice, including the use of research, reasoning, and problem-  
 104 solving skills to determine appropriate actions in the context  
 105 of each specific clinical setting.

106 (5) PROHIBITED ACTS; EXEMPTIONS.—A person may not practice  
 107 music therapy or represent himself or herself as being able to  
 108 practice music therapy in this state unless the person is  
 109 registered pursuant to this section. This section does not  
 110 prohibit or restrict the practice, services, or activities of  
 111 the following:

112 (a) A person licensed, certified, or regulated under the  
 113 laws of this state in another profession or occupation, or  
 114 personnel supervised by a licensed professional in this state  
 115 performing work, including the use of music, incidental to the  
 116 practice of his or her licensed, certified, or regulated  
 117 profession or occupation, if that person does not represent  
 118 himself or herself as a music therapist;

119 (b) A person whose training and national certification

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120 attests to the person's preparation and ability to practice his  
121 or her certified profession or occupation, if that person does  
122 not represent himself or herself as a music therapist;

123 (c) Any practice of music therapy as an integral part of a  
124 program of study for students enrolled in an accredited music  
125 therapy program, if the student does not represent himself or  
126 herself as a music therapist; or

127 (d) A person who practices music therapy under the  
128 supervision of a registered music therapist, if the person does  
129 not represent himself or herself as a music therapist.

130 (6) DEPARTMENT AUTHORITY.—

131 (a) The department is authorized to establish application,  
132 registration, and renewal fees estimated necessary to implement  
133 the provisions of this section, but each fee may not exceed \$50.

134 (b) The department is authorized to adopt rules to  
135 implement this section.

136 (c) The department may deny or revoke registration or  
137 renewal of registration for violations of this section.

138 Section 2. This act shall take effect July 1, 2016.

139



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development, *Vice Chair*  
Banking and Insurance  
Criminal Justice  
Education Pre-K-12  
Ethics and Elections  
Fiscal Policy

**SENATOR JEFF CLEMENS**

27th District

February 11, 2016

Senator Anitere Flores, Chair  
Senate Committee on Fiscal Policy  
225 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Chair Flores:

I respectfully request that SB 204 -- Music Therapists be added to the agenda for the next Senate Committee on Fiscal Policy meeting.

SB 204 creates a registration process for board-certified music therapists in Florida. This will increase access to qualified music therapy services for Florida residents and limit the potential for harm to the public by ensuring music therapy can only be offered by registered therapists.

Please feel free to contact me with any questions. Thank you, in advance, for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Clemens".

Senator Jeff Clemens  
Florida Senate District 27

**REPLY TO:**

- 508 Lake Avenue, Unit C, Lake Worth, Florida 33460 (561) 540-1140 FAX: (561) 540-1143
- 226 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/16

Meeting Date

SB 204

Bill Number (if applicable)

Topic Music Therapists

Amendment Barcode (if applicable)

Name Michelle Pelitto

Job Title Board Certified Music Therapist

Address 2629 Cotuit Lane  
Street

Phone (850)628-1353

Tallahassee FL 32309  
City State Zip

Email capitalmusictherapy@gmail.com

Speaking:  For  Against  Information

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

Representing FL Music Therapy Task Force

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 / 17 / 2016

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 209

*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_

*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

*Street*

SAINT PETERSBURG      FLORIDA      33705

*City*

*State*

*Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:     For     Against     Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:     Yes     No

Lobbyist registered with Legislature:     Yes     No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/16

Meeting Date

204

Bill Number (if applicable)

Topic Music therapy

Amendment Barcode (if applicable)

Name Ron Watson

Job Title lobbyist

Address 3738 Menden Way

Phone 850 567-1202

Street

City

Tallahassee

FL

State

32309

Zip

Email Watson.Strategies@comcast.net

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against

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

Representing Certification Board for Music Therapists

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)

2/17/2016  
Meeting Date

204  
Bill Number (if applicable)

Topic Music Therapist

Amendment Barcode (if applicable)

Name Christina Harrison

Job Title Nurse Administrator

Address 2657 Breton Ridge Dr.  
Street

Phone (850) 528-6334

Dallahassee, FL 32312  
City State Zip

Email CHRISTINA.NOE.HARRISON@gmail.com

Speaking:  For  Against  Information

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

Representing Certification Board for Music Therapist

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: SB 268

INTRODUCER: Senator Ring

SUBJECT: Bullying and Harassment Policies in Schools

DATE: February 16, 2016

REVISED: \_\_\_\_\_

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Scott</u>	<u>Klebacha</u>	<u>ED</u>	<b>Favorable</b>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<b>Recommend: Favorable</b>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Pre-meeting</b>

---

**I. Summary:**

SB 268 requires school districts to implement a policy prohibiting bullying and harassment and revise the policy at least every 3 years. The bill also requires the policy to include a procedure for the mandatory reporting of an act of bullying or harassment and a list of bullying prevention and intervention programs.

The bill has no fiscal impact.

**II. Present Situation:**

**Bullying and Harassment in Schools**

In 2008,<sup>1</sup> the Florida Legislature enacted s. 1006.147, F.S., which prohibits the bullying and harassment of any student or employee of a public K-12 educational institution.<sup>2</sup> Bullying is prohibited during a public K-12 education program or activity, school-sponsored event, or on a school bus.<sup>3</sup> Bullying and harassment are also prohibited through the use of data or computer software accessed through a computer within the scope<sup>4</sup> of a public K-12 educational institution or accessed at a non-school related event, if the bullying substantially interferes with or limits the victim's ability to participate in or benefit from the services, activities, or opportunities offered by a school or substantially disrupts the education process or orderly operation of a school.<sup>5</sup>

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<sup>1</sup> Chapter 2008-123, L.O.F., also known as the "Jeffrey Johnston Stand Up for All Students" Act.

<sup>2</sup> Section 1006.147(2), F.S.

<sup>3</sup> Section 1006.147(a) and (b), F.S.

<sup>4</sup> Section 1006.147(3)(d), F.S., defines "within the scope of a public K-12 educational institution" to mean regardless of ownership, any computer, computer system, or computer network that is physically located on school property or at a school-related or school-sponsored program or activity.

<sup>5</sup> Section 1006.147(2)(c) and (d), F.S. The law does not require a school to staff or monitor any non-school related activity, function, or program in its efforts to prevent bullying and harassment. See s. 1006.147(2)(d), F.S.

**Bullying** is the systemic and chronic infliction of physical hurt or psychological distress on one or more students, including cyberbullying,<sup>6</sup> and may involve:

- Teasing;
- Social exclusion;
- Threat;
- Intimidation;
- Stalking;
- Physical violence;
- Theft;
- Sexual, religious, or racial harassment;
- Public humiliation; or
- Destruction of property.<sup>7</sup>

**Harassment** is any threatening, insulting, or dehumanizing gesture, use of data or computer software, or written, verbal, or physical conduct directed against a student or school employee that:

- Places a student or school employee in reasonable fear of harm to his or her person or damage to his or her property;
- Has the effect of substantially interfering with a student's educational performance, opportunities, or benefits; or
- Has the effect of substantially disrupting the orderly operation of a school.<sup>8</sup>

The law further specifies that bullying and harassment include:

- Retaliating against a student or school employee for reporting bullying or harassment;
- Reporting bullying or harassment in bad faith;
- Perpetuating bullying or harassment with the intent to demean, dehumanize, embarrass, or cause physical harm to a student or school employee by:
  - Incitement or coercion;
  - Accessing or providing access to a school district's computer, computer system, or computer network; or
  - Engaging in conduct substantially similar in effect to bullying or harassment.<sup>9</sup>

### ***Policy and Reporting Requirements***

Each school district is required to adopt a policy prohibiting the bullying and harassment of a student or employee of a public K-12 educational institution.<sup>10</sup> The school district must involve students, parents, teachers, administrators, school volunteers, community representatives, and

---

<sup>6</sup> "Cyberbullying" is a form of bullying through the use of technology or other means of electronic communication, including, but not limited to, creating webpages or blogs and distributing or posting materials that perpetuate the conduct. *See* s. 1006.147(3)(b), F.S.

<sup>7</sup> Section 1006.147(3)(a), F.S.

<sup>8</sup> Section 1006.147(3)(c), F.S.

<sup>9</sup> Section 1006.147(3)(f), F.S.

<sup>10</sup> Section 1006.147(4), F.S. The policy must be in substantial compliance with the Department of Education's model policy. *See* Florida Department of Education, *Bullying Prevention, Model Policy Against Bullying and Harassment* (Revised July 2013), available at: <http://www.fldoe.org/schools/safe-healthy-schools/safe-schools/bullying-prevention.stml> (last visited Feb. 12, 2016).

local law enforcement agencies in the process of adopting the policy.<sup>11</sup> The policy must, at a minimum:

- Prohibit and define bullying and harassment;
- Describe the type of behavior expected from each student and employee of a public K-12 educational institution;
- Identify the consequences for a student or employee of a public K-12 educational institution who commits an act of bullying or harassment;
- Establish procedures for:
  - Reporting and investigating acts of bullying and harassment;
  - Immediately notifying a victim's parents, the parents of the perpetrator, and all local agencies where criminal charges may be pursued;
  - Referring victims and perpetrators to counseling;
  - Including incidents of bullying or harassment in each school's safety and discipline report submitted to the Department of Education;<sup>12</sup>
  - Providing instruction to students, parents, teachers, school administrators, counseling staff, and school volunteers on identifying, preventing, and responding to bullying or harassment, including instruction on recognizing behaviors that leads to bullying and harassment and taking appropriate preventative action based on those observations;
  - Regularly reporting to a victim's parents the actions taken to protect the victim; and
  - Publicizing the policy, including publication in the code of student conduct and all employee handbooks.<sup>13</sup>

The policy must be implemented in a manner that is ongoing throughout the school year and integrated with a school's curriculum, a school's discipline policies, and other violence prevention efforts.<sup>14</sup>

Distribution of safe schools funds to a school district is contingent upon the school district's compliance with implementing the reporting procedures required as part of its bullying and harassment policy.<sup>15</sup> By January 1 of each year, the Commissioner of Education must submit a report on the statewide implementation of bullying and harassment policies, including data regarding incidents of bullying and harassment and resulting consequences, to the Governor, the President of the Senate, and the Speaker of the House of Representatives.<sup>16</sup>

### III. Effect of Proposed Changes:

The bill requires that each school district:

- Revise its anti-bullying and harassment policy at least every 3 years; and

---

<sup>11</sup> Section 1006.147(4), F.S.

<sup>12</sup> Section 1006.09(6), F.S. The School Environmental Safety Incident Reporting System is used by the Office for Safe Schools within the Department of Education to compile data on incidents of crime, violence, and disruptive behaviors that occur on school grounds, on school transportation, and at off-campus, school-sponsored events. Such data is contained in the *Statewide Report on School Safety and Discipline Data*, available at: <http://www.fl DOE.org/safeschools/sesir.asp> (last visited Feb. 12, 2016).

<sup>13</sup> *Supra* note 11.

<sup>14</sup> *Id.*

<sup>15</sup> Section 1006.147(7), F.S.

<sup>16</sup> Section 1006.147(8), F.S.

- Require schools to implement the school district's anti-bullying and harassment policy.

The bill also requires that the school district's anti-bullying and harassment policy include:

- A procedure for the mandatory reporting of bullying or harassment; and
- A list of bullying prevention and intervention programs authorized by the school district to provide instruction to students, parents, teachers, school administrators, counseling staff, and school volunteers on identifying, preventing, and responding to bullying or harassment.

The bill is effective on July 1, 2016.

#### **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 has no fiscal impact.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

None.

#### **VIII. Statutes Affected:**

The bill substantially amends section 1006.147 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.

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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
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The Committee on Fiscal Policy (Clemens) recommended the following:

- 1       **Senate Amendment (with directory and title amendments)**
- 2
- 3       Between lines 19 and 20
- 4       insert:
- 5       (3) For purposes of this section:
- 6       (a) "Bullying" includes cyberbullying and means
- 7       systematically and chronically inflicting physical hurt or
- 8       psychological distress on one or more students and may involve:
- 9       1. Teasing;
- 10      2. Social exclusion;



- 11      3. Threat;
- 12      4. Intimidation;
- 13      5. Stalking;
- 14      6. Physical violence;
- 15      7. Theft;
- 16      8. Sexual, sexual orientation, religious, or racial
- 17      harassment;
- 18      9. Public or private humiliation; or
- 19      10. Destruction of property.
- 20
- 21      ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====
- 22      And the directory clause is amended as follows:
- 23      Delete lines 17 - 18
- 24      and insert:
- 25      Section 1. Paragraph (a) of subsection (3) and subsection
- 26      (4) of section 1006.147, Florida Statutes, are amended to read:
- 27
- 28      ===== T I T L E A M E N D M E N T =====
- 29      And the title is amended as follows:
- 30      Delete line 3
- 31      and insert:
- 32      schools; amending s. 1006.147, F.S.; revising the
- 33      definition of the term "bullying"; requiring school



LEGISLATIVE ACTION

Senate		House
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The Committee on Fiscal Policy (Clemens) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 33 - 53  
and insert:  
policy must be implemented by each school principal in a manner that is ongoing throughout the school year and integrated with a school's curriculum, a school's bullying prevention and intervention program, a school's discipline policies, and other violence prevention efforts. The school district policy must contain, at a minimum, the following components:



- 11 (a) A statement prohibiting bullying and harassment.
- 12 (b) A definition of bullying and a definition of harassment
- 13 that include the definitions listed in this section.
- 14 (c) A description of the type of behavior expected from
- 15 each student and employee of a public K-12 educational
- 16 institution.
- 17 (d) The consequences for a student or employee of a public
- 18 K-12 educational institution who commits an act of bullying or
- 19 harassment.
- 20 (e) The consequences for a student or employee of a public
- 21 K-12 educational institution who is found to have wrongfully and
- 22 intentionally accused another of an act of bullying or
- 23 harassment.
- 24 (f) A procedure for receiving reports ~~reporting of~~ an
- 25 alleged act of
- 26
- 27 ===== T I T L E A M E N D M E N T =====
- 28 And the title is amended as follows:
- 29 Delete lines 5 - 10
- 30 and insert:
- 31 policy at specified intervals; requiring each school
- 32 principal to implement the bullying and harassment
- 33 policy in a certain manner and integrate it with the
- 34 school's bullying prevention and intervention program;
- 35 requiring the policy to include a procedure for
- 36 receiving reports of alleged acts of bullying and a
- 37 list of authorized programs that

By Senator Ring

29-00417-16

2016268\_\_

A bill to be entitled

An act relating to bullying and harassment policies in schools; amending s. 1006.147, F.S.; requiring school districts to revise their bullying and harassment policy at specified intervals; requiring schools to implement the bullying and harassment policy in a certain manner and integrate it with the school's bullying prevention and intervention program; requiring the policy to include mandatory reporting procedures and a list of authorized programs that provide bullying and harassment identification, prevention, and response instruction; providing an effective date.

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

Section 1. Subsection (4) of section 1006.147, Florida Statutes, is amended to read:

1006.147 Bullying and harassment prohibited.—

(4) Each school district shall adopt and revise at least every 3 years a policy prohibiting bullying and harassment of a student or employee of a public K-12 educational institution. Each school district's policy shall be in substantial conformity with the Department of Education's model policy. The school district bullying and harassment policy shall afford all students the same protection regardless of their status under the law. The school district may establish separate discrimination policies that include categories of students. The school district shall involve students, parents, teachers,

Page 1 of 4

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

29-00417-16

2016268\_\_

administrators, school staff, school volunteers, community representatives, and local law enforcement agencies in the process of adopting and revising the policy. The school district policy must require a school to implement the policy ~~be implemented~~ in a manner that is ongoing throughout the school year and integrated with a school's curriculum, a school's bullying prevention and intervention program, a school's discipline policies, and other violence prevention efforts. The school district policy must contain, at a minimum, the following components:

(a) A statement prohibiting bullying and harassment.

(b) A definition of bullying and a definition of harassment that include the definitions listed in this section.

(c) A description of the type of behavior expected from each student and employee of a public K-12 educational institution.

(d) The consequences for a student or employee of a public K-12 educational institution who commits an act of bullying or harassment.

(e) The consequences for a student or employee of a public K-12 educational institution who is found to have wrongfully and intentionally accused another of an act of bullying or harassment.

(f) A procedure for the mandatory reporting of an act of bullying or harassment, including provisions that permit a person to anonymously report such an act. However, this paragraph does not permit formal disciplinary action to be based solely on an anonymous report.

(g) A procedure for the prompt investigation of a report of

Page 2 of 4

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29-00417-16

2016268\_\_

59 bullying or harassment and the persons responsible for the  
 60 investigation. The investigation of a reported act of bullying  
 61 or harassment is deemed to be a school-related activity and  
 62 begins with a report of such an act. Incidents that require a  
 63 reasonable investigation when reported to appropriate school  
 64 authorities shall include alleged incidents of bullying or  
 65 harassment allegedly committed against a child while the child  
 66 is en route to school aboard a school bus or at a school bus  
 67 stop.

68 (h) A process to investigate whether a reported act of  
 69 bullying or harassment is within the scope of the district  
 70 school system and, if not, a process for referral of such an act  
 71 to the appropriate jurisdiction. Computers without web-filtering  
 72 software or computers with web-filtering software that is  
 73 disabled shall be used when complaints of cyberbullying are  
 74 investigated.

75 (i) A procedure for providing immediate notification to the  
 76 parents of a victim of bullying or harassment and the parents of  
 77 the perpetrator of an act of bullying or harassment, as well as  
 78 notification to all local agencies where criminal charges may be  
 79 pursued against the perpetrator.

80 (j) A procedure to refer victims and perpetrators of  
 81 bullying or harassment for counseling.

82 (k) A procedure for including incidents of bullying or  
 83 harassment in the school's report of data concerning school  
 84 safety and discipline required under s. 1006.09(6). The report  
 85 must include each incident of bullying or harassment and the  
 86 resulting consequences, including discipline and referrals. The  
 87 report must include in a separate section each reported incident

Page 3 of 4

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29-00417-16

2016268\_\_

88 of bullying or harassment that does not meet the criteria of a  
 89 prohibited act under this section with recommendations regarding  
 90 such incidents. The Department of Education shall aggregate  
 91 information contained in the reports.

92 (l) A list of programs authorized by the school district  
 93 ~~which provide procedure for providing~~ instruction to students,  
 94 parents, teachers, school administrators, counseling staff, and  
 95 school volunteers on identifying, preventing, and responding to  
 96 bullying or harassment, including instruction on recognizing  
 97 behaviors that lead to bullying and harassment and taking  
 98 appropriate preventive action based on those observations.

99 (m) A procedure for regularly reporting to a victim's  
 100 parents the actions taken to protect the victim.

101 (n) A procedure for publicizing the policy, which must  
 102 include its publication in the code of student conduct required  
 103 under s. 1006.07(2) and in all employee handbooks.

104 Section 2. This act shall take effect July 1, 2016.

Page 4 of 4

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## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Governmental Oversight and Accountability, *Chair*  
Judiciary, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on Education  
Children, Families, and Elder Affairs  
Commerce and Tourism

**SENATOR JEREMY RING**  
29th District

February 11, 2016

The Honorable Anitere Flores  
Committee on Fiscal Policy  
225 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Madam Chair,

I am writing to respectfully request your cooperation in placing Senate Bill 268, relating to Bullying and Harassment Policies in Schools, on the Committee on Fiscal Policy agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring  
Senator District 29

cc: Jennifer Hrdlicka, Staff Director  
Tamra Lyon, Committee Administrative Assistant

**REPLY TO:**

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2 / 17 / 2016

Meeting Date

Topic \_\_\_\_\_

Bill Number 268

(if applicable)

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

**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 Fiscal Policy

---

BILL: SB 532

INTRODUCER: Senator Gibson

SUBJECT: Provisional Ballots

DATE: February 16, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Roberts</u>	<u>EE</u>	<b>Favorable</b>
2.	<u>Sneed</u>	<u>Miller</u>	<u>ATD</u>	<b>Recommend: Favorable</b>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Favorable</b>

---

**I. Summary:**

SB 532 allows a voter who casts a provisional ballot but fails to sign his or her name on the Provisional Ballot Voter’s Certificate and Affirmation to “cure” this deficiency by submitting an affidavit by 5 p.m. on the second day following the election.

This bill has no fiscal impact on state government, but may result in minimal expenses for local supervisors of elections.

The bill is effective July 1, 2016.

**II. Present Situation:**

When a poll worker can’t affirmatively confirm the eligibility of a person who presents himself or herself to vote at an early voting location or at a polling precinct on Election Day, the person is entitled to vote a provisional, or “conditional,” ballot.<sup>1</sup>

In such case, the precinct clerk who is in charge of polling place operations generally works with the voter to complete the Provisional Ballot Voter’s Certificate and Affirmation, making sure that all necessary information is filled out correctly including:

- **The voter’s signature;**
- His or her printed name;
- Party registration;
- Residential address;
- Mailing address; and
- Driver’s license number or the last 4 digits of the voter’s social security number.<sup>2</sup>

---

<sup>1</sup> Section 101.048(1), F.S.

<sup>2</sup> *Id.* at (3).

The Provisional Ballot Voter's Certificate and Affirmation must be sworn or affirmed before an election official, who must sign the attestation.<sup>3</sup>

The provisional voter is given written instructions about his or her right to provide the supervisor with written evidence of eligibility by 5 p.m. on the second day after the election.<sup>4</sup> The provisional voter is also given a numbered stub and directions on how to access a free system to find out if the provisional ballot was counted in the final tally or not, and if not, the reason why it was not counted.<sup>5</sup> Additional procedures are laid out in the Division of Elections Polling Place Procedures Manual, which is used at every precinct.<sup>6</sup>

There is no cure provision in law for when a person fails to sign the Provisional Ballot Voter's Certificate and Affirmation.

### III. Effect of Proposed Changes:

The bill allows a provisional voter who fails to sign the Provisional Ballot Voter's Certificate and Affirmation but whose identity can otherwise be determined from information on the certificate to "cure" the omission. The omission can be cured by providing identification and submitting a provisional ballot affidavit no later than 5 p.m. on the second day after an election.

The bill prescribes the form of the provisional ballot affidavit, and lays out procedures and requirements for completing and submitting it, including the manner of processing the submission. The form also requires the Department of State and the supervisor of elections to include the provisional ballot affidavit and instructions for completing the affidavit on their respective websites. The mailing address, email address, and fax number must be included on the webpage containing the affidavit instructions.

The voter's eligibility would still have to be determined in order for the ballot to count. The "cure" proposed in the bill would only ensure that the ballot would not be voided for lack of the requisite legal signature. The post-submission "cure" concept in the bill appears to be modeled after the absentee ballot cure process for missing signatures adopted in 2013 (see Section VII. Related Issues).

The bill is effective July 1, 2016.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at (1).

<sup>5</sup> *Id.* at (5) and (6).

<sup>6</sup> See Florida Department of State, Division of Elections, *Polling Place Procedures Manual*, pp.14-16 (June 2014) available at <http://dos.myflorida.com/media/695052/dsde11.pdf> (last visited February 12, 2016).

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 Department of State, the bill has no fiscal impact on state government but may result in minimal expenses for local supervisors of elections for providing copies of the cure affidavit and instructions to provisional voters who fail to sign the voter's certificate.<sup>7</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

In 2013, the Legislature authorized a similar post-submission affidavit procedure to allow **absentee voters** to cure missing signatures on absentee ballot voter certificates,<sup>8</sup> the distinction being that absentee electors have no election official guiding them through the process of completing the voter's certificate and no counter-signature requirement.

**VIII. Statutes Affected:**

This bill substantially amends section 101.048 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.

---

<sup>7</sup> Department of State, *2016 Legislative Bill Analysis for SB 532*, (November 6, 2015) (on file in the Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development).

<sup>8</sup> Section 101.68(4), F.S.

B. Amendments:

None.

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

---

By Senator Gibson

9-00119-16

2016532\_\_

1                                   A bill to be entitled  
 2       An act relating to provisional ballots; amending s.  
 3       101.048, F.S.; requiring the supervisor of elections  
 4       to allow a person who voted a provisional ballot to  
 5       submit an affidavit to cure an unsigned Provisional  
 6       Ballot Voter's Certificate and Affirmation;  
 7       prescribing the form and content of the affidavit;  
 8       providing instructions to accompany each affidavit;  
 9       requiring the affidavit, instructions, and the  
 10       supervisor's contact information to be posted on  
 11       specified websites; requiring the supervisor to attach  
 12       a received affidavit to the corresponding provisional  
 13       ballot envelope; providing an effective date.

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

16  
 17       Section 1. Paragraph (b) of subsection (2) of section  
 18       101.048, Florida Statutes, is amended, and subsection (7) is  
 19       added to that section, to read:

20       101.048 Provisional ballots.—

21       (2)

22       (b)1. If it is determined that the person was registered  
 23       and entitled to vote at the precinct where the person cast a  
 24       vote in the election, the canvassing board shall compare the  
 25       signature on the Provisional Ballot Voter's Certificate and  
 26       Affirmation or the Provisional Ballot Affidavit, if applicable,  
 27       with the signature on the voter's registration and, if it  
 28       matches, shall count the ballot.

29       2. If it is determined that the person voting the

Page 1 of 5

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

9-00119-16

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30 provisional ballot was not registered or entitled to vote at the  
 31 precinct where the person cast a vote in the election, the  
 32 provisional ballot shall not be counted and the ballot shall  
 33 remain in the envelope containing the Provisional Ballot Voter's  
 34 Certificate and Affirmation and the envelope shall be marked  
 35 "Rejected as Illegal."

36       (7) Until 5 p.m. on the second day following the election,  
 37       the supervisor of elections shall allow a person who has voted a  
 38       provisional ballot that does not include the person's signature  
 39       on the Provisional Ballot Voter's Certificate and Affirmation to  
 40       complete and submit an affidavit in order to cure the unsigned  
 41       provisional ballot. The supervisor of elections may allow a  
 42       person to submit an affidavit to cure an unsigned provisional  
 43       ballot only if the person's identity can otherwise be  
 44       ascertained through information provided in the Provisional  
 45       Ballot Voter's Certificate and Affirmation.

46       (a) The person must provide identification to the  
 47       supervisor of elections and must complete a provisional ballot  
 48       affidavit in substantially the following form:

49  
 50                                   PROVISIONAL BALLOT AFFIDAVIT

51       I, . . . , am a qualified voter in this election and  
 52       registered voter of . . . . County, Florida. I do solemnly swear or  
 53       affirm that I voted a provisional ballot and that I have not and  
 54       will not vote more than one ballot in this election. I  
 55       understand that if I commit or attempt any fraud in connection  
 56       with voting, vote a fraudulent ballot, or vote more than once in  
 57       an election, I may be convicted of a felony of the third degree,  
 58       fined up to \$5,000, and imprisoned for up to 5 years. I

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

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59 understand that my failure to sign this affidavit means that my  
60 provisional ballot will be invalidated.

61 ...(Voter's Signature)...

62 ...(Address)...

63  
64  
65  
66 (b) Instructions must accompany the provisional ballot  
67 affidavit in substantially the following form:

68  
69 READ THESE INSTRUCTIONS CAREFULLY BEFORE COMPLETING THE  
70 AFFIDAVIT. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY CAUSE YOUR  
71 BALLOT NOT TO COUNT.

72  
73 1. In order to cure the missing signature on your  
74 Provisional Ballot Voter's Certificate and Affirmation, your  
75 affidavit should be completed and returned as soon as possible  
76 so that it can reach the supervisor of elections of the county  
77 in which your precinct is located no later than 5 p.m. on the  
78 second day following the election.

79 2. You must sign your name on the line above (Voter's  
80 Signature).

81 3. You must make a copy of one of the following forms of  
82 identification:

83 a. Identification that includes your name and photograph:  
84 United States passport; debit or credit card; military  
85 identification; student identification; retirement center  
86 identification; neighborhood association identification; or  
87 public assistance identification; or

9-00119-16 2016532\_\_

88 b. Identification that shows your name and current  
89 residence address: current utility bill; bank statement;  
90 government check; paycheck; or government document (excluding  
91 voter identification card).

92 4. Place the envelope bearing the affidavit into a mailing  
93 envelope addressed to the supervisor of elections. Insert a copy  
94 of your identification in the mailing envelope. Mail, deliver,  
95 or have delivered the completed affidavit along with the copy of  
96 your identification to your county supervisor of elections. Be  
97 sure there is sufficient postage if mailed and that the  
98 supervisor's address is correct.

99 5. Alternatively, you may fax or e-mail your completed  
100 affidavit and a copy of your identification to the supervisor of  
101 elections. If e-mailing, please provide these documents as  
102 attachments.

103 6. Submitting a provisional ballot affidavit does not  
104 establish your eligibility to vote in this election or guarantee  
105 that your ballot will be counted. The county canvassing board  
106 determines your eligibility to vote through information provided  
107 on the Provisional Ballot Voter's Certificate and Affirmation,  
108 written evidence provided by the voter, and any other evidence  
109 presented by the supervisor of elections or a challenger. You  
110 may still be required to present additional written evidence to  
111 support your eligibility to vote no later than 5 p.m. on the  
112 second day following the election.

113 (c) The department and each supervisor of elections shall  
114 include the affidavit and instructions on their respective  
115 websites. The supervisor of elections shall include his or her  
116 office's mailing address, e-mail address, and facsimile number

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2016532\_\_

117 on the page containing the affidavit instructions; the  
118 department's instruction page must include the office mailing  
119 addresses, e-mail addresses, and facsimile numbers of all  
120 supervisors of elections or provide a conspicuous link to such  
121 addresses.

122 (d) The supervisor of elections shall attach each affidavit  
123 received to the appropriate provisional ballot envelope  
124 containing the Provisional Ballot Voter's Certificate and  
125 Affirmation.

126 Section 2. This act shall take effect July 1, 2016.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Criminal Justice, *Vice Chair*  
Military and Veterans Affairs, Space, and  
Domestic Security, *Vice Chair*  
Appropriations Subcommittee on  
Transportation, Tourism, and Economic  
Development  
Communications, Energy, and Public Utilities  
Rules  
Joint Legislative Auditing Committee

**SENATOR AUDREY GIBSON**  
9th District

February 11, 2016

Senator Anitere Flores, Chair  
Committee on Fiscal Policy  
413 Senate Office Building  
404 South Monroe Street  
Tallahassee, Florida 32399-1100

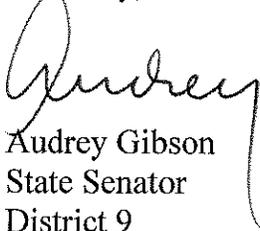
Chair Flores

I respectfully request that SB 532, relating to provisional ballots, be placed on the next committee agenda.

SB 532, requires the supervisor of elections to allow a person who voted a provisional ballot to submit an affidavit to cure an unsigned Provisional Ballot Voter's Certificate and Affirmation exactly like that of an unsigned vote by mail ballot. This bill passed in both of its previous committees.

Thank you for your time and consideration.

Sincerely,

  
Audrey Gibson  
State Senator  
District 9

**REPLY TO:**

- 101 E. Union Street, Suite 104, Jacksonville, Florida 32202 (904)359-2553 FAX: (904) 359-2532
- 205 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5009

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/16  
Meeting Date

532  
Bill Number (if applicable)

Topic Provisional Ballots

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title \_\_\_\_\_

Address 104 S. Monroe Street  
Tallahassee FL 32301  
Street City State Zip

Phone 850/425-1344

Email TcgLobby@aol.com

Speaking:  For  Against  Information

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

Representing STATE Conference of NAACP Branches

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)

2/17/16

Meeting Date

532

Bill Number (if applicable)

Topic PROVISIONAL BALLOTS

Amendment Barcode (if applicable)

Name RON LABASKY

Job Title

Address 225 S. ADAMS ST.

Phone 222-7712

Street

TALL

FL

32302

Email

City

State

Zip

Speaking: For [ ] Against [x] Information [ ]

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

Representing FLA. STATE ASSOC. OF SUPERVISORS OF ELECTIONS

Appearing at request of Chair: Yes [ ] No [x]

Lobbyist registered with Legislature: Yes [x] No [ ]

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

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: SB 550

INTRODUCER: Senator Dean

SUBJECT: Volunteer Rural Firefighting

DATE: February 16, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
2.	<u>Present</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Favorable</b>

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**I. Summary:**

SB 550 creates a Volunteer Rural Firefighter Certificate of Completion for volunteer firefighters who work for a fire service provider located within a municipality with a population of fewer than 12,000 or a county with a population of fewer than 150,000. The bill requires the Division of the State Fire Marshal to establish by rule, courses and course examinations to provide training for the Volunteer Rural Firefighter Certificate of Completion. The required courses may not exceed 160 hours and must include emergency medical responder training.

The bill has an indeterminate fiscal impact on the Department of Financial Services that can be absorbed within existing resources.

**II. Present Situation:**

**Division of the State Fire Marshal**

State law on fire prevention and control is provided in ch. 633, F.S., and s. 633.104, F.S., designates the Chief Financial Officer (CFO) as the State Fire Marshal, operating through the Division of the State Fire Marshal (division).<sup>1</sup> The State Fire Marshal:

- Regulates, trains, and certifies fire service personnel;
- Investigates the causes of fires;
- Enforces arson laws;
- Regulates the installation of fire equipment;
- Conducts firesafety inspections of state property;
- Develops firesafety standards;
- Provides facilities for the analysis of fire debris; and

---

<sup>1</sup> 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.

- Operates the Florida State Fire College.<sup>2</sup>

A “fire service provider” is a municipality or county, the state, or any political subdivision of the state, including authorities and special districts, employing firefighters or utilizing volunteer firefighters to provide fire extinguishment or fire prevention services for the protection of life and property. The term includes any organization under contract or other agreement with such entity to provide such services.<sup>3</sup>

### **Firefighters Employment, Standards, and Training Council**

The Firefighters Employment, Standards, and Training Council (council) is housed within the Department of Financial Services and consists of 14 members. The council is authorized to make recommendations for adoption by the division on:

- Uniform minimum standards for the employment and training of firefighters and training of volunteer firefighters.
- Minimum curriculum requirements for schools operated by or for any fire service provider for the specific purpose of training firefighter trainees, firefighters, and volunteer firefighters.
- Matters relating to the funding, general operation, and administration of the Bureau of Fire Standards and Training (Florida State Fire College), including, but not limited to, all standards, training, curriculum, and the issuance of any certificate of competency required by ch. 633, F.S.<sup>4</sup>

The council may also make or support studies on any aspect of firefighting employment, education, and training or recruitment.<sup>5</sup>

### **Volunteer Firefighters Certificate of Completion**

The division is required to establish the courses and course examinations required to receive the Volunteer Firefighter Certificate of Completion.<sup>6</sup> The training for a volunteer firefighter requires completion of Part I of the State of Florida Minimum Standards Course.<sup>7</sup> The Part I training curriculum is 206 hours of training and the following academic components:

- Firefighter I Curriculum – consisting of classroom and live fire based core training.
- National Incident Management System – focusing on the history, features, principles and organizational structure of the incident command.
- Wildland Firefighter Training – consisting of curriculum and field exercises that address the basic skills required of all wildland firefighters who must understand the behavior and factors that affect the spread of wildfires.

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<sup>2</sup> Section 633.104, F.S.

<sup>3</sup> Section 633.102(13), F.S.

<sup>4</sup> Section 633.402(9), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> Section 633.408(1)(b), F.S.

<sup>7</sup> As required by ch. 633, F.S., and Rules 69A-37 and 69A-62 F.A.C.

- EMS First Responder – consisting of curriculum that is an introduction to basic life support and emergency care.<sup>8</sup>

Fire service providers generally require, and are recommended by the division to require, that a candidate meet the following requirements:

- Is at least 18 years of age;
- Submits a set of fingerprints for a criminal background check; and
- Is in good physical condition as determined by a medical examination given by a physician, surgeon, or physician assistant licensed in the state pursuant to ch. 458, F.S.; an osteopathic physician, surgeon, or physician assistant licensed in the state pursuant to ch. 459, F.S.; or an advanced registered nurse practitioner licensed in the state pursuant to ch. 464, F.S.<sup>9, 10</sup>

A Volunteer Firefighter Certificate of Completion is awarded to a person who satisfactorily completes the training requirements for a volunteer firefighter.<sup>11</sup>

### Support Personnel

Other volunteers who do not seek the training needed for a Volunteer Firefighters Certificate of Completion may still be members of a Volunteer Fire Department. These volunteers are known as support personnel. Support personnel respond with volunteer firefighters and are part of the Volunteer Fire Department roster. They can perform all activities that a Volunteer Fire Department has trained them to perform safely outside the hot zone of an emergency scene, including pulling hoses, opening and closing fire hydrants, driving and operating apparatus, carrying tools, carrying or moving equipment, directing traffic, manning a resource pool, or similar activities.<sup>12</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 633.102, F.S., to define the term “volunteer rural firefighter” to mean an individual who holds a current and valid Volunteer Rural Firefighter Certificate of Completion issued by the division under s. 633.408, F.S., and provides fire extinguishment or fire prevention services through a fire service provider that:

- Is in existence on July 1, 2016, or that was in existence at any time between July 1, 2000, and July 1, 2016, and is subsequently reestablished after July 1, 2016; and
- Provides services in a municipality with a population of fewer than 12,000 or a county with a population of fewer than 150,000.

**Section 2** amends s. 633.406, F.S., to create a Volunteer Rural Firefighter Certificate of Completion for volunteer rural firefighters who provide services for a fire service provider

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<sup>8</sup> The Florida State Fire College, Division of the State Fire Marshal, *Guidelines for the Firefighter Part I Certificate of Completion Program (Volunteer Firefighter)*, Revision 2.0, (October 2015), available at [http://www.myfloridacfo.com/Division/SFM/BFST/Documents/REV\\_2\\_0\\_Guidelines\\_FF1.pdf](http://www.myfloridacfo.com/Division/SFM/BFST/Documents/REV_2_0_Guidelines_FF1.pdf) (last visited Feb. 10, 2016).

<sup>9</sup> Such medical examination may include, but is not limited to, the National Fire Protection Association Standard 1582.

<sup>10</sup> *Supra* note 8. See also s. 633.412(1)(e), F.S.

<sup>11</sup> Sections 633.408(5) and 633.406(1)(g), F.S.

<sup>12</sup> *Supra* note 8 and s. 633.102(3), F.S.

described above. The certificate is awarded to an individual who is satisfactorily completes the training requirements for a volunteer rural firefighter.

**Section 3** amends s. 633.408, F.S., to require the division to establish by rule the training courses and course examinations required to obtain a Volunteer Rural Firefighter Certificate of Completion. The required courses may not exceed 160 hours and must include emergency medical responder training. By rule any courses successfully completed on or after July 1, 1970, which were credited towards a certificate under ch. 633, F.S., can be applied toward the required training. The division is required to issue a Volunteer Rural Certificate of Completion to those who satisfactorily complete the course.

**Section 4** amends s. 633.414, F.S., to specify for a volunteer rural firefighter to retain his or her Volunteer Rural Firefighter Certificate of Completion, every four years he or she must be active as a volunteer rural firefighter or successfully complete a refresher course consisting of a minimum of 40 hours of training as prescribed by rule. The term “active” means providing service as a volunteer rural firefighter for a cumulative 6 months within a 4-year period.

**Section 5** amends s. 633.416, F.S., to allow a fire service provider to retain the services of an individual volunteering to extinguish fires or to supervise individuals who perform such services if the:

- Services will be performed in a municipality with a population of fewer than 12,000 or a county with a population of fewer than 150,000; and
- Individual holds a current and valid Volunteer Rural Firefighter Certificate of Completion or a current and valid Volunteer Firefighter Certificate of Completion.

This does not apply to a volunteer who provides only support services.

The bill requires a fire service provider to notify the division within 10 days of retaining or the release of a volunteer firefighter.

**Section 6** provides the bill is effective July 1, 2016.

#### **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:**

Individuals who volunteer to work for a fire service provider located within a municipality with a population of fewer than 12,000 or a county with a population of fewer than 150,000 will be able to take fewer hours of training to be certified. This should result in a cost savings from the current requirements of a volunteer firefighter certificate.

**C. Government Sector Impact:**

The bill creates a Volunteer Rural Firefighter Certificate of Completion and has an indeterminate fiscal impact on the Department of Financial Services that can be absorbed within existing resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The division will have to adopt by rule up to 160 hours of course work needed for the Volunteer Rural Firefighter Certificate of Completion.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 633.102, 633.406, 633.408, 633.414, and 633.416.

**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 Dean

5-00274A-16

2016550\_\_

A bill to be entitled

An act relating to volunteer rural firefighting; amending s. 633.102, F.S.; defining the term "volunteer rural firefighter"; amending s. 633.406, F.S.; authorizing the Division of State Fire Marshal within the Department of Financial Services to award a Volunteer Rural Firefighter Certificate of Completion; amending s. 633.408, F.S.; requiring the division to establish by rule courses and course examinations to provide training required to obtain the certificate; providing requirements for the courses for the certificate; requiring the division to award credit for certain approved courses successfully completed by a certain date; amending s. 633.414, F.S.; specifying the requirements for the retention of the certificate; amending s. 633.416, F.S.; revising the circumstances under which a fire service provider may retain the services of a volunteer firefighter; requiring a fire service provider to provide notice to the division regarding a decision to retain or not retain a volunteer rural firefighter; providing an effective date.

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

Section 1. Subsection (36) is added to section 633.102, Florida Statutes, to read:  
 633.102 Definitions.—As used in this chapter, the term:  
 (36) "Volunteer rural firefighter" means an individual who

Page 1 of 4

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

5-00274A-16

2016550\_\_

holds a current and valid Volunteer Rural Firefighter Certificate of Completion issued by the division under s. 633.408 and provides fire extinguishment or fire prevention services through a fire service provider that:

(a) Is in existence on July 1, 2016, or that was in existence at any time between July 1, 2000, and July 1, 2016, and is subsequently reestablished after July 1, 2016; and

(b) Provides services in a municipality with a population of fewer than 12,000 or a county with a population of fewer than 150,000.

Section 2. Paragraph (h) is added to subsection (1) of section 633.406, Florida Statutes, to read:

633.406 Classes of certification.—

(1) The division may award one or more of the following certificates:

(h) Volunteer Rural Firefighter Certificate of Completion.—  
A Volunteer Rural Firefighter Certificate of Completion may be awarded to a person who has satisfactorily completed the training requirements as prescribed by rule for a volunteer rural firefighter.

Section 3. Present paragraph (c) of subsection (1) of section 633.408, Florida Statutes, is redesignated as paragraph (d), a new paragraph (c) is added to that subsection, and subsection (5) of that section is amended, to read:

633.408 Firefighter and volunteer firefighter training and certification.—

(1) The division shall establish by rule:

(c) Courses and course examinations to provide training required to obtain a Volunteer Rural Firefighter Certificate of

Page 2 of 4

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

5-00274A-16

2016550\_\_

59 Completion. The required courses may not exceed 160 hours and  
 60 must include emergency medical responder training. The division  
 61 shall award credit toward a certificate under this paragraph, as  
 62 provided by rule adopted by the division, for any approved  
 63 course successfully completed on or after July 1, 1970, which  
 64 was creditable at the time of completion toward a certification  
 65 under this chapter.

66 (5) The division shall issue:

67 (a) A Volunteer Firefighter Certificate of Completion to  
 68 any individual who satisfactorily completes the course  
 69 established under paragraph (1)(b).

70 (b) A Volunteer Rural Firefighter Certificate of Completion  
 71 to any individual who satisfactorily completes the course  
 72 established under paragraph (1)(c).

73 Section 4. Present subsections (3), (4), and (5) of section  
 74 633.414, Florida Statutes, are redesignated as subsections (4),  
 75 (5), and (6), respectively, a new subsection (3) is added to  
 76 that section, and present subsection (4) is amended, to read:

77 633.414 Retention of firefighter certification.—

78 (3) In order for a volunteer rural firefighter to retain  
 79 her or his Volunteer Rural Firefighter Certificate of  
 80 Completion, every 4 years he or she must:

81 (a) Be active as a volunteer rural firefighter; or

82 (b) Successfully complete a refresher course consisting of  
 83 a minimum of 40 hours of training as prescribed by rule.

84 (5)(4) For the purposes of this section, the term "active"  
 85 means being employed as a firefighter or providing service as a  
 86 volunteer firefighter or volunteer rural firefighter for a  
 87 cumulative 6 months within a 4-year period.

5-00274A-16

2016550\_\_

88 Section 5. Subsection (2) and paragraph (a) of subsection  
 89 (4) of section 633.416, Florida Statutes, are amended to read:  
 90 633.416 Firefighter employment and volunteer firefighter  
 91 service; saving clause.—

92 (2) A fire service provider may ~~not~~ retain the services of  
 93 an individual volunteering to extinguish fires for the  
 94 protection of life or property or to supervise individuals who  
 95 perform such services only if:

96 (a) unless The individual holds a current and valid  
 97 Volunteer Firefighter Certificate of Completion; or

98 (b) The services will be performed in a municipality with a  
 99 population of fewer than 12,000 or a county with a population of  
 100 fewer than 150,000 and the individual holds a current and valid  
 101 Volunteer Rural Firefighter Certificate of Completion or a  
 102 current and valid Volunteer Firefighter Certificate of  
 103 Completion.

104  
 105 This subsection does not apply to a volunteer who provides only  
 106 support services.

107 (4) (a) A fire service provider must notify the division  
 108 electronically, as directed by rule by the division, within 10  
 109 days after:

110 1. The hiring of a firefighter.

111 2. The retention of a volunteer firefighter or a volunteer  
 112 rural firefighter.

113 3. The cessation of employment of a firefighter.

114 4. A decision not to retain a volunteer firefighter or a  
 115 volunteer rural firefighter.

116 Section 6. This act shall take effect July 1, 2016.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Environmental Preservation and  
Conservation, *Chair*  
Agriculture, *Vice Chair*  
Appropriations Subcommittee on General  
Government  
Children, Families, and Elder Affairs  
Community Affairs  
Ethics and Elections

**SENATOR CHARLES S. DEAN, SR.**

5th District

February 9, 2016

The Honorable Anitere Flores  
413 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Flores,

I respectfully request you place Senate Bill 550, relating to Volunteer Rural Firefighting, on your Fiscal Policy Committee agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

A handwritten signature in black ink that reads "Charles S. Dean".

Charles S. Dean  
State Senator District 5

cc: Jennifer Hrdlicka, Staff Director

**REPLY TO:**

- 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2 / 17 / 2016

Meeting Date

Topic \_\_\_\_\_

Bill Number 550

(if applicable)

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/CS/SB 562

INTRODUCER: Commerce and Tourism Committee; Banking and Insurance Committee; and Senator Stargel and others

SUBJECT: Consumer Debt Collection

DATE: February 16, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Pre-meeting</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 562 amends a provision of the Florida Consumer Collection Practices Act (FCCPA) which regulates consumer collection practices in order to protect consumers from deceptive, unfair, or abusive collection practices. The FCCPA prohibits a person collecting a consumer debt from communicating with a debtor if the person knows that a debtor is represented by an attorney.

The bill provides that an original creditor collecting a debt is not liable for communicating with a debtor if the debtor or debtor's attorney fails to provide notification of representation. A debtor's attorney provides notice of representation to an original creditor by:

- Service of pleadings in a filed action;
- Written notification by certified mail to the registered agent of the original creditor; or
- Notice of representation by mail, fax, email, or other electronic format, to a location designated by the creditor on a billing statement.

The bill requires the notice of representation to state that the debtor is represented by an attorney with respect to such debt and must disclose the attorney's name and address. The bill requires original creditors to designate at least one method of communication on a billing statement.

The bill also requires that an original creditor must cease direct communication with the debtor within 5 business days upon receiving notice of representation from the debtor's attorney.

The bill does not have a fiscal impact on state government.

## II. Present Situation:

Federal and state debt collection laws provide consumer protection against deceptive, unfair, or abusive collection practices that may occur before the debtor is sued, as well as during the litigation process.

Consumer debt covers personal debt such as mortgages, credit cards, medical debts, and other debts incurred mainly for individual, family, or household purposes. Depending on the terms of the loan, a grace period may be provided before a debt becomes delinquent.<sup>1</sup> Most credit issuers will attempt to collect on a delinquent debt between 120-180 days after delinquency, before it is deemed uncollectible and is “charged-off” corporate accounts.<sup>2</sup> Typically, the charged-off debt is then either assigned or sold to a third-party collection agency or collection law firm, which uses a variety of collection methods and judgment remedies to recover the asset, subject to applicable statutes of limitations. These remedies enable creditors to minimize losses due to nonpayment by borrowers, and help ensure the availability and affordability of consumer credit.<sup>3</sup>

Between 2001 and 2013, on average, 10.1 percent of outstanding credit card debt was reported as being more than 90 days delinquent. For the same period, 8 percent of student loans and 3.8 percent of mortgage loans were reported as being more than 90 days delinquent.<sup>4</sup> In 2013, the proportion of American consumers with at least one account in third-party collections stood at 14 percent and the total amount collected from them by third-party debt collectors was approximately \$55 billion.<sup>5</sup>

In 2014, the federal Consumer Financial Protection Bureau processed over 88,300 debt collection complaints, making debt collection the leading source of consumer complaints. Approximately 2 percent of these complaints related to a consumer being contacted directly, instead of the debt collector contacting the attorney.<sup>6</sup>

### Federal Fair Debt Collection Practices Act

The Fair Debt Collection Practices Act (FDCPA) protects consumers from harmful debt collection practices and to protect ethical collectors from an unfair competitive disadvantage. The Federal Trade Commission and the Consumer Financial Protection Bureau are the primary federal enforcement agencies of the FDCPA. The FDCPA establishes standards of conduct for

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<sup>1</sup> Consumer Financial Protection Bureau, Debt Collection, *Are there laws that limit what debt collectors can say or do?* (September 15, 2014), available at <http://www.consumerfinance.gov/> (last visited February 5, 2016).

<sup>2</sup> A debt “charged-off” is generally a debt that is deemed uncollectible by the reporting firm and subsequently written off. Investopedia, *Charge-off*, available at <http://www.investopedia.com/terms/c/chargeoff.asp> (last visited February 5, 2016).

<sup>3</sup> *Supra* note 1 at *What is a debt collector?*

<sup>4</sup> Viktor Fedaseyev, Working Papers Research Department, *Working Paper NO. 15-23 Debt Collection Agencies and the Supply of Consumer Credit*, p. 1, (June 19, 2015).

<sup>5</sup> Viktor Fedaseyev and Robert Hunt, Working Papers Research Department, *Working Paper NO. 15-43 The Economics of Debt Collection: Enforcement of Consumer Credit Contracts*, p. 1, (November 2015).

<sup>6</sup> Consumer Financial Protection Bureau, *Fair Debt Collection Practices Act, CFPB Annual Report 2015*, pp. 2 and 15, (March 2015) available at [http://files.consumerfinance.gov/f/201503\\_cfpb-fair-debt-collection-practices-act.pdf](http://files.consumerfinance.gov/f/201503_cfpb-fair-debt-collection-practices-act.pdf) (last visited February 5, 2016).

the collection industry by prohibiting abusive, deceptive, and unfair debt collection practices. The FDCPA applies to third-party debt collectors, which include contingency agencies, collection law firms, and debt buyers. A violation of the FDCPA carries a penalty of up to \$1,000 per violation.<sup>7</sup>

### **Florida Consumer Collection Practices Act**

In Florida, consumer debt collection practices are regulated by the FDCPA and the Florida Consumer Collection Practices Act (FCCPA).<sup>8</sup> The FCCPA gives regulatory oversight authority to the Office of Financial Regulation and authorizes the Attorney General to initiate enforcement actions against out-of-state consumer debt collectors that violate the act.<sup>9</sup>

Both acts provide private civil remedies to debtors for violations and if successful, the debtor may recover actual and statutory damages and reasonable attorney's fees and costs.<sup>10</sup> The FCCPA also provides that a person cannot be held liable if the person shows that the violation was not intentional and resulted from a bona fide error. If the court finds that the suit fails to raise justiciable issue of law or fact, the debtor is liable for court costs and reasonable attorney's fees incurred by the defendant.<sup>11</sup>

The FCCPA prohibits many of the same debt collection practices prohibited by the FDCPA but also provides additional requirements and regulations.<sup>12</sup> For instance, the FDCPA excludes original creditors from its provisions while the FCCPA has been construed to apply to both debt collectors and original creditors.<sup>13</sup> The FCCPA provides greater protection than the FDCPA because it forbids *a person*, rather than only debt collectors, from practicing certain consumer debt collection practices.<sup>14</sup>

### **Communication with Debtor Represented by Counsel**

Both the federal and state laws generally prohibit a debt collector from communicating with a debtor when the debt collector knows the debtor is represented by an attorney.<sup>15</sup> However, the FCCPA prohibits *a person* from communicating with a debtor if the person knows that the debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address.<sup>16</sup>

There are three exceptions to this prohibition, thus allowing the communication if:

- Debtor's attorney fails to respond within 30 days to a communication from the person;
- Debtor's attorney consents to a direct communication with the debtor; or

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<sup>7</sup> 15 U.S.C. s. 1692, *et seq.*

<sup>8</sup> Part VI of ch. 559, F.S.

<sup>9</sup> Section 559.565, F.S.

<sup>10</sup> 15 U.S.C. s. 1692k and s. 559.77, F.S.

<sup>11</sup> Section 559.77, F.S.

<sup>12</sup> Section 559.552, F.S.

<sup>13</sup> *Craig v. Park Fin. of Broward County, Inc.*, 390 F. Supp. 2d 1150, 1154-1155 (M.D. Fla. 2005).

<sup>14</sup> Section 559.72, F.S.

<sup>15</sup> 15 U.S.C. 1692c and s. 559.72(18), F.S.

<sup>16</sup> Section 559.72(18), F.S.

- Debtor initiates the communication.<sup>17</sup>

If a person contacts a debtor known to be represented by an attorney and one of the listed exceptions does not apply, that person may be liable for violating s. 559.72(18), F.S., unless the person can show by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error.<sup>18</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 559.72(18), F.S., to clarify that a debtor may notify a person collecting consumer debts of attorney representation by any reasonable means, including verbal notice.

The bill also provides that an original creditor collecting a debt is not liable for communicating with a debtor if the debtor or debtor's attorney fails to provide notification of representation. A debtor's attorney provides notice of representation to an original creditor by:

- Service of pleadings in a filed action;
- Written notification by certified mail to the registered agent of the original creditor that states that the debtor is represented by an attorney on such debt and discloses the attorney's name and address; or
- Mail, fax, email, or other electronic format designated by the creditor on a billing statement that states the debtor is represented by an attorney on such debt and discloses the attorney's name and address.

Original creditors are required to designate at least one method of communication on a billing statement. This ensures that notice of representation is provided to a location designated by the original creditor and that the original creditor is provided information that allows the original creditor to communicate with the debtor's attorney, rather than the debtor.

The bill requires that an original creditor to cease direct communication with the debtor within 5 business days upon receiving notice of representation from the debtor's attorney.<sup>19</sup>

**Section 2** provides the bill is effective July 1, 2016.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

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<sup>17</sup> *Id.*

<sup>18</sup> Section 559.77, F.S.

<sup>19</sup> This allows the original creditor avoid liability for violations of the FCCPA that may occur within 5 days business days upon receiving notice of attorney representation has occurred.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

A debtor may incur additional costs associated with the requirement to provide the notice of attorney representation if the debtor's attorney decides to give notice by certified mail. Original creditors may benefit by requiring notice of attorney representation to be delivered by one of the means provided in the bill. If notice is received at the proper address, original creditors will be less likely to violate the statute and incur associated fines.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The term "original creditor" is not defined in part VI of ch. 559, F.S. The terms "creditor" and "debt collector" are defined.<sup>20</sup>

**VIII. Statutes Affected:**

This bill substantially amends section 559.72 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/CS by Commerce and Tourism on February 1, 2016:**

The bill is amended to clarify that a debtor or a debtor's attorney may provide notice of attorney representation. The bill creates a requirement that an original creditor must cease

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<sup>20</sup> A "debt collector" is any person who uses any instrumentality of interstate commerce in any business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. A "creditor" is any person who offers or extends credit creating a debt or to whom a debt is owed but excludes persons that receives debt, through assignment or transfer, for the purpose of collecting the debt on behalf of another. *See* ss. 559.55(5) and (7), F.S.

communication with a debtor within 5 business days of receiving notice of representation from the debtor's attorney.

The bill also provides additional alternatives for a debtor's attorney to provide notice of representation. A debtor's attorney may provide notice of representation by:

- Service of pleadings in a filed action;
- Providing written notification by certified mail; or
- Providing notice of representation by mail, fax, email, or other electronic format, to a location designated by the creditor on a billing statement.

**CS by Banking and Insurance on January 19, 2016:**

The CS provides the following changes;

- Reinstates current law, which provides a prohibition on contacting a debtor when the person collecting the debt knows that the debtor is represented by an attorney with respect to the debt and, though lacking actual knowledge of the name and address of the debtor's attorney, the person is otherwise able to "*readily ascertain*" the name and address of the debtor's attorney.
- Provides that the prohibition against an original creditor contacting the debtor would also not apply if the debtor's attorney fails to provide notice of representation by certified mail at the address designated on the billing statement by the original creditor or to the registered agent of the original creditor. A debtor's attorney may also provide notice of representation to an original creditor by virtue of pleadings and other filings in a filed action.
- Eliminates the provision allowing the Office of Financial Regulation to adopt rules for notice of representation and receipt of response

**B. Amendments:**

None.



LEGISLATIVE ACTION

Senate		House
.		
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.		
.		
.		
.		

The Committee on Fiscal Policy (Stargel) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Subsection (18) of section 559.72, Florida Statutes, is amended to read:

559.72 Prohibited practices generally.—In collecting consumer debts, no person shall:

(18) Communicate with a debtor if the person knows that the debtor is represented by an attorney with respect to such debt



11 and has knowledge of, or can readily ascertain, such attorney's  
12 name and address.

13 (a) ~~This subsection does not apply if; unless~~

14 1. The debtor's attorney fails to respond within 30 days to  
15 a communication from the person; unless

16 2. The debtor's attorney consents to a direct communication  
17 with the debtor; or

18 3. unless The debtor initiates the communication.

19 (b) A creditor has knowledge that a debtor is represented  
20 by an attorney if the debtor, individually, has provided notice  
21 of representation by any reasonable means, including oral notice  
22 to a creditor if such oral notice is provided in response to a  
23 communication initiated by the creditor with respect to such  
24 debt.

25 (c) A creditor has knowledge that a debtor is represented  
26 by an attorney if the attorney representing the debtor has  
27 provided notice of such representation by:

28 1. Service of pleadings in a filed action with respect to  
29 such debt;

30 2. Providing written notice of representation to a location  
31 or person according to a prior agreement between the creditor  
32 and the debtor's attorney which states the debtor is represented  
33 by an attorney with respect to such debt and discloses the  
34 attorney's name and address;

35 3. Providing written notice of representation by certified  
36 mail to the registered agent of the creditor which states that  
37 the debtor is represented by an attorney with respect to such  
38 debt and discloses the attorney's name and address; or

39 4. Providing written notice of representation by mail,



40 facsimile, email, or other electronic format designated by the  
41 creditor on a billing statement or other written communication  
42 pertaining to the debt which states that the debtor is  
43 represented by an attorney with respect to such debt and  
44 discloses the attorney's name and address.

45 (d) A creditor shall designate, on a billing statement or  
46 other written communication pertaining to the debt, at least one  
47 of the following communication methods for notice of  
48 representation:

- 49 1. A mailing address;
- 50 2. A facsimile;
- 51 3. An email address; or
- 52 4. Other electronic format.

53 (e) For the purposes of this subsection, a creditor must  
54 cease direct communication with the debtor subject to the  
55 limitations and exceptions of this subsection within 5 business  
56 days upon receiving notice of representation from the attorney  
57 representing the debtor.

58 Section 2. This act shall take effect July 1, 2016.

59  
60 ===== T I T L E A M E N D M E N T =====

61 And the title is amended as follows:

62 Delete everything before the enacting clause  
63 and insert:

64 A bill to be entitled

65 An act relating to consumer debt collection; amending  
66 s. 559.72, F.S.; specifying methods by which a debtor,  
67 represented by an attorney, may notify a creditor of  
68 such representation; specifying methods by which an



69 attorney representing a debtor may notify a creditor  
70 of such representation; requiring a creditor to  
71 identify the manner by which a debtor may communicate  
72 notice of representation; providing a creditor must  
73 cease direct communication with the debtor under  
74 certain circumstances; providing an effective date.

By the Committees on Commerce and Tourism; and Banking and Insurance; and Senators Stargel and Gaetz

577-02904-16

2016562c2

A bill to be entitled

An act relating to consumer debt collection; amending s. 559.72, F.S.; authorizing a debtor to individually notify a person that is represented by an attorney under certain circumstances; providing that an original creditor is not liable for a violation of prohibited communication practices if the debtor or the debtor's attorney fails to provide certain notice or information; providing notification requirements; providing that an original creditor must cease direct communication with the debtor under certain circumstances; providing an effective date.

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

Section 1. Subsection (18) of section 559.72, Florida Statutes, is amended to read:

559.72 Prohibited practices generally.—In collecting consumer debts, no person shall:

(18) Communicate with a debtor if the person knows that the debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the debtor's attorney fails to respond within 30 days to a communication from the person, ~~unless~~ the debtor's attorney consents to a direct communication with the debtor, or ~~unless~~ the debtor initiates the communication. A debtor, individually, may notify such person of attorney representation by way of any reasonable means, including verbal notice.

(a) An original creditor is not liable for a violation of this subsection if the debtor or debtor's attorney fails to

Page 1 of 2

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

577-02904-16

2016562c2

provide notification of representation. With respect to notification of representation by a debtor's attorney, an original creditor has knowledge that a debtor is represented by an attorney if the attorney representing the debtor has provided notification of such representation by:

1. Service of pleadings in a filed action;

2. Providing written notice of representation by certified mail to the registered agent of the original creditor which states that the debtor is represented by an attorney with respect to such debt and which discloses the attorney's name and address; or

3. Providing notice of representation by mail, facsimile, e-mail, or other electronic format designated by the creditor on a billing statement which states that the debtor is represented by an attorney with respect to such debt and which discloses the attorney's name and address. The original creditor shall designate at least one of the following communication methods on a billing statement: a mailing address facsimile, e-mail, or other electronic format.

(b) For purposes of this subsection, an original creditor must cease direct communication with the debtor subject to the limitations and exceptions of this subsection within 5 business days upon receiving notice of representation from the attorney representing the debtor.

Section 2. This act shall take effect July 1, 2016.

Page 2 of 2

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Higher Education, *Chair*  
Appropriations Subcommittee on Education  
Fiscal Policy  
Judiciary  
Military and Veterans Affairs, Space, and Domestic Security  
Regulated Industries

**SENATOR KELLI STARGEL**  
15th District

**JOINT COMMITTEE:**  
Joint Committee on Public Counsel Oversight

February 3, 2016

The Honorable Anitere Flores  
Senate Fiscal Policy Committee, Chair  
413 Senate Office Building  
404 S. Monroe Street  
Tallahassee, FL 32399

Dear Chair Flores:

I respectfully request that SB 562, related to *Consumer Debt Collection*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Kelli Stargel".

Kelli Stargel  
State Senator, District 15

Cc: Jennifer Hrdlicka/ Staff Director  
Tamra Lyon/ AA

**REPLY TO:**

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/17/16

Meeting Date

562

Bill Number (if applicable)

216992

Amendment Barcode (if applicable)

Topic Debt collection

Name TODD MICHAELS

Job Title Attorney

Address 330 ~~W~~ ALHAMBRA CIRCLE

Phone 305/775-0339

CORAL GABLES, FL. 33134

Email tjm@haggardbutts.com

City State Zip

Speaking:  For  Against  Information

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

Representing ~~CONSUMERS~~ FJA

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.

\_\_\_\_\_

THE FLORIDA SENATE

APPEARANCE RECORD

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2/17/16  
Meeting Date

5628  
Bill Number (if applicable)

Topic Debt Collection Strike All Amendment 216992  
Amendment Barcode (if applicable)

Name Anthony DiMarco

Job Title EVO of Govt. Affairs

Address 1001 W. Warrasville Rd

Phone 224-22605

Street Tallahassee  
City State FL Zip 32303

Email adimario@perilabators.com

Speaking:  For  Against  Information

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

Representing Florida Bankers Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/17/16  
Meeting Date

562  
Bill Number (if applicable)

216992  
Amendment Barcode (if applicable)

Topic Debt Collection

Name Patrick Kennedy

Job Title Attorney

Address 10720 72nd st Suite 305  
Street

Phone 727-214-0700

Largo FL 33177  
City State Zip

Email patrick@finnlawgroup.com

Speaking:  For  Against  Information

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

Representing Finn Law Group

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Feb. 17, 14  
Meeting Date

562  
Bill Number (if applicable)

Topic Consumer Debt Collection & Physicians

216992  
Amendment Barcode (if applicable)

Name Toni Large

Job Title \_\_\_\_\_

Address 519 E. Park Ave.  
Street  
Tallahassee, FL 32308  
City State Zip

Phone (850) 556-1461

Email toni@sulaw.net

Speaking:  For  Against  Information

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

Representing Florida Orthopedic Society (orthopedic surgeons)

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/14

Meeting Date

562

Bill Number (if applicable)

216992

Amendment Barcode (if applicable)

Topic Consumer Collections

Name Clint Shoupe

Job Title State Govt Rep

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 BayCare

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)

2/17/16

Meeting Date

562

Bill Number (if applicable)

216992

Amendment Barcode (if applicable)

Topic Amendment 216992 to SB562

Name Jean Vansmith

Job Title Senior Manager, Govt. Relations

Address

Street

Orlando

City

FL

State

Zip

Phone 813-482-6393

Email jean.vansmith@flhosp.org

Speaking:  For  Against  Information

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

Representing Florida Hospital

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/16  
Meeting Date

562  
Bill Number (if applicable)

Topic Debt Collection

Amendment Barcode (if applicable)

Name Patrick Kennedy

Job Title Attorney

Address 10720 72nd St Suite 305  
Street

Phone 727-214-0700

Largo FL 33777  
City State Zip

Email patrick@finnlawgroup.com

Speaking:  For  Against  Information

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

Representing Finh Law Group

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/16  
Meeting Date

562  
Bill Number (if applicable)

Topic Debt collection

Amendment Barcode (if applicable)

Name TODD MICHAELS

Job Title Attorney

Address 330 ALHAMBRA CIRCLE

Phone 305-775-0339

CORAL GABLES, FL 33134  
Street City State Zip

Email tjm@hayswardlaw.com

Speaking:  For  Against  Information

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

Representing ~~CONSULTANT~~ FJA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

**APPEARANCE RECORD**

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

2/17/2016

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 562  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

*Street*

SAINT PETERSBURG                      FLORIDA                      33705

E-mail JUSTICE2JESUS@YAHOO.COM

*City*

*State*

*Zip*

Speaking:     For     Against     Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:     Yes     No

Lobbyist registered with Legislature:     Yes     No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/14  
Meeting Date

562  
Bill Number (if applicable)

Topic Debt Collection Bill

Amendment Barcode (if applicable)

Name Anthony DiMarco

Job Title  EVP of Govt. Affairs

Address 1001 Thomasville Rd

Phone 224-2267

Tallahassee FL 32303  
City State Zip

Email adimarco@floridabankers.com

Speaking:  For  Against  Information

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

Representing Florida Bankers Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/16

Meeting Date

562

Bill Number (if applicable)

Topic SB562

Amendment Barcode (if applicable)

Name Jean Vansmith

Job Title Senior Manager, Govt. Relations

Address

Phone 813-482-6393

Street

Orlando

FL

City

State

Zip

Email jean.vansmith@flhosp.org

Speaking:  For  Against  Information

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

Representing Florida Hospital

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/16

Meeting Date

562

Bill Number (if applicable)

Topic Consumer Collection

Amendment Barcode (if applicable)

Name Clint Shoup

Job Title State Court Auctioneer

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 BayCare

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/16  
Meeting Date

562  
Bill Number (if applicable)

Topic Consumer Debt

Amendment Barcode (if applicable)

Name Alice Vickers

Job Title Attorney

Address 623 Beard St.

Phone 850 556 3121

Tallahassee FL 32303  
City State Zip

Email alicevickers@flacp.org

Speaking:  For  Against  Information

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

Representing Florida Alliance for Consumer Protection

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/16  
Meeting Date

562  
Bill Number (if applicable)

Topic Consumer Debt Collection

Amendment Barcode (if applicable)

Name Tammy Perdue

Job Title General Counsel

Address 516 N. Adams St  
Street

Phone 850-224-7173

JLH  
City State Zip

Email tperdue@aif.com

Speaking:  For  Against  Information

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

Representing Associated Industries of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/16  
Meeting Date

ABX 562  
Bill Number (if applicable)

Topic Consumer Debt Collection

Amendment Barcode (if applicable)

Name Greg Black

Job Title Attorney

Address 119 S. Monroe Street, Ste 200  
Street

Phone (850) 205-9000

ILW FL 32301  
City State Zip

Email greg.black@mhoFirm.com

Speaking:  For  Against  Information

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

Representing Business 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.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/16  
Meeting Date

SB 542  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Frank Meiners

Job Title \_\_\_\_\_

Address PO BOX 11633  
Street

Phone (850) 591-0177

Tall FL 32302  
City State Zip

Email frank@chqmail

Speaking:  For  Against  Information

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

Representing FL Collectors Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

---

BILL: CS/SB 620

INTRODUCER: Fiscal Policy Committee and Senator Grimsley

SUBJECT: Medical Examiners

DATE: February 18, 2016

REVISED: \_\_\_\_\_

---

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	<b>Favorable</b>
2.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Fav/CS</b>

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 620 prohibits counties and district medical examiners from charging members of the public a fee for an examination, investigation, or autopsy performed to determine the cause of death under certain circumstances. As long as the death is not under the jurisdiction of the medical examiner because the death involved circumstances listed in s. 406.11(1)(a), F.S., a county can charge a fee for the medical examiner's approval of the cremation, burial at sea, or dissection of a body of:

- \$50 if adopted by resolution or ordinance.
- An amount established by resolution or ordinance on or before February 17, 2016, if the county has issued 3,000 or more medical examiner approvals in the past calendar year.

The bill is not expected to have an impact on state funds.

**II. Present Situation:**

**Medical Examiners Act**

The "Medical Examiners Act" (act) establishes minimum and uniform requirements for statewide medical examiner services.<sup>1</sup> The act establishes the Medical Examiners Commission (commission) within the Florida Department of Law Enforcement (FDLE) and requires the

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<sup>1</sup> Section 406.01, F.S.

commission to initiate cooperative policies with state agencies; investigate, suspend, and remove medical examiners for violations; establish medical examiner districts; oversee the distribution of state funds for the medical examiner districts; and make any necessary agreements and contracts.<sup>2</sup> Each medical examiner district is served by a medical examiner who is appointed by the Governor.<sup>3</sup> Currently, there are 24 medical examiner districts.<sup>4</sup>

Medical examiners are required to determine the cause of death of a person and perform the necessary examinations, investigations, and autopsies if requested by the state attorney or when a person dies under the following circumstances:

- Due to criminal violence;
- By accident;
- By suicide;
- Suddenly, when in apparent good health;
- Unattended by a practicing physician or other recognized practitioner;
- In any prison or penal institution;
- In police custody;
- In any suspicious or unusual circumstance;
- By criminal abortion;
- By poison;
- By disease constituting a threat to public health; or
- By disease, injury, or toxic agent resulting from employment.<sup>5</sup>

Medical examiners must also determine the cause of death when:

- A dead body is brought into the state without proper medical certification; or
- A dead body is to be cremated, dissected, or buried at sea.<sup>6</sup>

Currently, funeral directors must refer cases of death due to *the causes or conditions* listed above, or that occurred more than 12 months after the decedent was last treated by a primary care or attending physician, or for which there is reason to believe the death was caused by an unlawful act or neglect, to the district medical examiner of the county in which the death occurred or the body was found for a cause of death determination. Medical examiners must complete and sign a medical certification of cause of death for dead bodies that come under their jurisdictions.<sup>7</sup>

A dead human body cannot be cremated without the approval of the district medical examiner. The approval process differs from one district to another. Some medical examiner districts require written approval while others may allow approval by telephone. However, in no district

---

<sup>2</sup> See ss. 406.02 and 406.05, F.S. The commission consists of seven members appointed by the Governor, one member appointed by the Attorney General, and one member appointed by the State Surgeon General.

<sup>3</sup> Section 406.06, F.S.

<sup>4</sup> See Florida Medical Examiner Districts, available at <http://myfloridamedicalexaminer.com/> (last visited on February 10, 2016).

<sup>5</sup> Section 406.11(1)(a), F.S. See also s. 382.011(1), F.S.

<sup>6</sup> Section 406.11(1)(b) and (c), F.S.

<sup>7</sup> Section 382.011, F.S.

is written approval allowed to be made in the death record margins or in such a way to deface the death record.<sup>8</sup>

### **Medical Examiner Fees**

District and associate medical examiners are entitled to reasonable salary and fees as established by the board of county commissioners in the respective districts.<sup>9</sup> District medical examiners must submit annual budget information to the board of county commissioners for approval.<sup>10</sup> Each specific fee must be approved by the board of county commissioners in each county within the district. Fees vary from county to county and in some districts, fees are paid directly to the medical examiner's office, while in other districts, fees go directly to the county's general revenue fund.<sup>11</sup>

### ***Cremation Fees***

Most medical examiner districts charge a user fee for the services related to the determination of the cause of death when a body is to be cremated. Fees charged by district medical examiner's offices for the services provided to determine the cause of death vary from district to district. According to the commission, of the 24 medical examiner districts, three districts (14, 20, and 22) do not charge cremation approval fees, while 21 districts charge varying fees. District 11 (Miami-Dade County) charges the highest fee at \$63 and district 17 (Broward County) charges \$54 for cremation approval.<sup>12</sup> In 2014, the total amount of revenue generated from these fees was approximately \$3.98 million.<sup>13</sup>

It is unclear whether medical examiners have statutory authority to collect a cremation authorization fee for a cause of death determination performed when a body is to be cremated, dissected, or buried at sea.<sup>14</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 382.011(1), F.S., to prohibit counties and district medical examiners from charging members of the public a fee for an examination, investigation, or autopsy performed to determine the cause of death involving circumstances listed in s. 406.11(1), F.S.

---

<sup>8</sup> See DOH, Bureau of Vital Statistics, *Vital Records Registration Handbook*, (February 2015 Revision) p. 67, available at <http://www.floridahealth.gov/certificates/certificates/documents/HB2015v2.pdf> (last visited on February 10, 2016).

<sup>9</sup> Section 406.06(3), F.S.

<sup>10</sup> Section 406.08, F.S. Some medical examiner budgets are established through a fee-for-service contract with the county government. Medical examiner services are provided by private contract in districts 1, 2, 5, 6, 8, 10, 12, 14, 16, 20, 21, and 22. See *Infra* note 11.

<sup>11</sup> See FDLE, *2016 Legislative Bill Analysis HB 315/Revised* (December 14, 2015) (on file with the Senate Committee on Health Policy).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> See Op. Atty Gen. Fla. 2003-57 (2003). Medical examiners, like other public officers, have no legal claim for official services rendered, except when, and to the extent that, compensation is provided by law, and when no compensation is so provided rendition of such services is deemed to be gratuitous. [The Attorney General is]...aware of no authority in Chapter 406, or elsewhere in the statutes, for the medical examiner to charge a cremation authorization fee. In the absence of any such statutory authorization, it is my opinion that this service is to be provided without charge to the public as a service of the office.

As long as the death is not under the jurisdiction of the medical examiner because the death involved circumstances listed in s. 406.11(1)(a), F.S., a county can charge a fee for the medical examiner's approval of the cremation, burial at sea, or dissection of a body of:

- \$50 if adopted by resolution or ordinance.
- An amount established by resolution or ordinance on or before February 17, 2016, if the county has issued 3,000 or more medical examiner approvals in the past calendar year.

The bill also clarifies *the circumstances* under which a funeral director must refer a death case to the district medical examiner.

The bill is effective on October 1, 2016.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Article VII, subsection 18(b) of the Florida Constitution prohibits the legislature from enacting a general law that reduces the authority that municipalities or counties have to raise revenues in the aggregate, unless each chamber of the Legislature enacts such law by two-thirds vote or unless an exemption applies. Subsection 18(d) provides an exemption for laws determined to have an "insignificant fiscal impact." The fiscal impact of this bill is indeterminate, but it is likely to have an insignificant impact. If the insignificant threshold is exceeded, the bill will require a two-thirds vote of the membership of each house.

##### **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 a positive fiscal impact on those in the private sector who would have been charged a user fee that is reduced or prohibited by the bill.

##### **C. Government Sector Impact:**

Local governments may incur a loss in revenue if they currently charge user fees to cover costs of operations that are reduced or prohibited by the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 382.011 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 Fiscal Policy on February 17, 2016:**

The committee substitute allows counties that have issued 3,000 or more medical examiner approvals in the past year to continue to charge the medical examiner approval fee established by resolution or ordinance prior to February 17, 2016.

- B. **Amendments:**

None.



789460

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Margolis) recommended the following:

- 1       **Senate Amendment**
- 2
- 3       Delete line 30
- 4       and insert:
- 5       a fee for medical examiner approval not to exceed \$50 or the fee
- 6       amount established by the board in a county that issued more
- 7       than 3,000 such approvals during the previous calendar year when
- 8       a



927632

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Margolis) recommended the following:

- 1       **Senate Amendment to Amendment (789460)**
- 2
- 3       Delete line 6
- 4       and insert:
- 5       amount established by the board on or before February 17, 2016
- 6       in a county that issued more



336552

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/18/2016	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Bean) recommended the following:

**Senate Amendment**

Delete line 34

and insert:

listed in s. 406.11(1)(a). The fee may not be charged for the death of a person who served in the Armed Forces of the United States or for the death of a minor, as evidenced by the death record filed with the department electronic death registration system.



639124

LEGISLATIVE ACTION

Senate	.	House
Comm: OO	.	
02/18/2016	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Sachs) recommended the following:

**Senate Amendment to Amendment (336552)**

Delete line 9

and insert:

system. A charge of any kind may not be levied by any government, business, or other entity for cremation or for items or services related to the cremation of a veteran who served in the Armed Forces of the United States which exceeds the maximum veterans affairs benefit for the reimbursement of cremation expenses.

By Senator Grimsley

21-00634-16

2016620\_\_

1 A bill to be entitled  
 2 An act relating to medical examiners; amending s.  
 3 382.011, F.S.; providing that a member of the public  
 4 may not be charged for certain examinations,  
 5 investigations, or autopsies; authorizing a county to  
 6 charge a medical examiner approval fee under certain  
 7 circumstances; providing an effective date.  
 8

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

11 Section 1. Subsection (1) of section 382.011, Florida  
 12 Statutes, is amended to read:

13 382.011 Medical examiner determination of cause of death.—  
 14 (1) In the case of any death or fetal death involving the  
 15 circumstances due to causes or conditions listed in s. 406.11(1)  
 16 ~~s. 406.11~~, any death that occurred more than 12 months after the  
 17 decedent was last treated by a primary or attending physician as  
 18 defined in s. 382.008(3), or any death for which there is reason  
 19 to believe that the death may have been due to an unlawful act  
 20 or neglect, the funeral director or other person to whose  
 21 attention the death may come shall refer the case to the  
 22 district medical examiner of the county in which the death  
 23 occurred or the body was found for investigation and  
 24 determination of the cause of death. A county or district  
 25 medical examiner may not charge a member of the public a fee for  
 26 an examination, investigation, or autopsy performed to determine  
 27 the cause of death involving the circumstances listed in s.  
 28 406.11(1). However, a county, by resolution or ordinance of the  
 29 board of county commissioners, may charge a member of the public

Page 1 of 2

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

21-00634-16

2016620\_\_

30 a fee for medical examiner approval not to exceed \$50 when a  
 31 body is to be cremated, buried at sea, or dissected, provided  
 32 the fee is not charged for a death under the jurisdiction of the  
 33 medical examiner when such death involves the circumstances  
 34 listed in s. 406.11(1)(a).  
 35

Section 2. This act shall take effect October 1, 2016.

Page 2 of 2

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Anitere Flores, Chair  
Committee on Fiscal Policy

**Subject:** Committee Agenda Request

**Date:** February 9, 2016

---

I respectfully request that **Senate Bill #620**, relating to Medical Examiners, be placed on the:

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

A handwritten signature in cursive script that reads "Denise Grimsley".

---

Senator Denise Grimsley  
Florida Senate, District 21

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/16  
Meeting Date

620  
Bill Number (if applicable)

Topic MEDICAL EXAMINERS

927632  
Amendment Barcode (if applicable)

Name JACK MERRAY

Job Title \_\_\_\_\_

Address 200 W. COLLEGE AVE, #304  
Street

Phone 950-577-5227

TCH FL 32301  
City State Zip

Email jmerray@aacp.org

Speaking:  For  Against  Information

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

Representing AARP

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/14  
Meeting Date

620  
Bill Number (if applicable)

789460  
Amendment Barcode (if applicable)

Topic Medical Examiner bill

Name Claudia DAVANT

Job Title

Address 205 S. Adams  
Street

Phone 850-567-0979

City State Zip

Email

Speaking:  For  Against  Information

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

Representing Broward 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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/16 Meeting Date

620 Bill Number (if applicable)

Topic MEDICAL EXAMINERS

789460 Amendment Barcode (if applicable)

Name JACK MURRAY

Job Title

Address 200 W. COLLEGE AVE. # 304 Street

Phone 850-577-5127

TLH City FL State 32301 Zip

Email jmuray@acup.org

Speaking: For Against Information

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

Representing AARP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/16

Meeting Date

620

Bill Number (if applicable)

789460 Margolis

Amendment Barcode (if applicable)

Topic Medical Examiners

Name Marty Cassini

Job Title Legislative Counsel

Address 115 S. Andrews Ave

Street

Phone 954-357-7575

Fort Lauderdale

FL

33301

City

State

Zip

Email mcassini@broward.org

Speaking:  For  Against  Information

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

Representing Broward County

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/16

Meeting Date

680

Bill Number (if applicable)

336552 (Bea)

Amendment Barcode (if applicable)

Topic medical examiners

Name Corinne Nixon

Job Title Lobbyist

Address 119 E. Parkave

Street

Phone 782-2401

Tully FL 3230

City

State

Zip

Email cnixonmixon@gmail.com

Speaking:  For  Against  Information

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

Representing Independent Funeral Directors of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2-17-16

Meeting Date

SB-620

Bill Number (if applicable)

336552

Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name MARK ALVAREZ

Job Title LEGISLATIVE CHAIRMAN

Address 1149 Corby Ct. East

Phone 850 402 4133

Street

FDL

City

FL

State

32317

Zip

Email MARKALVAREZ@ENBAR.COM

Speaking:  For  Against  Information

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

Representing VETERANS OF FOREIGN WARS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

2/17/2016

Meeting Date

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

SB 620

Bill Number (if applicable)

336552

Amendment Barcode (if applicable)

Topic Relating to Medical Examiners

Name Jessica Kraynak (cray-nack)

Job Title Legislative Analyst

Address Suite 2105, the Capitol

Street

Tallahassee

City

FL

State

32399

Zip

Phone (850) 487-1533

Email Kraynakj2@fldva.state.fl.us

Speaking:  For  Against  Information

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

Representing The Florida Dept. of Veterans' Affairs

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-17-16

Meeting Date

SB 620

Bill Number (if applicable)

Topic Medical Examiners

FOR 336552  
Amendment Barcode (if applicable)

Name JAMES WYLIE

SEN BEAN

Job Title \_\_\_\_\_

Against 789466  
SEN MARGOLIS

Address 5359 Pembroke Place

Phone 850-567-1705

Street

Tallahassee

City

FL

State

32309

Zip

Email JAMESWYLIE@gmail.com

Speaking:  For  Against  Information

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

Representing Florida Funeral Cemetery and Consumer Advocacy, Inc

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/16

Meeting Date

620

Bill Number (if applicable)

639124

Amendment Barcode (if applicable)

Topic medical examiners

Name Susan Harbin

Job Title Legislative Advocate

Address 100 S. Monroe St.

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Phone 770 546-8845

Tallahassee

FL

32301

Email sharbin@fl-counties.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Association of Counties

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/16

Meeting Date

620

Bill Number (if applicable)

639124

Amendment Barcode (if applicable)

Topic MEDICAL EXAMINERS

Name TODD BOB LARZON

Job Title LEGISLATIVE AFFAIRS DIRECTOR

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Street

Phone (561) 355-3451

WEST PALM BEACH FL

City

State

33401

Zip

Email thurlow@phcgov.org

Speaking: [X] For [ ] Against [ ] Information

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

Representing PALM BEACH COUNTY

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/16

Meeting Date

620

Bill Number (if applicable)

Topic MEDICAL EXAMINERS

Amendment Barcode (if applicable)

Name JACK MERRAY

Job Title

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Phone 250-577-5187

Street

7LN FL 32301

City

State

Zip

Email jmcgray@aarp.org

Speaking: [X] For [ ] Against [ ] Information

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

Representing AARP

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/16  
Meeting Date

620  
Bill Number (if applicable)

Topic Med Examiners

Amendment Barcode (if applicable)

Name Mary Thomas

Job Title Assistant General Counsel

Address 1430 Piedmont Dr E  
Street

<sup>850</sup> Phone 224 6996

TLH FL 32308  
City State Zip

Email MThomas@flmedical.org

Speaking:  For  Against  Information

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

Representing Florida Medical Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

~~02/09~~ 2/17/16

Meeting Date

620

Bill Number (if applicable)

Topic Medical Examiners

Amendment Barcode (if applicable)

Name Marty Cassini

Job Title Legislative Counsel

Address 115 S. Andrews Ave

Phone 954-357-7575

Street

Fort Lauderdale FL 33301

Email mcassini@broward.org

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against

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

Representing Broward 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.

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**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: PCS/SB 700 (365564)

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on General Government); and Senator Soto

SUBJECT: Public Records/Juvenile Criminal History Information

DATE: February 16, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Pre-meeting</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/SB 700 addresses inconsistencies between s. 985.04(1), F.S. (confidential information of juveniles), and s. 943.053, F.S. (dissemination of criminal history information), by:

- Making the records of juveniles who have committed three or more misdemeanors confidential and exempt (currently they are not);
- Ensuring that the list of juvenile records that are not confidential and exempt under s. 985.04(2), F.S., is identical to the list of juvenile records deemed to be not confidential and exempt under s. 943.053, F.S.;
- Permitting a custodian of public records to choose not to post a juvenile's arrest or booking photograph that is not confidential and exempt under s. 985.04(2), F.S., on the custodian's website, while maintaining the public's right of access to the photograph;
- Requiring the Florida Department of Law Enforcement (FDLE) to release juvenile criminal history records in a manner that takes into account the records' confidential and exempt status; and
- Specifying how the FDLE must release juvenile criminal history records.

The bill expands existing public record exemptions and repeals them on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage because it expands public records exemptions.

The FDLE indicates that the bill will have no fiscal impact on the department if its requirements are implemented as part of the ongoing Computerized Criminal History (CCH) system update/replacement project, which began in Fiscal Year 2015-2016 and is expected to be completed in Fiscal Year 2017-2018. Senate Bill 2500, the Senate proposed 2016-2017 General Appropriations Act, includes \$2.5 million for continued implementation of the CCH project. There would be a fiscal impact of approximately \$100,000 if the requirements are implemented before the CCH system is updated.

The bill is effective upon becoming law.

## II. Present Situation:

The Florida Constitution provides that every individual has a right of access to public records which are made or received in connection with official public business unless the records are exempt. This right applies to records of the legislative, executive, and judicial branches.<sup>1</sup>

The Public Records Act, codified in ch. 119, F.S., expressly guarantees every person's right to inspect and copy any state or local government public record<sup>2</sup> at any reasonable time, under reasonable conditions, and under the supervision of the public records custodian.<sup>3</sup>

Only the Legislature may create an exemption to public records requirements.<sup>4</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>5</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>6</sup>

The Open Government Sunset Review Act requires a newly created or expanded public records exemption be repealed on October 2 of the fifth year after enactment, unless reviewed and

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<sup>1</sup> Article I, s. 24(a), FLA. CONST.

<sup>2</sup> Section 119.011(12), F.S., defines "public record" as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

<sup>3</sup> Section 119.07(1)(a), F.S.

<sup>4</sup> Article I, s. 24(c), FLA. CONST. There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Bd. of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, then such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in the statutory exemption. See Op. Att'y Gen, Fla. 85-62, August 1, 1985.

<sup>5</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>6</sup> Article I, s. 24(c), FLA. CONST.

reenacted by the Legislature.<sup>7</sup> It further provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose it serves.<sup>8</sup>

### **Section 985.04, F.S., Confidential Information of Juveniles**

Section 985.04(1), F.S., provides that all records obtained under ch. 985, F.S., resulting from a juvenile's involvement in the juvenile justice system are confidential. However, there are several exceptions to this confidentiality.

Section 985.04(2), F.S., provides that the name, photograph, address, and crime or arrest report of a juveniles are not *confidential and exempt* from s. 119.07(1), F.S., solely because of the juvenile's age, if the juvenile is:

- Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
- Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors;
- Transferred to the adult system by indictment, judicial waiver, or direct file;
- Taken into custody by a law enforcement officer for a violation of law subject to mandatory direct file under s. 985.557(2)(b) or (d), F.S.; or
- Transferred to the adult system but sentenced to the juvenile system under s. 985.565, F.S.

### **Criminal Justice Information Program**

Section 943.05, F.S., creates the Criminal Justice Information Program (CJIP) within the Florida Department of Law Enforcement (FDLE) to act as the state's central criminal justice information repository.<sup>9</sup> Law enforcement agencies, clerks of the court, the Department of Corrections (DOC), and the Department of Juvenile Justice (DJJ) are required to submit specified information on offenders they have had contact with for inclusion in the CJIP.<sup>10</sup> This information can then be transmitted between criminal justice agencies.<sup>11</sup>

Section 943.051, F.S., requires state, county, municipal, or other law enforcement agencies to capture and electronically submit to the FDLE the fingerprints, palm prints, and facial images of:

- An adult charged with or convicted of a felony, misdemeanor, or violation of a comparable ordinance;
- A juvenile charged with or found to have committed an offense, which would be a felony if committed by an adult; or

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<sup>7</sup> Section 119.15(3), F.S.

<sup>8</sup> Section 119.15(6)(b), F.S.

<sup>9</sup> Section 943.045(12), F.S., defines "criminal justice information" as information on individuals collected or disseminated as a result of arrest, detention, or the initiation of a criminal proceeding by criminal justice agencies, including arrest record information, correctional and release information, criminal history record information, conviction record information, offender registration information, identification record information, and wanted persons record information. The term does not include statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable. The term does not include criminal intelligence information or criminal investigative information.

<sup>10</sup> Section 943.052, F.S.

<sup>11</sup> Section 985.051, F.S.

- A juvenile charged with or found to have committed an enumerated offense, unless the person is issued a civil citation pursuant to s. 985.12, F.S.

### **Section 943.053, F.S., Dissemination of Criminal History Information**

Criminal history information<sup>12</sup> compiled by the CJIP may be released to criminal justice agencies, noncriminal justice agencies, and the private sector upon request in accordance with s. 943.053, F.S. Criminal justice agencies are provided criminal history information free of charge on a priority basis.<sup>13</sup> With some exceptions, noncriminal justice agencies and persons in the private sector are charged \$24 dollars per name submitted.<sup>14</sup>

Currently, s. 943.053, F.S., allows a juvenile's criminal history information to be disseminated in the same manner as that of an adult.<sup>15</sup> The statute is silent as to the release of a juvenile's information which has been made confidential pursuant to s. 985.04, F.S.

### ***G.G. v. FDLE***

In *G.G. v. FDLE*, 97 So.3d 268 (Fla. 1st DCA 2012), a juvenile with no prior criminal history record was arrested for a first degree misdemeanor of petit theft. Several weeks after the arrest, G.G.'s attorney received G.G.'s criminal history information from the FDLE, and discovered that it included information relating to the petit theft arrest. G.G. filed suit, claiming that the petit theft information should be confidential and exempt under s. 985.04(1), F.S. The trial court disagreed, holding that s. 943.053(3), F.S., creates an exception to confidentiality established for juvenile criminal history records in s. 985.04(1), F.S.<sup>16</sup>

On appeal, the First District Court of Appeal reversed the trial court's decision and held that the FDLE's authority to disseminate criminal justice information under s. 943.053(3), F.S., is expressly limited by s. 985.04, F.S., which, with very few exceptions, makes juvenile records confidential.<sup>17</sup>

### **Release of Juvenile Information since *G.G. v. FDLE***

As noted above, s. 985.04(1), F.S., makes the majority of juvenile records confidential except for the exceptions provided in s. 985.04(2), F.S. (**Section 985.04, F.S., Confidential Information of Juveniles**).

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<sup>12</sup> Section 943.045(5), F.S., defines "criminal history information" as information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. The term does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system.

<sup>13</sup> Section 943.053(3)(a), F.S.

<sup>14</sup> Section 943.053(3)(b), F.S. The guardian ad litem program, vendors of the Department of Children and Families, the DJJ, the Department of Elderly Affairs, the Department of Agriculture and Consumer Services, and other qualified entities are charged lesser amounts.

<sup>15</sup> Section 943.053(3)(a), F.S.

<sup>16</sup> *G.G.*, 97 So.3d 268 at 269.

<sup>17</sup> *G.G.*, 97 So.3d 268 at 273.

In an effort to comply with the ruling in *G.G. v. FDLE*, the FDLE is ensuring that only the above-described records are released. However, because of programming limitations<sup>18</sup> and incomplete reporting of juvenile disposition information,<sup>19</sup> the FDLE reports that it is unable to accurately and fairly assess whether a juvenile has been found by a court to have committed three or more misdemeanors. As such, the FDLE is currently only releasing the following juvenile records to private entities and non-criminal justice agencies:

- Records of juveniles taken into custody or charged with a crime that would be a felony if committed by an adult; and
- Records of juveniles who are treated as adults.<sup>20</sup>

### III. Effect of Proposed Changes:

The bill addresses the inconsistencies that exist between s. 985.04(1), F.S. (making the majority of juvenile records confidential), and s. 943.053, F.S. (allowing a juvenile's criminal history information to be disseminated in the same manner as that of an adult), by:

- Ensuring that the specified juvenile records deemed to be not confidential and exempt under s. 943.053, F.S., are identical to the juvenile records deemed to be not confidential and exempt under s. 985.04, F.S.; and
- Requiring the FDLE to release juvenile criminal history records in a manner that takes into account the records' confidential and exempt status.

#### Section 985.04, F.S., Confidential Information of Juveniles

The bill amends s. 985.04(1), F.S., clarifying that juvenile records obtained under ch. 985, F.S., are confidential and exempt (rather than just confidential). The changes to apply to records obtained before, on, and after the effective date of the bill.

Section 985.04(2), F.S., is amended to specify that the following juvenile records are not confidential and exempt:

- Records of a juvenile taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
- Records of a juvenile who is charged with a violation of law which, if committed by an adult, would be a felony;
- Records of a juvenile who has been found to have committed an offense which, if committed by an adult, would be a felony; or
- Records of a juvenile who has been transferred to adult court pursuant to part X of ch. 985, F.S.

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<sup>18</sup> The FDLE cites that there would be extensive programming changes required to ensure that the records of juveniles found to have committed three or more misdemeanors were available for dissemination. Florida Department of Law Enforcement, *2016 Bill Analysis for SB 700* (November 3, 2015) (on file with the Senate Criminal Justice Committee).

<sup>19</sup> "Disposition, or charge outcome, reporting for juvenile arrests was not legislatively mandated until July 1, 2008. This has resulted in much lower arrest-disposition reporting rates for juveniles. (The juvenile reporting rate for all arrests is currently 48.5%, while the adult rate is 72.2%)." *Id.*

<sup>20</sup> *Id.*

The bill removes language specifying that the records of juveniles who have been found to have committed three or more misdemeanor violations are not confidential and exempt. These records are now confidential and exempt.

The bill authorizes a custodian of public records to choose not to post a juvenile's arrest or booking photograph on the custodian's website even though the photograph is not confidential and exempt under s. 985.04(2), F.S. This authorization does not restrict public access to the record.

### **Section 943.053, F.S., Dissemination of Criminal History Information**

The bill amends s. 943.053, F.S., to make the list of juvenile records deemed to be not confidential and exempt identical to the list of juvenile records deemed to be not confidential and exempt under s. 985.04(2), F.S. Because the language regarding three or more misdemeanors is not included on the list, the FDLE is no longer tasked with determining whether the juvenile had three or more misdemeanors before releasing such records to the private sector and noncriminal justice agencies. Records relating to misdemeanors are now confidential and exempt.

The bill amends s. 943.053(3), F.S., to establish a separate process to disseminate juvenile criminal history information. Under this process, juvenile criminal history information, including the information that is confidential and exempt, is available to:

- A criminal justice agency for criminal justice purposes on a priority basis and free of charge;
- The person to whom the record relates or his or her attorney;
- The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or
- An agency or entity specified in ss. 943.0585(4) or 943.059(4), F.S.,<sup>21</sup> for the purposes specified therein, and to any person within such agency or entity who has direct responsibility for employment, access authorization, or licensure decisions.

Juvenile criminal history information not confidential and exempt may be released to the private sector and noncriminal justice agencies upon tender of fees and in the same manner that criminal history information relating to adults is released.

Juvenile records deemed confidential and exempt under s. 943.053, F.S., which are released by the sheriff, the DOC, or the DJJ to private entities under contract with each entity retain their confidential and exempt status upon release to these private entities.

The bill repeals all new public records exemptions created in the bill on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.<sup>22</sup>

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<sup>21</sup> These sections require persons who are seeking employment with specified agencies (e.g., in part, the Department of Children and Families, the Department of Health, and the DJJ) to acknowledge their criminal history records, even if such records has been sealed or expunged.

<sup>22</sup> Article I, s. 24(c), FLA. CONST.

The bill makes conforming changes to ss. 496.4101 and 943.056, F.S., to reflect changes made in the act.

The bill is effective upon becoming law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

###### **Vote Requirement**

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; thus, it requires a two-thirds vote for final passage.

###### **Public Necessity Statement**

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption and includes the required public necessity statement.

###### **Breadth of Exemption**

Article I, s. 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands a public record exemption limited to certain criminal history information of juveniles.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

The bill may result in a positive economic benefit to juveniles with misdemeanor records who are seeking employment as these records will no longer be released to the public.

**C. Government Sector Impact:**

According to the FDLE, there should be no fiscal impact upon the department if the requirements of the bill are implemented as part of the ongoing Computerized Criminal History (CCH) system update/replacement project, which began in Fiscal Year 2015-2016 and is expected to be completed in Fiscal Year 2017-2018.<sup>23</sup>

Senate Bill 2500, the Senate proposed 2016-2017 General Appropriations Act, includes \$2.5 million for continued implementation of the CCH project. If the bill is implemented in the current CCH system before the system is updated, it will cost the department \$100,000.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The FDLE recommends that the bill's effective date be changed to July 1, 2018 because that is when the CCH system replacement project will be completed and the bill's requirements can be fully implemented without the department incurring additional costs.<sup>24</sup>

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 985.04 and 943.053.

This bill makes conforming and technical changes to the following sections of the Florida Statutes: 496.4101 and 943.056.

**IX. Additional Information:**

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

**Recommended PCS Barcode 365564 by the Appropriations Subcommittee on General Government on February 11, 2016:**

- Amends s. 985.04(2)(a), F.S., to permit a custodian of public records to choose not to post a juvenile's arrest or booking photograph that is not confidential and exempt under s. 985.04(2), F.S., on the custodian's website, while maintaining the public's right of access to the photograph.

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<sup>23</sup> Florida Department of Law Enforcement, *2016 Bill Analysis for SB 700* (November 3, 2015), and Email from Bobbie Baggett, Legislative Analyst, Office of External Affairs, Florida Department of Law Enforcement, (January 27, 2016) (on file with the Senate Criminal Justice Committee).

<sup>24</sup> Email from Bobbie Baggett, Legislative Analyst, Office of External Affairs, Florida Department of Law Enforcement, (January 27, 2016) (on file with the Senate Criminal Justice Committee).

B. Amendments:

None.

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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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594-03417-16

Proposed Committee Substitute by the Committee on Fiscal Policy  
(Appropriations Subcommittee on Criminal and Civil Justice)

A bill to be entitled

An act relating to public records; amending s. 985.04, F.S.; specifying that certain confidential information obtained under chapter 985, F.S., relating to juvenile justice, is exempt from public records requirements; providing applicability; revising applicability of public records requirements with respect to the arrest records of certain juvenile offenders; authorizing a custodian to not post on the custodian's website certain arrest or booking photographs of a child; providing for future review and repeal of such applicability provisions; amending s. 943.053, F.S.; providing an exemption from public records requirements for juvenile information compiled by the Criminal Justice Information Program from intrastate sources; providing exceptions; providing for future review and repeal of the exemption; providing for release by the Department of Law Enforcement of the criminal history information of a juvenile which has been deemed confidential and exempt under certain circumstances; amending ss. 496.4101 and 943.056, F.S.; conforming provisions to changes made by the act; providing a statement of public necessity; providing an effective date.

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



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Section 1. Subsections (1) and (2) of section 985.04, Florida Statutes, are amended to read:

985.04 Oaths; records; confidential information.—

(1) (a) Except as provided in subsections (2), (3), (6), and (7) and s. 943.053, all information obtained under this chapter in the discharge of official duty by any judge, any employee of the court, any authorized agent of the department, the Florida Commission on Offender Review, the Department of Corrections, the juvenile justice circuit boards, any law enforcement agent, or any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to information obtained before, on, or after the effective date of this exemption.

(b) Such confidential and exempt information ~~and~~ may be disclosed only to the authorized personnel of the court, the department and its designees, the Department of Corrections, the Florida Commission on Offender Review, law enforcement agents, school superintendents and their designees, any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile, and others entitled under this chapter to receive that information, or upon order of the court.

(c) Within each county, the sheriff, the chiefs of police, the district school superintendent, and the department shall enter into an interagency agreement for the purpose of sharing information about juvenile offenders among all parties. The agreement must specify the conditions under which summary



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57 criminal history information is to be made available to  
58 appropriate school personnel, and the conditions under which  
59 school records are to be made available to appropriate  
60 department personnel. Such agreement shall require notification  
61 to any classroom teacher of assignment to the teacher's  
62 classroom of a juvenile who has been placed in a probation or  
63 commitment program for a felony offense. The agencies entering  
64 into such agreement must comply with s. 943.0525, and must  
65 maintain the confidentiality of information that is otherwise  
66 exempt from s. 119.07(1), as provided by law.

67 (2) (a) Notwithstanding any other provisions of this  
68 chapter, the name, photograph, address, and crime or arrest  
69 report of a child:

70 1. (a) Taken into custody if the child has been taken into  
71 custody by a law enforcement officer for a violation of law  
72 which, if committed by an adult, would be a felony;

73 2. Charged with a violation of law which, if committed by  
74 an adult, would be a felony;

75 3. Found to have committed an offense which, if committed  
76 by an adult, would be a felony; or

77 4. Transferred to adult court pursuant to part X of this  
78 chapter,

79 ~~(b) Found by a court to have committed three or more~~  
80 ~~violations of law which, if committed by an adult, would be~~  
81 ~~misdemeanors;~~

82 ~~(c) Transferred to the adult system under s. 985.557,~~  
83 ~~indicted under s. 985.56, or waived under s. 985.556;~~

84 ~~(d) Taken into custody by a law enforcement officer for a~~  
85 ~~violation of law subject to s. 985.557(2)(b) or (d); or~~



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86 ~~(e) Transferred to the adult system but sentenced to the~~  
87 ~~juvenile system under s. 985.565~~

88  
89 are shall not be considered confidential and exempt from s.  
90 119.07(1) solely because of the child's age. For arrest or  
91 booking photographs of a child not confidential and exempt under  
92 this subsection, a custodian of public records may choose not to  
93 electronically post such arrest or booking photograph on the  
94 custodian's website, although this does not restrict public  
95 access to records as provided under this subsection.

96 (b) This subsection is subject to the Open Government  
97 Sunset Review Act in accordance with s. 119.15 and shall stand  
98 repealed on October 2, 2021, unless reviewed and saved from  
99 repeal through reenactment by the Legislature.

100 Section 2. Subsections (3), (8), (9), and (10) of section  
101 943.053, Florida Statutes, are amended to read:

102 943.053 Dissemination of criminal justice information;  
103 fees.-

104 (3) (a) Criminal history information, ~~including information~~  
105 relating to an adult minors, compiled by the Criminal Justice  
106 Information Program from intrastate sources shall be available  
107 on a priority basis to criminal justice agencies for criminal  
108 justice purposes free of charge. After providing the program  
109 with all known personal identifying information, persons in the  
110 private sector and noncriminal justice agencies may be provided  
111 criminal history information upon tender of fees as established  
112 in this subsection and in the manner prescribed by rule of the  
113 Department of Law Enforcement. ~~Any access to criminal history~~  
114 ~~information by the private sector or noncriminal justice~~



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115 ~~agencies as provided in this subsection shall be assessed~~  
116 ~~without regard to the quantity or category of criminal history~~  
117 ~~record information requested.~~

118 (b)1. Criminal history information relating to a juvenile  
119 compiled by the Criminal Justice Information Program from  
120 intrastate sources shall be released as provided in this  
121 section. Such information is confidential and exempt from s.  
122 119.07(1) and s. 24(a), Art. I of the State Constitution, unless  
123 such juvenile has been:

124 a. Taken into custody by a law enforcement officer for a  
125 violation of law which, if committed by an adult, would be a  
126 felony;

127 b. Charged with a violation of law which, if committed by  
128 an adult, would be a felony;

129 c. Found to have committed an offense which, if committed  
130 by an adult, would be a felony; or

131 d. Transferred to adult court pursuant to part X of chapter  
132 985,

133 and provided the criminal history record has not been expunged  
134 or sealed under any law applicable to such record.

135 2. This paragraph is subject to the Open Government Sunset  
136 Review Act in accordance with s. 119.15 and shall stand repealed  
137 on October 2, 2021, unless reviewed and saved from repeal  
138 through reenactment by the Legislature.

139 (c)1. Criminal history information relating to juveniles,  
140 including criminal history information consisting in whole or in  
141 part of information that is confidential and exempt under  
142 paragraph (b), shall be available to:  
143



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144 a. A criminal justice agency for criminal justice purposes  
145 on a priority basis and free of charge;

146 b. The person to whom the record relates, or his or her  
147 attorney;

148 c. The parent, guardian, or legal custodian of the person  
149 to whom the record relates, provided such person has not reached  
150 the age of majority, been emancipated by a court, or been  
151 legally married; or

152 d. An agency or entity specified in s. 943.0585(4) or s.  
153 943.059(4), for the purposes specified therein, and to any  
154 person within such agency or entity who has direct  
155 responsibility for employment, access authorization, or  
156 licensure decisions.

157 2. After providing the program with all known personal  
158 identifying information, the criminal history information  
159 relating to a juvenile which is not confidential and exempt  
160 under this subsection may be released to the private sector and  
161 noncriminal justice agencies not specified in s. 943.0585(4) or  
162 s. 943.059(4) in the same manner as provided in paragraph (a).  
163 Criminal history information relating to a juvenile which is not  
164 confidential and exempt under this subsection is the entire  
165 criminal history information relating to a juvenile who  
166 satisfies any of the criteria listed in sub-subparagraphs  
167 (b)1.a. through (b)1.d., except for any portion of such  
168 juvenile's criminal history record which has been expunged or  
169 sealed under any law applicable to such record.

170 3. All criminal history information relating to juveniles,  
171 other than that provided to criminal justice agencies for  
172 criminal justice purposes, shall be provided upon tender of fees



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173 as established in this subsection and in the manner prescribed  
174 by rule of the Department of Law Enforcement.

175 (d) The fee for access to criminal history information by  
176 the private sector or a noncriminal justice agency shall be  
177 assessed without regard to the size or category of criminal  
178 history record information requested.

179 (e) ~~(b)~~ The fee per record for criminal history information  
180 provided pursuant to this subsection and s. 943.0542 is \$24 per  
181 name submitted, except that the fee for the guardian ad litem  
182 program and vendors of the Department of Children and Families,  
183 the Department of Juvenile Justice, and the Department of  
184 Elderly Affairs shall be \$8 for each name submitted; the fee for  
185 a state criminal history provided for application processing as  
186 required by law to be performed by the Department of Agriculture  
187 and Consumer Services shall be \$15 for each name submitted; and  
188 the fee for requests under s. 943.0542, which implements the  
189 National Child Protection Act, shall be \$18 for each volunteer  
190 name submitted. The state offices of the Public Defender shall  
191 not be assessed a fee for Florida criminal history information  
192 or wanted person information.

193 (8) Notwithstanding ~~the provisions of~~ s. 943.0525, and any  
194 user agreements adopted pursuant thereto, and notwithstanding  
195 the confidentiality of sealed records as provided for in s.  
196 943.059 and juvenile records as provided for in paragraph  
197 (3) (b), the sheriff of any county that has contracted with a  
198 private entity to operate a county detention facility pursuant  
199 to ~~the provisions of~~ s. 951.062 shall provide that private  
200 entity, in a timely manner, copies of the Florida criminal  
201 history records for its inmates. The sheriff may assess a charge



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202 for the Florida criminal history records pursuant to ~~the~~  
203 ~~provisions of~~ chapter 119. Sealed records and confidential  
204 juvenile records received by the private entity under this  
205 section remain confidential and exempt from ~~the provisions of~~ s.  
206 119.07(1).

207 (9) Notwithstanding ~~the provisions of~~ s. 943.0525, and any  
208 user agreements adopted pursuant thereto, and notwithstanding  
209 the confidentiality of sealed records as provided for in s.  
210 943.059 and juvenile records as provided for in paragraph  
211 (3) (b), the Department of Corrections shall provide, in a timely  
212 manner, copies of the Florida criminal history records for  
213 inmates housed in a private state correctional facility to the  
214 private entity under contract to operate the facility pursuant  
215 to ~~the provisions of~~ s. 944.105. The department may assess a  
216 charge for the Florida criminal history records pursuant to ~~the~~  
217 ~~provisions of~~ chapter 119. Sealed records and confidential  
218 juvenile records received by the private entity under this  
219 section remain confidential and exempt from ~~the provisions of~~ s.  
220 119.07(1).

221 (10) Notwithstanding ~~the provisions of~~ s. 943.0525 and any  
222 user agreements adopted pursuant thereto, and notwithstanding  
223 the confidentiality of sealed records as provided for in s.  
224 943.059 or of juvenile records as provided for in paragraph  
225 (3) (b), the Department of Juvenile Justice or any other state or  
226 local criminal justice agency may provide copies of the Florida  
227 criminal history records for juvenile offenders currently or  
228 formerly detained or housed in a contracted juvenile assessment  
229 center or detention facility or serviced in a contracted  
230 treatment program and for employees or other individuals who



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231 will have access to these facilities, only to the entity under  
232 direct contract with the Department of Juvenile Justice to  
233 operate these facilities or programs pursuant to ~~the provisions~~  
234 ~~of~~ s. 985.688. The criminal justice agency providing such data  
235 may assess a charge for the Florida criminal history records  
236 pursuant to ~~the provisions of~~ chapter 119. Sealed records and  
237 confidential juvenile records received by the private entity  
238 under this section remain confidential and exempt from ~~the~~  
239 ~~provisions of~~ s. 119.07(1). Information provided under this  
240 section shall be used only for the criminal justice purpose for  
241 which it was requested and may not be further disseminated.

242 Section 3. Paragraph (b) of subsection (3) of section  
243 496.4101, Florida Statutes, is amended to read:

244 496.4101 Licensure of professional solicitors and certain  
245 employees thereof.-

246 (3)

247 (b) Fees for state and federal fingerprint processing and  
248 fingerprint retention fees shall be borne by the applicant. The  
249 state cost for fingerprint processing is that authorized in s.  
250 943.053(3)(e) ~~943.053(3)(b)~~ for records provided to persons or  
251 entities other than those specified as exceptions therein.

252 Section 4. Subsection (1) of section 943.056, Florida  
253 Statutes, is amended to read:

254 943.056 Criminal history records; access, review, and  
255 challenge.-

256 (1) For purposes of verification of the accuracy and  
257 completeness of a criminal history record, the Department of Law  
258 Enforcement shall provide, in the manner prescribed by rule,  
259 such record for review upon verification, by fingerprints, of



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260 the identity of the requesting person. If a minor, or the parent  
261 or legal guardian of a minor, requests a copy of the minor's  
262 criminal history record, the Department of Law Enforcement shall  
263 provide such copy, including any portions of the record which  
264 may be confidential under s. 943.053(3)(b), for review upon  
265 verification, by fingerprints, of the identity of the minor. The  
266 providing of such record shall not require the payment of any  
267 fees, except those provided for by federal regulations.

268 Section 5. The Legislature finds that it is a public  
269 necessity that the criminal history information of juveniles,  
270 who have not been adjudicated delinquent of a felony or who have  
271 been found only to have committed misdemeanor offenses and  
272 certain criminal history information relating to a juvenile  
273 compiled by the Criminal Justice Information Program be made  
274 confidential and exempt from s. 119.07(1), Florida Statutes, and  
275 s. 24(a), Article I of the State Constitution under ss. 985.04  
276 and 943.053, Florida Statutes. Many individuals who have either  
277 completed their sanctions and received treatment or who were  
278 never charged in the juvenile justice system have found it  
279 difficult to obtain employment. The presence of an arrest or a  
280 misdemeanor record in these individuals' juvenile past and  
281 certain criminal history information relating to a juvenile  
282 compiled by the Criminal Justice Information Program creates an  
283 unnecessary barrier to becoming productive members of society,  
284 thus frustrating the rehabilitative purpose of the juvenile  
285 system. The Legislature therefore finds that it is in the best  
286 interest of the public that individuals with juvenile  
287 misdemeanor records are given the opportunity to become  
288 contributing members of society. Therefore, prohibiting the



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289 unfettered release of juvenile misdemeanor records and certain  
290 criminal history information relating to a juvenile compiled by  
291 the Criminal Justice Information Program is of greater  
292 importance than any public benefit that may be derived from the  
293 full disclosure and release of such arrest records and  
294 information.

295 Section 6. This act shall take effect upon becoming a law.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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**BILL:** CS/SB 700

**INTRODUCER:** Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); and Senator Soto

**SUBJECT:** Public Records/Juvenile Criminal History Information

**DATE:** February 18, 2016      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Recommend: Fav/CS</b>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Fav/CS</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 700 addresses inconsistencies between s. 985.04(1), F.S. (confidential information of juveniles), and s. 943.053, F.S. (dissemination of criminal history information), by:

- Making the records of juveniles who have committed three or more misdemeanors confidential and exempt (currently they are not);
- Ensuring that the list of juvenile records that are not confidential and exempt under s. 985.04(2), F.S., is identical to the list of juvenile records deemed to be not confidential and exempt under s. 943.053, F.S.;
- Permitting a custodian of public records to choose not to post a juvenile's arrest or booking photograph that is not confidential and exempt under s. 985.04(2), F.S., on the custodian's website, while maintaining the public's right of access to the photograph;
- Requiring the Florida Department of Law Enforcement (FDLE) to release juvenile criminal history records in a manner that takes into account the records' confidential and exempt status; and
- Specifying how the FDLE must release juvenile criminal history records.

The bill expands existing public record exemptions and repeals them on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage because it expands public records exemptions.

The FDLE indicates that the bill will have no fiscal impact on the department if its requirements are implemented as part of the ongoing Computerized Criminal History (CCH) system update/replacement project, which began in Fiscal Year 2015-2016 and is expected to be completed in Fiscal Year 2017-2018. Senate Bill 2500, the Senate proposed 2016-2017 General Appropriations Act, includes \$2.5 million for continued implementation of the CCH project. There would be a fiscal impact of approximately \$100,000 if the requirements are implemented before the CCH system is updated.

The bill is effective upon becoming law.

## II. Present Situation:

The Florida Constitution provides that every individual has a right of access to public records which are made or received in connection with official public business unless the records are exempt. This right applies to records of the legislative, executive, and judicial branches.<sup>1</sup>

The Public Records Act, codified in ch. 119, F.S., expressly guarantees every person's right to inspect and copy any state or local government public record<sup>2</sup> at any reasonable time, under reasonable conditions, and under the supervision of the public records custodian.<sup>3</sup>

Only the Legislature may create an exemption to public records requirements.<sup>4</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>5</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>6</sup>

The Open Government Sunset Review Act requires a newly created or expanded public records exemption be repealed on October 2 of the fifth year after enactment, unless reviewed and

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<sup>1</sup> Article I, s. 24(a), FLA. CONST.

<sup>2</sup> Section 119.011(12), F.S., defines "public record" as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

<sup>3</sup> Section 119.07(1)(a), F.S.

<sup>4</sup> Article I, s. 24(c), FLA. CONST. There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Bd. of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, then such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in the statutory exemption. See Op. Att'y Gen, Fla. 85-62, August 1, 1985.

<sup>5</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>6</sup> Article I, s. 24(c), FLA. CONST.

reenacted by the Legislature.<sup>7</sup> It further provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose it serves.<sup>8</sup>

### **Section 985.04, F.S., Confidential Information of Juveniles**

Section 985.04(1), F.S., provides that all records obtained under ch. 985, F.S., resulting from a juvenile's involvement in the juvenile justice system are confidential. However, there are several exceptions to this confidentiality.

Section 985.04(2), F.S., provides that the name, photograph, address, and crime or arrest report of a juveniles are not *confidential and exempt* from s. 119.07(1), F.S., solely because of the juvenile's age, if the juvenile is:

- Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
- Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors;
- Transferred to the adult system by indictment, judicial waiver, or direct file;
- Taken into custody by a law enforcement officer for a violation of law subject to mandatory direct file under s. 985.557(2)(b) or (d), F.S.; or
- Transferred to the adult system but sentenced to the juvenile system under s. 985.565, F.S.

### **Criminal Justice Information Program**

Section 943.05, F.S., creates the Criminal Justice Information Program (CJIP) within the Florida Department of Law Enforcement (FDLE) to act as the state's central criminal justice information repository.<sup>9</sup> Law enforcement agencies, clerks of the court, the Department of Corrections (DOC), and the Department of Juvenile Justice (DJJ) are required to submit specified information on offenders they have had contact with for inclusion in the CJIP.<sup>10</sup> This information can then be transmitted between criminal justice agencies.<sup>11</sup>

Section 943.051, F.S., requires state, county, municipal, or other law enforcement agencies to capture and electronically submit to the FDLE the fingerprints, palm prints, and facial images of:

- An adult charged with or convicted of a felony, misdemeanor, or violation of a comparable ordinance;
- A juvenile charged with or found to have committed an offense, which would be a felony if committed by an adult; or

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<sup>7</sup> Section 119.15(3), F.S.

<sup>8</sup> Section 119.15(6)(b), F.S.

<sup>9</sup> Section 943.045(12), F.S., defines "criminal justice information" as information on individuals collected or disseminated as a result of arrest, detention, or the initiation of a criminal proceeding by criminal justice agencies, including arrest record information, correctional and release information, criminal history record information, conviction record information, offender registration information, identification record information, and wanted persons record information. The term does not include statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable. The term does not include criminal intelligence information or criminal investigative information.

<sup>10</sup> Section 943.052, F.S.

<sup>11</sup> Section 985.051, F.S.

- A juvenile charged with or found to have committed an enumerated offense, unless the person is issued a civil citation pursuant to s. 985.12, F.S.

### **Section 943.053, F.S., Dissemination of Criminal History Information**

Criminal history information<sup>12</sup> compiled by the CJIP may be released to criminal justice agencies, noncriminal justice agencies, and the private sector upon request in accordance with s. 943.053, F.S. Criminal justice agencies are provided criminal history information free of charge on a priority basis.<sup>13</sup> With some exceptions, noncriminal justice agencies and persons in the private sector are charged \$24 dollars per name submitted.<sup>14</sup>

Currently, s. 943.053, F.S., allows a juvenile's criminal history information to be disseminated in the same manner as that of an adult.<sup>15</sup> The statute is silent as to the release of a juvenile's information which has been made confidential pursuant to s. 985.04, F.S.

### ***G.G. v. FDLE***

In *G.G. v. FDLE*, 97 So.3d 268 (Fla. 1st DCA 2012), a juvenile with no prior criminal history record was arrested for a first degree misdemeanor of petit theft. Several weeks after the arrest, G.G.'s attorney received G.G.'s criminal history information from the FDLE, and discovered that it included information relating to the petit theft arrest. G.G. filed suit, claiming that the petit theft information should be confidential and exempt under s. 985.04(1), F.S. The trial court disagreed, holding that s. 943.053(3), F.S., creates an exception to confidentiality established for juvenile criminal history records in s. 985.04(1), F.S.<sup>16</sup>

On appeal, the First District Court of Appeal reversed the trial court's decision and held that the FDLE's authority to disseminate criminal justice information under s. 943.053(3), F.S., is expressly limited by s. 985.04, F.S., which, with very few exceptions, makes juvenile records confidential.<sup>17</sup>

### **Release of Juvenile Information since *G.G. v. FDLE***

As noted above, s. 985.04(1), F.S., makes the majority of juvenile records confidential except for the exceptions provided in s. 985.04(2), F.S. (**Section 985.04, F.S., Confidential Information of Juveniles**).

<sup>12</sup> Section 943.045(5), F.S., defines "criminal history information" as information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. The term does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system.

<sup>13</sup> Section 943.053(3)(a), F.S.

<sup>14</sup> Section 943.053(3)(b), F.S. The guardian ad litem program, vendors of the Department of Children and Families, the DJJ, the Department of Elderly Affairs, the Department of Agriculture and Consumer Services, and other qualified entities are charged lesser amounts.

<sup>15</sup> Section 943.053(3)(a), F.S.

<sup>16</sup> *G.G.*, 97 So.3d 268 at 269.

<sup>17</sup> *G.G.*, 97 So.3d 268 at 273.

In an effort to comply with the ruling in *G.G. v. FDLE*, the FDLE is ensuring that only the above-described records are released. However, because of programming limitations<sup>18</sup> and incomplete reporting of juvenile disposition information,<sup>19</sup> the FDLE reports that it is unable to accurately and fairly assess whether a juvenile has been found by a court to have committed three or more misdemeanors. As such, the FDLE is currently only releasing the following juvenile records to private entities and non-criminal justice agencies:

- Records of juveniles taken into custody or charged with a crime that would be a felony if committed by an adult; and
- Records of juveniles who are treated as adults.<sup>20</sup>

### III. Effect of Proposed Changes:

The bill addresses the inconsistencies that exist between s. 985.04(1), F.S. (making the majority of juvenile records confidential), and s. 943.053, F.S. (allowing a juvenile's criminal history information to be disseminated in the same manner as that of an adult), by:

- Ensuring that the specified juvenile records deemed to be not confidential and exempt under s. 943.053, F.S., are identical to the juvenile records deemed to be not confidential and exempt under s. 985.04, F.S.; and
- Requiring the FDLE to release juvenile criminal history records in a manner that takes into account the records' confidential and exempt status.

#### Section 985.04, F.S., Confidential Information of Juveniles

The bill amends s. 985.04(1), F.S., clarifying that juvenile records obtained under ch. 985, F.S., are confidential and exempt (rather than just confidential). The changes to apply to records obtained before, on, and after the effective date of the bill.

Section 985.04(2), F.S., is amended to specify that the following juvenile records are not confidential and exempt:

- Records of a juvenile taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
- Records of a juvenile who is charged with a violation of law which, if committed by an adult, would be a felony;
- Records of a juvenile who has been found to have committed an offense which, if committed by an adult, would be a felony; or
- Records of a juvenile who has been transferred to adult court pursuant to part X of ch. 985, F.S.

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<sup>18</sup> The FDLE cites that there would be extensive programming changes required to ensure that the records of juveniles found to have committed three or more misdemeanors were available for dissemination. Florida Department of Law Enforcement, *2016 Bill Analysis for SB 700* (November 3, 2015) (on file with the Senate Criminal Justice Committee).

<sup>19</sup> "Disposition, or charge outcome, reporting for juvenile arrests was not legislatively mandated until July 1, 2008. This has resulted in much lower arrest-disposition reporting rates for juveniles. (The juvenile reporting rate for all arrests is currently 48.5%, while the adult rate is 72.2%)." *Id.*

<sup>20</sup> *Id.*

The bill removes language specifying that the records of juveniles who have been found to have committed three or more misdemeanor violations are not confidential and exempt. These records are now confidential and exempt.

The bill authorizes a custodian of public records to choose not to post a juvenile's arrest or booking photograph on the custodian's website even though the photograph is not confidential and exempt under s. 985.04(2), F.S. This authorization does not restrict public access to the record.

### **Section 943.053, F.S., Dissemination of Criminal History Information**

The bill amends s. 943.053, F.S., to make the list of juvenile records deemed to be not confidential and exempt identical to the list of juvenile records deemed to be not confidential and exempt under s. 985.04(2), F.S. Because the language regarding three or more misdemeanors is not included on the list, the FDLE is no longer tasked with determining whether the juvenile had three or more misdemeanors before releasing such records to the private sector and noncriminal justice agencies. Records relating to misdemeanors are now confidential and exempt.

The bill amends s. 943.053(3), F.S., to establish a separate process to disseminate juvenile criminal history information. Under this process, juvenile criminal history information, including the information that is confidential and exempt, is available to:

- A criminal justice agency for criminal justice purposes on a priority basis and free of charge;
- The person to whom the record relates or his or her attorney;
- The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or
- An agency or entity specified in ss. 943.0585(4) or 943.059(4), F.S.,<sup>21</sup> for the purposes specified therein, and to any person within such agency or entity who has direct responsibility for employment, access authorization, or licensure decisions.

Juvenile criminal history information not confidential and exempt may be released to the private sector and noncriminal justice agencies upon tender of fees and in the same manner that criminal history information relating to adults is released.

Juvenile records deemed confidential and exempt under s. 943.053, F.S., which are released by the sheriff, the DOC, or the DJJ to private entities under contract with each entity retain their confidential and exempt status upon release to these private entities.

The bill repeals all new public records exemptions created in the bill on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.<sup>22</sup>

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<sup>21</sup> These sections require persons who are seeking employment with specified agencies (e.g., in part, the Department of Children and Families, the Department of Health, and the DJJ) to acknowledge their criminal history records, even if such records has been sealed or expunged.

<sup>22</sup> Article I, s. 24(c), FLA. CONST.

The bill makes conforming changes to ss. 496.4101 and 943.056, F.S., to reflect changes made in the act.

The bill is effective upon becoming law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

###### **Vote Requirement**

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; thus, it requires a two-thirds vote for final passage.

###### **Public Necessity Statement**

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption and includes the required public necessity statement.

###### **Breadth of Exemption**

Article I, s. 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands a public record exemption limited to certain criminal history information of juveniles.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

The bill may result in a positive economic benefit to juveniles with misdemeanor records who are seeking employment as these records will no longer be released to the public.

**C. Government Sector Impact:**

According to the FDLE, there should be no fiscal impact upon the department if the requirements of the bill are implemented as part of the ongoing Computerized Criminal History (CCH) system update/replacement project, which began in Fiscal Year 2015-2016 and is expected to be completed in Fiscal Year 2017-2018.<sup>23</sup>

Senate Bill 2500, the Senate proposed 2016-2017 General Appropriations Act, includes \$2.5 million for continued implementation of the CCH project. If the bill is implemented in the current CCH system before the system is updated, it will cost the department \$100,000.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The FDLE recommends that the bill's effective date be changed to July 1, 2018 because that is when the CCH system replacement project will be completed and the bill's requirements can be fully implemented without the department incurring additional costs.<sup>24</sup>

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 985.04 and 943.053.

This bill makes conforming and technical changes to the following sections of the Florida Statutes: 496.4101 and 943.056.

**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 Fiscal Policy on February 17, 2016:**

- As recommended by the Appropriations Subcommittee on Criminal and Civil Justice, the CS amends s. 985.04(2)(a), F.S., to permit a custodian of public records to choose not to post a juvenile's arrest or booking photograph that is not confidential and exempt under s. 985.04(2), F.S., on the custodian's website, while maintaining the public's right of access to the photograph.

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<sup>23</sup> Florida Department of Law Enforcement, *2016 Bill Analysis for SB 700* (November 3, 2015), and Email from Bobbie Baggett, Legislative Analyst, Office of External Affairs, Florida Department of Law Enforcement, (January 27, 2016) (on file with the Senate Criminal Justice Committee).

<sup>24</sup> Email from Bobbie Baggett, Legislative Analyst, Office of External Affairs, Florida Department of Law Enforcement, (January 27, 2016) (on file with the Senate Criminal Justice Committee).

B. Amendments:

None.

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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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By Senator Soto

14-00618A-16

2016700\_\_

A bill to be entitled

An act relating to public records; amending s. 985.04, F.S.; specifying that certain confidential information obtained under chapter 985, F.S., relating to juvenile justice, is exempt from public records requirements; providing applicability; revising applicability of public records requirements with respect to the arrest records of certain juvenile offenders; providing for future review and repeal of such applicability provisions; amending s. 943.053, F.S.; providing an exemption from public records requirements for juvenile information compiled by the Criminal Justice Information Program from intrastate sources; providing exceptions; providing for future review and repeal of the exemption; providing for release by the Department of Law Enforcement of the criminal history information of a juvenile which has been deemed confidential and exempt under certain circumstances; amending ss. 496.4101 and 943.056, F.S.; conforming provisions to changes made by the act; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsections (1) and (2) of section 985.04, Florida Statutes, are amended to read:

985.04 Oaths; records; confidential information.—

(1) (a) Except as provided in subsections (2), (3), (6), and (7) and s. 943.053, all information obtained under this chapter

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

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in the discharge of official duty by any judge, any employee of the court, any authorized agent of the department, the Florida Commission on Offender Review, the Department of Corrections, the juvenile justice circuit boards, any law enforcement agent, or any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to information obtained before, on, or after the effective date of this exemption.

(b) Such confidential and exempt information ~~and~~ may be disclosed only to the authorized personnel of the court, the department and its designees, the Department of Corrections, the Florida Commission on Offender Review, law enforcement agents, school superintendents and their designees, any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile, and others entitled under this chapter to receive that information, or upon order of the court.

(c) Within each county, the sheriff, the chiefs of police, the district school superintendent, and the department shall enter into an interagency agreement for the purpose of sharing information about juvenile offenders among all parties. The agreement must specify the conditions under which summary criminal history information is to be made available to appropriate school personnel, and the conditions under which school records are to be made available to appropriate department personnel. Such agreement shall require notification to any classroom teacher of assignment to the teacher's

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

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59 classroom of a juvenile who has been placed in a probation or  
60 commitment program for a felony offense. The agencies entering  
61 into such agreement must comply with s. 943.0525, and must  
62 maintain the confidentiality of information that is otherwise  
63 exempt from s. 119.07(1), as provided by law.

64 (2) (a) Notwithstanding any other provisions of this  
65 chapter, the name, photograph, address, and crime or arrest  
66 report of a child:

67 1. (a) Taken into custody ~~if the child has been taken into~~  
68 ~~eustody~~ by a law enforcement officer for a violation of law  
69 which, if committed by an adult, would be a felony;

70 2. Charged with a violation of law which, if committed by  
71 an adult, would be a felony;

72 3. Found to have committed an offense which, if committed  
73 by an adult, would be a felony; or

74 4. Transferred to adult court pursuant to part X of this  
75 chapter,

76 ~~(b) Found by a court to have committed three or more~~  
77 ~~violations of law which, if committed by an adult, would be~~  
78 ~~misdemeanors;~~

79 ~~(c) Transferred to the adult system under s. 985.557,~~  
80 ~~indicted under s. 985.56, or waived under s. 985.556;~~

81 ~~(d) Taken into custody by a law enforcement officer for a~~  
82 ~~violation of law subject to s. 985.557(2)(b) or (d); or~~

83 ~~(e) Transferred to the adult system but sentenced to the~~  
84 ~~juvenile system under s. 985.565~~

85  
86 are shall not be considered confidential and exempt from s.  
87 119.07(1) solely because of the child's age.

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88 (b) This subsection is subject to the Open Government  
89 Sunset Review Act in accordance with s. 119.15 and shall stand  
90 repealed on October 2, 2021, unless reviewed and saved from  
91 repeal through reenactment by the Legislature.

92 Section 2. Subsections (3), (8), (9), and (10) of section  
93 943.053, Florida Statutes, are amended to read:

94 943.053 Dissemination of criminal justice information;  
95 fees.—

96 (3) (a) Criminal history information, ~~including information~~  
97 relating to an adult ~~minors~~, compiled by the Criminal Justice  
98 Information Program from intrastate sources shall be available  
99 on a priority basis to criminal justice agencies for criminal  
100 justice purposes free of charge. After providing the program  
101 with all known personal identifying information, persons in the  
102 private sector and noncriminal justice agencies may be provided  
103 criminal history information upon tender of fees as established  
104 in this subsection and in the manner prescribed by rule of the  
105 Department of Law Enforcement. ~~Any access to criminal history~~  
106 ~~information by the private sector or noncriminal justice~~  
107 ~~agencies as provided in this subsection shall be assessed~~  
108 ~~without regard to the quantity or category of criminal history~~  
109 ~~record information requested.~~

110 (b)1. Criminal history information relating to a juvenile  
111 compiled by the Criminal Justice Information Program from  
112 intrastate sources shall be released as provided in this  
113 section. Such information is confidential and exempt from s.  
114 119.07(1) and s. 24(a), Art. I of the State Constitution, unless  
115 such juvenile has been:

116 a. Taken into custody by a law enforcement officer for a

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117 violation of law which, if committed by an adult, would be a  
 118 felony;

119 b. Charged with a violation of law which, if committed by  
 120 an adult, would be a felony;

121 c. Found to have committed an offense which, if committed  
 122 by an adult, would be a felony; or

123 d. Transferred to adult court pursuant to part X of chapter  
 124 985,

125

126 and provided the criminal history record has not been expunged  
 127 or sealed under any law applicable to such record.

128 2. This paragraph is subject to the Open Government Sunset  
 129 Review Act in accordance with s. 119.15 and shall stand repealed  
 130 on October 2, 2021, unless reviewed and saved from repeal  
 131 through reenactment by the Legislature.

132 (c)1. Criminal history information relating to juveniles,  
 133 including criminal history information consisting in whole or in  
 134 part of information that is confidential and exempt under  
 135 paragraph (b), shall be available to:

136 a. A criminal justice agency for criminal justice purposes  
 137 on a priority basis and free of charge;

138 b. The person to whom the record relates, or his or her  
 139 attorney;

140 c. The parent, guardian, or legal custodian of the person  
 141 to whom the record relates, provided such person has not reached  
 142 the age of majority, been emancipated by a court, or been  
 143 legally married; or

144 d. An agency or entity specified in s. 943.0585(4) or s.  
 145 943.059(4), for the purposes specified therein, and to any

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146 person within such agency or entity who has direct  
 147 responsibility for employment, access authorization, or  
 148 licensure decisions.

149 2. After providing the program with all known personal  
 150 identifying information, the criminal history information  
 151 relating to a juvenile which is not confidential and exempt  
 152 under this subsection may be released to the private sector and  
 153 noncriminal justice agencies not specified in s. 943.0585(4) or  
 154 s. 943.059(4) in the same manner as provided in paragraph (a).  
 155 Criminal history information relating to a juvenile which is not  
 156 confidential and exempt under this subsection is the entire  
 157 criminal history information relating to a juvenile who  
 158 satisfies any of the criteria listed in sub-subparagraphs  
 159 (b)1.a. through (b)1.d., except for any portion of such  
 160 juvenile's criminal history record which has been expunged or  
 161 sealed under any law applicable to such record.

162 3. All criminal history information relating to juveniles,  
 163 other than that provided to criminal justice agencies for  
 164 criminal justice purposes, shall be provided upon tender of fees  
 165 as established in this subsection and in the manner prescribed  
 166 by rule of the Department of Law Enforcement.

167 (d) The fee for access to criminal history information by  
 168 the private sector or a noncriminal justice agency shall be  
 169 assessed without regard to the size or category of criminal  
 170 history record information requested.

171 (e)~~(b)~~ The fee per record for criminal history information  
 172 provided pursuant to this subsection and s. 943.0542 is \$24 per  
 173 name submitted, except that the fee for the guardian ad litem  
 174 program and vendors of the Department of Children and Families,

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175 the Department of Juvenile Justice, and the Department of  
 176 Elderly Affairs shall be \$8 for each name submitted; the fee for  
 177 a state criminal history provided for application processing as  
 178 required by law to be performed by the Department of Agriculture  
 179 and Consumer Services shall be \$15 for each name submitted; and  
 180 the fee for requests under s. 943.0542, which implements the  
 181 National Child Protection Act, shall be \$18 for each volunteer  
 182 name submitted. The state offices of the Public Defender shall  
 183 not be assessed a fee for Florida criminal history information  
 184 or wanted person information.

185 (8) Notwithstanding ~~the provisions of~~ s. 943.0525, and any  
 186 user agreements adopted pursuant thereto, and notwithstanding  
 187 the confidentiality of sealed records as provided for in s.  
 188 943.059 and juvenile records as provided for in paragraph  
 189 (3)(b), the sheriff of any county that has contracted with a  
 190 private entity to operate a county detention facility pursuant  
 191 to ~~the provisions of~~ s. 951.062 shall provide that private  
 192 entity, in a timely manner, copies of the Florida criminal  
 193 history records for its inmates. The sheriff may assess a charge  
 194 for the Florida criminal history records pursuant to ~~the~~  
 195 ~~provisions of~~ chapter 119. Sealed records and confidential  
 196 juvenile records received by the private entity under this  
 197 section remain confidential and exempt from ~~the provisions of~~ s.  
 198 119.07(1).

199 (9) Notwithstanding ~~the provisions of~~ s. 943.0525, and any  
 200 user agreements adopted pursuant thereto, and notwithstanding  
 201 the confidentiality of sealed records as provided for in s.  
 202 943.059 and juvenile records as provided for in paragraph  
 203 (3)(b), the Department of Corrections shall provide, in a timely

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204 manner, copies of the Florida criminal history records for  
 205 inmates housed in a private state correctional facility to the  
 206 private entity under contract to operate the facility pursuant  
 207 to ~~the provisions of~~ s. 944.105. The department may assess a  
 208 charge for the Florida criminal history records pursuant to ~~the~~  
 209 ~~provisions of~~ chapter 119. Sealed records and confidential  
 210 juvenile records received by the private entity under this  
 211 section remain confidential and exempt from ~~the provisions of~~ s.  
 212 119.07(1).

213 (10) Notwithstanding ~~the provisions of~~ s. 943.0525 and any  
 214 user agreements adopted pursuant thereto, and notwithstanding  
 215 the confidentiality of sealed records as provided for in s.  
 216 943.059 or of juvenile records as provided for in paragraph  
 217 (3)(b), the Department of Juvenile Justice or any other state or  
 218 local criminal justice agency may provide copies of the Florida  
 219 criminal history records for juvenile offenders currently or  
 220 formerly detained or housed in a contracted juvenile assessment  
 221 center or detention facility or serviced in a contracted  
 222 treatment program and for employees or other individuals who  
 223 will have access to these facilities, only to the entity under  
 224 direct contract with the Department of Juvenile Justice to  
 225 operate these facilities or programs pursuant to ~~the provisions~~  
 226 ~~of~~ s. 985.688. The criminal justice agency providing such data  
 227 may assess a charge for the Florida criminal history records  
 228 pursuant to ~~the provisions of~~ chapter 119. Sealed records and  
 229 confidential juvenile records received by the private entity  
 230 under this section remain confidential and exempt from ~~the~~  
 231 ~~provisions of~~ s. 119.07(1). Information provided under this  
 232 section shall be used only for the criminal justice purpose for

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233 which it was requested and may not be further disseminated.

234 Section 3. Paragraph (b) of subsection (3) of section  
235 496.4101, Florida Statutes, is amended to read:

236 496.4101 Licensure of professional solicitors and certain  
237 employees thereof.-

238 (3)

239 (b) Fees for state and federal fingerprint processing and  
240 fingerprint retention fees shall be borne by the applicant. The  
241 state cost for fingerprint processing is that authorized in s.  
242 943.053(3)(e) ~~943.053(3)(b)~~ for records provided to persons or  
243 entities other than those specified as exceptions therein.

244 Section 4. Subsection (1) of section 943.056, Florida  
245 Statutes, is amended to read:

246 943.056 Criminal history records; access, review, and  
247 challenge.-

248 (1) For purposes of verification of the accuracy and  
249 completeness of a criminal history record, the Department of Law  
250 Enforcement shall provide, in the manner prescribed by rule,  
251 such record for review upon verification, by fingerprints, of  
252 the identity of the requesting person. If a minor, or the parent  
253 or legal guardian of a minor, requests a copy of the minor's  
254 criminal history record, the Department of Law Enforcement shall  
255 provide such copy, including any portions of the record which  
256 may be confidential under s. 943.053(3)(b), for review upon  
257 verification, by fingerprints, of the identity of the minor. The  
258 providing of such record shall not require the payment of any  
259 fees, except those provided for by federal regulations.

260 Section 5. The Legislature finds that it is a public  
261 necessity that the criminal history information of juveniles,

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262 who have not been adjudicated delinquent of a felony or who have  
263 been found only to have committed misdemeanor offenses and  
264 certain criminal history information relating to a juvenile  
265 compiled by the Criminal Justice Information Program be made  
266 confidential and exempt from s. 119.07(1), Florida Statutes, and  
267 s. 24(a), Article I of the State Constitution under ss. 985.04  
268 and 943.053, Florida Statutes. Many individuals who have either  
269 completed their sanctions and received treatment or who were  
270 never charged in the juvenile justice system have found it  
271 difficult to obtain employment. The presence of an arrest or a  
272 misdemeanor record in these individuals' juvenile past and  
273 certain criminal history information relating to a juvenile  
274 compiled by the Criminal Justice Information Program creates an  
275 unnecessary barrier to becoming productive members of society,  
276 thus frustrating the rehabilitative purpose of the juvenile  
277 system. The Legislature therefore finds that it is in the best  
278 interest of the public that individuals with juvenile  
279 misdemeanor records are given the opportunity to become  
280 contributing members of society. Therefore, prohibiting the  
281 unfettered release of juvenile misdemeanor records and certain  
282 criminal history information relating to a juvenile compiled by  
283 the Criminal Justice Information Program is of greater  
284 importance than any public benefit that may be derived from the  
285 full disclosure and release of such arrest records and  
286 information.

287 Section 6. This act shall take effect upon becoming a law.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Rules, *Vice Chair*  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Environmental Preservation and Conservation  
Finance and Tax  
Judiciary

### JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

### SENATOR DARREN SOTO

*Minority Caucus Rules Chair*  
14th District

February 11, 2016

The Honorable Anitere Flores  
Committee on Fiscal Policy  
225 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Chair Flores,

I respectfully request that Senate Bill 700, Public Records/Criminal History Information, be placed on the agenda as soon as possible. Senate Bill 700 specifies that certain confidential information relating to juvenile justice is exempt from public records requirements. This bill further revises the applicability of public record requirements to the arrest of juvenile offenders, as well as providing exceptions to the bill for specific juvenile records and agencies. The bill also provides for future dates of review and repeal of such applicability provisions.

Thank you for your consideration. Should you have any questions or concerns, please feel free to contact me at 850-487-5014.

Sincerely,

A handwritten signature in cursive script that reads "Darren M. Soto".

Darren M. Soto  
State Senator, District 14

Cc: Jennifer Hrdlicka, Staff Director  
Tamra Lyon, Committee Administrative Assistant

#### REPLY TO:

- Kissimmee City Hall, 101 North Church Street, Suite 305, Kissimmee, Florida 34741 (407) 846-5187 FAX: (407) 846-5188
- 220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-17-14

Meeting Date

700

Bill Number (if applicable)

Topic Juvenile Records

Amendment Barcode (if applicable)

Name Samantha Sexton

Job Title Dir. of Government Affairs

Address One W. Adams St, Ste. 301

Phone 904-383-9403

Street

Jacksonville

City

FL

State

32202

Zip

Email Samantha.Sexton@

pacecenter.org

Speaking:  For  Against  Information

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

Representing PACE Center for Girls

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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)

2-17-16

*Meeting Date*

700

*Bill Number (if applicable)*

Topic Public Records/Juvenile Criminal History Information

*Amendment Barcode (if applicable)*

Name Christina Spudeas

Job Title Executive Director

Address 1401 N. University Drive, Suite 408

Phone 954-796-0860

*Street*

Coral Springs

FL

33071

Email Christina.Spudeas@floridaschildrenfirst.org

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida's Children First

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)

2/17/2016  
Meeting Date

SB 700  
Bill Number (if applicable)

Topic PUBLIC RECORDS / JUVENILE CRIMINAL HISTORY INFO

Amendment Barcode (if applicable)

Name RICHARD FORTIN

Job Title SERGEANT VOLUSIA COUNTY SHERIFFS OFFICE

Address 101 EAST CANAL ST  
Street

Phone 386 423-3301

NEW SMYRNA  
City

FL 32168  
State Zip

Email RFORTIN@VCSO.US

Speaking:  For  Against  Information

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

Representing FLORIDA SHERIFFS 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.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

17 Feb 16

Meeting Date

700

Bill Number (if applicable)

Topic Juvenile Records

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title 204 S Monroe Pres & CEO

Address 204 S. Monroe  
Street

Phone 577-3032

Tall  
City State Zip

Email barney@smart  
justicealliance.org

Speaking:  For  Against  Information

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

Representing Fla. 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)

2-17-16  
Meeting Date

SB 700  
Bill Number (if applicable)

Topic Juvenile Records Confidentiality Amendment Barcode (if applicable)

Name Colleen Mackin

Job Title Consultant

Address 115 Magnolia DR  
Tallahassee FL  
Street City State Zip

Phone 7272441032

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing The Children's Campaign

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)

2/17/2016

*Meeting Date*

700

*Bill Number (if applicable)*

Topic Public Records/Juvenile Criminal History Information

*Amendment Barcode (if applicable)*

Name Bruce Miller

Job Title Public Defender, 1st Circuit

Address 190 Governmental Center

Phone 850.595.4100

*Street*

Pensacola

FL

32502

Email bruce\_miller@pd1.fl.gov

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Public Defender Association, Inc.

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)

2/17/16  
Meeting Date

5B0700  
Bill Number (if applicable)

Topic Public Rewards Juvenile Crime Hearing

Amendment Barcode (if applicable)

Name Dennis Stange

Job Title Captain

Address 2500 West Colonial Dr

Phone 407 254-7000

Street

Orlando FL 32804

City

State

Zip

Email dennis.stange@ocfl.net

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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)

2.17.16

Meeting Date

700

Bill Number (if applicable)

Topic Public Records / Juvenile Criminal History Info

Amendment Barcode (if applicable)

Name RON DRAA

Job Title Director of External Affairs

Address 2331 Phillips Road  
Street

Phone 410.7020

Tall FL 32308  
City State Zip

Email RONALDDRAA@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.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/2016

*Meeting Date*

Topic \_\_\_\_\_ Bill Number 700  
*(if applicable)*  
Name BRIAN PITTS Amendment Barcode \_\_\_\_\_  
*(if applicable)*  
Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291  
*Street*  
SAINT PETERSBURG FLORIDA 33705  
*City State Zip*  
E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: SB 764

INTRODUCER: Senator Hays

SUBJECT: Public Food Service Establishments

DATE: February 16, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	<b>Favorable</b>
2.	Oxamendi	Caldwell	RI	<b>Favorable</b>
3.	Hrdlicka	Hrdlicka	FP	<b>Pre-meeting</b>

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## I. Summary:

SB 764 creates new exclusions from the definition of “public food service establishment”:

- Any place maintained and operated by a public or private school, college, or university temporarily to serve food contests and cook-offs.
- Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization temporarily to serve food contests or cook-offs.
- Any eating place maintained and operated by an individual or entity at a food contest, cook-off, or a temporary event lasting 1 to 3 days that is hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization.

The bill requires an organization claiming an exclusion to provide proof of its status as a church, religious organization, nonprofit fraternal organization, or nonprofit civic organization when requested by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

Establishments excluded from the definition of “public food service establishment” are not required to obtain and pay the license fee for temporary food service events. The bill is estimated to have a negative fiscal impact of \$199,654 on the Hotels and Restaurants Trust Fund. In addition, as a result of the reduction in license fees, there will be an estimated \$15,972 annual reduction in the service charge paid to the General Revenue Fund.

## II. Present Situation:

### Public Food Service Establishments

The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (department) is the state agency charged with enforcing the provisions of part I of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of

public food service establishments for the purpose of protecting the public health, safety, and welfare.

A “public food service establishment” is any building, vehicle, place, or structure, or any room or division therein where food is prepared, served, or sold for immediate consumption on or near the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.<sup>1</sup>

At the end of Fiscal Year 2014-2015, there were 49,966 licensed public food service establishments, including seating, permanent non-seating, hotdog carts, and mobile food dispensing vehicles.<sup>2</sup>

### Exclusions from the Definition of Public Food Service Establishments

There are several exclusions from the definition of public food service establishment, including:<sup>3</sup>

- Any place maintained and operated by a public or private school, college, or university for the use of students and faculty or temporarily to serve events such as fairs, carnivals, and athletic contests.
- Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization for the use of members and associates or temporarily to serve events such as fairs, carnivals, or athletic contests.
- Any eating place located on an airplane, train, bus, or watercraft which is a common carrier.
- Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services (DACs) under s. 500.12, F.S.
- Any place of business serving only ice, beverages, popcorn, and prepackaged items.
- Any vending machine dispensing food or beverages other than potentially hazardous foods.

### Temporary Food Service Events

A “temporary food service event” is any event of 30 days or less where food is prepared, served, or sold to the general public.<sup>4</sup> The division issues licenses for 1-3 day events, 4-30 day events, and an annual license. The following license fees apply to temporary and annual licenses:<sup>5</sup>

License Type	Licenses Issued FY 2014-2015	License Fee	Total Revenue
1-3 day event	2,194	\$91	\$199,654
4-30 day event	2,738	\$105	\$287,490
Annual	328	\$456	\$149,568
<b>Totals:</b>	<b>5,260</b>	<b>-</b>	<b>\$636,712</b>

<sup>1</sup> Section 509.013(5)(a), F.S.

<sup>2</sup> Department of Business and Professional Regulation, Division of Hotels and Restaurants, *Annual Report Fiscal Year 2014-2015*, available at [http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2014\\_15.pdf](http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2014_15.pdf) (last visited 2/13/2016).

<sup>3</sup> Section 509.013(5)(b), F.S.

<sup>4</sup> Section 509.13(8), F.S.

<sup>5</sup> Rule 61C-1.008, F.A.C. *Supra* note 2. There were also 2,590 licenses for temporary food service events that were already licensed either annually, permanently, or by the DACs.

The division does not license temporary food service events located on the premises of a church, school, or nonprofit fraternal or civic organization or events located elsewhere and operated by such organizations because these types of organizations are excluded from the division's regulation.<sup>6</sup>

### III. Effect of Proposed Changes:

The bill excludes from the definition of "public food service establishment" any:

- Place maintained and operated by a public or private school, college, or university temporarily to serve food contests and cook-offs.
- Eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization temporarily to serve food contests or cook-offs.
- Eating place maintained and operated by an individual or entity at a food contest, cook-off, or a temporary event lasting 1 to 3 days that is hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization.

The bill requires churches, religious organizations, and nonprofit fraternal or civic organizations that claim to be excluded from the definition of public food service establishment to provide the division with documentation of such status when requested by the division.

For individuals or entities at food contests, cook-offs, or temporary events, the event host must provide the division with documentation of its status as a church or a religious, nonprofit fraternal, or nonprofit civic organization when requested by the division.

The bill clarifies that establishments excluded from the definition of "public food service establishment" are not required to obtain and pay the license fee for temporary food service events.

The bill is effective July 1, 2016.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

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<sup>6</sup> Department of Business and Professional Regulation, *Do churches, schools, or nonprofit organizations need a temporary food service event license?* (updated 06/01/2012), available at [http://myfloridalicense.custhelp.com/app/answers/detail/a\\_id/104](http://myfloridalicense.custhelp.com/app/answers/detail/a_id/104) (last visited 2/13/2016).

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

None.

**B. Private Sector Impact:**

Currently, the division does not license temporary food service events located when the food is prepared and served by an excluded entity. Temporary food service vendors who operate at a 1-3 day event hosted by a church, religious organization, or nonprofit fraternal or civic organization will not be required to pay the applicable license fees.

**C. Government Sector Impact:**

The bill has an annual negative fiscal impact of \$199,654 on the Hotels and Restaurants Trust Fund of the department due to eliminating necessity of licenses for temporary food service events for certain events operated related to churches, religious organizations, and nonprofit fraternal or civic organizations.<sup>7</sup> In addition, as a result of the estimated reduction in license and delinquent fees, there will be a \$15,972 annual reduction in the service charge paid to the General Revenue Fund.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 509.013 and 509.032 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.

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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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<sup>7</sup> The department estimates a 31 percent loss of new temporary event license fee revenues. Department of Business and Professional Regulation, *2016 Legislative Bill Analysis: SB 764*, November 23, 2015.

By Senator Hays

11-00079-16

2016764\_\_

1 A bill to be entitled  
 2 An act relating to public food service establishments;  
 3 amending s. 509.013, F.S.; revising the definition of  
 4 the term "public food service establishment" to  
 5 exclude certain events; amending s. 509.032, F.S.;  
 6 clarifying that a food service license is not required  
 7 to be obtained if an event is excluded under the  
 8 definition of the term "public food service  
 9 establishment"; providing an effective date.

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

11 Section 1. Subsection (5) of section 509.013, Florida  
 12 Statutes, is amended to read:

13 509.013 Definitions.—As used in this chapter, the term:

14 (5) (a) "Public food service establishment" means any  
 15 building, vehicle, place, or structure, or any room or division  
 16 in a building, vehicle, place, or structure where food is  
 17 prepared, served, or sold for immediate consumption on or in the  
 18 vicinity of the premises; called for or taken out by customers;  
 19 or prepared prior to being delivered to another location for  
 20 consumption.

21 (b) The following are excluded from the definition in  
 22 paragraph (a):

23 1. Any place maintained and operated by a public or private  
 24 school, college, or university:

25 a. For the use of students and faculty; or  
 26 b. Temporarily to serve such events as fairs, carnivals,  
 27 food contests, cook-offs, and athletic contests.  
 28  
 29

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

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30 2. Any eating place maintained and operated by a church or  
 31 a religious, nonprofit fraternal, or nonprofit civic  
 32 organization:

33 a. For the use of members and associates; or  
 34 b. Temporarily to serve such events as fairs, carnivals,  
 35 food contests, cook-offs, or athletic contests.  
 36

37 Upon request by the division, a church or a religious, nonprofit  
 38 fraternal, or nonprofit civic organization claiming an exclusion  
 39 under this subparagraph must provide the division documentation  
 40 of its status as a church or a religious, nonprofit fraternal,  
 41 or nonprofit civic organization.

42 3. Any eating place maintained and operated by an  
 43 individual or entity at a food contest, cook-off, or a temporary  
 44 event lasting from 1 to 3 days which is hosted by a church or a  
 45 religious, nonprofit fraternal, or nonprofit civic organization.  
 46 Upon request by the division, the event host must provide the  
 47 division documentation of its status as a church or a religious,  
 48 nonprofit fraternal, or nonprofit civic organization.

49 ~~4.3-~~ Any eating place located on an airplane, train, bus,  
 50 or watercraft which is a common carrier.

51 ~~5.4-~~ Any eating place maintained by a facility certified or  
 52 licensed and regulated by the Agency for Health Care  
 53 Administration or the Department of Children and Families or  
 54 other similar place that is regulated under s. 381.0072.

55 ~~6.5-~~ Any place of business issued a permit or inspected by  
 56 the Department of Agriculture and Consumer Services under s.  
 57 500.12.

58 ~~7.6-~~ Any place of business where the food available for

Page 2 of 4

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

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59 consumption is limited to ice, beverages with or without  
60 garnishment, popcorn, or prepackaged items sold without  
61 additions or preparation.

62 ~~8.7-~~ Any theater, if the primary use is as a theater and if  
63 patron service is limited to food items customarily served to  
64 the admittees of theaters.

65 ~~9.8-~~ Any vending machine that dispenses any food or  
66 beverages other than potentially hazardous foods, as defined by  
67 division rule.

68 ~~10.9-~~ Any vending machine that dispenses potentially  
69 hazardous food and which is located in a facility regulated  
70 under s. 381.0072.

71 ~~11.10-~~ Any research and development test kitchen limited to  
72 the use of employees and which is not open to the general  
73 public.

74 Section 2. Paragraph (c) of subsection (3) of section  
75 509.032, Florida Statutes, is amended to read:

76 509.032 Duties.—

77 (3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD SERVICE  
78 EVENTS.—The division shall:

79 (c) Administer a public notification process for temporary  
80 food service events and distribute educational materials that  
81 address safe food storage, preparation, and service procedures.

82 1. Sponsors of temporary food service events shall notify  
83 the division not less than 3 days before the scheduled event of  
84 the type of food service proposed, the time and location of the  
85 event, a complete list of food service vendors participating in  
86 the event, the number of individual food service facilities each  
87 vendor will operate at the event, and the identification number

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88 of each food service vendor's current license as a public food  
89 service establishment or temporary food service event licensee.  
90 Notification may be completed orally, by telephone, in person,  
91 or in writing. A public food service establishment or food  
92 service vendor may not use this notification process to  
93 circumvent the license requirements of this chapter.

94 2. The division shall keep a record of all notifications  
95 received for proposed temporary food service events and shall  
96 provide appropriate educational materials to the event sponsors  
97 and notify the event sponsors of the availability of the food-  
98 recovery brochure developed under s. 595.420.

99 3.a. Unless excluded under s. 509.013(5)(b), a public food  
100 service establishment or other food service vendor must obtain  
101 one of the following classes of license from the division: an  
102 individual license, for a fee of no more than \$105, for each  
103 temporary food service event in which it participates; or an  
104 annual license, for a fee of no more than \$1,000, that entitles  
105 the licensee to participate in an unlimited number of food  
106 service events during the license period. The division shall  
107 establish license fees, by rule, and may limit the number of  
108 food service facilities a licensee may operate at a particular  
109 temporary food service event under a single license.

110 b. Public food service establishments holding current  
111 licenses from the division may operate under the regulations of  
112 such a license at temporary food service events.

113 Section 3. This act shall take effect July 1, 2016.



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR ALAN HAYS**  
11th District

**COMMITTEES:**  
Appropriations Subcommittee on General  
Government, *Chair*  
Governmental Oversight and Accountability,  
*Vice Chair*  
Appropriations  
Environmental Preservation and Conservation  
Ethics and Elections  
Fiscal Policy

**JOINT COMMITTEE:**  
Joint Select Committee on Collective Bargaining,  
*Alternating Chair*

## MEMORANDUM

**To:** Senator Anitere Flores, Chair  
Committee on Fiscal Policy  
CC: Jennifer Hrdlicka, Staff Director  
Tamra Lyon, Committee Administrative Assistant

**From:** Senator D. Alan Hays

**Subject:** Request to agenda SB 764- Public Food Service Establishments

**Date:** February 2, 2016

---

The above referenced bill passed through Regulated Industries this afternoon. In the interest of keeping the bill moving forward, I am asking that you please consider adding it to your next agenda "if received." This bill sailed through all of its committees of reference last year with no opposition. It would have made it all the way through the process, but was a victim of the House leaving early. This is the bill's last stop. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

A handwritten signature in black ink that reads "D. Alan Hays" with a stylized flourish at the end.

D. Alan Hays, DMD  
State Senator, District 11

**REPLY TO:**

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- 685 West Montrose Street, Suite 210, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/SB 784

INTRODUCER: Criminal Justice Committee and Senator Flores

SUBJECT: Human Trafficking

DATE: February 16, 2016

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Cannon	CJ	<b>Fav/CS</b>
2. Harkness	Sadberry	ACJ	<b>Recommend: Favorable</b>
3. Jones	Hrdlicka	FP	<b>Favorable</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 784 reclassifies human trafficking offenses under s. 787.06, F.S., if a person causes great bodily harm, permanent disability, or permanent disfigurement to another person and clarifies that a person can be convicted of branding a victim of human trafficking if the branding is for the purpose of committing or facilitating the offense of human trafficking. The bill also adds human trafficking as a qualifying felony offense for first degree felony murder.

The bill increases the penalties for a first time violation of s. 796.06(2), F.S., from a second degree misdemeanor to a first degree misdemeanor and for a second or subsequent violation from a first degree misdemeanor to a third degree felony.

The bill amends s. 796.07, F.S. (prostitution and related acts), to:

- Remove minors from being prosecuted for prostitution, lewdness, or assignation under s. 796.07, F.S.;
- Specify that programs offered by faith-based providers may be included in required educational programs on the negative effects of prostitution and human trafficking; and
- Reclassify a violation of s. 796.07, F.S., to the next degree higher if the place, structure, building, or conveyance that is owned, established, maintained, or operated in violation of the statute is a massage establishment that is or should be licensed under s. 480.043, F.S.

The bill provides that only an adult may be charged with engaging in prostitution, lewdness, or assignation and removes language regarding the arrest or prosecution of a minor for the above offenses from the definition of “sexual abuse of a child” in s. 39.01, F.S.

The bill adds s. 796.07, F.S., to the list of offenses which:

- The Department of Health (DOH) has to issue an emergency order suspending a license;
- The Board of Massage Therapy has to deny an application for a new or renewal massage therapist license; and
- The DOH has to deny an application for a new or renewal massage establishment license.

The bill adds the offense of racketeering to the list of qualifying offenses for classification as a sexual predator or sexual offender only if the court makes a written finding that the racketeering activity involved at least one registration-qualifying sexual offense or one registration-qualifying offense with sexual intent or motive.

The Criminal Justice Impact Conference (CJIC) reviewed the bill on January 29, 2016, and concluded that the bill has an overall positive, but insignificant, impact on prison beds. As a result, the bill, as filed, has no significant fiscal impact to the state. The bill amends multiple statutes and therefore has varying effects on state prison beds. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2016.

## II. Present Situation:

### Background

Human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, teenagers, men, and women, who are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.<sup>1</sup> The International Labor Organization estimates more than 26 million adults and children are in forced labor, bonded labor, and commercial sexual servitude at any given time.<sup>2</sup> It is estimated that as many as 300,000 children in the United States are at risk for sexual exploitation each year.<sup>3</sup>

### Human Trafficking

Section 787.06, F.S., is Florida’s human trafficking statute and defines “human trafficking” as the “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person.” The statute contains a variety of provisions prohibiting persons from knowingly engaging in human trafficking by using labor or

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<sup>1</sup> U.S. Department of Health and Human Services, Office on Trafficking in Persons. Administration for Children and Families, *What is Human Trafficking?*, (Aug. 16, 2012) available at <http://www.acf.hhs.gov/programs/endtrafficking/resource/about-human-trafficking> (last visited Feb. 13, 2016).

<sup>2</sup> United States Department of State, *Trafficking in Persons Report*, (June 2013) available at <http://www.state.gov/documents/organization/210737.pdf> (last visited Feb. 13, 2016).

<sup>3</sup> U.S. Department of Justice, Office of Justice Programs, *OJP Fact Sheet, Fast Facts*, (December 2011) available at [http://ojp.gov/newsroom/factsheets/ojpfs\\_humantrafficking.html](http://ojp.gov/newsroom/factsheets/ojpfs_humantrafficking.html) (last visited Feb. 13, 2016).

services or through commercial sexual activity.<sup>4</sup> Specifically, it is a second degree felony for a person to permanently brand, or direct to be branded, a victim of human trafficking.<sup>5</sup>

### **Felony Murder**

Felony murder is first degree murder when the unlawful killing of a human being is committed by a person engaged in the perpetration of, or in the attempt to perpetrate any felony offense listed in s. 782.04(1)(a)2., F.S. An example of such felony offenses in s. 782.04(1)(a)2., F.S., are drug trafficking, arson, and sexual battery. First degree murder is a capital felony punishable by death or life imprisonment.

Currently, human trafficking is not a listed felony offense.

### **Massage Therapist and Massage Establishment Licensing**

Chapter 480, F.S., entitled the “Massage Practice Act” (act), governs the practice of massage<sup>6</sup> in Florida. A significant portion of the act is dedicated to regulating massage establishments, which are defined as “a site or premises, or portion thereof, wherein a massage therapist practices massage.”<sup>7</sup>

In order to be licensed as a massage therapist, an applicant must meet certain criteria.<sup>8</sup> Massage establishments may only operate if they have applied for and received a license from the Department of Health (DOH) in accordance with rules adopted by the Board of Massage Therapy (Board).<sup>9</sup> The Board’s rules:

- Govern the operation of massage establishments and their facilities, personnel, safety and sanitary requirements, financial responsibilities, and insurance coverages;
- Require the DOH to inspect a proposed massage establishment upon receipt of an application for licensure to ensure that the site is to be utilized for massage; and
- Require the DOH to periodically inspect licensed massage establishments at least once a year.<sup>10</sup>

In addition to practicing massage therapy in a licensed massage establishment, a massage therapist may practice at a client’s residence or office, at a sports event, or at a convention or trade show.<sup>11</sup>

The DOH must issue an emergency order suspending the license of a massage therapist or massage establishment upon information that the therapist, a person with ownership interest in

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<sup>4</sup> See ss. 787.06(3) and (4), F.S.

<sup>5</sup> Section 787.06(4)(b), F.S. “Permanently branded” is defined as a mark on the body that can only be removed or repaired by surgical means, laser treatment, or other medical procedure.

<sup>6</sup> “Massage” is defined as the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation. Section 480.033(3), F.S.

<sup>7</sup> Section 480.033(7), F.S.

<sup>8</sup> See ss. 480.041 and 480.042, F.S.

<sup>9</sup> Section 480.043(1), F.S.

<sup>10</sup> See Rules 64B7-26.003, 64B7-26.004, and 64B7-26.005, F.A.C.

<sup>11</sup> Section 480.046(1)(o), F.S.

the establishment, or other specified person<sup>12</sup> has committed a specified felony offense including a violation of Florida's human trafficking statute.<sup>13</sup>

The Board must also deny an application for a new or renewal massage therapist license if the applicant has committed a specified felony offense.<sup>14</sup> Similarly, the DOH must deny an application for a new or renewal massage establishment license if the applicant has committed a specified felony offense.<sup>15</sup> The specified felony offenses include a violation of Florida's human trafficking statute.

### **Renting and Using Space for Lewdness, Assignment, or Prostitution**

Section 796.06(1), F.S., provides that it is unlawful for any person to let or rent any place, structure, or part thereof, trailer or other conveyance, with the knowledge that it will be used for the purpose of lewdness, assignment,<sup>16</sup> or prostitution. A first violation of s. 796.06, F.S., is a second degree misdemeanor<sup>17</sup> and a second or subsequent violation is a first degree misdemeanor.<sup>18</sup>

### **Prostitution**

Section 796.07(2)(a), F.S., makes it unlawful to establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness, assignment, or prostitution, which is punishable by a:

- Second degree misdemeanor for a first violation;
- First degree misdemeanor for a second violation; or
- Third degree felony for a third or subsequent violation.<sup>19</sup>

In 2014, the Legislature added legislative intent to ch. 796, F.S., directing the prosecutions of adults who involve minors in prostitution to be prosecuted under other chapters of law as minors are unable to consent to an act of prostitution.<sup>20</sup> Adults who use minors in any act prohibited under ch. 796, F.S., should not be prosecuted under ch. 796, F.S., but should rather be prosecuted under other criminal laws, such as, but not limited to s. 787.06, F.S. (human trafficking), ch. 794, F.S. (sexual battery), ch. 800, F.S. (lewdness and indecent exposure), s. 810.145, F.S. (video voyeurism), ch. 827, F.S. (abuse of children), and ch. 847, F.S. (obscenity).<sup>21</sup>

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<sup>12</sup> For a corporation that has more than \$250,000 of business assets in this state, the owner, officer, or individual directly involved in the management of the establishment. Section 456.074(5), F.S.

<sup>13</sup> Section 456.074(5), F.S.

<sup>14</sup> Section 480.041(7), F.S.

<sup>15</sup> Section 480.043(8), F.S.

<sup>16</sup> The term "assignment" is not defined in statute. In the context of s. 796.06, F.S., it is essentially setting up an appointment or meeting for prostitution or related acts punished by the statute.

<sup>17</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

<sup>18</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>19</sup> Section 796.07(4)(a), F.S.

<sup>20</sup> Chapter 2014-160, L.O.F.

<sup>21</sup> Section 796.001, F.S.

The legislation also repealed the following provisions from ch. 796, F.S.:

- Procuring persons under age 18 for prostitution;
- Selling or buying of minors into prostitution; and
- Reclassifying prostitution violations involving minors.<sup>22</sup>

Currently both minors and adults may be charged with engaging in prostitution, lewdness, or assignment.<sup>23</sup>

### **Sexual Predator and Sexual Offender Registration**

Florida law requires certain persons to register as a sexual predator or sexual offender. A person is designated by a court to be a sexual predator and administratively determined to be a sexual offender by the Florida Department of Law Enforcement (FDLE). Generally, the distinction between a sexual predator and a sexual offender depends on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred.<sup>24</sup>

A sexual predator or sexual offender must comply with a number of registration requirements.<sup>25</sup> Most of these requirements relate to the registration of particular identifying and residential information but other information may also be required (e.g., vehicular information, attendance at an institution of higher education, and temporarily or permanently departing from or reentering this state).

Section 775.21(4)(a), F.S., provides a list of offenses that designate a person as a sexual predator.

Sections 943.0435, 944.606, and 944.607, F.S., all provide a list of offenses that, if convicted of, means that person is a sexual offender.

Currently, a person convicted of racketeering under s. 895.03, F.S., that involved an offense listed in the above statutes is a sexual predator or sexual offender.

### **III. Effect of Proposed Changes:**

#### **Human Trafficking**

The bill reclassifies an offense under s. 787.06, F.S., if a person causes great bodily harm, permanent disability, or permanent disfigurement to another person. The reclassification makes:

- A second degree felony<sup>26</sup> a first degree felony;<sup>27</sup> and

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<sup>22</sup> *Supra* note 20.

<sup>23</sup> Section 796.07(2)(e), F.S.

<sup>24</sup> *See* ss. 775.21, 943.0435, 944.606, 944.607, 985.481, and 985.4815, F.S.

<sup>25</sup> *Id.* Failure to comply with these requirements is generally a third degree felony. *See* ss. 775.21, 943.0435, and 985.4815, F.S.

<sup>26</sup> A second degree felony is punishable by up to fifteen years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>27</sup> A first degree felony is punishable by up to thirty years imprisonment or when provided in statute by imprisonment for a term of years not exceeding life imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

- A first degree felony a life felony.<sup>28</sup>

The bill also clarifies a person can only be convicted of branding a victim of human trafficking if the branding is for the purpose of committing or facilitating and offence of human trafficking.<sup>29</sup>

### **Felony Murder**

The bill amends s. 782.04(1)(a)2., F.S., to add human trafficking as a qualifying felony offense for first degree felony murder.

### **Renting and Using Space for Lewdness, Assignment, or Prostitution**

The bill increases the penalties for a first time violation of s. 796.06(2), F.S., from a second degree misdemeanor to a first degree misdemeanor and for a second or subsequent violation from a first degree misdemeanor to a third degree felony.<sup>30</sup>

### **Prostitution**

The bill amends s. 796.07(2)(e), F.S., to provide that only an adult may be charged with engaging in prostitution, lewdness, or assignment. The bill also removes language regarding the arrest or prosecution of a minor for the above offenses from the definition of “sexual abuse of a child” in s. 39.01, F.S.

Section 796.07(5), F.S., currently provides that the court must order a person convicted of soliciting, inducing, enticing or procuring another to commit prostitution, lewdness, or assignment<sup>31</sup> to pay and attend an educational program about the negative effects of prostitution and human trafficking, such as a sexual violence prevention education program. The bill specifies that an educational program includes such programs offered by faith-based providers, if they exist in the judicial circuit in which the offender is sentenced.

The bill creates s. 796.07(7), F.S., to reclassify a violation of s. 796.07(2)(a), F.S., if the place is a massage establishment, from a:

- Second degree misdemeanor for a first violation, to a first degree misdemeanor;
- First degree misdemeanor for a second violation, to a third degree felony; and
- Third degree felony for a third or subsequent violation, to a second degree felony.

### **Massage Therapist and Massage Establishment Licensing**

The bill requires the DOH to issue an emergency order suspending the license of a massage therapist or the massage establishment if the therapist, establishment owner, or other specified

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<sup>28</sup> A life felony is punishable by life imprisonment or a term of years not exceeding life imprisonment and a \$15,000 fine. Sections 775.082 and 775.083, F.S.

<sup>29</sup> For example, a tattoo artist could not be arrested for giving a tattoo to a victim of human trafficking years after the trafficking occurred.

<sup>30</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>31</sup> Section 796.07(2)(f), F.S.

person has violated s. 796.07(2)(a), F.S. and to deny an application for a new or renewal massage establishment license if the applicant violated s. 796.07(2)(a), F.S.

The bill also requires the Board to deny an application for a new or renewal massage therapist license if the applicant has violated of s. 796.07(2)(a), F.S.

### **Sexual Predator and Sexual Offender Registration**

The bill amends the list of offenses in ss. 775.21, 943.0435, 944.606, and 944.707, F.S., to add the offense of racketeering (s. 895.03, F.S.) to the list of qualifying offenses for the classification as a sexual predator or sexual offender. The offense of racketeering is only a qualifying offense for such a classification if the court makes a written finding that the racketeering activity involved at least one sexual offense included in the definition of a sexual predator or sexual offender or the offense listed in the definition of sexual predator or sexual offender involved sexual intent or motive.

The bill reenacts numerous sections of the Florida Statutes to incorporate the above described amendments. See Section VIII. Statutes Affected.

The bill is effective October 1, 2016.

## **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 Criminal Justice Impact Conference (CJIC), which provides the official estimate of the prison bed impact, reviewed the bill on January 29, 2016 and concluded that the bill,

as originally filed, has an overall positive, but insignificant, impact on prison beds. As a result, the bill has no significant fiscal impact to the state. The bill amends multiple statutes, and therefore has varying effects on state prison beds, as follows:

- **(Felony Murder)** s. 782.04(1)(a)2., F.S.: In Fiscal Year 2014-2015, 12 offenders were sentenced under s. 787.06, F.S. (Human Trafficking), 9 of the 12 were sentenced to prison, and none of were charged with the additional offense of felony murder. The CJIC estimated that the amendment to s. 782.04(1)(a)2., F.S., has a positive, but insignificant prison bed impact.
- **(Human Trafficking)** s. 787.06(4)(b), F.S.: In Fiscal Year 2014-2015, there were no offenders sentenced under s. 787.06(4)(b), F.S. The CJIC estimated that the amendment to s. 787.06(4)(b), F.S., has a negative, but insignificant prison bed impact.
- **(Human Trafficking)** s. 787.06, F.S.: In Fiscal Year 2014-2015, 12 offenders were sentenced under s. 787.06, F.S., and 9 of the 12 were sentenced to prison. Two offenders were charged with felony battery in addition to human trafficking, and one was charged with domestic battery. The CJIC estimated that the amendment to s. 787.06, F.S., has a positive, but insignificant prison bed impact.
- **(Human Trafficking)** s. 796.06(2)(b), F.S.: In Fiscal Year 2014-2015, of the 8 convictions and 1 adjudication withheld for violating s. 796.06, F.S., all were second degree misdemeanors and none were repeat offenders. In Fiscal Year 2014-2015, the incarceration rate for an unranked third degree felony was 9.9 percent. The CJIC estimated that the amendment to s. 796.06(2)(b), F.S., has a positive, but insignificant prison bed impact.
- **(Prostitution)** s. 796.07(2)(a), F.S.: In Fiscal Year 2014-2015, there were no guilty/convicted counts and 2 adjudication withheld counts for violating s. 796.07(2)(a), F.S. The CJIC estimated that the amendment to s. 796.07(2)(a), F.S., has a positive, but insignificant prison bed impact.
- **(Prostitution)** s. 796.07(2)(e), F.S.: In Fiscal Year 2014-2015, there was 1 convicted and 1 adjudication withheld for violating s. 796.07(2)(e), F.S. In Fiscal Year 2014-2015, no offenders were sentenced for committing the offense of prostitution for a third or subsequent violation while under 18. The CJIC estimated that the amendment to s. 796.07(2)(e), F.S., has a negative, but insignificant prison bed impact.
- **(Sexual Predator and Sexual Offender Registration)** ss. 775.21, 943.0435, 944.606, and 944.607, F.S.: In Fiscal Year 2014-2015, there were 12 offenders sentenced under s. 787.06, F.S. (Human Trafficking); 9 of these offenders were sentenced to prison and 1 was sentenced to prison for both racketeering and sexual offenses. The CJIC estimated that the amendment to ss. 775.021, 943.0435, 944.606, 944.607, F.S., has a positive, but insignificant prison bed impact.

#### VI. Technical Deficiencies:

None.

#### VII. Related Issues:

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 39.01, 456.074, 480.041, 480.043, 782.04, 787.06, 796.06, 796.07, 775.21, 943.0435, 944.606, and 944.607.

The bill reenacts provisions of the following sections of the Florida Statutes: 39.0139, 39.509, 39.806, 60.05, 63.089, 63.092, 68.07, 92.55, 95.11, 322.141, 394.495, 394.912, 394.9125, 397.4872, 409.1678, 775.082, 775.0823, 775.0862, 775.0877, 775.13, 775.15, 775.21, 775.24, 775.25, 775.261, 782.065, 794.075, 796.08, 796.09, 895.02, 903.0351, 903.046, 921.0022, 921.16, 921.141, 938.10, 943.0435, 943.0436, 944.607, 944.608, 944.609, 947.1405, 947.146, 948.06, 948.062, 948.063, 948.064, 948.12, 948.16, 948.30, 948.31, 960.065, 985.04, 985.265, 985.4815, 1012.315, and 1012.467.

**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 January 25, 2016:**

- Reclassifies the felony degree of human trafficking offenses under s. 787.06, F.S., which increases the maximum penalty of these offenses, if the victim suffers great bodily harm, permanent disability, or permanent disfigurement;
- Clarifies that the offense of branding a victim of human trafficking is for the purpose of committing or facilitating a human trafficking offense under s. 797.06, F.S.;
- Adds human trafficking as a predicate (qualifying) felony for first degree murder in the commission of a felony;
- Increases from a second degree misdemeanor (maximum penalty of 60 days in jail) to a first degree misdemeanor (up to one year in jail) a first violation of s. 796.06, F.S. (renting space to be used for lewdness, assignation, prostitution), and increases from a first degree misdemeanor to a third degree felony (maximum penalty of five years in state prison) a second or subsequent violation of that statute;
- Amends s. 796.07, F.S. (prostitution and related acts) to reclassify the misdemeanor or felony degree of a violation of s. 796.07, F.S., if the place, structure, building, or conveyance that is owned, established, maintained, or operated in violation of the statute is a massage establishment that is or should be licensed under s. 480.043, F.S.;
- Requires the Department of Health to issue an emergency order suspending the license of a massage therapist of the massage establishment if the therapist, establishment owner, etc., committed a reclassified violation of s. 796.07, F.S.;
- Requires the Board of Massage Therapy to deny an application for a new or renewal massage therapist license if the applicant has committed a reclassified violation of s. 796.07, F.S.;
- Requires the Department of Health to deny an application for a new or renewal massage establishment license if the applicant has committed a reclassified violation of s. 796.07, F.S.; and

- Consistent with removing minors from being prosecuted for a violation of s. 796.07, F.S., involving prostitution, lewdness, or assignation, removing language regarding arrest or prosecution of a minor for these offenses from the definition “sexual abuse of a child” in ch. 39, F.S. (child dependency).

B. Amendments:

None.

By the Committee on Criminal Justice; and Senator Flores

591-02541-16

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1 A bill to be entitled  
 2 An act relating to human trafficking; amending s.  
 3 39.01, F.S.; revising the definition of the term  
 4 "sexual abuse of a child" to delete a reference to a  
 5 child being arrested or prosecuted for specified  
 6 offenses; amending s. 782.04, F.S.; including human  
 7 trafficking as a predicate offense for felony murder;  
 8 amending s. 787.06, F.S.; creating an increased  
 9 penalty for causing great bodily harm, permanent  
 10 disability, or permanent disfigurement; prohibiting  
 11 permanently branding, or directing the permanent  
 12 branding, of a victim of human trafficking with  
 13 specified intent; amending s. 456.074, F.S.; requiring  
 14 the Department of Health to issue an emergency order  
 15 suspending the license of a massage therapist or  
 16 massage establishment if the therapist or a specified  
 17 person connected to the establishment is convicted of  
 18 owning, establishing, maintaining, or operating a  
 19 place, structure, building, or conveyance for  
 20 lewdness, assignation, or prostitution in conjunction  
 21 with the establishment; correcting a cross-reference;  
 22 amending s. 480.041, F.S.; providing that a licensed  
 23 massage therapist may not receive a new or renewal  
 24 license if the applicant is convicted of owning,  
 25 establishing, maintaining, or operating a place,  
 26 structure, building, or conveyance for lewdness,  
 27 assignation, or prostitution in conjunction with a  
 28 massage establishment; correcting a cross-reference;  
 29 amending s. 480.043, F.S.; providing that a licensed  
 30 massage establishment may not receive a new or renewal  
 31 license if specified persons connected to the  
 32 establishment are convicted of owning, establishing,

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33 maintaining, or operating a place, structure,  
 34 building, or conveyance for lewdness, assignation, or  
 35 prostitution in conjunction with the establishment;  
 36 correcting a cross-reference; amending s. 796.06,  
 37 F.S.; increasing criminal penalties for the offense of  
 38 renting space to be used for lewdness, assignation, or  
 39 prostitution; amending s. 796.07, F.S.; providing that  
 40 minors may not be charged with specified prostitution  
 41 offenses; specifying that certain educational programs  
 42 may be offered by faith-based providers; providing for  
 43 the reclassification of the offense of owning,  
 44 establishing, maintaining, or operating a place,  
 45 structure, building, or conveyance for lewdness,  
 46 assignation, or prostitution if the offense is  
 47 committed in conjunction with a massage establishment;  
 48 amending ss. 775.21 and 943.0435, F.S.; requiring a  
 49 person convicted of specified racketeering offenses to  
 50 register as a sexual predator or sexual offender under  
 51 certain circumstances; amending ss. 944.606 and  
 52 944.607, F.S.; revising the definition of the term  
 53 "sexual offender" for purposes of offender  
 54 notification to include a person convicted of  
 55 specified racketeering offenses if the court makes  
 56 specified findings; reenacting s. 394.495(4)(p), F.S.,  
 57 relating to the child and adolescent mental health  
 58 system of care, s. 409.1678(1)(c) and (6)(a) and (b),  
 59 F.S., relating to specialized residential options for  
 60 children who are victims of sexual exploitation, and  
 61 s. 960.065(5), F.S., relating to eligibility for

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62 awards, to incorporate the amendment made by the act  
 63 to s. 39.01, F.S., in references thereto; reenacting  
 64 s. 39.806(1)(d) and (n), F.S., relating to grounds for  
 65 termination of parental rights, to incorporate the  
 66 amendments made by the act to ss. 775.21 and 782.04,  
 67 F.S., in references thereto; reenacting s.  
 68 63.089(4)(b), F.S., relating to proceedings to  
 69 terminate parental rights pending adoption, to  
 70 incorporate the amendments made by the act to ss.  
 71 775.21 and 782.04, F.S., in references thereto;  
 72 reenacting s. 95.11(10), F.S., relating to limitations  
 73 other than for the recovery of real property, s.  
 74 775.082(1)(b) and (3)(a), (b), and (c), F.S., relating  
 75 to penalties, s. 782.065, F.S., relating to murder of  
 76 specified officers, s. 921.16(1), F.S., relating to  
 77 when sentences should be concurrent and when they  
 78 should be consecutive, s. 948.062(1)(a), F.S.,  
 79 relating to reviewing and reporting serious offenses  
 80 committed by offenders placed on probation or  
 81 community control, s. 985.265(3)(b), F.S., relating to  
 82 detention transfer and release, and s. 1012.315(1)(d),  
 83 F.S., relating to disqualification from employment, to  
 84 incorporate the amendment made by the act to s.  
 85 782.04, F.S., in references thereto; reenacting s.  
 86 1012.467(2)(g), F.S., relating to noninstructional  
 87 contractors who are permitted access to school grounds  
 88 when students are present, to incorporate the  
 89 amendments made by the act to ss. 782.04 and 943.0435,  
 90 F.S., in references thereto; reenacting s. 775.0823(1)

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91 and (2), F.S., relating to violent offenses committed  
 92 against certain officers, attorneys, and judges, s.  
 93 921.0022(3)(i), F.S., relating to the offense severity  
 94 ranking chart, s. 947.146(3)(i), F.S., relating to the  
 95 Control Release Authority, and s. 394.912(9)(a), F.S.,  
 96 relating to definitions relating to involuntary civil  
 97 commitment of sexually violent predators, to  
 98 incorporate the amendment made by the act to s.  
 99 782.04, F.S., in references thereto; reenacting s.  
 100 775.15(19), F.S., relating to time limitations, to  
 101 incorporate the amendment made by the act to s.  
 102 787.06, F.S., in a reference thereto; reenacting s.  
 103 60.05(4), F.S., relating to abatement of nuisances, s.  
 104 775.0877(1)(m), F.S., relating to criminal  
 105 transmission of HIV, s. 796.08(2) and (3), F.S.,  
 106 relating to screening for HIV and sexually  
 107 transmissible diseases, s. 796.09(2), F.S., relating  
 108 to certain civil causes of action, s. 895.02(1)(a),  
 109 F.S., relating to definitions for the Florida RICO  
 110 Act, and s. 948.16(1)(a), F.S., relating to specified  
 111 misdemeanor pretrial intervention programs, to  
 112 incorporate the amendment made by the act to s.  
 113 796.07, F.S., in references thereto; reenacting s.  
 114 39.0139(3)(a), F.S., relating to visitation or other  
 115 contact, s. 39.509(6)(b), F.S., relating to  
 116 grandparents rights, s. 63.092(3), F.S., relating to a  
 117 report to the court of intended placement by an  
 118 adoption entity, to incorporate the amendment made by  
 119 the act to s. 775.21, F.S., in references thereto;

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120 reenacting s. 68.07(3)(i) and (6), F.S., relating to  
 121 change of name, to incorporate the amendments made by  
 122 this act to ss. 775.21 and 943.0435, F.S., in  
 123 references thereto; reenacting s. 322.141(3), F.S.,  
 124 relating to color or markings of certain licenses or  
 125 identification cards, to incorporate the amendments  
 126 made by this act to ss. 775.21, 943.0435, and 944.607,  
 127 F.S., in references thereto; reenacting s.  
 128 397.4872(2)(a) and (c), F.S., relating to exemption  
 129 from disqualification, to incorporate the amendments  
 130 made by this act to ss. 775.21 and 943.0435, F.S., in  
 131 references thereto; reenacting s. 775.13(4)(e) and  
 132 (f), F.S., relating to registration of convicted  
 133 felons, to incorporate the amendments made by this act  
 134 to ss. 775.21, 943.0435, and 944.607, F.S., in  
 135 references thereto; reenacting s. 775.25, F.S.,  
 136 relating to prosecutions for acts or omissions, to  
 137 incorporate the amendments made to this act by ss.  
 138 775.21, 943.0435, 944.606, and 944.607, F.S., in  
 139 references thereto; reenacting s. 775.261(3)(b), F.S.,  
 140 relating to The Florida Career Offender Registration  
 141 Act, to incorporate the amendments made by this act to  
 142 ss. 775.21, 943.0435, and 944.607, F.S., in references  
 143 thereto; reenacting s. 794.075(1), F.S., relating to  
 144 sexual predators and erectile dysfunction drugs, and  
 145 s. 903.0351(1)(c), F.S., relating to restrictions on  
 146 pretrial release pending probation-violation hearing  
 147 or community-control-violation hearing, to incorporate  
 148 the amendment made by the act to s. 775.21, F.S., in

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149 references thereto; reenacting s. 903.046(2)(m), F.S.,  
 150 relating to purpose of and criteria for bail  
 151 determination, to incorporate the amendments made by  
 152 this act to ss. 775.21 and 943.0435, F.S., in  
 153 references thereto; reenacting s. 921.141(5)(o), F.S.,  
 154 relating to sentence of death or life imprisonment for  
 155 capital felonies, to incorporate the amendment made by  
 156 the act to s. 775.21, F.S., in a reference thereto;  
 157 reenacting s. 938.10(1), F.S., relating to additional  
 158 court cost imposed in cases of certain crimes, to  
 159 incorporate the amendments made by this act to ss.  
 160 775.21 and 943.0435, F.S., in references thereto;  
 161 reenacting s. 943.0435(3), (4), and (5), F.S.,  
 162 relating to sexual offenders required to register with  
 163 the department, to incorporate the amendments made by  
 164 this act to ss. 775.21, 944.606, and 944.607, F.S., in  
 165 references thereto; reenacting s. 944.607(4)(a) and  
 166 (9), F.S., relating to notification to the Department  
 167 of Law Enforcement of information on sexual offenders,  
 168 to incorporate the amendments made by this act to ss.  
 169 775.21 and 943.0435, F.S., in references thereto;  
 170 reenacting s. 944.608(7), F.S., relating to  
 171 notification to the Department of Law Enforcement of  
 172 information on career offenders, to incorporate the  
 173 amendments made by this act to ss. 775.21 and 944.607,  
 174 F.S., in references thereto; reenacting s. 944.609(4),  
 175 F.S., relating to career offenders and notification  
 176 upon release, to incorporate the amendment made by the  
 177 act to s. 775.21, F.S., in references thereto;

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178 reenacting s. 947.1405(2)(c), (10), and (12), F.S.,  
 179 relating to the conditional release program, to  
 180 incorporate the amendments made by this act to ss.  
 181 775.21 and 943.0435, F.S., in references thereto;  
 182 reenacting s. 948.06(4) and (8)(b), (c), and (d),  
 183 F.S., relating to violation of probation or community  
 184 control, to incorporate the amendments made by this  
 185 act to ss. 782.04, 775.21, 943.0435, and 944.607,  
 186 F.S., in references thereto; reenacting s. 948.063,  
 187 F.S., relating to violations of probation or community  
 188 control by designated sexual offenders and sexual  
 189 predators, to incorporate the amendments made by this  
 190 act to ss. 775.21, 943.0435, and 944.607, F.S., in  
 191 references thereto; reenacting s. 948.064(4), F.S.,  
 192 relating to notification of status as a violent felony  
 193 offender of special concern, and s. 948.12(3), F.S.,  
 194 relating to intensive supervision for postprison  
 195 release of violent offenders, to incorporate the  
 196 amendment made by the act to s. 775.21, F.S., in  
 197 references thereto; reenacting s. 948.30(3)(b) and  
 198 (4), F.S., relating to additional terms and conditions  
 199 of probation or community control for certain sex  
 200 offenses, to incorporate the amendments made by this  
 201 act to ss. 775.21 and 943.0435, F.S., in references  
 202 thereto; reenacting s. 948.31, F.S., relating to  
 203 evaluation and treatment of sexual predators and  
 204 offenders on probation or community control, and s.  
 205 985.04(6)(b), F.S., relating to oaths, records, and  
 206 confidential information, to incorporate the

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207 amendments made by the act to ss. 775.21, 943.0435,  
 208 944.606, and 944.607, F.S., in references thereto;  
 209 reenacting s. 985.4815(9), F.S., relating to  
 210 notification to the Department of Law Enforcement of  
 211 information on juvenile sexual offenders, to  
 212 incorporate the amendments made by this act to ss.  
 213 775.21 and 943.0435, F.S., in references thereto;  
 214 reenacting s. 92.55(1)(b), F.S., relating to judicial  
 215 or other proceedings involving certain victims,  
 216 witnesses, and persons, to incorporate the amendments  
 217 made by this act to ss. 775.21 and 943.0435, F.S., in  
 218 references thereto; reenacting s. 394.9125(2)(a),  
 219 F.S., relating to state attorney authority to refer a  
 220 person for civil commitment, to incorporate the  
 221 amendment made by the act to s. 943.0435, F.S., in a  
 222 reference thereto; reenacting s. 775.21(5)(d) and  
 223 (10)(c), F.S., relating to the Florida Sexual  
 224 Predators Act, to incorporate the amendments made by  
 225 this act to ss. 943.0435 and 944.607, F.S., in  
 226 references thereto; reenacting s. 775.24(2), F.S.,  
 227 relating to the duty of the court to uphold laws  
 228 governing sexual predators and sexual offenders, to  
 229 incorporate the amendments made by this act to ss.  
 230 943.0435, 944.606, and 944.607, F.S., in references  
 231 thereto; reenacting s. 943.0436(2), F.S., relating to  
 232 the duty of the court to uphold laws governing sexual  
 233 predators and sexual offenders, to incorporate the  
 234 amendments made by this act to ss. 775.21, 943.0435,  
 235 944.606, and 944.607, F.S., in references thereto;

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236 reenacting s. 775.0862(2), F.S., relating to  
 237 reclassification of sexual offenses against students  
 238 by authority figures, to incorporate the amendment  
 239 made by the act to s. 943.0435, F.S., in a reference  
 240 thereto; providing an effective date.

241  
 242 Be It Enacted by the Legislature of the State of Florida:

243  
 244 Section 1. Paragraph (g) of subsection (69) of section  
 245 39.01, Florida Statutes, is amended to read:

246 39.01 Definitions.—When used in this chapter, unless the  
 247 context otherwise requires:

248 (69) "Sexual abuse of a child" for purposes of finding a  
 249 child to be dependent means one or more of the following acts:

250 (g) The sexual exploitation of a child, which includes the  
 251 act of a child offering to engage in or engaging in  
 252 prostitution, ~~provided that the child is not under arrest or is~~  
 253 ~~not being prosecuted in a delinquency or criminal proceeding for~~  
 254 ~~a violation of any offense in chapter 796 based on such~~  
 255 ~~behavior, or the act of~~ allowing, encouraging, or forcing a  
 256 child to:

- 257 1. Solicit for or engage in prostitution;
- 258 2. Engage in a sexual performance, as defined by chapter  
 259 827; or
- 260 3. Participate in the trade of human trafficking as  
 261 provided in s. 787.06(3)(g).

262 Section 2. Paragraph (a) of subsection (1) of section  
 263 782.04, Florida Statutes, is amended to read:

264 782.04 Murder.—

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- 265 (1) (a) The unlawful killing of a human being:  
 266 1. When perpetrated from a premeditated design to effect  
 267 the death of the person killed or any human being;  
 268 2. When committed by a person engaged in the perpetration  
 269 of, or in the attempt to perpetrate, any:
- 270 a. Trafficking offense prohibited by s. 893.135(1),
  - 271 b. Arson,
  - 272 c. Sexual battery,
  - 273 d. Robbery,
  - 274 e. Burglary,
  - 275 f. Kidnapping,
  - 276 g. Escape,
  - 277 h. Aggravated child abuse,
  - 278 i. Aggravated abuse of an elderly person or disabled adult,
  - 279 j. Aircraft piracy,
  - 280 k. Unlawful throwing, placing, or discharging of a  
 281 destructive device or bomb,
  - 282 l. Carjacking,
  - 283 m. Home-invasion robbery,
  - 284 n. Aggravated stalking,
  - 285 o. Murder of another human being,
  - 286 p. Resisting an officer with violence to his or her person,
  - 287 q. Aggravated fleeing or eluding with serious bodily injury  
 288 or death,
  - 289 r. Felony that is an act of terrorism or is in furtherance  
 290 of an act of terrorism,  
 291 s. Human trafficking; or
  - 292 3. Which resulted from the unlawful distribution of any  
 293 substance controlled under s. 893.03(1), cocaine as described in

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294 s. 893.03(2)(a)4., opium or any synthetic or natural salt,  
295 compound, derivative, or preparation of opium, or methadone by a  
296 person 18 years of age or older, when such drug is proven to be  
297 the proximate cause of the death of the user,

298  
299 is murder in the first degree and constitutes a capital felony,  
300 punishable as provided in s. 775.082.

301 Section 3. Subsections (8) and (9) of section 787.06,  
302 Florida Statutes, are renumbered as subsections (9) and (10),  
303 respectively, paragraph (b) of subsection (4) is amended, and a  
304 new subsection (8) is added to that section, to read:

305 787.06 Human trafficking.—

306 (4)

307 (b) Any person who, for the purpose of committing or  
308 facilitating an offense under this section, permanently brands,  
309 or directs to be branded, a victim of an offense under this  
310 section commits a second degree felony, punishable as provided  
311 in s. 775.082, s. 775.083, or s. 775.084. For purposes of this  
312 subsection, the term "permanently branded" means a mark on the  
313 individual's body that, if it can be removed or repaired at all,  
314 can only be removed or repaired by surgical means, laser  
315 treatment, or other medical procedure.

316 (8) The degree of an offense shall be reclassified as  
317 follows if a person causes great bodily harm, permanent  
318 disability, or permanent disfigurement to another person during  
319 the commission of an offense under this section:

320 (a) A felony of the second degree shall be reclassified as  
321 a felony of the first degree.

322 (b) A felony of the first degree shall be reclassified as a

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323 life felony.

324 Section 4. Subsection (5) of section 456.074, Florida  
325 Statutes, is amended to read:

326 456.074 Certain health care practitioners; immediate  
327 suspension of license.—

328 (5) The department shall issue an emergency order  
329 suspending the license of a massage therapist or establishment  
330 as defined in chapter 480 upon receipt of information that the  
331 massage therapist, a person with an ownership interest in the  
332 establishment, or, for a corporation that has more than \$250,000  
333 of business assets in this state, the owner, officer, or  
334 individual directly involved in the management of the  
335 establishment has been convicted or found guilty of, or has  
336 entered a plea of guilty or nolo contendere to, regardless of  
337 adjudication, a violation of s. 796.07(2)(a) which is  
338 reclassified under s. 796.07(7) or a felony offense under any of  
339 the following provisions of state law or a similar provision in  
340 another jurisdiction:

341 (a) Section 787.01, relating to kidnapping.

342 (b) Section 787.02, relating to false imprisonment.

343 (c) Section 787.025, relating to luring or enticing a  
344 child.

345 (d) Section 787.06, relating to human trafficking.

346 (e) Section 787.07, relating to human smuggling.

347 (f) Section 794.011, relating to sexual battery.

348 (g) Section 794.08, relating to female genital mutilation.

349 (h) Former s. 796.03, relating to procuring a person under  
350 the age of 18 for prostitution.

351 (i) Former s. 796.035, relating to the selling or buying of

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352 minors into prostitution.

353 (j) Section 796.04, relating to forcing, compelling, or  
354 coercing another to become a prostitute.

355 (k) Section 796.05, relating to deriving support from the  
356 proceeds of prostitution.

357 (l) Section 796.07(4)(a)3. ~~796.07(4)(e)~~, relating to a  
358 felony of the third degree for a third or subsequent violation  
359 of s. 796.07, relating to prohibiting prostitution and related  
360 acts.

361 (m) Section 800.04, relating to lewd or lascivious offenses  
362 committed upon or in the presence of persons less than 16 years  
363 of age.

364 (n) Section 825.1025(2)(b), relating to lewd or lascivious  
365 offenses committed upon or in the presence of an elderly or  
366 disabled person.

367 (o) Section 827.071, relating to sexual performance by a  
368 child.

369 (p) Section 847.0133, relating to the protection of minors.

370 (q) Section 847.0135, relating to computer pornography.

371 (r) Section 847.0138, relating to the transmission of  
372 material harmful to minors to a minor by electronic device or  
373 equipment.

374 (s) Section 847.0145, relating to the selling or buying of  
375 minors.

376 Section 5. Subsection (7) of section 480.041, Florida  
377 Statutes, is amended to read:

378 480.041 Massage therapists; qualifications; licensure;  
379 endorsement.—

380 (7) The board shall deny an application for a new or

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381 renewal license if an applicant has been convicted or found  
382 guilty of, or enters a plea of guilty or nolo contendere to,  
383 regardless of adjudication, a violation of s. 796.07(2)(a) which  
384 is reclassified under s. 796.07(7) or a felony offense under any  
385 of the following provisions of state law or a similar provision  
386 in another jurisdiction:

387 (a) Section 787.01, relating to kidnapping.

388 (b) Section 787.02, relating to false imprisonment.

389 (c) Section 787.025, relating to luring or enticing a  
390 child.

391 (d) Section 787.06, relating to human trafficking.

392 (e) Section 787.07, relating to human smuggling.

393 (f) Section 794.011, relating to sexual battery.

394 (g) Section 794.08, relating to female genital mutilation.

395 (h) Former s. 796.03, relating to procuring a person under  
396 the age of 18 for prostitution.

397 (i) Former s. 796.035, relating to the selling or buying of  
398 minors into prostitution.

399 (j) Section 796.04, relating to forcing, compelling, or  
400 coercing another to become a prostitute.

401 (k) Section 796.05, relating to deriving support from the  
402 proceeds of prostitution.

403 (l) Section 796.07(4)(a)3. ~~796.07(4)(e)~~, relating to a  
404 felony of the third degree for a third or subsequent violation  
405 of s. 796.07, relating to prohibiting prostitution and related  
406 acts.

407 (m) Section 800.04, relating to lewd or lascivious offenses  
408 committed upon or in the presence of persons less than 16 years  
409 of age.

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410 (n) Section 825.1025(2)(b), relating to lewd or lascivious  
 411 offenses committed upon or in the presence of an elderly or  
 412 disabled person.

413 (o) Section 827.071, relating to sexual performance by a  
 414 child.

415 (p) Section 847.0133, relating to the protection of minors.

416 (q) Section 847.0135, relating to computer pornography.

417 (r) Section 847.0138, relating to the transmission of  
 418 material harmful to minors to a minor by electronic device or  
 419 equipment.

420 (s) Section 847.0145, relating to the selling or buying of  
 421 minors.

422 Section 6. Subsection (8) of section 480.043, Florida  
 423 Statutes, is amended to read:

424 480.043 Massage establishments; requisites; licensure;  
 425 inspection.—

426 (8) The department shall deny an application for a new or  
 427 renewal license if a person with an ownership interest in the  
 428 establishment or, for a corporation that has more than \$250,000  
 429 of business assets in this state, the owner, officer, or  
 430 individual directly involved in the management of the  
 431 establishment has been convicted or found guilty of, or entered  
 432 a plea of guilty or nolo contendere to, regardless of  
 433 adjudication, a violation of s. 796.07(2)(a) which is  
 434 reclassified under s. 796.07(7) or a felony offense under any of  
 435 the following provisions of state law or a similar provision in  
 436 another jurisdiction:

437 (a) Section 787.01, relating to kidnapping.

438 (b) Section 787.02, relating to false imprisonment.

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439 (c) Section 787.025, relating to luring or enticing a  
 440 child.

441 (d) Section 787.06, relating to human trafficking.

442 (e) Section 787.07, relating to human smuggling.

443 (f) Section 794.011, relating to sexual battery.

444 (g) Section 794.08, relating to female genital mutilation.

445 (h) Former s. 796.03, relating to procuring a person under  
 446 the age of 18 for prostitution.

447 (i) Former s. 796.035, relating to selling or buying of  
 448 minors into prostitution.

449 (j) Section 796.04, relating to forcing, compelling, or  
 450 coercing another to become a prostitute.

451 (k) Section 796.05, relating to deriving support from the  
 452 proceeds of prostitution.

453 (l) Section 796.07(4)(a)3. ~~796.07(4)(e)~~, relating to a  
 454 felony of the third degree for a third or subsequent violation  
 455 of s. 796.07, relating to prohibiting prostitution and related  
 456 acts.

457 (m) Section 800.04, relating to lewd or lascivious offenses  
 458 committed upon or in the presence of persons less than 16 years  
 459 of age.

460 (n) Section 825.1025(2)(b), relating to lewd or lascivious  
 461 offenses committed upon or in the presence of an elderly or  
 462 disabled person.

463 (o) Section 827.071, relating to sexual performance by a  
 464 child.

465 (p) Section 847.0133, relating to the protection of minors.

466 (q) Section 847.0135, relating to computer pornography.

467 (r) Section 847.0138, relating to the transmission of

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468 material harmful to minors to a minor by electronic device or  
 469 equipment.

470 (s) Section 847.0145, relating to the selling or buying of  
 471 minors.

472 Section 7. Subsection (2) of section 796.06, Florida  
 473 Statutes, is amended to read:

474 796.06 Renting space to be used for lewdness, assignation,  
 475 or prostitution.—

476 (2) A person who violates this section commits:

477 (a) A misdemeanor of the first ~~second~~ degree for a first  
 478 violation, punishable as provided in s. 775.082 or s. 775.083.

479 (b) A felony ~~misdemeanor~~ of the third ~~first~~ degree for a  
 480 second or subsequent violation, punishable as provided in s.  
 481 775.082, ~~or~~ s. 775.083, or s. 775.084.

482 Section 8. Paragraph (e) of subsection (2) and paragraph  
 483 (b) of subsection (5) of section 796.07, Florida Statutes, are  
 484 amended, and subsection (7) is added to that section, to read:

485 796.07 Prohibiting prostitution and related acts.—

486 (2) It is unlawful:

487 (e) For a person 18 years of age or older to offer to  
 488 commit, or to commit, or to engage in, prostitution, lewdness,  
 489 or assignation.

490 (5)

491 (b) In addition to any other penalty imposed, the court  
 492 shall order a person convicted of a violation of paragraph  
 493 (2)(f) to:

494 1. Perform 100 hours of community service; and  
 495 2. Pay for and attend an educational program about the  
 496 negative effects of prostitution and human trafficking, such as

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497 a sexual violence prevention education program, including such  
 498 programs offered by faith-based providers, if such programs  
 499 ~~exist~~ ~~program exists~~ in the judicial circuit in which the  
 500 offender is sentenced.

501 (7) If the place, structure, building, or conveyance that  
 502 is owned, established, maintained, or operated in violation of  
 503 paragraph (2)(a) is a massage establishment that is or should be  
 504 licensed under s. 480.043, the offense shall be reclassified to  
 505 the next higher degree as follows:

506 (a) A misdemeanor of the second degree for a first  
 507 violation is reclassified as a misdemeanor of the first degree,  
 508 punishable as provided in s. 775.082 or s. 775.083.

509 (b) A misdemeanor of the first degree for a second  
 510 violation is reclassified as a felony of the third degree,  
 511 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

512 (c) A felony of the third degree for a third or subsequent  
 513 violation is reclassified as a felony of the second degree,  
 514 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

515 Section 9. Paragraph (a) of subsection (4) of section  
 516 775.21, Florida Statutes, is amended to read:

517 775.21 The Florida Sexual Predators Act.—

518 (4) SEXUAL PREDATOR CRITERIA.—

519 (a) For a current offense committed on or after October 1,  
 520 1993, upon conviction, an offender shall be designated as a  
 521 "sexual predator" under subsection (5), and subject to  
 522 registration under subsection (6) and community and public  
 523 notification under subsection (7) if:

524 1. The felony is:

525 a. A capital, life, or first degree felony violation, or

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526 any attempt thereof, of s. 787.01 or s. 787.02, where the victim  
 527 is a minor and the defendant is not the victim's parent or  
 528 guardian, or s. 794.011, s. 800.04, or s. 847.0145, or a  
 529 violation of a similar law of another jurisdiction; or  
 530 b. Any felony violation, or any attempt thereof, of s.  
 531 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.  
 532 787.025(2)(c), where the victim is a minor and the defendant is  
 533 not the victim's parent or guardian; s. 787.06(3)(b), (d), (f),  
 534 or (g); former s. 787.06(3)(h); s. 794.011, excluding s.  
 535 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s.  
 536 800.04; s. 810.145(8)(b); s. 825.1025; s. 827.071; s. 847.0135,  
 537 excluding s. 847.0135(6); s. 847.0145; s. 895.03, if the court  
 538 makes a written finding that the racketeering activity involved  
 539 at least one sexual offense listed in this sub-subparagraph or  
 540 at least one offense listed in this sub-subparagraph with sexual  
 541 intent or motive; s. 916.1075(2); or s. 985.701(1); or a  
 542 violation of a similar law of another jurisdiction, and the  
 543 offender has previously been convicted of or found to have  
 544 committed, or has pled nolo contendere or guilty to, regardless  
 545 of adjudication, any violation of s. 393.135(2); s. 394.4593(2);  
 546 s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a  
 547 minor and the defendant is not the victim's parent or guardian;  
 548 s. 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s.  
 549 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;  
 550 former s. 796.035; s. 800.04; s. 825.1025; s. 827.071; s.  
 551 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0145; s.  
 552 895.03, if the court makes a written finding that the  
 553 racketeering activity involved at least one sexual offense  
 554 listed in this sub-subparagraph or at least one offense listed

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555 in this sub-subparagraph with sexual intent or motive; s.  
 556 916.1075(2); or s. 985.701(1); or a violation of a similar law  
 557 of another jurisdiction;  
 558 2. The offender has not received a pardon for any felony or  
 559 similar law of another jurisdiction that is necessary for the  
 560 operation of this paragraph; and  
 561 3. A conviction of a felony or similar law of another  
 562 jurisdiction necessary to the operation of this paragraph has  
 563 not been set aside in any postconviction proceeding.  
 564 Section 10. Paragraph (a) of subsection (1) of section  
 565 943.0435, Florida Statutes, is amended to read:  
 566 943.0435 Sexual offenders required to register with the  
 567 department; penalty.—  
 568 (1) As used in this section, the term:  
 569 (a)1. "Sexual offender" means a person who meets the  
 570 criteria in sub-subparagraph a., sub-subparagraph b., sub-  
 571 subparagraph c., or sub-subparagraph d., as follows:  
 572 a.(I) Has been convicted of committing, or attempting,  
 573 soliciting, or conspiring to commit, any of the criminal  
 574 offenses proscribed in the following statutes in this state or  
 575 similar offenses in another jurisdiction: s. 393.135(2); s.  
 576 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where  
 577 the victim is a minor and the defendant is not the victim's  
 578 parent or guardian; s. 787.06(3)(b), (d), (f), or (g); former s.  
 579 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05;  
 580 former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8);  
 581 s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.  
 582 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s. 895.03,  
 583 if the court makes a written finding that the racketeering

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584 activity involved at least one sexual offense listed in this  
 585 sub-sub-subparagraph or at least one offense listed in this sub-  
 586 sub-subparagraph with sexual intent or motive; s. 916.1075(2);  
 587 or s. 985.701(1); or any similar offense committed in this state  
 588 which has been redesignated from a former statute number to one  
 589 of those listed in this sub-sub-subparagraph; and

590 (II) Has been released on or after October 1, 1997, from  
 591 the sanction imposed for any conviction of an offense described  
 592 in sub-sub-subparagraph (I). For purposes of sub-sub-  
 593 subparagraph (I), a sanction imposed in this state or in any  
 594 other jurisdiction includes, but is not limited to, a fine,  
 595 probation, community control, parole, conditional release,  
 596 control release, or incarceration in a state prison, federal  
 597 prison, private correctional facility, or local detention  
 598 facility;

599 b. Establishes or maintains a residence in this state and  
 600 who has not been designated as a sexual predator by a court of  
 601 this state but who has been designated as a sexual predator, as  
 602 a sexually violent predator, or by another sexual offender  
 603 designation in another state or jurisdiction and was, as a  
 604 result of such designation, subjected to registration or  
 605 community or public notification, or both, or would be if the  
 606 person were a resident of that state or jurisdiction, without  
 607 regard to whether the person otherwise meets the criteria for  
 608 registration as a sexual offender;

609 c. Establishes or maintains a residence in this state who  
 610 is in the custody or control of, or under the supervision of,  
 611 any other state or jurisdiction as a result of a conviction for  
 612 committing, or attempting, soliciting, or conspiring to commit,

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613 any of the criminal offenses proscribed in the following  
 614 statutes or similar offense in another jurisdiction: s.  
 615 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.  
 616 787.025(2) (c), where the victim is a minor and the defendant is  
 617 not the victim's parent or guardian; s. 787.06(3) (b), (d), (f),  
 618 or (g); former s. 787.06(3) (h); s. 794.011, excluding s.  
 619 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s.  
 620 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s.  
 621 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s.  
 622 847.0145; s. 895.03, if the court makes a written finding that  
 623 the racketeering activity involved at least one sexual offense  
 624 listed in this sub-subparagraph or at least one offense listed  
 625 in this sub-subparagraph with sexual intent or motive; s.

626 916.1075(2); or s. 985.701(1); or any similar offense committed  
 627 in this state which has been redesignated from a former statute  
 628 number to one of those listed in this sub-subparagraph; or

629 d. On or after July 1, 2007, has been adjudicated  
 630 delinquent for committing, or attempting, soliciting, or  
 631 conspiring to commit, any of the criminal offenses proscribed in  
 632 the following statutes in this state or similar offenses in  
 633 another jurisdiction when the juvenile was 14 years of age or  
 634 older at the time of the offense:

635 (I) Section 794.011, excluding s. 794.011(10);

636 (II) Section 800.04(4)(a)2. where the victim is under 12  
 637 years of age or where the court finds sexual activity by the use  
 638 of force or coercion;

639 (III) Section 800.04(5)(c)1. where the court finds  
 640 molestation involving unclothed genitals; or

641 (IV) Section 800.04(5)(d) where the court finds the use of

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642 force or coercion and unclothed genitals.

643 2. For all qualifying offenses listed in sub-subparagraph  
644 (1)(a)1.d., the court shall make a written finding of the age of  
645 the offender at the time of the offense.

646  
647 For each violation of a qualifying offense listed in this  
648 subsection, except for a violation of s. 794.011, the court  
649 shall make a written finding of the age of the victim at the  
650 time of the offense. For a violation of s. 800.04(4), the court  
651 shall also make a written finding indicating whether the offense  
652 involved sexual activity and indicating whether the offense  
653 involved force or coercion. For a violation of s. 800.04(5), the  
654 court shall also make a written finding that the offense did or  
655 did not involve unclothed genitals or genital area and that the  
656 offense did or did not involve the use of force or coercion.

657 Section 11. Paragraph (b) of subsection (1) of section  
658 944.606, Florida Statutes, is amended to read:

659 944.606 Sexual offenders; notification upon release.—

660 (1) As used in this section:

661 (b) "Sexual offender" means a person who has been convicted  
662 of committing, or attempting, soliciting, or conspiring to  
663 commit, any of the criminal offenses proscribed in the following  
664 statutes in this state or similar offenses in another  
665 jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s.  
666 787.02, or s. 787.025(2)(c), where the victim is a minor and the  
667 defendant is not the victim's parent or guardian; s.  
668 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s.  
669 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;  
670 former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s.

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671 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.  
672 847.0137; s. 847.0138; s. 847.0145; s. 895.03, if the court  
673 makes a written finding that the racketeering activity involved  
674 at least one sexual offense listed in this paragraph or at least  
675 one offense listed in this paragraph with sexual intent or  
676 motive; s. 916.1075(2); or s. 985.701(1); or any similar offense  
677 committed in this state which has been redesignated from a  
678 former statute number to one of those listed in this subsection,  
679 when the department has received verified information regarding  
680 such conviction; an offender's computerized criminal history  
681 record is not, in and of itself, verified information.

682 Section 12. Paragraph (a) of subsection (1) of section  
683 944.607, Florida Statutes, is amended to read:

684 944.607 Notification to Department of Law Enforcement of  
685 information on sexual offenders.—

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

687 (a) "Sexual offender" means a person who is in the custody  
688 or control of, or under the supervision of, the department or is  
689 in the custody of a private correctional facility:

690 1. On or after October 1, 1997, as a result of a conviction  
691 for committing, or attempting, soliciting, or conspiring to  
692 commit, any of the criminal offenses proscribed in the following  
693 statutes in this state or similar offenses in another  
694 jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s.  
695 787.02, or s. 787.025(2)(c), where the victim is a minor and the  
696 defendant is not the victim's parent or guardian; s.  
697 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s.  
698 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;  
699 former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s.

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700 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.  
 701 847.0137; s. 847.0138; s. 847.0145; s. 895.03, if the court  
 702 makes a written finding that the racketeering activity involved  
 703 at least one sexual offense listed in this subparagraph or at  
 704 least one offense listed in this subparagraph with sexual intent  
 705 or motive; s. 916.1075(2); or s. 985.701(1); or any similar  
 706 offense committed in this state which has been redesignated from  
 707 a former statute number to one of those listed in this  
 708 paragraph; or

709 2. Who establishes or maintains a residence in this state  
 710 and who has not been designated as a sexual predator by a court  
 711 of this state but who has been designated as a sexual predator,  
 712 as a sexually violent predator, or by another sexual offender  
 713 designation in another state or jurisdiction and was, as a  
 714 result of such designation, subjected to registration or  
 715 community or public notification, or both, or would be if the  
 716 person were a resident of that state or jurisdiction, without  
 717 regard as to whether the person otherwise meets the criteria for  
 718 registration as a sexual offender.

719 Section 13. For the purpose of incorporating the amendment  
 720 made by this act to section 39.01, Florida Statutes, in a  
 721 reference thereto, paragraph (p) of subsection (4) of section  
 722 394.495, Florida Statutes, is reenacted to read:

723 394.495 Child and adolescent mental health system of care;  
 724 programs and services.—

725 (4) The array of services may include, but is not limited  
 726 to:

727 (p) Trauma-informed services for children who have suffered  
 728 sexual exploitation as defined in s. 39.01(69)(g).

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729 Section 14. For the purpose of incorporating the amendment  
 730 made by this act to section 39.01, Florida Statutes, in  
 731 references thereto, paragraph (c) of subsection (1) and  
 732 paragraphs (a) and (b) of subsection (6) of section 409.1678,  
 733 Florida Statutes, are reenacted to read:

734 409.1678 Specialized residential options for children who  
 735 are victims of sexual exploitation.—

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

737 (c) "Sexually exploited child" means a child who has  
 738 suffered sexual exploitation as defined in s. 39.01(69)(g) and  
 739 is ineligible for relief and benefits under the federal  
 740 Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq.

741 (6) LOCATION INFORMATION.—

742 (a) Information about the location of a safe house, safe  
 743 foster home, or other residential facility serving victims of  
 744 sexual exploitation, as defined in s. 39.01(69)(g), which is  
 745 held by an agency, as defined in s. 119.011, is confidential and  
 746 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 747 Constitution. This exemption applies to such confidential and  
 748 exempt information held by an agency before, on, or after the  
 749 effective date of the exemption.

750 (b) Information about the location of a safe house, safe  
 751 foster home, or other residential facility serving victims of  
 752 sexual exploitation, as defined in s. 39.01(69)(g), may be  
 753 provided to an agency, as defined in s. 119.011, as necessary to  
 754 maintain health and safety standards and to address emergency  
 755 situations in the safe house, safe foster home, or other  
 756 residential facility.

757 Section 15. For the purpose of incorporating the amendment

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758 made by this act to section 39.01, Florida Statutes, in a  
759 reference thereto, subsection (5) of section 960.065, Florida  
760 Statutes, is reenacted to read:

761 960.065 Eligibility for awards.—

762 (5) A person is not ineligible for an award pursuant to  
763 paragraph (2) (a), paragraph (2) (b), or paragraph (2) (c) if that  
764 person is a victim of sexual exploitation of a child as defined  
765 in s. 39.01(69) (g).

766 Section 16. For the purpose of incorporating the amendments  
767 made by this act to sections 775.21 and 782.04, Florida  
768 Statutes, in references thereto, paragraphs (d) and (n) of  
769 subsection (1) of section 39.806, Florida Statutes, are  
770 reenacted to read:

771 39.806 Grounds for termination of parental rights.—

772 (1) Grounds for the termination of parental rights may be  
773 established under any of the following circumstances:

774 (d) When the parent of a child is incarcerated and either:

775 1. The period of time for which the parent is expected to  
776 be incarcerated will constitute a significant portion of the  
777 child's minority. When determining whether the period of time is  
778 significant, the court shall consider the child's age and the  
779 child's need for a permanent and stable home. The period of time  
780 begins on the date that the parent enters into incarceration;

781 2. The incarcerated parent has been determined by the court  
782 to be a violent career criminal as defined in s. 775.084, a  
783 habitual violent felony offender as defined in s. 775.084, or a  
784 sexual predator as defined in s. 775.21; has been convicted of  
785 first degree or second degree murder in violation of s. 782.04  
786 or a sexual battery that constitutes a capital, life, or first

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787 degree felony violation of s. 794.011; or has been convicted of  
788 an offense in another jurisdiction which is substantially  
789 similar to one of the offenses listed in this paragraph. As used  
790 in this section, the term "substantially similar offense" means  
791 any offense that is substantially similar in elements and  
792 penalties to one of those listed in this subparagraph, and that  
793 is in violation of a law of any other jurisdiction, whether that  
794 of another state, the District of Columbia, the United States or  
795 any possession or territory thereof, or any foreign  
796 jurisdiction; or

797 3. The court determines by clear and convincing evidence  
798 that continuing the parental relationship with the incarcerated  
799 parent would be harmful to the child and, for this reason, that  
800 termination of the parental rights of the incarcerated parent is  
801 in the best interest of the child. When determining harm, the  
802 court shall consider the following factors:

803 a. The age of the child.

804 b. The relationship between the child and the parent.

805 c. The nature of the parent's current and past provision  
806 for the child's developmental, cognitive, psychological, and  
807 physical needs.

808 d. The parent's history of criminal behavior, which may  
809 include the frequency of incarceration and the unavailability of  
810 the parent to the child due to incarceration.

811 e. Any other factor the court deems relevant.

812 (n) The parent is convicted of an offense that requires the  
813 parent to register as a sexual predator under s. 775.21.

814 Section 17. For the purpose of incorporating the amendments  
815 made by this act to sections 775.21 and 782.04, Florida

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816 Statutes, in references thereto, paragraph (b) of subsection (4)  
817 of section 63.089, Florida Statutes, is reenacted to read:

818 63.089 Proceeding to terminate parental rights pending  
819 adoption; hearing; grounds; dismissal of petition; judgment.—

820 (4) FINDING OF ABANDONMENT.—A finding of abandonment  
821 resulting in a termination of parental rights must be based upon  
822 clear and convincing evidence that a parent or person having  
823 legal custody has abandoned the child in accordance with the  
824 definition contained in s. 63.032. A finding of abandonment may  
825 also be based upon emotional abuse or a refusal to provide  
826 reasonable financial support, when able, to a birth mother  
827 during her pregnancy or on whether the person alleged to have  
828 abandoned the child, while being able, failed to establish  
829 contact with the child or accept responsibility for the child's  
830 welfare.

831 (b) The child has been abandoned when the parent of a child  
832 is incarcerated on or after October 1, 2001, in a federal,  
833 state, or county correctional institution and:

834 1. The period of time for which the parent has been or is  
835 expected to be incarcerated will constitute a significant  
836 portion of the child's minority. In determining whether the  
837 period of time is significant, the court shall consider the  
838 child's age and the child's need for a permanent and stable  
839 home. The period of time begins on the date that the parent  
840 enters into incarceration;

841 2. The incarcerated parent has been determined by a court  
842 of competent jurisdiction to be a violent career criminal as  
843 defined in s. 775.084, a habitual violent felony offender as  
844 defined in s. 775.084, convicted of child abuse as defined in s.

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845 827.03, or a sexual predator as defined in s. 775.21; has been  
846 convicted of first degree or second degree murder in violation  
847 of s. 782.04 or a sexual battery that constitutes a capital,  
848 life, or first degree felony violation of s. 794.011; or has  
849 been convicted of a substantially similar offense in another  
850 jurisdiction. As used in this section, the term "substantially  
851 similar offense" means any offense that is substantially similar  
852 in elements and penalties to one of those listed in this  
853 subparagraph, and that is in violation of a law of any other  
854 jurisdiction, whether that of another state, the District of  
855 Columbia, the United States or any possession or territory  
856 thereof, or any foreign jurisdiction; or

857 3. The court determines by clear and convincing evidence  
858 that continuing the parental relationship with the incarcerated  
859 parent would be harmful to the child and, for this reason,  
860 termination of the parental rights of the incarcerated parent is  
861 in the best interests of the child.

862 Section 18. For the purpose of incorporating the amendment  
863 made by this act to section 782.04, Florida Statutes, in  
864 references thereto, subsection (10) of section 95.11, Florida  
865 Statutes, is reenacted to read:

866 95.11 Limitations other than for the recovery of real  
867 property.—Actions other than for recovery of real property shall  
868 be commenced as follows:

869 (10) FOR INTENTIONAL TORTS RESULTING IN DEATH FROM ACTS  
870 DESCRIBED IN S. 782.04 OR S. 782.07.—Notwithstanding paragraph  
871 (4) (d), an action for wrongful death seeking damages authorized  
872 under s. 768.21 brought against a natural person for an  
873 intentional tort resulting in death from acts described in s.

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874 782.04 or s. 782.07 may be commenced at any time. This  
 875 subsection shall not be construed to require an arrest, the  
 876 filing of formal criminal charges, or a conviction for a  
 877 violation of s. 782.04 or s. 782.07 as a condition for filing a  
 878 civil action.

879 Section 19. For the purpose of incorporating the amendment  
 880 made by this act to section 782.04, Florida Statutes, in  
 881 references thereto, paragraph (b) of subsection (1) and  
 882 paragraphs (a), (b), and (c) of subsection (3) of section  
 883 775.082, Florida Statutes, are reenacted to read:

884 775.082 Penalties; applicability of sentencing structures;  
 885 mandatory minimum sentences for certain reoffenders previously  
 886 released from prison.—

887 (1)

888 (b)1. A person who actually killed, intended to kill, or  
 889 attempted to kill the victim and who is convicted under s.  
 890 782.04 of a capital felony, or an offense that was reclassified  
 891 as a capital felony, which was committed before the person  
 892 attained 18 years of age shall be punished by a term of  
 893 imprisonment for life if, after a sentencing hearing conducted  
 894 by the court in accordance with s. 921.1401, the court finds  
 895 that life imprisonment is an appropriate sentence. If the court  
 896 finds that life imprisonment is not an appropriate sentence,  
 897 such person shall be punished by a term of imprisonment of at  
 898 least 40 years. A person sentenced pursuant to this subparagraph  
 899 is entitled to a review of his or her sentence in accordance  
 900 with s. 921.1402(2)(a).

901 2. A person who did not actually kill, intend to kill, or  
 902 attempt to kill the victim and who is convicted under s. 782.04

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903 of a capital felony, or an offense that was reclassified as a  
 904 capital felony, which was committed before the person attained  
 905 18 years of age may be punished by a term of imprisonment for  
 906 life or by a term of years equal to life if, after a sentencing  
 907 hearing conducted by the court in accordance with s. 921.1401,  
 908 the court finds that life imprisonment is an appropriate  
 909 sentence. A person who is sentenced to a term of imprisonment of  
 910 more than 15 years is entitled to a review of his or her  
 911 sentence in accordance with s. 921.1402(2)(c).

912 3. The court shall make a written finding as to whether a  
 913 person is eligible for a sentence review hearing under s.  
 914 921.1402(2)(a) or (c). Such a finding shall be based upon  
 915 whether the person actually killed, intended to kill, or  
 916 attempted to kill the victim. The court may find that multiple  
 917 defendants killed, intended to kill, or attempted to kill the  
 918 victim.

919 (3) A person who has been convicted of any other designated  
 920 felony may be punished as follows:

921 (a)1. For a life felony committed before October 1, 1983,  
 922 by a term of imprisonment for life or for a term of at least 30  
 923 years.

924 2. For a life felony committed on or after October 1, 1983,  
 925 by a term of imprisonment for life or by a term of imprisonment  
 926 not exceeding 40 years.

927 3. Except as provided in subparagraph 4., for a life felony  
 928 committed on or after July 1, 1995, by a term of imprisonment  
 929 for life or by imprisonment for a term of years not exceeding  
 930 life imprisonment.

931 4.a. Except as provided in sub-subparagraph b., for a life

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932 felony committed on or after September 1, 2005, which is a  
 933 violation of s. 800.04(5)(b), by:

934 (I) A term of imprisonment for life; or  
 935 (II) A split sentence that is a term of at least 25 years'  
 936 imprisonment and not exceeding life imprisonment, followed by  
 937 probation or community control for the remainder of the person's  
 938 natural life, as provided in s. 948.012(4).

939 b. For a life felony committed on or after July 1, 2008,  
 940 which is a person's second or subsequent violation of s.  
 941 800.04(5)(b), by a term of imprisonment for life.

942 5. Notwithstanding subparagraphs 1.-4., a person who is  
 943 convicted under s. 782.04 of an offense that was reclassified as  
 944 a life felony which was committed before the person attained 18  
 945 years of age may be punished by a term of imprisonment for life  
 946 or by a term of years equal to life imprisonment if the judge  
 947 conducts a sentencing hearing in accordance with s. 921.1401 and  
 948 finds that life imprisonment or a term of years equal to life  
 949 imprisonment is an appropriate sentence.

950 a. A person who actually killed, intended to kill, or  
 951 attempted to kill the victim and is sentenced to a term of  
 952 imprisonment of more than 25 years is entitled to a review of  
 953 his or her sentence in accordance with s. 921.1402(2)(b).

954 b. A person who did not actually kill, intend to kill, or  
 955 attempt to kill the victim and is sentenced to a term of  
 956 imprisonment of more than 15 years is entitled to a review of  
 957 his or her sentence in accordance with s. 921.1402(2)(c).

958 c. The court shall make a written finding as to whether a  
 959 person is eligible for a sentence review hearing under s.  
 960 921.1402(2)(b) or (c). Such a finding shall be based upon

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961 whether the person actually killed, intended to kill, or  
 962 attempted to kill the victim. The court may find that multiple  
 963 defendants killed, intended to kill, or attempted to kill the  
 964 victim.

965 6. For a life felony committed on or after October 1, 2014,  
 966 which is a violation of s. 787.06(3)(g), by a term of  
 967 imprisonment for life.

968 (b)1. For a felony of the first degree, by a term of  
 969 imprisonment not exceeding 30 years or, when specifically  
 970 provided by statute, by imprisonment for a term of years not  
 971 exceeding life imprisonment.

972 2. Notwithstanding subparagraph 1., a person convicted  
 973 under s. 782.04 of a first degree felony punishable by a term of  
 974 years not exceeding life imprisonment, or an offense that was  
 975 reclassified as a first degree felony punishable by a term of  
 976 years not exceeding life, which was committed before the person  
 977 attained 18 years of age may be punished by a term of years  
 978 equal to life imprisonment if the judge conducts a sentencing  
 979 hearing in accordance with s. 921.1401 and finds that a term of  
 980 years equal to life imprisonment is an appropriate sentence.

981 a. A person who actually killed, intended to kill, or  
 982 attempted to kill the victim and is sentenced to a term of  
 983 imprisonment of more than 25 years is entitled to a review of  
 984 his or her sentence in accordance with s. 921.1402(2)(b).

985 b. A person who did not actually kill, intend to kill, or  
 986 attempt to kill the victim and is sentenced to a term of  
 987 imprisonment of more than 15 years is entitled to a review of  
 988 his or her sentence in accordance with s. 921.1402(2)(c).

989 c. The court shall make a written finding as to whether a

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990 person is eligible for a sentence review hearing under s.  
 991 921.1402(2) (b) or (c). Such a finding shall be based upon  
 992 whether the person actually killed, intended to kill, or  
 993 attempted to kill the victim. The court may find that multiple  
 994 defendants killed, intended to kill, or attempted to kill the  
 995 victim.

996 (c) Notwithstanding paragraphs (a) and (b), a person  
 997 convicted of an offense that is not included in s. 782.04 but  
 998 that is an offense that is a life felony or is punishable by a  
 999 term of imprisonment for life or by a term of years not  
 1000 exceeding life imprisonment, or an offense that was reclassified  
 1001 as a life felony or an offense punishable by a term of  
 1002 imprisonment for life or by a term of years not exceeding life  
 1003 imprisonment, which was committed before the person attained 18  
 1004 years of age may be punished by a term of imprisonment for life  
 1005 or a term of years equal to life imprisonment if the judge  
 1006 conducts a sentencing hearing in accordance with s. 921.1401 and  
 1007 finds that life imprisonment or a term of years equal to life  
 1008 imprisonment is an appropriate sentence. A person who is  
 1009 sentenced to a term of imprisonment of more than 20 years is  
 1010 entitled to a review of his or her sentence in accordance with  
 1011 s. 921.1402(2) (d).

1012 Section 20. For the purpose of incorporating the amendment  
 1013 made by this act to section 782.04, Florida Statutes, in  
 1014 references thereto, section 782.065, Florida Statutes, is  
 1015 reenacted to read:

1016 782.065 Murder; law enforcement officer, correctional  
 1017 officer, correctional probation officer.—Notwithstanding ss.  
 1018 775.082, 775.0823, 782.04, 782.051, and chapter 921, a defendant

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1019 shall be sentenced to life imprisonment without eligibility for  
 1020 release upon findings by the trier of fact that, beyond a  
 1021 reasonable doubt:

1022 (1) The defendant committed murder in the first degree in  
 1023 violation of s. 782.04(1) and a death sentence was not imposed;  
 1024 murder in the second or third degree in violation of s.  
 1025 782.04(2), (3), or (4); attempted murder in the first or second  
 1026 degree in violation of s. 782.04(1)(a)1. or (2); or attempted  
 1027 felony murder in violation of s. 782.051; and

1028 (2) The victim of any offense described in subsection (1)  
 1029 was a law enforcement officer, part-time law enforcement  
 1030 officer, auxiliary law enforcement officer, correctional  
 1031 officer, part-time correctional officer, auxiliary correctional  
 1032 officer, correctional probation officer, part-time correctional  
 1033 probation officer, or auxiliary correctional probation officer,  
 1034 as those terms are defined in s. 943.10, engaged in the lawful  
 1035 performance of a legal duty.

1036 Section 21. For the purpose of incorporating the amendment  
 1037 made by this act to section 782.04, Florida Statutes, in a  
 1038 reference thereto, subsection (1) of section 921.16, Florida  
 1039 Statutes, is reenacted to read:

1040 921.16 When sentences to be concurrent and when  
 1041 consecutive.—

1042 (1) A defendant convicted of two or more offenses charged  
 1043 in the same indictment, information, or affidavit or in  
 1044 consolidated indictments, informations, or affidavits shall  
 1045 serve the sentences of imprisonment concurrently unless the  
 1046 court directs that two or more of the sentences be served  
 1047 consecutively. Sentences of imprisonment for offenses not

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1048 charged in the same indictment, information, or affidavit shall  
 1049 be served consecutively unless the court directs that two or  
 1050 more of the sentences be served concurrently. Any sentence for  
 1051 sexual battery as defined in chapter 794 or murder as defined in  
 1052 s. 782.04 must be imposed consecutively to any other sentence  
 1053 for sexual battery or murder which arose out of a separate  
 1054 criminal episode or transaction.

1055 Section 22. For the purpose of incorporating the amendment  
 1056 made by this act to section 782.04, Florida Statutes, in a  
 1057 reference thereto, paragraph (a) of subsection (1) of section  
 1058 948.062, Florida Statutes, is reenacted to read:

1059 948.062 Reviewing and reporting serious offenses committed  
 1060 by offenders placed on probation or community control.—

1061 (1) The department shall review the circumstances related  
 1062 to an offender placed on probation or community control who has  
 1063 been arrested while on supervision for the following offenses:

1064 (a) Any murder as provided in s. 782.04;

1065 Section 23. For the purpose of incorporating the amendment  
 1066 made by this act to section 782.04, Florida Statutes, in a  
 1067 reference thereto, paragraph (b) of subsection (3) of section  
 1068 985.265, Florida Statutes, is reenacted to read:

1069 985.265 Detention transfer and release; education; adult  
 1070 jails.—

1071 (3)

1072 (b) When a juvenile is released from secure detention or  
 1073 transferred to nonsecure detention, detention staff shall  
 1074 immediately notify the appropriate law enforcement agency,  
 1075 school personnel, and victim if the juvenile is charged with  
 1076 committing any of the following offenses or attempting to commit

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1077 any of the following offenses:

- 1078 1. Murder, under s. 782.04;
- 1079 2. Sexual battery, under chapter 794;
- 1080 3. Stalking, under s. 784.048; or
- 1081 4. Domestic violence, as defined in s. 741.28.

1082 Section 24. For the purpose of incorporating the amendment  
 1083 made by this act to section 782.04, Florida Statutes, in a  
 1084 reference thereto, paragraph (d) of subsection (1) of section  
 1085 1012.315, Florida Statutes, is reenacted to read:

1086 1012.315 Disqualification from employment.—A person is  
 1087 ineligible for educator certification, and instructional  
 1088 personnel and school administrators, as defined in s. 1012.01,  
 1089 are ineligible for employment in any position that requires  
 1090 direct contact with students in a district school system,  
 1091 charter school, or private school that accepts scholarship  
 1092 students under s. 1002.39 or s. 1002.395, if the person,  
 1093 instructional personnel, or school administrator has been  
 1094 convicted of:

1095 (1) Any felony offense prohibited under any of the  
 1096 following statutes:

1097 (d) Section 782.04, relating to murder.

1098 Section 25. For the purpose of incorporating the amendment  
 1099 made by this act to sections 782.04 and 943.0435, Florida  
 1100 Statutes, in references thereto, paragraph (g) of subsection (2)  
 1101 of section 1012.467, Florida Statutes, is reenacted to read:

1102 1012.467 Noninstructional contractors who are permitted  
 1103 access to school grounds when students are present; background  
 1104 screening requirements.—

1105 (2)

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1106 (g) A noninstructional contractor for whom a criminal  
 1107 history check is required under this section may not have been  
 1108 convicted of any of the following offenses designated in the  
 1109 Florida Statutes, any similar offense in another jurisdiction,  
 1110 or any similar offense committed in this state which has been  
 1111 redesignated from a former provision of the Florida Statutes to  
 1112 one of the following offenses:

- 1113 1. Any offense listed in s. 943.0435(1)(a)1., relating to  
 1114 the registration of an individual as a sexual offender.  
 1115 2. Section 393.135, relating to sexual misconduct with  
 1116 certain developmentally disabled clients and the reporting of  
 1117 such sexual misconduct.  
 1118 3. Section 394.4593, relating to sexual misconduct with  
 1119 certain mental health patients and the reporting of such sexual  
 1120 misconduct.  
 1121 4. Section 775.30, relating to terrorism.  
 1122 5. Section 782.04, relating to murder.  
 1123 6. Section 787.01, relating to kidnapping.  
 1124 7. Any offense under chapter 800, relating to lewdness and  
 1125 indecent exposure.  
 1126 8. Section 826.04, relating to incest.  
 1127 9. Section 827.03, relating to child abuse, aggravated  
 1128 child abuse, or neglect of a child.  
 1129 Section 26. For the purpose of incorporating the amendment  
 1130 made by this act to section 782.04, Florida Statutes, in  
 1131 references thereto, subsections (1) and (2) of section 775.0823,  
 1132 Florida Statutes, are reenacted to read:  
 1133 775.0823 Violent offenses committed against law enforcement  
 1134 officers, correctional officers, state attorneys, assistant

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1135 state attorneys, justices, or judges.—The Legislature does  
 1136 hereby provide for an increase and certainty of penalty for any  
 1137 person convicted of a violent offense against any law  
 1138 enforcement or correctional officer, as defined in s. 943.10(1),  
 1139 (2), (3), (6), (7), (8), or (9); against any state attorney  
 1140 elected pursuant to s. 27.01 or assistant state attorney  
 1141 appointed under s. 27.181; or against any justice or judge of a  
 1142 court described in Art. V of the State Constitution, which  
 1143 offense arises out of or in the scope of the officer's duty as a  
 1144 law enforcement or correctional officer, the state attorney's or  
 1145 assistant state attorney's duty as a prosecutor or investigator,  
 1146 or the justice's or judge's duty as a judicial officer, as  
 1147 follows:

- 1148 (1) For murder in the first degree as described in s.  
 1149 782.04(1), if the death sentence is not imposed, a sentence of  
 1150 imprisonment for life without eligibility for release.  
 1151 (2) For attempted murder in the first degree as described  
 1152 in s. 782.04(1), a sentence pursuant to s. 775.082, s. 775.083,  
 1153 or s. 775.084.  
 1154 Notwithstanding the provisions of s. 948.01, with respect to any  
 1155 person who is found to have violated this section, adjudication  
 1156 of guilt or imposition of sentence shall not be suspended,  
 1157 deferred, or withheld.  
 1158 Section 27. For the purpose of incorporating the amendment  
 1159 made by this act to section 782.04, Florida Statutes, in a  
 1160 reference thereto, paragraph (i) of subsection (3) of section  
 1161 921.0022, Florida Statutes, is reenacted to read:  
 1162 921.0022 Criminal Punishment Code; offense severity ranking  
 1163

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1164 chart.-

1165 (3) OFFENSE SEVERITY RANKING CHART

1166 (i) LEVEL 9

1167

1168

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
327.35 (3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.
409.920 (2)(b)1.c.	1st	Medicaid provider fraud; \$50,000 or more.
499.0051(9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling

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1175 or exceeding \$100,000.

655.50(10)(b)3. 1st Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.

1176

775.0844 1st Aggravated white collar crime.

1177

782.04(1) 1st Attempt, conspire, or solicit to commit premeditated murder.

1178

782.04(3) 1st,PBL Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.

1179

782.051(1) 1st Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).

1180

782.07(2) 1st Aggravated manslaughter of an elderly person or disabled adult.

1181

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1182 787.01(1)(a)1. 1st,PBL Kidnapping; hold for ransom or  
reward or as a shield or  
hostage.

1183 787.01(1)(a)2. 1st,PBL Kidnapping with intent to  
commit or facilitate commission  
of any felony.

1184 787.01(1)(a)4. 1st,PBL Kidnapping with intent to  
interfere with performance of  
any governmental or political  
function.

1185 787.02(3)(a) 1st,PBL False imprisonment; child under  
age 13; perpetrator also  
commits aggravated child abuse,  
sexual battery, or lewd or  
lascivious battery,  
molestation, conduct, or  
exhibition.

1186 787.06(3)(c)1. 1st Human trafficking for labor and  
services of an unauthorized  
alien child.

787.06(3)(d) 1st Human trafficking using  
coercion for commercial sexual  
activity of an unauthorized  
adult alien.

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1187 787.06(3)(f)1. 1st,PBL Human trafficking for  
commercial sexual activity by  
the transfer or transport of  
any child from outside Florida  
to within the state.

1188 790.161 1st Attempted capital destructive  
device offense.

1189 790.166(2) 1st,PBL Possessing, selling, using, or  
attempting to use a weapon of  
mass destruction.

1190 794.011(2) 1st Attempted sexual battery;  
victim less than 12 years of  
age.

1191 794.011(2) Life Sexual battery; offender  
younger than 18 years and  
commits sexual battery on a  
person less than 12 years.

1192 794.011(4)(a) 1st,PBL Sexual battery, certain  
circumstances; victim 12 years  
of age or older but younger  
than 18 years; offender 18  
years or older.

1193

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1194	794.011(4)(b)	1st	Sexual battery, certain circumstances; victim and offender 18 years of age or older.
	794.011(4)(c)	1st	Sexual battery, certain circumstances; victim 12 years of age or older; offender younger than 18 years.
1195	794.011(4)(d)	1st,PBL	Sexual battery, certain circumstances; victim 12 years of age or older; prior conviction for specified sex offenses.
1196	794.011(8)(b)	1st,PBL	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
1197	794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
1198	800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
1199			

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1200	812.13(2)(a)	1st,PBL	Robbery with firearm or other deadly weapon.
1201	812.133(2)(a)	1st,PBL	Carjacking; firearm or other deadly weapon.
1202	812.135(2)(b)	1st	Home-invasion robbery with weapon.
1203	817.535(3)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee.
1204	817.535(4)(a)2.	1st	Filing false claim or other unauthorized document; defendant is incarcerated or under supervision.
1205	817.535(5)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the false instrument.
	817.568(7)	2nd, PBL	Fraudulent use of personal identification information of

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			an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.	
1206	827.03(2)(a)	1st	Aggravated child abuse.	
1207	847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.	
1208	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.	
1209	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.	
1210	893.135	1st	Attempted capital trafficking offense.	
1211	893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.	
1212				

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	893.135	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.	
	(1)(b)1.c.			
1213	893.135	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.	
	(1)(c)1.c.			
1214	893.135	1st	Trafficking in hydrocodone, 200 grams or more, less than 30 kilograms.	
	(1)(c)2.d.			
1215	893.135	1st	Trafficking in oxycodone, 100 grams or more, less than 30 kilograms.	
	(1)(c)3.d.			
1216	893.135	1st	Trafficking in phencyclidine, more than 400 grams.	
	(1)(d)1.c.			
1217	893.135	1st	Trafficking in methaqualone, more than 25 kilograms.	
	(1)(e)1.c.			
1218	893.135	1st	Trafficking in amphetamine, more than 200 grams.	
	(1)(f)1.c.			
1219	893.135	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.	
	(1)(h)1.c.			
1220				

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1221 893.135 1st Trafficking in 1,4-Butanediol,  
(1) (j) 1.c. 10 kilograms or more.

1222 893.135 1st Trafficking in Phenethylamines,  
(1) (k) 2.c. 400 grams or more.

1223 896.101(5) (c) 1st Money laundering, financial  
instruments totaling or  
exceeding \$100,000.

1224 896.104(4) (a) 3. 1st Structuring transactions to  
evade reporting or registration  
requirements, financial  
transactions totaling or  
exceeding \$100,000.

1225 Section 28. For the purpose of incorporating the amendment  
1226 made by this act to section 782.04, Florida Statutes, in a  
1227 reference thereto, paragraph (i) of subsection (3) of section  
1228 947.146, Florida Statutes, is reenacted to read:

1229 947.146 Control Release Authority.—

1230 (3) Within 120 days prior to the date the state  
1231 correctional system is projected pursuant to s. 216.136 to  
1232 exceed 99 percent of total capacity, the authority shall  
1233 determine eligibility for and establish a control release date  
1234 for an appropriate number of parole ineligible inmates committed  
1235 to the department and incarcerated within the state who have  
1236 been determined by the authority to be eligible for  
1237

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1238 discretionary early release pursuant to this section. In  
1239 establishing control release dates, it is the intent of the  
1240 Legislature that the authority prioritize consideration of  
1241 eligible inmates closest to their tentative release date. The  
1242 authority shall rely upon commitment data on the offender  
1243 information system maintained by the department to initially  
1244 identify inmates who are to be reviewed for control release  
1245 consideration. The authority may use a method of objective risk  
1246 assessment in determining if an eligible inmate should be  
1247 released. Such assessment shall be a part of the department's  
1248 management information system. However, the authority shall have  
1249 sole responsibility for determining control release eligibility,  
1250 establishing a control release date, and effectuating the  
1251 release of a sufficient number of inmates to maintain the inmate  
1252 population between 99 percent and 100 percent of total capacity.  
1253 Inmates who are ineligible for control release are inmates who  
1254 are parole eligible or inmates who:

1255 (i) Are convicted, or have been previously convicted, of  
1256 committing or attempting to commit murder in the first, second,  
1257 or third degree under s. 782.04(1), (2), (3), or (4), or have  
1258 ever been convicted of any degree of murder or attempted murder  
1259 in another jurisdiction;

1260

1261 In making control release eligibility determinations under this  
1262 subsection, the authority may rely on any document leading to or  
1263 generated during the course of the criminal proceedings,  
1264 including, but not limited to, any presentence or postsentence  
1265 investigation or any information contained in arrest reports  
1266 relating to circumstances of the offense.

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1267 Section 29. For the purpose of incorporating the amendment  
 1268 made by this act to section 782.04, Florida Statutes, in a  
 1269 reference thereto, paragraph (a) of subsection (9) of section  
 1270 394.912, Florida Statutes, is reenacted to read:

1271 394.912 Definitions.—As used in this part, the term:

1272 (9) "Sexually violent offense" means:

1273 (a) Murder of a human being while engaged in sexual battery  
 1274 in violation of s. 782.04(1)(a)2.;

1275 Section 30. For the purpose of incorporating the amendment  
 1276 made by this act to section 787.06, Florida Statutes, in a  
 1277 reference thereto, subsection (19) of section 775.15, Florida  
 1278 Statutes, is reenacted to read:

1279 775.15 Time limitations; general time limitations;  
 1280 exceptions.—

1281 (19) A prosecution for a violation of s. 787.06 may be  
 1282 commenced at any time. This subsection applies to any such  
 1283 offense except an offense the prosecution of which would have  
 1284 been barred by subsection (2) on or before October 1, 2014.

1285 Section 31. For the purpose of incorporating the amendment  
 1286 made by this act to section 796.07, Florida Statutes, in a  
 1287 reference thereto, subsection (4) of section 60.05, Florida  
 1288 Statutes, is reenacted to read:

1289 60.05 Abatement of nuisances.—

1290 (4) On trial if the existence of a nuisance is shown, the  
 1291 court shall issue a permanent injunction and order the costs to  
 1292 be paid by the persons establishing or maintaining the nuisance  
 1293 and shall adjudge that the costs are a lien on all personal  
 1294 property found in the place of the nuisance and on the failure  
 1295 of the property to bring enough to pay the costs, then on the

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1296 real estate occupied by the nuisance. No lien shall attach to  
 1297 the real estate of any other than said persons unless 5 days'  
 1298 written notice has been given to the owner or his or her agent  
 1299 who fails to begin to abate the nuisance within said 5 days. In  
 1300 a proceeding abating a nuisance pursuant to s. 823.10 or s.  
 1301 823.05, if a tenant has been convicted of an offense under  
 1302 chapter 893 or s. 796.07, the court may order the tenant to  
 1303 vacate the property within 72 hours if the tenant and owner of  
 1304 the premises are parties to the nuisance abatement action and  
 1305 the order will lead to the abatement of the nuisance.

1306 Section 32. For the purpose of incorporating the amendment  
 1307 made by this act to section 796.07, Florida Statutes, in a  
 1308 reference thereto, paragraph (m) of subsection (1) of section  
 1309 775.0877, Florida Statutes, is reenacted to read:

1310 775.0877 Criminal transmission of HIV; procedures;  
 1311 penalties.—

1312 (1) In any case in which a person has been convicted of or  
 1313 has pled nolo contendere or guilty to, regardless of whether  
 1314 adjudication is withheld, any of the following offenses, or the  
 1315 attempt thereof, which offense or attempted offense involves the  
 1316 transmission of body fluids from one person to another:

1317 (m) Sections 796.07 and 796.08, relating to prostitution;

1318  
 1319 the court shall order the offender to undergo HIV testing, to be  
 1320 performed under the direction of the Department of Health in  
 1321 accordance with s. 381.004, unless the offender has undergone  
 1322 HIV testing voluntarily or pursuant to procedures established in  
 1323 s. 381.004(2)(h)6. or s. 951.27, or any other applicable law or  
 1324 rule providing for HIV testing of criminal offenders or inmates,

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1325 subsequent to her or his arrest for an offense enumerated in  
 1326 paragraphs (a)-(n) for which she or he was convicted or to which  
 1327 she or he pled nolo contendere or guilty. The results of an HIV  
 1328 test performed on an offender pursuant to this subsection are  
 1329 not admissible in any criminal proceeding arising out of the  
 1330 alleged offense.

1331 Section 33. For the purpose of incorporating the amendment  
 1332 made by this act to section 796.07, Florida Statutes, in  
 1333 references thereto, subsections (2) and (3) of section 796.08,  
 1334 Florida Statutes, are reenacted to read:

1335 796.08 Screening for HIV and sexually transmissible  
 1336 diseases; providing penalties.—

1337 (2) A person arrested under s. 796.07 may request screening  
 1338 for a sexually transmissible disease under direction of the  
 1339 Department of Health and, if infected, shall submit to  
 1340 appropriate treatment and counseling. A person who requests  
 1341 screening for a sexually transmissible disease under this  
 1342 subsection must pay any costs associated with such screening.

1343 (3) A person convicted under s. 796.07 of prostitution or  
 1344 procuring another to commit prostitution must undergo screening  
 1345 for a sexually transmissible disease, including, but not limited  
 1346 to, screening to detect exposure to the human immunodeficiency  
 1347 virus, under direction of the Department of Health. If the  
 1348 person is infected, he or she must submit to treatment and  
 1349 counseling prior to release from probation, community control,  
 1350 or incarceration. Notwithstanding the provisions of s. 384.29,  
 1351 the results of tests conducted pursuant to this subsection shall  
 1352 be made available by the Department of Health to the offender,  
 1353 medical personnel, appropriate state agencies, state attorneys,

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1354 and courts of appropriate jurisdiction in need of such  
 1355 information in order to enforce the provisions of this chapter.

1356 Section 34. For the purpose of incorporating the amendment  
 1357 made by this act to section 796.07, Florida Statutes, in a  
 1358 reference thereto, subsection (2) of section 796.09, Florida  
 1359 Statutes, is reenacted to read:

1360 796.09 Coercion; civil cause of action; evidence; defenses;  
 1361 attorney's fees.—

1362 (2) As used in this section, the term "prostitution" has  
 1363 the same meaning as in s. 796.07.

1364 Section 35. For the purpose of incorporating the amendment  
 1365 made by this act to section 796.07, Florida Statutes, in a  
 1366 reference thereto, paragraph (a) of subsection (1) of section  
 1367 895.02, Florida Statutes, is reenacted to read:

1368 895.02 Definitions.—As used in ss. 895.01-895.08, the term:

1369 (1) "Racketeering activity" means to commit, to attempt to  
 1370 commit, to conspire to commit, or to solicit, coerce, or  
 1371 intimidate another person to commit:

1372 (a) Any crime that is chargeable by petition, indictment,  
 1373 or information under the following provisions of the Florida  
 1374 Statutes:

1375 1. Section 210.18, relating to evasion of payment of  
 1376 cigarette taxes.

1377 2. Section 316.1935, relating to fleeing or attempting to  
 1378 elude a law enforcement officer and aggravated fleeing or  
 1379 eluding.

1380 3. Section 403.727(3)(b), relating to environmental  
 1381 control.

1382 4. Section 409.920 or s. 409.9201, relating to Medicaid

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1383 fraud.

1384 5. Section 414.39, relating to public assistance fraud.

1385 6. Section 440.105 or s. 440.106, relating to workers'

1386 compensation.

1387 7. Section 443.071(4), relating to creation of a fictitious

1388 employer scheme to commit reemployment assistance fraud.

1389 8. Section 465.0161, relating to distribution of medicinal

1390 drugs without a permit as an Internet pharmacy.

1391 9. Section 499.0051, relating to crimes involving

1392 contraband and adulterated drugs.

1393 10. Part IV of chapter 501, relating to telemarketing.

1394 11. Chapter 517, relating to sale of securities and

1395 investor protection.

1396 12. Section 550.235 or s. 550.3551, relating to dogracing

1397 and horseracing.

1398 13. Chapter 550, relating to jai alai frontons.

1399 14. Section 551.109, relating to slot machine gaming.

1400 15. Chapter 552, relating to the manufacture, distribution,

1401 and use of explosives.

1402 16. Chapter 560, relating to money transmitters, if the

1403 violation is punishable as a felony.

1404 17. Chapter 562, relating to beverage law enforcement.

1405 18. Section 624.401, relating to transacting insurance

1406 without a certificate of authority, s. 624.437(4)(c)1., relating

1407 to operating an unauthorized multiple-employer welfare

1408 arrangement, or s. 626.902(1)(b), relating to representing or

1409 aiding an unauthorized insurer.

1410 19. Section 655.50, relating to reports of currency

1411 transactions, when such violation is punishable as a felony.

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1412 20. Chapter 687, relating to interest and usurious

1413 practices.

1414 21. Section 721.08, s. 721.09, or s. 721.13, relating to

1415 real estate timeshare plans.

1416 22. Section 775.13(5)(b), relating to registration of

1417 persons found to have committed any offense for the purpose of

1418 benefiting, promoting, or furthering the interests of a criminal

1419 gang.

1420 23. Section 777.03, relating to commission of crimes by

1421 accessories after the fact.

1422 24. Chapter 782, relating to homicide.

1423 25. Chapter 784, relating to assault and battery.

1424 26. Chapter 787, relating to kidnapping or human

1425 trafficking.

1426 27. Chapter 790, relating to weapons and firearms.

1427 28. Chapter 794, relating to sexual battery, but only if

1428 such crime was committed with the intent to benefit, promote, or

1429 further the interests of a criminal gang, or for the purpose of

1430 increasing a criminal gang member's own standing or position

1431 within a criminal gang.

1432 29. Former s. 796.03, former s. 796.035, s. 796.04, s.

1433 796.05, or s. 796.07, relating to prostitution.

1434 30. Chapter 806, relating to arson and criminal mischief.

1435 31. Chapter 810, relating to burglary and trespass.

1436 32. Chapter 812, relating to theft, robbery, and related

1437 crimes.

1438 33. Chapter 815, relating to computer-related crimes.

1439 34. Chapter 817, relating to fraudulent practices, false

1440 pretenses, fraud generally, and credit card crimes.

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1441 35. Chapter 825, relating to abuse, neglect, or  
 1442 exploitation of an elderly person or disabled adult.  
 1443 36. Section 827.071, relating to commercial sexual  
 1444 exploitation of children.  
 1445 37. Section 828.122, relating to fighting or baiting  
 1446 animals.  
 1447 38. Chapter 831, relating to forgery and counterfeiting.  
 1448 39. Chapter 832, relating to issuance of worthless checks  
 1449 and drafts.  
 1450 40. Section 836.05, relating to extortion.  
 1451 41. Chapter 837, relating to perjury.  
 1452 42. Chapter 838, relating to bribery and misuse of public  
 1453 office.  
 1454 43. Chapter 843, relating to obstruction of justice.  
 1455 44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or  
 1456 s. 847.07, relating to obscene literature and profanity.  
 1457 45. Chapter 849, relating to gambling, lottery, gambling or  
 1458 gaming devices, slot machines, or any of the provisions within  
 1459 that chapter.  
 1460 46. Chapter 874, relating to criminal gangs.  
 1461 47. Chapter 893, relating to drug abuse prevention and  
 1462 control.  
 1463 48. Chapter 896, relating to offenses related to financial  
 1464 transactions.  
 1465 49. Sections 914.22 and 914.23, relating to tampering with  
 1466 or harassing a witness, victim, or informant, and retaliation  
 1467 against a witness, victim, or informant.  
 1468 50. Sections 918.12 and 918.13, relating to tampering with  
 1469 jurors and evidence.

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1470 Section 36. For the purpose of incorporating the amendment  
 1471 made by this act to section 796.07, Florida Statutes, in a  
 1472 reference thereto, paragraph (a) of subsection (1) of section  
 1473 948.16, Florida Statutes, is reenacted to read:  
 1474 948.16 Misdemeanor pretrial substance abuse education and  
 1475 treatment intervention program; misdemeanor pretrial veterans'  
 1476 treatment intervention program.—  
 1477 (1) (a) A person who is charged with a nonviolent,  
 1478 nontraffic-related misdemeanor and identified as having a  
 1479 substance abuse problem or who is charged with a misdemeanor for  
 1480 possession of a controlled substance or drug paraphernalia under  
 1481 chapter 893, prostitution under s. 796.07, possession of alcohol  
 1482 while under 21 years of age under s. 562.111, or possession of a  
 1483 controlled substance without a valid prescription under s.  
 1484 499.03, and who has not previously been convicted of a felony,  
 1485 is eligible for voluntary admission into a misdemeanor pretrial  
 1486 substance abuse education and treatment intervention program,  
 1487 including a treatment-based drug court program established  
 1488 pursuant to s. 397.334, approved by the chief judge of the  
 1489 circuit, for a period based on the program requirements and the  
 1490 treatment plan for the offender, upon motion of either party or  
 1491 the court's own motion, except, if the state attorney believes  
 1492 the facts and circumstances of the case suggest the defendant is  
 1493 involved in dealing and selling controlled substances, the court  
 1494 shall hold a preadmission hearing. If the state attorney  
 1495 establishes, by a preponderance of the evidence at such hearing,  
 1496 that the defendant was involved in dealing or selling controlled  
 1497 substances, the court shall deny the defendant's admission into  
 1498 the pretrial intervention program.

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1499 Section 37. For the purpose of incorporating the amendment  
 1500 made by this act to section 775.21, Florida Statutes, in a  
 1501 reference thereto, paragraph (a) of subsection (3) of section  
 1502 39.0139, Florida Statutes, is reenacted to read:

1503 39.0139 Visitation or other contact; restrictions.—

1504 (3) PRESUMPTION OF DETRIMENT.—

1505 (a) A rebuttable presumption of detriment to a child is  
 1506 created when:

1507 1. A court of competent jurisdiction has found probable  
 1508 cause exists that a parent or caregiver has sexually abused a  
 1509 child as defined in s. 39.01;

1510 2. A parent or caregiver has been found guilty of,  
 1511 regardless of adjudication, or has entered a plea of guilty or  
 1512 nolo contendere to, charges under the following statutes or  
 1513 substantially similar statutes of other jurisdictions:

1514 a. Section 787.04, relating to removing minors from the  
 1515 state or concealing minors contrary to court order;

1516 b. Section 794.011, relating to sexual battery;

1517 c. Section 798.02, relating to lewd and lascivious  
 1518 behavior;

1519 d. Chapter 800, relating to lewdness and indecent exposure;

1520 e. Section 826.04, relating to incest; or

1521 f. Chapter 827, relating to the abuse of children; or

1522 3. A court of competent jurisdiction has determined a  
 1523 parent or caregiver to be a sexual predator as defined in s.  
 1524 775.21 or a parent or caregiver has received a substantially  
 1525 similar designation under laws of another jurisdiction.

1526 Section 38. For the purpose of incorporating the amendment  
 1527 made by this act to section 775.21, Florida Statutes, in a

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1528 reference thereto, paragraph (b) of subsection (6) of section  
 1529 39.509, Florida Statutes, is reenacted to read:

1530 39.509 Grandparents rights.—Notwithstanding any other  
 1531 provision of law, a maternal or paternal grandparent as well as  
 1532 a stepgrandparent is entitled to reasonable visitation with his  
 1533 or her grandchild who has been adjudicated a dependent child and  
 1534 taken from the physical custody of the parent unless the court  
 1535 finds that such visitation is not in the best interest of the  
 1536 child or that such visitation would interfere with the goals of  
 1537 the case plan. Reasonable visitation may be unsupervised and,  
 1538 where appropriate and feasible, may be frequent and continuing.  
 1539 Any order for visitation or other contact must conform to the  
 1540 provisions of s. 39.0139.

1541 (6) In determining whether grandparental visitation is not  
 1542 in the child's best interest, consideration may be given to the  
 1543 following:

1544 (b) The designation by a court as a sexual predator as  
 1545 defined in s. 775.21 or a substantially similar designation  
 1546 under laws of another jurisdiction.

1547 Section 39. For the purpose of incorporating the amendment  
 1548 made by this act to section 775.21, Florida Statutes, in a  
 1549 reference thereto, subsection (3) of section 63.092, Florida  
 1550 Statutes, is reenacted to read:

1551 63.092 Report to the court of intended placement by an  
 1552 adoption entity; at-risk placement; preliminary study.—

1553 (3) PRELIMINARY HOME STUDY.—Before placing the minor in the  
 1554 intended adoptive home, a preliminary home study must be  
 1555 performed by a licensed child-placing agency, a child-caring  
 1556 agency registered under s. 409.176, a licensed professional, or

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1557 an agency described in s. 61.20(2), unless the adoptee is an  
 1558 adult or the petitioner is a stepparent or a relative. If the  
 1559 adoptee is an adult or the petitioner is a stepparent or a  
 1560 relative, a preliminary home study may be required by the court  
 1561 for good cause shown. The department is required to perform the  
 1562 preliminary home study only if there is no licensed child-  
 1563 placing agency, child-caring agency registered under s. 409.176,  
 1564 licensed professional, or agency described in s. 61.20(2), in  
 1565 the county where the prospective adoptive parents reside. The  
 1566 preliminary home study must be made to determine the suitability  
 1567 of the intended adoptive parents and may be completed prior to  
 1568 identification of a prospective adoptive minor. A favorable  
 1569 preliminary home study is valid for 1 year after the date of its  
 1570 completion. Upon its completion, a signed copy of the home study  
 1571 must be provided to the intended adoptive parents who were the  
 1572 subject of the home study. A minor may not be placed in an  
 1573 intended adoptive home before a favorable preliminary home study  
 1574 is completed unless the adoptive home is also a licensed foster  
 1575 home under s. 409.175. The preliminary home study must include,  
 1576 at a minimum:

- 1577 (a) An interview with the intended adoptive parents;
- 1578 (b) Records checks of the department's central abuse  
 1579 registry and criminal records correspondence checks under s.  
 1580 39.0138 through the Department of Law Enforcement on the  
 1581 intended adoptive parents;
- 1582 (c) An assessment of the physical environment of the home;
- 1583 (d) A determination of the financial security of the  
 1584 intended adoptive parents;
- 1585 (e) Documentation of counseling and education of the

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1586 intended adoptive parents on adoptive parenting;

1587 (f) Documentation that information on adoption and the  
 1588 adoption process has been provided to the intended adoptive  
 1589 parents;

1590 (g) Documentation that information on support services  
 1591 available in the community has been provided to the intended  
 1592 adoptive parents; and

1593 (h) A copy of each signed acknowledgment of receipt of  
 1594 disclosure required by s. 63.085.

1595

1596 If the preliminary home study is favorable, a minor may be  
 1597 placed in the home pending entry of the judgment of adoption. A  
 1598 minor may not be placed in the home if the preliminary home  
 1599 study is unfavorable. If the preliminary home study is  
 1600 unfavorable, the adoption entity may, within 20 days after  
 1601 receipt of a copy of the written recommendation, petition the  
 1602 court to determine the suitability of the intended adoptive  
 1603 home. A determination as to suitability under this subsection  
 1604 does not act as a presumption of suitability at the final  
 1605 hearing. In determining the suitability of the intended adoptive  
 1606 home, the court must consider the totality of the circumstances  
 1607 in the home. A minor may not be placed in a home in which there  
 1608 resides any person determined by the court to be a sexual  
 1609 predator as defined in s. 775.21 or to have been convicted of an  
 1610 offense listed in s. 63.089(4)(b)2.

1611 Section 40. For the purpose of incorporating the amendments  
 1612 made by this act to sections 775.21 and 943.0435, Florida  
 1613 Statutes, in references thereto, paragraph (i) of subsection (3)  
 1614 and subsection (6) of section 68.07, Florida Statutes, are

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1615 reenacted to read:

1616 68.07 Change of name.—

1617 (3) Each petition shall be verified and show:

1618 (i) Whether the petitioner has ever been required to  
1619 register as a sexual predator under s. 775.21 or as a sexual  
1620 offender under s. 943.0435.

1621 (6) The clerk of the court must, within 5 business days  
1622 after the filing of the final judgment, send a report of the  
1623 judgment to the Department of Law Enforcement on a form to be  
1624 furnished by that department. If the petitioner is required to  
1625 register as a sexual predator or a sexual offender pursuant to  
1626 s. 775.21 or s. 943.0435, the clerk of court shall  
1627 electronically notify the Department of Law Enforcement of the  
1628 name change, in a manner prescribed by that department, within 2  
1629 business days after the filing of the final judgment. The  
1630 Department of Law Enforcement must send a copy of the report to  
1631 the Department of Highway Safety and Motor Vehicles, which may  
1632 be delivered by electronic transmission. The report must contain  
1633 sufficient information to identify the petitioner, including the  
1634 results of the criminal history records check if applicable, the  
1635 new name of the petitioner, and the file number of the judgment.  
1636 The Department of Highway Safety and Motor Vehicles shall  
1637 monitor the records of any sexual predator or sexual offender  
1638 whose name has been provided to it by the Department of Law  
1639 Enforcement. If the sexual predator or sexual offender does not  
1640 obtain a replacement driver license or identification card  
1641 within the required time as specified in s. 775.21 or s.  
1642 943.0435, the Department of Highway Safety and Motor Vehicles  
1643 shall notify the Department of Law Enforcement. The Department

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1644 of Law Enforcement shall notify applicable law enforcement  
1645 agencies of the predator's or offender's failure to comply with  
1646 registration requirements. Any information retained by the  
1647 Department of Law Enforcement and the Department of Highway  
1648 Safety and Motor Vehicles may be revised or supplemented by said  
1649 departments to reflect changes made by the final judgment. With  
1650 respect to a person convicted of a felony in another state or of  
1651 a federal offense, the Department of Law Enforcement must send  
1652 the report to the respective state's office of law enforcement  
1653 records or to the office of the Federal Bureau of Investigation.  
1654 The Department of Law Enforcement may forward the report to any  
1655 other law enforcement agency it believes may retain information  
1656 related to the petitioner.

1657 Section 41. For the purpose of incorporating the amendments  
1658 made by this act to sections 775.21, 943.0435, and 944.607,  
1659 Florida Statutes, in references thereto, subsection (3) of  
1660 section 322.141, Florida Statutes, is reenacted to read:

1661 322.141 Color or markings of certain licenses or  
1662 identification cards.—

1663 (3) All licenses for the operation of motor vehicles or  
1664 identification cards originally issued or reissued by the  
1665 department to persons who are designated as sexual predators  
1666 under s. 775.21 or subject to registration as sexual offenders  
1667 under s. 943.0435 or s. 944.607, or who have a similar  
1668 designation or are subject to a similar registration under the  
1669 laws of another jurisdiction, shall have on the front of the  
1670 license or identification card the following:

1671 (a) For a person designated as a sexual predator under s.  
1672 775.21 or who has a similar designation under the laws of

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1673 another jurisdiction, the marking "SEXUAL PREDATOR."

1674 (b) For a person subject to registration as a sexual  
1675 offender under s. 943.0435 or s. 944.607, or subject to a  
1676 similar registration under the laws of another jurisdiction, the  
1677 marking "943.0435, F.S."

1678 Section 42. For the purpose of incorporating the amendments  
1679 made by this act to sections 775.21 and 943.0435, Florida  
1680 Statutes, in references thereto, paragraphs (a) and (c) of  
1681 subsection (2) of section 397.4872, Florida Statutes, are  
1682 reenacted to read:

1683 397.4872 Exemption from disqualification; publication.-

1684 (2) The department may exempt a person from ss. 397.487(6)  
1685 and 397.4871(5) if it has been at least 3 years since the person  
1686 has completed or been lawfully released from confinement,  
1687 supervision, or sanction for the disqualifying offense. An  
1688 exemption from the disqualifying offenses may not be given under  
1689 any circumstances for any person who is a:

1690 (a) Sexual predator pursuant to s. 775.21;

1691 (c) Sexual offender pursuant to s. 943.0435, unless the  
1692 requirement to register as a sexual offender has been removed  
1693 pursuant to s. 943.04354.

1694 Section 43. For the purpose of incorporating the amendments  
1695 made by this act to sections 775.21, 943.0435, and 944.607,  
1696 Florida Statutes, in references thereto, paragraphs (e) and (f)  
1697 of subsection (4) of section 775.13, Florida Statutes, are  
1698 reenacted to read:

1699 775.13 Registration of convicted felons, exemptions;  
1700 penalties.-

1701 (4) This section does not apply to an offender:

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1702 (e) Who is a sexual predator and has registered as required  
1703 under s. 775.21;

1704 (f) Who is a sexual offender and has registered as required  
1705 in s. 943.0435 or s. 944.607; or

1706 Section 44. For the purpose of incorporating the amendments  
1707 made by this act to sections 775.21, 943.0435, 944.606, and  
1708 944.607, Florida Statutes, in references thereto, section  
1709 775.25, Florida Statutes, is reenacted to read:

1710 775.25 Prosecutions for acts or omissions.-A sexual  
1711 predator or sexual offender who commits any act or omission in  
1712 violation of s. 775.21, s. 943.0435, s. 944.605, s. 944.606, s.  
1713 944.607, or former s. 947.177 may be prosecuted for the act or  
1714 omission in the county in which the act or omission was  
1715 committed, in the county of the last registered address of the  
1716 sexual predator or sexual offender, in the county in which the  
1717 conviction occurred for the offense or offenses that meet the  
1718 criteria for designating a person as a sexual predator or sexual  
1719 offender, in the county where the sexual predator or sexual  
1720 offender was released from incarceration, or in the county of  
1721 the intended address of the sexual predator or sexual offender  
1722 as reported by the predator or offender prior to his or her  
1723 release from incarceration. In addition, a sexual predator may  
1724 be prosecuted for any such act or omission in the county in  
1725 which he or she was designated a sexual predator.

1726 Section 45. For the purpose of incorporating the amendments  
1727 made by this act to sections 775.21, 943.0435, and 944.607,  
1728 Florida Statutes, in references thereto, paragraph (b) of  
1729 subsection (3) of section 775.261, Florida Statutes, is  
1730 reenacted to read:

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1731 775.261 The Florida Career Offender Registration Act.-  
 1732 (3) CRITERIA FOR REGISTRATION AS A CAREER OFFENDER.-  
 1733 (b) This section does not apply to any person who has been  
 1734 designated as a sexual predator and required to register under  
 1735 s. 775.21 or who is required to register as a sexual offender  
 1736 under s. 943.0435 or s. 944.607. However, if a person is no  
 1737 longer required to register as a sexual predator under s. 775.21  
 1738 or as a sexual offender under s. 943.0435 or s. 944.607, the  
 1739 person must register as a career offender under this section if  
 1740 the person is otherwise designated as a career offender as  
 1741 provided in this section.

1742 Section 46. For the purpose of incorporating the amendment  
 1743 made by this act to section 775.21, Florida Statutes, in a  
 1744 reference thereto, subsection (1) of section 794.075, Florida  
 1745 Statutes, is reenacted to read:

1746 794.075 Sexual predators; erectile dysfunction drugs.-  
 1747 (1) A person may not possess a prescription drug, as  
 1748 defined in s. 499.003(43), for the purpose of treating erectile  
 1749 dysfunction if the person is designated as a sexual predator  
 1750 under s. 775.21.

1751 Section 47. For the purpose of incorporating the amendment  
 1752 made by this act to section 775.21, Florida Statutes, in a  
 1753 reference thereto, paragraph (c) of subsection (1) of section  
 1754 903.0351, Florida Statutes, is reenacted to read:

1755 903.0351 Restrictions on pretrial release pending  
 1756 probation-violation hearing or community-control-violation  
 1757 hearing.-

1758 (1) In the instance of an alleged violation of felony  
 1759 probation or community control, bail or any other form of

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1760 pretrial release shall not be granted prior to the resolution of  
 1761 the probation-violation hearing or the community-control-  
 1762 violation hearing to:

1763 (c) A person who is on felony probation or community  
 1764 control and has previously been found by a court to be a  
 1765 habitual violent felony offender as defined in s. 775.084(1)(b),  
 1766 a three-time violent felony offender as defined in s.  
 1767 775.084(1)(c), or a sexual predator under s. 775.21, and who is  
 1768 arrested for committing a qualifying offense as defined in s.  
 1769 948.06(8)(c) on or after the effective date of this act.

1770 Section 48. For the purpose of incorporating the amendments  
 1771 made by this act to sections 775.21 and 943.0435, Florida  
 1772 Statutes, in references thereto, paragraph (m) of subsection (2)  
 1773 of section 903.046, Florida Statutes, is reenacted to read:

1774 903.046 Purpose of and criteria for bail determination.-

1775 (2) When determining whether to release a defendant on bail  
 1776 or other conditions, and what that bail or those conditions may  
 1777 be, the court shall consider:

1778 (m) Whether the defendant, other than a defendant whose  
 1779 only criminal charge is a misdemeanor offense under chapter 316,  
 1780 is required to register as a sexual offender under s. 943.0435  
 1781 or a sexual predator under s. 775.21; and, if so, he or she is  
 1782 not eligible for release on bail or surety bond until the first  
 1783 appearance on the case in order to ensure the full participation  
 1784 of the prosecutor and the protection of the public.

1785 Section 49. For the purpose of incorporating the amendment  
 1786 made by this act to section 775.21, Florida Statutes, in a  
 1787 reference thereto, paragraph (o) of subsection (5) of section  
 1788 921.141, Florida Statutes, is reenacted to read:

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1789 921.141 Sentence of death or life imprisonment for capital  
 1790 felonies; further proceedings to determine sentence.—  
 1791 (5) AGGRAVATING CIRCUMSTANCES.—Aggravating circumstances  
 1792 shall be limited to the following:  
 1793 (o) The capital felony was committed by a person designated  
 1794 as a sexual predator pursuant to s. 775.21 or a person  
 1795 previously designated as a sexual predator who had the sexual  
 1796 predator designation removed.

1797 Section 50. For the purpose of incorporating the amendments  
 1798 made by this act to sections 775.21 and 943.0435, Florida  
 1799 Statutes, in references thereto, subsection (1) of section  
 1800 938.10, Florida Statutes, is reenacted to read:  
 1801 938.10 Additional court cost imposed in cases of certain  
 1802 crimes.—  
 1803 (1) If a person pleads guilty or nolo contendere to, or is  
 1804 found guilty of, regardless of adjudication, any offense against  
 1805 a minor in violation of s. 784.085, chapter 787, chapter 794,  
 1806 former s. 796.03, former s. 796.035, s. 800.04, chapter 827, s.  
 1807 847.012, s. 847.0133, s. 847.0135(5), s. 847.0138, s. 847.0145,  
 1808 s. 893.147(3), or s. 985.701, or any offense in violation of s.  
 1809 775.21, s. 823.07, s. 847.0125, s. 847.0134, or s. 943.0435, the  
 1810 court shall impose a court cost of \$151 against the offender in  
 1811 addition to any other cost or penalty required by law.

1812 Section 51. For the purpose of incorporating the amendments  
 1813 made by this act to sections 775.21, 944.606, and 944.607,  
 1814 Florida Statutes, in references thereto, subsections (3), (4),  
 1815 and (5) of section 943.0435, Florida Statutes, are reenacted to  
 1816 read:  
 1817 943.0435 Sexual offenders required to register with the

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1818 department; penalty.—  
 1819 (3) Within 48 hours after the report required under  
 1820 subsection (2), a sexual offender shall report in person at a  
 1821 driver license office of the Department of Highway Safety and  
 1822 Motor Vehicles, unless a driver license or identification card  
 1823 that complies with the requirements of s. 322.141(3) was  
 1824 previously secured or updated under s. 944.607. At the driver  
 1825 license office the sexual offender shall:  
 1826 (a) If otherwise qualified, secure a Florida driver  
 1827 license, renew a Florida driver license, or secure an  
 1828 identification card. The sexual offender shall identify himself  
 1829 or herself as a sexual offender who is required to comply with  
 1830 this section and shall provide proof that the sexual offender  
 1831 reported as required in subsection (2). The sexual offender  
 1832 shall provide any of the information specified in subsection  
 1833 (2), if requested. The sexual offender shall submit to the  
 1834 taking of a photograph for use in issuing a driver license,  
 1835 renewed license, or identification card, and for use by the  
 1836 department in maintaining current records of sexual offenders.

1837 (b) Pay the costs assessed by the Department of Highway  
 1838 Safety and Motor Vehicles for issuing or renewing a driver  
 1839 license or identification card as required by this section. The  
 1840 driver license or identification card issued must be in  
 1841 compliance with s. 322.141(3).  
 1842 (c) Provide, upon request, any additional information  
 1843 necessary to confirm the identity of the sexual offender,  
 1844 including a set of fingerprints.

1845 (4) (a) Each time a sexual offender's driver license or  
 1846 identification card is subject to renewal, and, without regard

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1847 to the status of the offender's driver license or identification  
 1848 card, within 48 hours after any change in the offender's  
 1849 permanent, temporary, or transient residence or change in the  
 1850 offender's name by reason of marriage or other legal process,  
 1851 the offender shall report in person to a driver license office,  
 1852 and is subject to the requirements specified in subsection (3).  
 1853 The Department of Highway Safety and Motor Vehicles shall  
 1854 forward to the department all photographs and information  
 1855 provided by sexual offenders. Notwithstanding the restrictions  
 1856 set forth in s. 322.142, the Department of Highway Safety and  
 1857 Motor Vehicles may release a reproduction of a color-photograph  
 1858 or digital-image license to the Department of Law Enforcement  
 1859 for purposes of public notification of sexual offenders as  
 1860 provided in this section and ss. 943.043 and 944.606. A sexual  
 1861 offender who is unable to secure or update a driver license or  
 1862 identification card with the Department of Highway Safety and  
 1863 Motor Vehicles as provided in subsection (3) and this subsection  
 1864 shall also report any change in the sexual offender's permanent,  
 1865 temporary, or transient residence or change in the offender's  
 1866 name by reason of marriage or other legal process within 48  
 1867 hours after the change to the sheriff's office in the county  
 1868 where the offender resides or is located and provide  
 1869 confirmation that he or she reported such information to the  
 1870 Department of Highway Safety and Motor Vehicles.

1871 (b)1. A sexual offender who vacates a permanent, temporary,  
 1872 or transient residence and fails to establish or maintain  
 1873 another permanent, temporary, or transient residence shall,  
 1874 within 48 hours after vacating the permanent, temporary, or  
 1875 transient residence, report in person to the sheriff's office of

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1876 the county in which he or she is located. The sexual offender  
 1877 shall specify the date upon which he or she intends to or did  
 1878 vacate such residence. The sexual offender must provide or  
 1879 update all of the registration information required under  
 1880 paragraph (2)(b). The sexual offender must provide an address  
 1881 for the residence or other place that he or she is or will be  
 1882 located during the time in which he or she fails to establish or  
 1883 maintain a permanent or temporary residence.

1884 2. A sexual offender shall report in person at the  
 1885 sheriff's office in the county in which he or she is located  
 1886 within 48 hours after establishing a transient residence and  
 1887 thereafter must report in person every 30 days to the sheriff's  
 1888 office in the county in which he or she is located while  
 1889 maintaining a transient residence. The sexual offender must  
 1890 provide the addresses and locations where he or she maintains a  
 1891 transient residence. Each sheriff's office shall establish  
 1892 procedures for reporting transient residence information and  
 1893 provide notice to transient registrants to report transient  
 1894 residence information as required in this subparagraph.  
 1895 Reporting to the sheriff's office as required by this  
 1896 subparagraph does not exempt registrants from any reregistration  
 1897 requirement. The sheriff may coordinate and enter into  
 1898 agreements with police departments and other governmental  
 1899 entities to facilitate additional reporting sites for transient  
 1900 residence registration required in this subparagraph. The  
 1901 sheriff's office shall, within 2 business days, electronically  
 1902 submit and update all information provided by the sexual  
 1903 offender to the department.

1904 (c) A sexual offender who remains at a permanent,

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1905 temporary, or transient residence after reporting his or her  
 1906 intent to vacate such residence shall, within 48 hours after the  
 1907 date upon which the offender indicated he or she would or did  
 1908 vacate such residence, report in person to the agency to which  
 1909 he or she reported pursuant to paragraph (b) for the purpose of  
 1910 reporting his or her address at such residence. When the sheriff  
 1911 receives the report, the sheriff shall promptly convey the  
 1912 information to the department. An offender who makes a report as  
 1913 required under paragraph (b) but fails to make a report as  
 1914 required under this paragraph commits a felony of the second  
 1915 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 1916 775.084.

1917 (d) The failure of a sexual offender who maintains a  
 1918 transient residence to report in person to the sheriff's office  
 1919 every 30 days as required in subparagraph (b)2. is punishable as  
 1920 provided in subsection (9).

1921 (e) A sexual offender shall register all electronic mail  
 1922 addresses and Internet identifiers with the department before  
 1923 using such electronic mail addresses and Internet identifiers.  
 1924 The department shall establish an online system through which  
 1925 sexual offenders may securely access and update all electronic  
 1926 mail address and Internet identifier information.

1927 (5) This section does not apply to a sexual offender who is  
 1928 also a sexual predator, as defined in s. 775.21. A sexual  
 1929 predator must register as required under s. 775.21.

1930 Section 52. For the purpose of incorporating the amendments  
 1931 made by this act to sections 775.21 and 943.0435, Florida  
 1932 Statutes, in references thereto, paragraph (a) of subsection (4)  
 1933 and subsection (9) of section 944.607, Florida Statutes, are

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1934 reenacted to read:

1935 944.607 Notification to Department of Law Enforcement of  
 1936 information on sexual offenders.—

1937 (4) A sexual offender, as described in this section, who is  
 1938 under the supervision of the Department of Corrections but is  
 1939 not incarcerated shall register with the Department of  
 1940 Corrections within 3 business days after sentencing for a  
 1941 registrable offense and otherwise provide information as  
 1942 required by this subsection.

1943 (a) The sexual offender shall provide his or her name; date  
 1944 of birth; social security number; race; sex; height; weight;  
 1945 hair and eye color; tattoos or other identifying marks; all  
 1946 electronic mail addresses and Internet identifiers required to  
 1947 be provided pursuant to s. 943.0435(4)(e); all home telephone  
 1948 numbers and cellular telephone numbers; the make, model, color,  
 1949 vehicle identification number (VIN), and license tag number of  
 1950 all vehicles owned; permanent or legal residence and address of  
 1951 temporary residence within the state or out of state while the  
 1952 sexual offender is under supervision in this state, including  
 1953 any rural route address or post office box; if no permanent or  
 1954 temporary address, any transient residence within the state; and  
 1955 address, location or description, and dates of any current or  
 1956 known future temporary residence within the state or out of  
 1957 state. The sexual offender shall also produce his or her  
 1958 passport, if he or she has a passport, and, if he or she is an  
 1959 alien, shall produce or provide information about documents  
 1960 establishing his or her immigration status. The sexual offender  
 1961 shall also provide information about any professional licenses  
 1962 he or she has. The Department of Corrections shall verify the

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1963 address of each sexual offender in the manner described in ss.  
 1964 775.21 and 943.0435. The department shall report to the  
 1965 Department of Law Enforcement any failure by a sexual predator  
 1966 or sexual offender to comply with registration requirements.

1967 (9) A sexual offender, as described in this section, who is  
 1968 under the supervision of the Department of Corrections but who  
 1969 is not incarcerated shall, in addition to the registration  
 1970 requirements provided in subsection (4), register and obtain a  
 1971 distinctive driver license or identification card in the manner  
 1972 provided in s. 943.0435(3), (4), and (5), unless the sexual  
 1973 offender is a sexual predator, in which case he or she shall  
 1974 register and obtain a distinctive driver license or  
 1975 identification card as required under s. 775.21. A sexual  
 1976 offender who fails to comply with the requirements of s.  
 1977 943.0435 is subject to the penalties provided in s. 943.0435(9).

1978 Section 53. For the purpose of incorporating the amendments  
 1979 made by this act to sections 775.21 and 944.607, Florida  
 1980 Statutes, in references thereto, subsection (7) of section  
 1981 944.608, Florida Statutes, is reenacted to read:

1982 944.608 Notification to Department of Law Enforcement of  
 1983 information on career offenders.—

1984 (7) A career offender who is under the supervision of the  
 1985 department but who is not incarcerated shall, in addition to the  
 1986 registration requirements provided in subsection (3), register  
 1987 in the manner provided in s. 775.261(4)(c), unless the career  
 1988 offender is a sexual predator, in which case he or she shall  
 1989 register as required under s. 775.21, or is a sexual offender,  
 1990 in which case he or she shall register as required in s.  
 1991 944.607. A career offender who fails to comply with the

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1992 requirements of s. 775.261(4) is subject to the penalties  
 1993 provided in s. 775.261(8).

1994 Section 54. For the purpose of incorporating the amendment  
 1995 made by this act to section 775.21, Florida Statutes, in  
 1996 references thereto, subsection (4) of section 944.609, Florida  
 1997 Statutes, is reenacted to read:

1998 944.609 Career offenders; notification upon release.—

1999 (4) The department or any law enforcement agency may notify  
 2000 the community and the public of a career offender's presence in  
 2001 the community. However, with respect to a career offender who  
 2002 has been found to be a sexual predator under s. 775.21, the  
 2003 Department of Law Enforcement or any other law enforcement  
 2004 agency must inform the community and the public of the career  
 2005 offender's presence in the community, as provided in s. 775.21.

2006 Section 55. For the purpose of incorporating the amendments  
 2007 made by this act to sections 775.21 and 943.0435, Florida  
 2008 Statutes, in references thereto, paragraph (c) of subsection (2)  
 2009 and subsections (10) and (12) of section 947.1405, Florida  
 2010 Statutes, are reenacted to read:

2011 947.1405 Conditional release program.—

2012 (2) Any inmate who:

2013 (c) Is found to be a sexual predator under s. 775.21 or  
 2014 former s. 775.23,

2015 shall, upon reaching the tentative release date or provisional  
 2016 release date, whichever is earlier, as established by the  
 2017 Department of Corrections, be released under supervision subject  
 2018 to specified terms and conditions, including payment of the cost  
 2019 of supervision pursuant to s. 948.09. Such supervision shall be  
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2021 applicable to all sentences within the overall term of sentences  
 2022 if an inmate's overall term of sentences includes one or more  
 2023 sentences that are eligible for conditional release supervision  
 2024 as provided herein. Effective July 1, 1994, and applicable for  
 2025 offenses committed on or after that date, the commission may  
 2026 require, as a condition of conditional release, that the  
 2027 releasee make payment of the debt due and owing to a county or  
 2028 municipal detention facility under s. 951.032 for medical care,  
 2029 treatment, hospitalization, or transportation received by the  
 2030 releasee while in that detention facility. The commission, in  
 2031 determining whether to order such repayment and the amount of  
 2032 such repayment, shall consider the amount of the debt, whether  
 2033 there was any fault of the institution for the medical expenses  
 2034 incurred, the financial resources of the releasee, the present  
 2035 and potential future financial needs and earning ability of the  
 2036 releasee, and dependents, and other appropriate factors. If any  
 2037 inmate placed on conditional release supervision is also subject  
 2038 to probation or community control, resulting from a probationary  
 2039 or community control split sentence within the overall term of  
 2040 sentences, the Department of Corrections shall supervise such  
 2041 person according to the conditions imposed by the court and the  
 2042 commission shall defer to such supervision. If the court revokes  
 2043 probation or community control and resentsences the offender to a  
 2044 term of incarceration, such revocation also constitutes a  
 2045 sufficient basis for the revocation of the conditional release  
 2046 supervision on any nonprobationary or noncommunity control  
 2047 sentence without further hearing by the commission. If any such  
 2048 supervision on any nonprobationary or noncommunity control  
 2049 sentence is revoked, such revocation may result in a forfeiture

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2050 of all gain-time, and the commission may revoke the resulting  
 2051 deferred conditional release supervision or take other action it  
 2052 considers appropriate. If the term of conditional release  
 2053 supervision exceeds that of the probation or community control,  
 2054 then, upon expiration of the probation or community control,  
 2055 authority for the supervision shall revert to the commission and  
 2056 the supervision shall be subject to the conditions imposed by  
 2057 the commission. A panel of no fewer than two commissioners shall  
 2058 establish the terms and conditions of any such release. If the  
 2059 offense was a controlled substance violation, the conditions  
 2060 shall include a requirement that the offender submit to random  
 2061 substance abuse testing intermittently throughout the term of  
 2062 conditional release supervision, upon the direction of the  
 2063 correctional probation officer as defined in s. 943.10(3). The  
 2064 commission shall also determine whether the terms and conditions  
 2065 of such release have been violated and whether such violation  
 2066 warrants revocation of the conditional release.

2067 (10) Effective for a releasee whose crime was committed on  
 2068 or after September 1, 2005, in violation of chapter 794, s.  
 2069 800.04(4), (5), or (6), s. 827.071, or s. 847.0145, and the  
 2070 unlawful activity involved a victim who was 15 years of age or  
 2071 younger and the offender is 18 years of age or older or for a  
 2072 releasee who is designated as a sexual predator pursuant to s.  
 2073 775.21, in addition to any other provision of this section, the  
 2074 commission must order electronic monitoring for the duration of  
 2075 the releasee's supervision.

2076 (12) In addition to all other conditions imposed, for a  
 2077 releasee who is subject to conditional release for a crime that  
 2078 was committed on or after May 26, 2010, and who has been

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2079 convicted at any time of committing, or attempting, soliciting,  
 2080 or conspiring to commit, any of the criminal offenses listed in  
 2081 s. 943.0435(1)(a)1.a.(I), or a similar offense in another  
 2082 jurisdiction against a victim who was under 18 years of age at  
 2083 the time of the offense, if the releasee has not received a  
 2084 pardon for any felony or similar law of another jurisdiction  
 2085 necessary for the operation of this subsection, if a conviction  
 2086 of a felony or similar law of another jurisdiction necessary for  
 2087 the operation of this subsection has not been set aside in any  
 2088 postconviction proceeding, or if the releasee has not been  
 2089 removed from the requirement to register as a sexual offender or  
 2090 sexual predator pursuant to s. 943.04354, the commission must  
 2091 impose the following conditions:

2092 (a) A prohibition on visiting schools, child care  
 2093 facilities, parks, and playgrounds without prior approval from  
 2094 the releasee's supervising officer. The commission may also  
 2095 designate additional prohibited locations to protect a victim.  
 2096 The prohibition ordered under this paragraph does not prohibit  
 2097 the releasee from visiting a school, child care facility, park,  
 2098 or playground for the sole purpose of attending a religious  
 2099 service as defined in s. 775.0861 or picking up or dropping off  
 2100 the releasee's child or grandchild at a child care facility or  
 2101 school.

2102 (b) A prohibition on distributing candy or other items to  
 2103 children on Halloween; wearing a Santa Claus costume, or other  
 2104 costume to appeal to children, on or preceding Christmas;  
 2105 wearing an Easter Bunny costume, or other costume to appeal to  
 2106 children, on or preceding Easter; entertaining at children's  
 2107 parties; or wearing a clown costume without prior approval from

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2108 the commission.

2109 Section 56. For the purpose of incorporating the amendments  
 2110 made by this act to sections 782.04, 775.21, 943.0435, and  
 2111 944.607, Florida Statutes, in references thereto, subsection (4)  
 2112 and paragraphs (b), (c), and (d) of subsection (8) of section  
 2113 948.06, Florida Statutes, are reenacted to read:

2114 948.06 Violation of probation or community control;  
 2115 revocation; modification; continuance; failure to pay  
 2116 restitution or cost of supervision.—

2117 (4) Notwithstanding any other provision of this section, a  
 2118 felony probationer or an offender in community control who is  
 2119 arrested for violating his or her probation or community control  
 2120 in a material respect may be taken before the court in the  
 2121 county or circuit in which the probationer or offender was  
 2122 arrested. That court shall advise him or her of the charge of a  
 2123 violation and, if such charge is admitted, shall cause him or  
 2124 her to be brought before the court that granted the probation or  
 2125 community control. If the violation is not admitted by the  
 2126 probationer or offender, the court may commit him or her or  
 2127 release him or her with or without bail to await further  
 2128 hearing. However, if the probationer or offender is under  
 2129 supervision for any criminal offense proscribed in chapter 794,  
 2130 s. 800.04(4), (5), (6), s. 827.071, or s. 847.0145, or is a  
 2131 registered sexual predator or a registered sexual offender, or  
 2132 is under supervision for a criminal offense for which he or she  
 2133 would meet the registration criteria in s. 775.21, s. 943.0435,  
 2134 or s. 944.607 but for the effective date of those sections, the  
 2135 court must make a finding that the probationer or offender is  
 2136 not a danger to the public prior to release with or without

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2137 bail. In determining the danger posed by the offender's or  
 2138 probationer's release, the court may consider the nature and  
 2139 circumstances of the violation and any new offenses charged; the  
 2140 offender's or probationer's past and present conduct, including  
 2141 convictions of crimes; any record of arrests without conviction  
 2142 for crimes involving violence or sexual crimes; any other  
 2143 evidence of allegations of unlawful sexual conduct or the use of  
 2144 violence by the offender or probationer; the offender's or  
 2145 probationer's family ties, length of residence in the community,  
 2146 employment history, and mental condition; his or her history and  
 2147 conduct during the probation or community control supervision  
 2148 from which the violation arises and any other previous  
 2149 supervisions, including disciplinary records of previous  
 2150 incarcerations; the likelihood that the offender or probationer  
 2151 will engage again in a criminal course of conduct; the weight of  
 2152 the evidence against the offender or probationer; and any other  
 2153 facts the court considers relevant. The court, as soon as is  
 2154 practicable, shall give the probationer or offender an  
 2155 opportunity to be fully heard on his or her behalf in person or  
 2156 by counsel. After the hearing, the court shall make findings of  
 2157 fact and forward the findings to the court that granted the  
 2158 probation or community control and to the probationer or  
 2159 offender or his or her attorney. The findings of fact by the  
 2160 hearing court are binding on the court that granted the  
 2161 probation or community control. Upon the probationer or offender  
 2162 being brought before it, the court that granted the probation or  
 2163 community control may revoke, modify, or continue the probation  
 2164 or community control or may place the probationer into community  
 2165 control as provided in this section. However, the probationer or

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2166 offender shall not be released and shall not be admitted to  
 2167 bail, but shall be brought before the court that granted the  
 2168 probation or community control if any violation of felony  
 2169 probation or community control other than a failure to pay costs  
 2170 or fines or make restitution payments is alleged to have been  
 2171 committed by:

2172 (a) A violent felony offender of special concern, as  
 2173 defined in this section;

2174 (b) A person who is on felony probation or community  
 2175 control for any offense committed on or after the effective date  
 2176 of this act and who is arrested for a qualifying offense as  
 2177 defined in this section; or

2178 (c) A person who is on felony probation or community  
 2179 control and has previously been found by a court to be a  
 2180 habitual violent felony offender as defined in s. 775.084(1)(b),  
 2181 a three-time violent felony offender as defined in s.  
 2182 775.084(1)(c), or a sexual predator under s. 775.21, and who is  
 2183 arrested for committing a qualifying offense as defined in this  
 2184 section on or after the effective date of this act.

2185 (8)

2186 (b) For purposes of this section and ss. 903.0351, 948.064,  
 2187 and 921.0024, the term "violent felony offender of special  
 2188 concern" means a person who is on:

2189 1. Felony probation or community control related to the  
 2190 commission of a qualifying offense committed on or after the  
 2191 effective date of this act;

2192 2. Felony probation or community control for any offense  
 2193 committed on or after the effective date of this act, and has  
 2194 previously been convicted of a qualifying offense;

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2195 3. Felony probation or community control for any offense  
 2196 committed on or after the effective date of this act, and is  
 2197 found to have violated that probation or community control by  
 2198 committing a qualifying offense;

2199 4. Felony probation or community control and has previously  
 2200 been found by a court to be a habitual violent felony offender  
 2201 as defined in s. 775.084(1)(b) and has committed a qualifying  
 2202 offense on or after the effective date of this act;

2203 5. Felony probation or community control and has previously  
 2204 been found by a court to be a three-time violent felony offender  
 2205 as defined in s. 775.084(1)(c) and has committed a qualifying  
 2206 offense on or after the effective date of this act; or

2207 6. Felony probation or community control and has previously  
 2208 been found by a court to be a sexual predator under s. 775.21  
 2209 and has committed a qualifying offense on or after the effective  
 2210 date of this act.

2211 (c) For purposes of this section, the term "qualifying  
 2212 offense" means any of the following:

2213 1. Kidnapping or attempted kidnapping under s. 787.01,  
 2214 false imprisonment of a child under the age of 13 under s.  
 2215 787.02(3), or luring or enticing a child under s. 787.025(2)(b)  
 2216 or (c).

2217 2. Murder or attempted murder under s. 782.04, attempted  
 2218 felony murder under s. 782.051, or manslaughter under s. 782.07.

2219 3. Aggravated battery or attempted aggravated battery under  
 2220 s. 784.045.

2221 4. Sexual battery or attempted sexual battery under s.  
 2222 794.011(2), (3), (4), or (8)(b) or (c).

2223 5. Lewd or lascivious battery or attempted lewd or

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2224 lascivious battery under s. 800.04(4), lewd or lascivious  
 2225 molestation under s. 800.04(5)(b) or (c)2., lewd or lascivious  
 2226 conduct under s. 800.04(6)(b), lewd or lascivious exhibition  
 2227 under s. 800.04(7)(b), or lewd or lascivious exhibition on  
 2228 computer under s. 847.0135(5)(b).

2229 6. Robbery or attempted robbery under s. 812.13, carjacking  
 2230 or attempted carjacking under s. 812.133, or home invasion  
 2231 robbery or attempted home invasion robbery under s. 812.135.

2232 7. Lewd or lascivious offense upon or in the presence of an  
 2233 elderly or disabled person or attempted lewd or lascivious  
 2234 offense upon or in the presence of an elderly or disabled person  
 2235 under s. 825.1025.

2236 8. Sexual performance by a child or attempted sexual  
 2237 performance by a child under s. 827.071.

2238 9. Computer pornography under s. 847.0135(2) or (3),  
 2239 transmission of child pornography under s. 847.0137, or selling  
 2240 or buying of minors under s. 847.0145.

2241 10. Poisoning food or water under s. 859.01.

2242 11. Abuse of a dead human body under s. 872.06.

2243 12. Any burglary offense or attempted burglary offense that  
 2244 is either a first degree felony or second degree felony under s.  
 2245 810.02(2) or (3).

2246 13. Arson or attempted arson under s. 806.01(1).

2247 14. Aggravated assault under s. 784.021.

2248 15. Aggravated stalking under s. 784.048(3), (4), (5), or  
 2249 (7).

2250 16. Aircraft piracy under s. 860.16.

2251 17. Unlawful throwing, placing, or discharging of a  
 2252 destructive device or bomb under s. 790.161(2), (3), or (4).

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2253 18. Treason under s. 876.32.

2254 19. Any offense committed in another jurisdiction which  
 2255 would be an offense listed in this paragraph if that offense had  
 2256 been committed in this state.

2257 (d) In the case of an alleged violation of probation or  
 2258 community control other than a failure to pay costs, fines, or  
 2259 restitution, the following individuals shall remain in custody  
 2260 pending the resolution of the probation or community control  
 2261 violation:

2262 1. A violent felony offender of special concern, as defined  
 2263 in this section;

2264 2. A person who is on felony probation or community control  
 2265 for any offense committed on or after the effective date of this  
 2266 act and who is arrested for a qualifying offense as defined in  
 2267 this section; or

2268 3. A person who is on felony probation or community control  
 2269 and has previously been found by a court to be a habitual  
 2270 violent felony offender as defined in s. 775.084(1)(b), a three-  
 2271 time violent felony offender as defined in s. 775.084(1)(c), or  
 2272 a sexual predator under s. 775.21, and who is arrested for  
 2273 committing a qualifying offense as defined in this section on or  
 2274 after the effective date of this act.

2275  
 2276 The court shall not dismiss the probation or community control  
 2277 violation warrant pending against an offender enumerated in this  
 2278 paragraph without holding a recorded violation-of-probation  
 2279 hearing at which both the state and the offender are  
 2280 represented.

2281 Section 57. For the purpose of incorporating the amendments

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2282 made by this act to sections 775.21, 943.0435, and 944.607,  
 2283 Florida Statutes, in references thereto, section 948.063,  
 2284 Florida Statutes, is reenacted to read:

2285 948.063 Violations of probation or community control by  
 2286 designated sexual offenders and sexual predators.—

2287 (1) If probation or community control for any felony  
 2288 offense is revoked by the court pursuant to s. 948.06(2)(e) and  
 2289 the offender is designated as a sexual offender pursuant to s.  
 2290 943.0435 or s. 944.607 or as a sexual predator pursuant to s.  
 2291 775.21 for unlawful sexual activity involving a victim 15 years  
 2292 of age or younger and the offender is 18 years of age or older,  
 2293 and if the court imposes a subsequent term of supervision  
 2294 following the revocation of probation or community control, the  
 2295 court must order electronic monitoring as a condition of the  
 2296 subsequent term of probation or community control.

2297 (2) If the probationer or offender is required to register  
 2298 as a sexual predator under s. 775.21 or as a sexual offender  
 2299 under s. 943.0435 or s. 944.607 for unlawful sexual activity  
 2300 involving a victim 15 years of age or younger and the  
 2301 probationer or offender is 18 years of age or older and has  
 2302 violated the conditions of his or her probation or community  
 2303 control, but the court does not revoke the probation or  
 2304 community control, the court shall nevertheless modify the  
 2305 probation or community control to include electronic monitoring  
 2306 for any probationer or offender not then subject to electronic  
 2307 monitoring.

2308 Section 58. For the purpose of incorporating the amendment  
 2309 made by this act to section 775.21, Florida Statutes, in a  
 2310 reference thereto, subsection (4) of section 948.064, Florida

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2311 Statutes, is reenacted to read:

2312 948.064 Notification of status as a violent felony offender  
2313 of special concern.—

2314 (4) The state attorney, or the statewide prosecutor if  
2315 applicable, shall advise the court at each critical stage in the  
2316 judicial process, at which the state attorney or statewide  
2317 prosecutor is represented, whether an alleged or convicted  
2318 offender is a violent felony offender of special concern; a  
2319 person who is on felony probation or community control for any  
2320 offense committed on or after the effective date of this act and  
2321 who is arrested for a qualifying offense; or a person who is on  
2322 felony probation or community control and has previously been  
2323 found by a court to be a habitual violent felony offender as  
2324 defined in s. 775.084(1)(b), a three-time violent felony  
2325 offender as defined in s. 775.084(1)(c), or a sexual predator  
2326 under s. 775.21, and who is arrested for committing a qualifying  
2327 offense on or after the effective date of this act.

2328 Section 59. For the purpose of incorporating the amendment  
2329 made by this act to section 775.21, Florida Statutes, in a  
2330 reference thereto, subsection (3) of section 948.12, Florida  
2331 Statutes, is reenacted to read:

2332 948.12 Intensive supervision for postprison release of  
2333 violent offenders.—It is the finding of the Legislature that the  
2334 population of violent offenders released from state prison into  
2335 the community poses the greatest threat to the public safety of  
2336 the groups of offenders under community supervision. Therefore,  
2337 for the purpose of enhanced public safety, any offender released  
2338 from state prison who:

2339 (3) Has been found to be a sexual predator pursuant to s.

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2340 775.21,

2341  
2342 and who has a term of probation to follow the period of  
2343 incarceration shall be provided intensive supervision by  
2344 experienced correctional probation officers. Subject to specific  
2345 appropriation by the Legislature, caseloads may be restricted to  
2346 a maximum of 40 offenders per officer to provide for enhanced  
2347 public safety as well as to effectively monitor conditions of  
2348 electronic monitoring or curfews, if such was ordered by the  
2349 court.

2350 Section 60. For the purpose of incorporating the amendments  
2351 made by this act to sections 775.21 and 943.0435, Florida  
2352 Statutes, in references thereto, paragraph (b) of subsection (3)  
2353 and subsection (4) of section 948.30, Florida Statutes, are  
2354 reenacted to read:

2355 948.30 Additional terms and conditions of probation or  
2356 community control for certain sex offenses.—Conditions imposed  
2357 pursuant to this section do not require oral pronouncement at  
2358 the time of sentencing and shall be considered standard  
2359 conditions of probation or community control for offenders  
2360 specified in this section.

2361 (3) Effective for a probationer or community controllee  
2362 whose crime was committed on or after September 1, 2005, and  
2363 who:

2364 (b) Is designated a sexual predator pursuant to s. 775.21;  
2365 or

2366  
2367 the court must order, in addition to any other provision of this  
2368 section, mandatory electronic monitoring as a condition of the

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2369 probation or community control supervision.

2370 (4) In addition to all other conditions imposed, for a  
 2371 probationer or community controllee who is subject to  
 2372 supervision for a crime that was committed on or after May 26,  
 2373 2010, and who has been convicted at any time of committing, or  
 2374 attempting, soliciting, or conspiring to commit, any of the  
 2375 criminal offenses listed in s. 943.0435(1)(a)1.a.(I), or a  
 2376 similar offense in another jurisdiction, against a victim who  
 2377 was under the age of 18 at the time of the offense; if the  
 2378 offender has not received a pardon for any felony or similar law  
 2379 of another jurisdiction necessary for the operation of this  
 2380 subsection, if a conviction of a felony or similar law of  
 2381 another jurisdiction necessary for the operation of this  
 2382 subsection has not been set aside in any postconviction  
 2383 proceeding, or if the offender has not been removed from the  
 2384 requirement to register as a sexual offender or sexual predator  
 2385 pursuant to s. 943.04354, the court must impose the following  
 2386 conditions:

2387 (a) A prohibition on visiting schools, child care  
 2388 facilities, parks, and playgrounds, without prior approval from  
 2389 the offender's supervising officer. The court may also designate  
 2390 additional locations to protect a victim. The prohibition  
 2391 ordered under this paragraph does not prohibit the offender from  
 2392 visiting a school, child care facility, park, or playground for  
 2393 the sole purpose of attending a religious service as defined in  
 2394 s. 775.0861 or picking up or dropping off the offender's  
 2395 children or grandchildren at a child care facility or school.

2396 (b) A prohibition on distributing candy or other items to  
 2397 children on Halloween; wearing a Santa Claus costume, or other

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2398 costume to appeal to children, on or preceding Christmas;  
 2399 wearing an Easter Bunny costume, or other costume to appeal to  
 2400 children, on or preceding Easter; entertaining at children's  
 2401 parties; or wearing a clown costume; without prior approval from  
 2402 the court.

2403 Section 61. For the purpose of incorporating the amendments  
 2404 made by this act to sections 775.21, 943.0435, 944.606, and  
 2405 944.607, Florida Statutes, in references thereto, section  
 2406 948.31, Florida Statutes, is reenacted to read:

2407 948.31 Evaluation and treatment of sexual predators and  
 2408 offenders on probation or community control.—The court may  
 2409 require any probationer or community controllee who is required  
 2410 to register as a sexual predator under s. 775.21 or sexual  
 2411 offender under s. 943.0435, s. 944.606, or s. 944.607 to undergo  
 2412 an evaluation, at the probationer or community controllee's  
 2413 expense, by a qualified practitioner to determine whether such  
 2414 probationer or community controllee needs sexual offender  
 2415 treatment. If the qualified practitioner determines that sexual  
 2416 offender treatment is needed and recommends treatment, the  
 2417 probationer or community controllee must successfully complete  
 2418 and pay for the treatment. Such treatment must be obtained from  
 2419 a qualified practitioner as defined in s. 948.001. Treatment may  
 2420 not be administered by a qualified practitioner who has been  
 2421 convicted or adjudicated delinquent of committing, or  
 2422 attempting, soliciting, or conspiring to commit, any offense  
 2423 that is listed in s. 943.0435(1)(a)1.a.(I).

2424 Section 62. For the purpose of incorporating the amendments  
 2425 made by this act to sections 775.21, 943.0435, 944.606, and  
 2426 944.607, Florida Statutes, in references thereto, paragraph (b)

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2427 of subsection (6) of section 985.04, Florida Statutes, is  
 2428 reenacted to read:  
 2429 985.04 Oaths; records; confidential information.-  
 2430 (6)  
 2431 (b) Sexual offender and predator registration information  
 2432 as required in ss. 775.21, 943.0435, 944.606, 944.607, 985.481,  
 2433 and 985.4815 is a public record pursuant to s. 119.07(1) and as  
 2434 otherwise provided by law.  
 2435 Section 63. For the purpose of incorporating the amendments  
 2436 made by this act to sections 775.21 and 943.0435, Florida  
 2437 Statutes, in references thereto, subsection (9) of section  
 2438 985.4815, Florida Statutes, is reenacted to read:  
 2439 985.4815 Notification to Department of Law Enforcement of  
 2440 information on juvenile sexual offenders.-  
 2441 (9) A sexual offender, as described in this section, who is  
 2442 under the care, jurisdiction, or supervision of the department  
 2443 but who is not incarcerated shall, in addition to the  
 2444 registration requirements provided in subsection (4), register  
 2445 in the manner provided in s. 943.0435(3), (4), and (5), unless  
 2446 the sexual offender is a sexual predator, in which case he or  
 2447 she shall register as required under s. 775.21. A sexual  
 2448 offender who fails to comply with the requirements of s.  
 2449 943.0435 is subject to the penalties provided in s. 943.0435(9).  
 2450 Section 64. For the purpose of incorporating the amendments  
 2451 made by this act to sections 775.21 and 943.0435, Florida  
 2452 Statutes, in references thereto, paragraph (b) of subsection (1)  
 2453 of section 92.55, Florida Statutes, is reenacted to read:  
 2454 92.55 Judicial or other proceedings involving victim or  
 2455 witness under the age of 16, a person who has an intellectual

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2456 disability, or a sexual offense victim or witness; special  
 2457 protections; use of registered service or therapy animals.-  
 2458 (1) For purposes of this section, the term:  
 2459 (b) "Sexual offense" means any offense specified in s.  
 2460 775.21(4)(a)1. or s. 943.0435(1)(a)1.a.(I).  
 2461 Section 65. For the purpose of incorporating the amendment  
 2462 made by this act to section 943.0435, Florida Statutes, in a  
 2463 reference thereto, paragraph (a) of subsection (2) of section  
 2464 394.9125, Florida Statutes, is reenacted to read:  
 2465 394.9125 State attorney; authority to refer a person for  
 2466 civil commitment.-  
 2467 (2) A state attorney may refer a person to the department  
 2468 for civil commitment proceedings if the person:  
 2469 (a) Is required to register as a sexual offender pursuant  
 2470 to s. 943.0435;  
 2471 Section 66. For the purpose of incorporating the amendments  
 2472 made by this act to sections 943.0435 and 944.607, Florida  
 2473 Statutes, in references thereto, paragraph (d) of subsection (5)  
 2474 and paragraph (c) of subsection (10) of section 775.21, Florida  
 2475 Statutes, are reenacted to read:  
 2476 775.21 The Florida Sexual Predators Act.-  
 2477 (5) SEXUAL PREDATOR DESIGNATION.-An offender is designated  
 2478 as a sexual predator as follows:  
 2479 (d) A person who establishes or maintains a residence in  
 2480 this state and who has not been designated as a sexual predator  
 2481 by a court of this state but who has been designated as a sexual  
 2482 predator, as a sexually violent predator, or by another sexual  
 2483 offender designation in another state or jurisdiction and was,  
 2484 as a result of such designation, subjected to registration or

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2485 community or public notification, or both, or would be if the  
 2486 person was a resident of that state or jurisdiction, without  
 2487 regard to whether the person otherwise meets the criteria for  
 2488 registration as a sexual offender, shall register in the manner  
 2489 provided in s. 943.0435 or s. 944.607 and shall be subject to  
 2490 community and public notification as provided in s. 943.0435 or  
 2491 s. 944.607. A person who meets the criteria of this section is  
 2492 subject to the requirements and penalty provisions of s.  
 2493 943.0435 or s. 944.607 until the person provides the department  
 2494 with an order issued by the court that designated the person as  
 2495 a sexual predator, as a sexually violent predator, or by another  
 2496 sexual offender designation in the state or jurisdiction in  
 2497 which the order was issued which states that such designation  
 2498 has been removed or demonstrates to the department that such  
 2499 designation, if not imposed by a court, has been removed by  
 2500 operation of law or court order in the state or jurisdiction in  
 2501 which the designation was made, and provided such person no  
 2502 longer meets the criteria for registration as a sexual offender  
 2503 under the laws of this state.

2504 (10) PENALTIES.—

2505 (c) Any person who misuses public records information  
 2506 relating to a sexual predator, as defined in this section, or a  
 2507 sexual offender, as defined in s. 943.0435 or s. 944.607, to  
 2508 secure a payment from such a predator or offender; who knowingly  
 2509 distributes or publishes false information relating to such a  
 2510 predator or offender which the person misrepresents as being  
 2511 public records information; or who materially alters public  
 2512 records information with the intent to misrepresent the  
 2513 information, including documents, summaries of public records

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2514 information provided by law enforcement agencies, or public  
 2515 records information displayed by law enforcement agencies on  
 2516 websites or provided through other means of communication,  
 2517 commits a misdemeanor of the first degree, punishable as  
 2518 provided in s. 775.082 or s. 775.083.

2519 Section 67. For the purpose of incorporating the amendments  
 2520 made by this act to sections 943.0435, 944.606, and 944.607,  
 2521 Florida Statutes, in references thereto, subsection (2) of  
 2522 section 775.24, Florida Statutes, is reenacted to read:

2523 775.24 Duty of the court to uphold laws governing sexual  
 2524 predators and sexual offenders.—

2525 (2) If a person meets the criteria in this chapter for  
 2526 designation as a sexual predator or meets the criteria in s.  
 2527 943.0435, s. 944.606, s. 944.607, or any other law for  
 2528 classification as a sexual offender, the court may not enter an  
 2529 order, for the purpose of approving a plea agreement or for any  
 2530 other reason, which:

2531 (a) Exempts a person who meets the criteria for designation  
 2532 as a sexual predator or classification as a sexual offender from  
 2533 such designation or classification, or exempts such person from  
 2534 the requirements for registration or community and public  
 2535 notification imposed upon sexual predators and sexual offenders;

2536 (b) Restricts the compiling, reporting, or release of  
 2537 public records information that relates to sexual predators or  
 2538 sexual offenders; or

2539 (c) Prevents any person or entity from performing its  
 2540 duties or operating within its statutorily conferred authority  
 2541 as such duty or authority relates to sexual predators or sexual  
 2542 offenders.

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2543 Section 68. For the purpose of incorporating the amendments  
 2544 made by this act to sections 775.21, 943.0435, 944.606 and  
 2545 944.607, Florida Statutes, in references thereto, subsection (2)  
 2546 of section 943.0436, Florida Statutes, is reenacted to read:

2547 943.0436 Duty of the court to uphold laws governing sexual  
 2548 predators and sexual offenders.—

2549 (2) If a person meets the criteria in chapter 775 for  
 2550 designation as a sexual predator or meets the criteria in s.  
 2551 943.0435, s. 944.606, s. 944.607, or any other law for  
 2552 classification as a sexual offender, the court may not enter an  
 2553 order, for the purpose of approving a plea agreement or for any  
 2554 other reason, which:

2555 (a) Exempts a person who meets the criteria for designation  
 2556 as a sexual predator or classification as a sexual offender from  
 2557 such designation or classification, or exempts such person from  
 2558 the requirements for registration or community and public  
 2559 notification imposed upon sexual predators and sexual offenders;

2560 (b) Restricts the compiling, reporting, or release of  
 2561 public records information that relates to sexual predators or  
 2562 sexual offenders; or

2563 (c) Prevents any person or entity from performing its  
 2564 duties or operating within its statutorily conferred authority  
 2565 as such duty or authority relates to sexual predators or sexual  
 2566 offenders.

2567 Section 69. For the purpose of incorporating the amendment  
 2568 made by this act to section 943.0435, Florida Statutes, in a  
 2569 reference thereto, subsection (2) of section 775.0862, Florida  
 2570 Statutes, is reenacted to read:

2571 775.0862 Sexual offenses against students by authority

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2572 figures; reclassification.—

2573 (2) The felony degree of a violation of an offense listed  
 2574 in s. 943.0435(1)(a)1.a., unless the offense is a violation of  
 2575 s. 794.011(4)(e)7. or s. 810.145(8)(a)2., shall be reclassified  
 2576 as provided in this section if the offense is committed by an  
 2577 authority figure of a school against a student of the school.

2578 Section 70. This act shall take effect October 1, 2016.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

17 Feb 16

Meeting Date

784

Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title Pres & CEO

Address 204 S. Monroe

Phone 577.3032

Street

Tall

City

FL

State

32301

Zip

Email barney@smart

justicealliance.org

Speaking:  For  Against  Information

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

Representing FLA. 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)

2-17-16

Meeting Date

SB-784

Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Colleen Mackin

Job Title Consultant

Address 115 Magnolia DR #4

Phone 7272441037

Street Tallahassee State Zip

Email cmackin@iamfor kids.org

Speaking:  For  Against  Information

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

Representing The Children's Campaign

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2-17-16  
Meeting Date

764  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name JANET MABRY

Job Title \_\_\_\_\_

Address 2866 Bay Heather Circle  
Street

Phone 501-2502

Gulf Breeze FL 32563  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing American Massage Therapy Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/16  
Meeting Date

784  
Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Bill Bunkley

Job Title President

Address PO Box 341644  
Street

Phone (813) 264-2977

Tampa FL 33694  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing FL Ethics & Religious Liberty Commission

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2.17.14  
Meeting Date

784  
Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Samantha Sexton

Job Title Dir. of Government Affairs

Address One W. Adams St. Ste 301

Phone 904-383-9403

Jacksonville FL 32202  
City State Zip

Email Samantha.Sexton@pacecenter.org

Speaking:  For  Against  Information

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

Representing PACE Center for Girls

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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)

2/17

Meeting Date

784

Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Courtney Gager

Job Title Legislative Assistant

Address 4853 S Orange Ave

Phone 407-418-0250

Street

Orlando

City

FL

State

32806

Zip

Email cgager@floridafamily

action.org

Speaking:  For  Against  Information

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

Representing Florida Family Action, legislative arm of the Florida Family Policy Council

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)

2/17/2016  
Meeting Date

SB 0784  
Bill Number (if applicable)

Topic HUMAN TRAFFICKING

Amendment Barcode (if applicable)

Name RICHARD FORTIN

Job Title SERGEANT VOLUSIA COUNTY SHERIFFS OFFICE

Address 101 EAST CANAL STREET  
Street

Phone 386-423-5301

NEW SMYRNA FL 32168  
City State Zip

Email R.FORTIN@VCSO.US

Speaking:  For  Against  Information

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

Representing FLORIDA SHERIFFS 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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/16 Meeting Date

580784 Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Dennis Strange

Job Title Captain

Address 2570 West Colonial Dr

Phone 407 254-7000

Del Prado 71 32804 City State Zip

Email dennis.strange@ocfl.net

Speaking: For Against Information

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

Representing Orange County Sheriff's Office

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)

2/17/16  
Meeting Date

53784  
Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name De Bood Bell

Job Title CEO MOK LIFE

Address 1700 17<sup>th</sup> St  
Street  
Sarasota, FL 34230  
City State Zip

Phone 941-227-1612

Email wood@moklife.com

Speaking:  For  Against  Information

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

Representing MOK LIFE

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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**BILL:** CS/SB 818

**INTRODUCER:** Health Policy Committee and Senator Latvala and others

**SUBJECT:** Instruction on Human Trafficking

**DATE:** February 16, 2016      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	<b>Fav/CS</b>
2.	Brown	Pigott	AHS	<b>Recommend: Favorable</b>
3.	Pace	Hrdlicka	FP	<b>Favorable</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 818 adds human trafficking to the required continuing medical education (CE) requirements for allopathic and osteopath physicians, physician assistants, anesthesiology assistants, nurses, dentists, dental hygienists, dental lab personnel, psychologists, social workers, mental health counselors, and marriage and family therapists. Such licensees must complete two hours of CE courses on domestic violence *and human trafficking*, approved by the respective board, every third biennial re-licensure or recertification cycle.

The Department of Health (DOH) indicates that the cost of implementing the bill can be absorbed within existing resources.

**II. Present Situation:**

Currently, all licensed allopathic and osteopath physicians, physician assistants, anesthesiology assistants, nurses, dentists, dental hygienists, dental lab personnel, psychologists, social workers, mental health counselors, and marriage and family therapists are required to complete 2 hours of CE on domestic violence<sup>1</sup> as part of relicensure or recertification every third biennium, or every 6 years. Each appropriate board must approve the domestic violence CE course.

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<sup>1</sup> Section 741.28, F.S. defines “domestic violence” as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

The CE course must consist of:

- Data and information on the number of patients in that professional's practice who are likely to be victims of domestic violence;
- The number who are likely to be perpetrators of domestic violence;
- Screening procedures for determining whether a patient has any history of being either a victim or a perpetrator of domestic violence; and
- Instruction on how to provide patients with information on resources in the local community, such as domestic violence centers and other advocacy groups, that provide legal aid, shelter, victim counseling, batterer counseling, or child protection services.<sup>2</sup>

Licenses and certificate holders must submit confirmation of having completed the CE course when submitting fees for every third biennial renewal. The form of the CE confirmation is left to the discretion of the respective board.<sup>3</sup>

Each licensing board may approve equivalent courses to satisfy the CE requirements and may include the hour required for completion of the CE course in the total CE hours required for the profession, unless the CE requirement for the profession is less than 30 hours biennially. A person holding two or more licenses satisfies the CE requirements for each license upon proof of completion of one, 2-hour CE course.<sup>4</sup>

Failure to comply with the CE requirements is grounds for disciplinary action by the board of each respective practice act.<sup>5</sup> Licensees are required to complete the CE course as part of any discipline imposed.

Florida law defines "human trafficking" as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.<sup>6</sup>

Currently there is no requirement, under any of the practice acts, to complete a CE course on human trafficking.

According to the DOH there are 48,941 allopathic physicians,<sup>7</sup> 6,216 osteopathic physicians,<sup>8</sup> 6,744 physician assistants, 197 anesthesiologist assistants, 304,566 nurses,<sup>9</sup> 10,981 dentists,

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<sup>2</sup> Section 456.031, F.S.

<sup>3</sup> See DOH, *Continuing Education – CE*, available at: <http://www.floridahealth.gov/licensing-and-regulation/ce.html> (last visited Feb. 12, 2016). Currently, the DOH requires all licensees to report CEs at the time of licensure renewal through the department's electronic tracking system. A licensee is only able to renew a license if the licensee's CE records are complete.

<sup>4</sup> Section 456.031(1)(c) and (d), F.S.

<sup>5</sup> Section 456.031(1), F.S.

<sup>6</sup> Section 787.06(2)(d), F.S.

<sup>7</sup> The 48,941 active allopathic physicians include: 48,182 medical doctors, 226 house physicians, 146 limited license physicians, 335 critical need physicians, 8 medical expert physicians, 1 Mayo Clinic limited license physician, 40 medical faculty physicians, 2 public health physicians, and 1 public psychiatry physician.

<sup>8</sup> The 6,216 osteopathic physicians include: 5,264 osteopathic physicians, 5 osteopathic limited license physicians, 1 osteopathic expert physicians, and 946 osteopathic training registrations.

<sup>9</sup> The 304,566 nurses include: 18,250 advanced registered nurse practitioners (ARNPs), 26 ARNP/Certified Nurse Specialists, 131 clinical nurse specialists, 217,315 registered nurses, and 68,844 licensed practical nurses.

11,589 dental hygienists, 1,023 dental lab personnel, 5,086 psychologists, 7,971 social workers, 9,054 mental health counselors, and 1,667 marriage and family therapists holding active licenses in Florida.<sup>10</sup>

### III. Effect of Proposed Changes:

The bill amends s. 456.031, F.S., to require licensed allopathic and osteopath physicians, physician assistants, anesthesiology assistants, nurses, dentists, dental hygienists, dental lab personnel, psychologists, social workers, mental health counselors, and marriage and family therapists to complete two hours of CE on domestic violence *and human trafficking* as part of every third biennial relicensure or recertification. The course content for the domestic violence CE course and the requirements for CE courses remain unchanged.

The bill requires the human trafficking CE course to consist of:

- Data and information on the types and extent of labor and sex trafficking;
- Factors that place a person at greater risk of being a trafficking victim;
- Patient safety and security;
- Management of medical records of patients who are trafficking victims;
- Public and private social services available for rescue, food, clothing, and shelter referrals;
- Hotlines for reporting human trafficking maintained by the National Human Trafficking Resource Center and the U.S. Department of Homeland Security;
- Validated assessment tools for the identification of trafficking victims;
- General indicators that a person may be a victim of human trafficking;
- Procedures for sharing information related to human trafficking with a patient; and
- Referral options for legal and social services as appropriate.

The bill is effective on July 1, 2016.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

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<sup>10</sup> DOH, Annual Report and Long Range Plan Fiscal Year 2014-2015, *Table 1: Summary of Licensed Practitioners*, p. 10-13, available at: <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/documents/annual-report-1415.pdf> (last visited Feb. 12, 2016).

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

None.

**B. Private Sector Impact:**

Licenses listed in s. 456.031, F.S., are currently required to complete a two-hour course on domestic violence every 6 years. Under the bill, they may incur additional costs to satisfy the requirement after human trafficking is added to the required subject matter, if the cost of the course is increased.

**C. Government Sector Impact:**

The boards will incur costs for rulemaking. The DOH and boards will incur costs for handling complaints and discipline. The DOH has indicated that these costs can be absorbed within existing resources.<sup>11</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 456.031 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 Health Policy on January 26, 2016:**

The committee substitute deletes the creation of new s. 456.0315, F.S., on CEs for human trafficking. It amends existing s. 456.031, F.S., on domestic violence CEs, and adds human trafficking to the required domestic violence CE, making the required course a 2-hour course on both domestic violence and human trafficking due every third biennium. It also increases the number of professions required to take the CEs to all those listed in s. 456.031, F.S.

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<sup>11</sup> See DOH, *Senate Bill 818 Analysis*, p. 4, (Nov. 16, 2015) (on file with the Senate Committee on Health Policy).

B. Amendments:

None.

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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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By the Committee on Health Policy; and Senators Latvala and Sobel

588-02621-16

2016818c1

A bill to be entitled

An act relating to instruction on human trafficking; amending s. 456.031, F.S.; providing that certain licensing boards must require specified licensees to complete a specified continuing education course that includes a section on human trafficking as a condition of relicensure or recertification; providing requirements and procedures related to the course; providing an effective date.

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

Section 1. Section 456.031, Florida Statutes, is amended to read:

456.031 Requirement for instruction on domestic violence and human trafficking.—

(1) (a) The appropriate board shall require each person licensed or certified under chapter 458, chapter 459, part I of chapter 464, chapter 466, chapter 467, chapter 490, or chapter 491 to complete a 2-hour continuing education course, approved by the board, on domestic violence, as defined in s. 741.28, and on human trafficking, as defined in s. 787.06(2), as part of every third biennial relicensure or recertification.

1. The domestic violence section of the course must shall consist of data and information on the number of patients in that professional's practice who are likely to be victims of domestic violence and the number who are likely to be perpetrators of domestic violence, screening procedures for determining whether a patient has any history of being either a victim or a perpetrator of domestic violence, and instruction on how to provide such patients with information on, or how to

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refer such patients to, resources in the local community, such as domestic violence centers and other advocacy groups, that provide legal aid, shelter, victim counseling, batterer counseling, or child protection services.

2. The human trafficking section of the course must consist of data and information on the types of human trafficking, such as labor and sex, and the extent of human trafficking; factors that place a person at greater risk for being a victim of human trafficking; management of medical records of patients who are human trafficking victims; patient safety and security; public and private social services available for rescue, food, clothing, and shelter referrals; hotlines for reporting human trafficking maintained by the National Human Trafficking Resource Center and the United States Department of Homeland Security; validated assessment tools for identifying human trafficking victims and general indicators that a person may be a victim of human trafficking; procedures for sharing information related to human trafficking with a patient; and referral options for legal and social services.

(b) Each ~~such~~ licensee or certificateholder shall submit confirmation of having completed the continuing education ~~such~~ course, on a form provided by the board, when submitting fees for every third biennial relicensure or recertification ~~renewal~~.

(c) The board may approve additional equivalent courses that may be used to satisfy the requirements of paragraph (a). Each licensing board that requires a licensee to complete a continuing ~~an~~ educational course pursuant to this subsection may include the hour required for completion of the course in the total hours of continuing education required by law for the ~~such~~

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61 profession, unless the continuing education requirements for the  
62 ~~such~~ profession consist of fewer than 30 hours of continuing  
63 education biennially.

64 (d) Any person holding two or more licenses subject to ~~the~~  
65 ~~provisions of~~ this subsection shall be permitted to show proof  
66 of completion of ~~having taken~~ one board-approved course on  
67 domestic violence and human trafficking, for purposes of  
68 relicensure or recertification for additional licenses.

69 (e) Failure to comply with the requirements of this  
70 subsection shall constitute grounds for disciplinary action  
71 under each respective practice act and under s. 456.072(1)(k).  
72 In addition to discipline by the board, the licensee shall be  
73 required to complete the board-approved ~~such~~ course under this  
74 subsection.

75 (2) Each board may adopt rules to carry out the provisions  
76 of this section.

77 Section 2. This act shall take effect July 1, 2016.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/2016

Meeting Date

Topic \_\_\_\_\_

Bill Number 818  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH  
*Street*

Phone 727-897-9291

SAINT PETERSBURG      FLORIDA      33705  
*City*                                      *State*                                      *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:     For <sup>*in part*</sup>     Against     Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2.17.16  
Meeting Date

818  
Bill Number (if applicable)

Topic Instruction on Human Trafficking

Amendment Barcode (if applicable)

Name Samantha Sexton

Job Title Dir. of Government Affairs

Address One W. Adams St, Ste 301  
Street  
Jacksonville FL 32202  
City State Zip

Phone 904-383-9403

Email Samantha.Sexton@pacecenter.org

Speaking:  For  Against  Information

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

Representing PACE Center for Girls

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Appropriations Subcommittee on  
Transportation, Tourism, and Economic  
Development, *Chair*  
Appropriations  
Commerce and Tourism  
Governmental Oversight and Accountability  
Regulated Industries  
Rules

**SENATOR JACK LATVALA**

20th District

February 16, 2016

The Honorable Anitere Flores, Chair  
Senate Committee on Fiscal Policy  
225 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairwoman Flores:

My bill on Instruction on Human Trafficking, Senate Bill 818, is scheduled to be heard in the Senate Committee on Fiscal Policy on Wednesday, February 17<sup>th</sup> at 4 p.m. at the same time as my Senate Committee on Rules. I respectfully request that my legislative aide, Lizbeth Mabry, be permitted to present the bill before the Committee.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Jack Latvala".

Jack Latvala  
Senator, District 20

Cc: Jennifer Hrdlicka, Staff Director; Tamra Lyon, Administrative Assistant

REPLY TO:

- 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX. (727) 793-2799
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/CS/SB 912

INTRODUCER: Fiscal Policy Committee; Criminal Justice Committee; and Senators Flores and Soto

SUBJECT: Fraudulent Activities Associated with Payment Systems

DATE: February 19, 2016

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Cannon	CJ	<b>Fav/CS</b>
2. Blizzard	DeLoach	AGG	<b>Recommend: Favorable</b>
3. Pace	Hrdlicka	FP	<b>Fav/CS</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 912 addresses fraudulent activity occurring at fuel stations by increasing the penalties for offenses related to the fraudulent activity and requiring retail fuel pumps that have credit card scanners to have certain security measures. Related to the offenses, the bill:

- Increases the felony classification for unlawful conveyance of fuel;
- Revises the offense of trafficking in counterfeit credit cards and related documents to include the possession of counterfeit cards and related documents;
- Creates a tiered penalty for the revised offense of trafficking in or possession of counterfeit cards and related documents based upon the number of items involved; and
- Ranks the offenses in the Criminal Punishment Code offense severity level ranking chart.

The Legislature's Office of Economic and Demographic Research preliminary estimate is that the bill would have a positive indeterminate impact on state prison beds, which means that the bill will require unquantifiable increase in prison beds.

**II. Present Situation:**

**Fraudulent Activity Occurring at Fuel Stations**

It is the responsibility of the Department of Agriculture and Consumer Services (DACS) to inspect all measuring devices used in selling or distributing petroleum fuel at wholesale and

retail.<sup>1</sup> As part of the inspections of retail pumps, the DACS also inspects pumps for devices that steal credit card information from consumers, commonly called “skimmers.” According to the DACS, the consumer’s credit card information obtained by a skimmer is often used to purchase gasoline fraudulently, and the fuel is then sold on the black market. Both the consumer and the retailer are victimized by the fraudulent fuel purchase and credit card theft. The DACS reports that “in some cases, gas stations are losing thousands of dollars a day in the theft of fuel by use of counterfeit/compromised credit cards.” There are no provisions in current law that would require security measures to be in place to reduce the possibility of skimmers being placed into pumps or to alert a consumer that tampering has been done to a pump. Further, current penalties for the theft of fuel are determined by the amount stolen.<sup>2</sup>

### **Unlawful Conveyance of Fuel**

It is unlawful for any person to maintain, or possess any conveyance or vehicle that is equipped with, fuel tanks, bladders, drums, or other containers that do not conform to 49 C.F.R. or have not been approved by the United States Department of Transportation for the purpose of hauling, transporting, or conveying motor or diesel fuel.<sup>3</sup>

A person commits a third degree felony if he or she has attempted to or has fraudulently obtained motor or diesel fuel by:

- Presenting a fraudulent credit card or a credit card account number;<sup>4</sup>
- Using unauthorized access to any computer network; or
- Using a fraudulently scanned or lost or stolen payment access device, whether a credit card or contactless device.<sup>5</sup>

The described offense is not currently ranked in the offense severity level ranking chart in s. 921.0022, F.S. A third degree felony that is not ranked in the chart is ranked as a Level 1 offense pursuant to the “default” provisions of s. 921.0023, F.S.<sup>6</sup>

### **Trafficking In or Possession of Counterfeit Cards**

It is a second degree felony for a person to traffic in or attempt to traffic in 10 or more counterfeit credit cards, invoices, vouchers, sales drafts, or other representations or manifestations of counterfeit credit cards, or credit card account numbers of another in any 6-month period.<sup>7</sup> This offense does not specifically state that *possession* of counterfeit credit cards is unlawful.

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<sup>1</sup> Section 525.07, F.S.

<sup>2</sup> DACs, *Legislative Bill Analysis of SB 912* (November 24, 2015), (on file with the Senate Committee on Criminal Justice).

<sup>3</sup> Section 316.80(1), F.S.

<sup>4</sup> Section 817.625, F.S., defines a number of payment card offenses including use of a scanning device or reencoder to access and store information on the payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user’s card, or a merchant.

<sup>5</sup> Section 316.80(2), F.S.

<sup>6</sup> Section 921.0022, F.S., ranks offenses for sentencing from Level 1, which is the least severe, to Level 10, the most severe.

<sup>7</sup> Section 817.611, F.S.

The described offense is not currently ranked in the offense severity level ranking chart in s. 931.0022, F.S. A second degree felony that is not ranked in the chart is ranked as a Level 4 offense pursuant to the “default” provisions of s. 921.0023, F.S.<sup>8</sup>

### III. Effect of Proposed Changes:

The bill addresses fraudulent activity occurring at fuel stations by increasing the felony classification for unlawful conveyance of fuel; revising the offense of trafficking in and possession of counterfeit cards and related documents; creating a tiered penalty system for persons who traffic in or possess counterfeit cards or related documents; ranking such offenses; and requiring retail fuel pumps that have credit card scanners to have certain security measures.

**Section 1** amends s. 316.80, F.S., to increase the felony classification for unlawful conveyance of fuel to a second degree felony. Currently, the unlawful conveyance of fuel is classified as a third degree felony.<sup>9</sup>

**Section 2** amends s. 527.07, F.S., to require each person who owns or manages a retail petroleum fuel measuring device (fuel pump) with a scanning device to affix or install a security measure on the fuel pump to restrict the unauthorized access of customer payment card information.

The bill requires one of the following security measures:

- Placement of a pressure-sensitive security tape over the panel opening that leads to the scanning device for the fuel pump in a manner that will restrict the unauthorized opening of the panel;
- A device or system that will render the fuel pump or scanning device inoperable if there is an unauthorized opening of the panel;
- A device or system that encrypts the customer payment card information in the scanning device; or
- Another security measure approved by the DACS.

The bill authorizes the DACS to prohibit the use of a retail fuel pump until a security measure is installed, replaced, or repaired. The DACs must provide written notice to the owner or manager of noncompliance and allow the owner or manager 5 days to come into compliance.

If a retail fuel pump is found out of compliance more than once then the DACS is authorized to immediately take the device out of service.

The terms “scanning device” and “payment card” have the same meanings as defined in s. 817.625, F.S.<sup>10</sup>

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<sup>8</sup> *Supra* note 6.

<sup>9</sup> A second degree felony carries a maximum penalty of 15 years in state prison, and a fine of up to \$10,000. A third degree felony carries a maximum penalty of 5 years in state prison, and a fine of up to \$5,000. *See* ss. 775.082 and 775.083, F.S.

<sup>10</sup> Section 817.625(1)(a), F.S. defines “scanning device” as a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card. Section 817.625(1)(c), F.S., defines “payment card” as a credit card, charge card, debit card, or any other card that is issued to an authorized card user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant.

**Section 3** amends s. 817.611, F.S., to revise the offense to include the possession of counterfeit credits cards or related documents. “Related documents” are defined as invoices, vouchers, sales drafts, or other representations or manifestations of a counterfeit credit card or a credit card number of a cardholder if not authorized by the cardholder.

The bill establishes a tiered penalty for the offense based on the number of counterfeit credit cards or related documents involved. A person who traffics in, attempts to traffic in, or possesses counterfeit cards or related documents commits the following offense:

- Second degree felony, ranked as a Level 5 for 5-14 counterfeit cards or related documents;
- First degree felony, ranked as a Level 7 for 15-49 counterfeit cards or related documents; and
- First degree felony, ranked as a Level 9 for 50 or more counterfeit cards or related documents.<sup>11</sup>

**Section 4** amends s. 921.0022, F.S., to rank the unlawful conveyance of fuel as a Level 5 offense in the Criminal Punishment Code offense severity level ranking chart. Currently, this offense is ranked by default as a Level 1 offense.<sup>12</sup>

Currently, the offense of trafficking in counterfeit credit cards is ranked by default as a Level 4 offense. The bill ranks, in the severity level ranking chart, the trafficking in or possession of counterfeit cards or related documents as a:

- Level 5 offense for 5-14 counterfeit cards or related documents;
- Level 7 offense for 15-49 counterfeit cards or related documents;
- Level 9 offense for 50 or more counterfeit cards or related documents.<sup>13</sup>

A higher ranking in the severity level ranking chart increases the possibility for a defendant to score a longer lowest permissible prison sentence.

**Section 5** provides that the bill is effective October 1, 2016.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

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<sup>11</sup> A second degree felony is punishable by up to 15 years imprisonment and a fine of up to \$10,000. A first degree felony is punishable by up to 30 years imprisonment and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

<sup>12</sup> An offender with a Level 1 primary offense would likely score a nonstate prison sanction as the lowest permissible sentence absent significant prior convictions. The possibility of a defendant receiving a prison sentence is greater if the offense is a Level 5 rather than a Level 1.

<sup>13</sup> The possibility of a defendant receiving a prison sentence is greater if the offense is a Level 5 rather than a Level 4. An offender with a Level 7 primary offense would score prison as the lowest permissible prison sentence absent any significant prior convictions. An offender with a Level 9 primary offense would score a greater prison sentence than a Level 7 as the lowest permissible prison sentence.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have a fiscal impact on owners or managers of retail fuel pump due to the requirement for the installation of one or more security measures on such devices.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the official estimate of the prison bed impact of legislation has not reviewed the bill. A preliminary estimate by the Legislature's Office of Economic and Demographic Research is that the bill would have a positive indeterminate impact on state prison beds, which means that the bill will require an unquantifiable increase in prison beds.

The Office of Economic and Demographic Research provided the following information regarding the penalty provisions of the bill:

**Unlawful Conveyance of Fuel:** The bill increases the offense to a second degree felony ranked in Level 5 of the Criminal Punishment Code offense severity level ranking chart. According to the Department of Corrections, in Fiscal Year 2014-2015, there was one (adj.) offender sentenced for fraudulently obtaining motor or diesel fuel, but that person did not receive a prison sentence. In Fiscal Year 2014-2015, the incarceration rate for a second degree felony ranked in Level 5 was 37.3 percent.

**Trafficking in or Possession of Counterfeit Credit Cards:** The bill creates a tiered penalty for the offense based upon the number of counterfeit credit cards and related documents involved. The tiers are: a second degree felony, ranked Level 5 in the severity level ranking chart, for 5-14 items; a first degree felony, ranked Level 7, for 15-49 items; and a first degree felony, ranked Level 9, for 50 or more items. According to the Department of Corrections, in Fiscal Year 2014-2015:

- There were 35 (adj.) offenders sentenced for trafficking in counterfeit credit cards, and 12 (adj.) received a prison sentence (mean sentence length of 30.4 months and incarceration rate of 34.3 percent adj. to 33.3 percent unadj.).
- The incarceration rate for a first degree felony ranked in Level 7 was 73.5 percent.
- The incarceration rate for a first degree felony ranked in Level 9 was 83.2 percent.

The Office of Economic and Demographic Research stated that it is unknown how many cards were involved in each separate offense.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 316.80, 525.07, 817.611, and 921.0022.

**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 Fiscal Policy on February 17, 2016**

The committee substitute establishes a tiered penalty system for persons who traffic in, attempt to traffic in, or possess counterfeit cards or related documents depending on the number of cards trafficked or possesses.

**CS by Criminal Justice on January 25, 2016:**

- Requiring that each person who owns or manages a retail petroleum fuel measuring device have affixed to or installed onto the measuring device a security measure to restrict the unauthorized access of customer payment card information;
- Providing that the security measure must include one or more specified security measures;
- Providing that the owner or manager of a retail petroleum fuel measuring device without a security measure or with an altered or damaged security measure, upon written notice from the department of such noncompliance, shall have five calendar days to comply; and
- Providing that after the fifth day of noncompliance, the department may prohibit further use of the retail petroleum fuel measuring device until a security measure is installed, replaced, or repaired.

- B. **Amendments:**

None.



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Flores) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 103 - 174

and insert:

817.611 Traffic in or possess counterfeit credit cards.-

(1) As used in this section, the term "related document" means an invoice, a voucher, a sales draft, or other representation or manifestation of a counterfeit credit card or a credit card number of a cardholder if not authorized by the cardholder.



11 (2) A Any person who traffics in, ~~or~~ attempts to traffic  
12 in, or possesses 10 or more counterfeit credit cards or related  
13 documents, invoices, vouchers, sales drafts, or other  
14 representations or manifestations of counterfeit credit cards,  
15 or credit card account numbers of another in any 6-month period  
16 is guilty of:

17 (a) A felony of the second degree, punishable as provided  
18 in s. 775.082, s. 775.083, or s. 775.084, if the person traffics  
19 in, attempts to traffic in, or possesses 5 to 14 counterfeit  
20 credit cards or related documents.

21 (b) A felony of the first degree, punishable as provided in  
22 s. 775.082, s. 775.083, or s. 775.084, if the person traffics  
23 in, attempts to traffic in, or possesses 15 to 49 counterfeit  
24 credit cards or related documents.

25 (c) A felony of the first degree, punishable as provided in  
26 s. 775.082, s. 775.083, or s. 775.084, if the person traffics  
27 in, attempts to traffic in, or possesses 50 or more counterfeit  
28 credit cards or related documents.

29 Section 4. Paragraphs (e), (g), and (i) of subsection (3)  
30 of section 921.0022, Florida Statutes, are amended to read:  
31 921.0022 Criminal Punishment Code; offense severity ranking  
32 chart.-

33 (3) OFFENSE SEVERITY RANKING CHART

34 (e) LEVEL 5

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving



37			personal injuries other than serious bodily injury, failure to stop; leaving scene.
38	316.1935(4) (a)	2nd	Aggravated fleeing or eluding.
39	<u>316.80(2)</u>	<u>2nd</u>	<u>Unlawful conveyance; obtaining fuel fraudulently.</u>
40	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
41	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
42	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
	379.3671 (2) (c) 3.	3rd	Willful molestation, possession, or removal



43			of a commercial harvester's trap contents or trap gear by another harvester.
44	381.0041(11) (b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
45	440.10(1) (g)	2nd	Failure to obtain workers' compensation coverage.
46	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
47	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
	624.401(4) (b) 2.	2nd	Transacting insurance without a certificate or authority; premium



48			collected \$20,000 or more but less than \$100,000.
49	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
50	790.01(2)	3rd	Carrying a concealed firearm.
51	790.162	2nd	Threat to throw or discharge destructive device.
52	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
53	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
54	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
	796.05(1)	2nd	Live on earnings of a



55			prostitute; 1st offense.
56	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
57	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
58	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
59	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
60	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
61	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
	812.131(2)(b)	3rd	Robbery by sudden



261112

62			snatching.
63	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
64	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
65	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
66	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
67	<u>817.611(2)(a)</u>	<u>2nd</u>	<u>Traffic in or possess 5 to 14 counterfeit credit cards or related documents.</u>
	817.568(2)(b)	2nd	Fraudulent use of



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			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.
68	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
69	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
70	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
71			



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72	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
73	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.
74	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
75	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
76	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
	847.0138	3rd	Transmission of material



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77	(2) & (3)		harmful to minors to a minor by electronic device or equipment.
78	874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
79	874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
80	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).
	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  
recreational facility or  
community center.

81

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.

82

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.



83

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.

84

893.13(4)(b)

2nd

Deliver to minor  
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).

85

893.1351(1)

3rd

Ownership, lease, or  
rental for trafficking  
in or manufacturing of  
controlled substance.

86

87

88

89

(g) LEVEL 7

Florida  
Statute

Felony  
Degree

Description



90	316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.
91	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
92	316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
93	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
94	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
95			



96	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
97	409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
98	456.065(2)	3rd	Practicing a health care profession without a license.
99	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
100	458.327(1)	3rd	Practicing medicine without a license.
101	459.013(1)	3rd	Practicing osteopathic medicine without a license.
102	460.411(1)	3rd	Practicing chiropractic medicine without a license.
	461.012(1)	3rd	Practicing podiatric medicine without a



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103			license.
104	462.17	3rd	Practicing naturopathy without a license.
105	463.015(1)	3rd	Practicing optometry without a license.
106	464.016(1)	3rd	Practicing nursing without a license.
107	465.015(2)	3rd	Practicing pharmacy without a license.
108	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
109	467.201	3rd	Practicing midwifery without a license.
110	468.366	3rd	Delivering respiratory care services without a license.
111	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.



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112	483.901(9)	3rd	Practicing medical physics without a license.
113	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
114	484.053	3rd	Dispensing hearing aids without a license.
115	494.0018(2)	1st	Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
116	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.
	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.



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117	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
118	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.
119	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
120	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
121	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
122			



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	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
123	782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).
124	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
125	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
126	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
127	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
128			



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129	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
130	784.048(7)	3rd	Aggravated stalking; violation of court order.
131	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
132	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
133	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
134	784.081(1)	1st	Aggravated battery on specified official or employee.
135	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
136	784.083(1)	1st	Aggravated battery on code inspector.



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137	787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
138	787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
139	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
140	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
141	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.



142	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
143	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
144	790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
145	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
146	796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.
147	796.05(1)	1st	Live on earnings of a



148	800.04(5)(c)1.	2nd	prostitute; 3rd and subsequent offense. Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.
149	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age or older.
150	800.04(5)(e)	1st	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense.
151	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
152	810.02(3)(a)	2nd	Burglary of occupied



153			dwelling; unarmed; no assault or battery.
154	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
155	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
156	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
157	812.014(2)(a)1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
158	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
	812.014(2)(b)3.	2nd	Property stolen, emergency



159			medical equipment; 2nd degree grand theft.
160	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
161	812.0145(2)(a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
162	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
163	812.131(2)(a)	2nd	Robbery by sudden snatching.
164	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
165	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.



166	817.234 (8) (a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
167	817.234 (9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
168	817.234 (11) (c)	1st	Insurance fraud; property value \$100,000 or more.
169	817.2341 (2) (b) & (3) (b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
170	817.535 (2) (a)	3rd	Filing false lien or other unauthorized document.
171	<u>817.611 (2) (b)</u>	<u>1st</u>	<u>Traffic in or possess 15 to 49 counterfeit credit cards or related documents.</u>



172	825.102 (3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
173	825.103 (3) (b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$10,000 or more, but less than \$50,000.
174	827.03 (2) (b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
175	827.04 (3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
176	837.05 (2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
177	838.015	2nd	Bribery.



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178	838.016	2nd	Unlawful compensation or reward for official behavior.
179	838.021(3) (a)	2nd	Unlawful harm to a public servant.
180	838.22	2nd	Bid tampering.
181	843.0855(2)	3rd	Impersonation of a public officer or employee.
182	843.0855(3)	3rd	Unlawful simulation of legal process.
183	843.0855(4)	3rd	Intimidation of a public officer or employee.
184	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
185	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
	872.06	2nd	Abuse of a dead human body.



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186	874.05(2) (b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
187	874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
188	893.13(1) (c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
189	893.13(1) (e)1.	1st	Sell, manufacture, or deliver cocaine or other



190 893.13(4) (a) 1st Deliver to minor cocaine  
(or other s. 893.03(1) (a),  
(1) (b), (1) (d), (2) (a),  
(2) (b), or (2) (c) 4.  
drugs).

191 893.135(1) (a) 1. 1st Trafficking in cannabis,  
more than 25 lbs., less  
than 2,000 lbs.

192 893.135 (1) (b) 1.a. 1st Trafficking in cocaine,  
more than 28 grams, less  
than 200 grams.

193 893.135 (1) (c) 1.a. 1st Trafficking in illegal  
drugs, more than 4 grams,  
less than 14 grams.

194 893.135 (1) (c) 2.a. 1st Trafficking in  
hydrocodone, 14 grams or  
more, less than 28 grams.



195 893.135 (1) (c) 2.b. 1st Trafficking in  
hydrocodone, 28 grams or  
more, less than 50 grams.

196 893.135 (1) (c) 3.a. 1st Trafficking in oxycodone,  
7 grams or more, less than  
14 grams.

197 893.135 (1) (c) 3.b. 1st Trafficking in oxycodone,  
14 grams or more, less  
than 25 grams.

198 893.135(1) (d) 1. 1st Trafficking in  
phencyclidine, more than  
28 grams, less than 200  
grams.

199 893.135(1) (e) 1. 1st Trafficking in  
methaqualone, more than  
200 grams, less than 5  
kilograms.

200 893.135(1) (f) 1. 1st Trafficking in  
amphetamine, more than 14  
grams, less than 28 grams.

201 893.135 (1) (g) 1.a. 1st Trafficking in  
flunitrazepam, 4 grams or



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202			more, less than 14 grams.
893.135	1st	Trafficking in gamma-hydroxybutyric acid (GHB),	
(1) (h) 1.a.		1 kilogram or more, less than 5 kilograms.	
203			
893.135	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.	
(1) (j) 1.a.			
204			
893.135	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.	
(1) (k) 2.a.			
205			
893.1351 (2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.	
206			
896.101 (5) (a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.	
207			
896.104 (4) (a) 1.	3rd	Structuring transactions to evade reporting or	



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			registration requirements, financial transactions exceeding \$300 but less than \$20,000.
208			
943.0435 (4) (c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.	
209			
943.0435 (8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.	
210			
943.0435 (9) (a)	3rd	Sexual offender; failure to comply with reporting requirements.	
211			
943.0435 (13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.	
212			
943.0435 (14)	3rd	Sexual offender; failure to report and reregister; failure to respond to	



213			address verification; providing false registration information.
214	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
215	944.607(10) (a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
216	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
217	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
218	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.



219	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
220	985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
221			
222	(i) LEVEL 9		
223			
224	Florida Statute	Felony Degree	Description
225	316.193 (3) (c) 3.b.	1st	DUI manslaughter; failing to render aid or give information.
226	327.35 (3) (c) 3.b.	1st	BUI manslaughter; failing to render aid or give information.
	409.920 (2) (b) 1.c.	1st	Medicaid provider fraud; \$50,000 or more.



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227	499.0051(9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
228	560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
229	560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
230	655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.
231	775.0844	1st	Aggravated white collar crime.
232			



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	782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
233	782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.
234	782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
235	782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
236	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
237	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate



238			commission of any felony.
	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
239			
	787.02(3)(a)	1st,PBL	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
240			
	787.06(3)(c)1.	1st	Human trafficking for labor and services of an unauthorized alien child.
241			
	787.06(3)(d)	1st	Human trafficking using coercion for commercial sexual activity of an unauthorized adult alien.
242			
	787.06(3)(f)1.	1st,PBL	Human trafficking for commercial sexual activity by the transfer



			or transport of any child from outside Florida to within the state.
243			
	790.161	1st	Attempted capital destructive device offense.
244			
	790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
245			
	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
246			
	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
247			
	794.011(4)(a)	1st,PBL	Sexual battery, certain circumstances; victim 12 years of age or older but younger than 18 years; offender 18 years or older.



248	794.011(4)(b)	1st	Sexual battery, certain circumstances; victim and offender 18 years of age or older.
249	794.011(4)(c)	1st	Sexual battery, certain circumstances; victim 12 years of age or older; offender younger than 18 years.
250	794.011(4)(d)	1st,PBL	Sexual battery, certain circumstances; victim 12 years of age or older; prior conviction for specified sex offenses.
251	794.011(8)(b)	1st,PBL	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
252	794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
253			



	800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
254	812.13(2)(a)	1st,PBL	Robbery with firearm or other deadly weapon.
255	812.133(2)(a)	1st,PBL	Carjacking; firearm or other deadly weapon.
256	812.135(2)(b)	1st	Home-invasion robbery with weapon.
257	817.535(3)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee.
258	817.535(4)(a)2.	1st	Filing false claim or other unauthorized document; defendant is incarcerated or under supervision.
259	817.535(5)(b)	1st	Filing false lien or



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			other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the false instrument.
260	817.568(7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
261	<u>817.611(2)(c)</u>	<u>1st</u>	<u>Traffic in or possess 50 or more counterfeit credit cards or related documents.</u>
262	827.03(2)(a)	1st	Aggravated child abuse.
263	847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
264	847.0145(2)	1st	Purchasing, or otherwise



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			obtaining custody or control, of a minor.
265	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
266	893.135	1st	Attempted capital trafficking offense.
267	893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
268	893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
269	893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
270	893.135 (1)(c)2.d.	1st	Trafficking in hydrocodone, 200 grams or more, less than 30



271			kilograms.
	893.135	1st	Trafficking in oxycodone,
	(1)(c)3.d.		100 grams or more, less than 30 kilograms.
272			
	893.135	1st	Trafficking in
	(1)(d)1.c.		phencyclidine, more than 400 grams.
273			
	893.135	1st	Trafficking in
	(1)(e)1.c.		methaqualone, more than 25 kilograms.
274			
	893.135	1st	Trafficking in
	(1)(f)1.c.		amphetamine, more than 200 grams.
275			
	893.135	1st	Trafficking in gamma-
	(1)(h)1.c.		hydroxybutyric acid (GHB), 10 kilograms or more.
276			
	893.135	1st	Trafficking in 1,4-
	(1)(j)1.c.		Butanediol, 10 kilograms or more.
277			
	893.135	1st	Trafficking in
	(1)(k)2.c.		Phenethylamines, 400



			grams or more.
278			
	896.101(5)(c)	1st	Money laundering,
			financial instruments totaling or exceeding \$100,000.
279			
	896.104(4)(a)3.	1st	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$100,000.
280			
281			
282			
283			
284	===== T I T L E A M E N D M E N T =====		
285	And the title is amended as follows:		
286	Delete lines 20 - 27		
287	and insert:		
288	rulemaking; amending s. 817.611, F.S.; defining the		
289	term "related document"; revising the prohibition		
290	against trafficking in or possession of counterfeit		
291	credit cards; revising penalties; amending s.		
292	921.0022, F.S.; revising the ranking of unlawful		
293	conveyance or fraudulent acquisition of fuel on the		
294	offense severity ranking chart; ranking trafficking in		
295	or possession of counterfeit credit cards; providing		



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296

an effective date.

By the Committee on Criminal Justice; and Senator Flores

591-02542-16

2016912c1

1 A bill to be entitled  
 2 An act relating to fraudulent activities associated  
 3 with payment systems; amending s. 316.80, F.S.;  
 4 revising the felony classification for unlawful  
 5 conveyance of fuel; amending s. 525.07, F.S.;  
 6 specifying requirements for managers of petroleum fuel  
 7 measuring devices with respect to accurate  
 8 measurement; requiring retail petroleum fuel measuring  
 9 devices fitted with scanning devices to have certain  
 10 security measures; providing requirements for such  
 11 measures; requiring the owner or operator of a device  
 12 to have certain security measures in place within a  
 13 specified timeframe upon notice from the Department of  
 14 Agriculture and Consumer Services; authorizing the  
 15 department, under certain circumstances, to prohibit  
 16 use of or to remove from service such devices that are  
 17 noncompliant; defining terms; providing applicability;  
 18 requiring the Department of Agriculture and Consumer  
 19 Services to enforce provisions; providing for  
 20 rulemaking; amending s. 817.611, F.S.; reducing the  
 21 number of counterfeit credit cards that a person can  
 22 be in possession of to qualify as unlawful; amending  
 23 s. 921.0022, F.S.; ranking unlawful conveyance or  
 24 fraudulent acquisition of fuel as a level 5 offense;  
 25 ranking trafficking in or possession of counterfeit  
 26 credit cards as a level 5 offense; providing an  
 27 effective date.

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

30  
 31 Section 1. Subsection (2) of section 316.80, Florida  
 32 Statutes, is amended to read:

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

591-02542-16

2016912c1

33 316.80 Unlawful conveyance of fuel; obtaining fuel  
 34 fraudulently.-  
 35 (2) A ~~Any~~ person who violates subsection (1) commits a  
 36 felony of the second ~~third~~ degree, punishable as provided in s.  
 37 775.082, s. 775.083, or s. 775.084, if he or she has attempted  
 38 to or has fraudulently obtained motor or diesel fuel by:  
 39 (a) Presenting a credit card or a credit card account  
 40 number in violation of ss. 817.57-817.685;  
 41 (b) Using unauthorized access to any computer network in  
 42 violation of s. 815.06; or  
 43 (c) Using a fraudulently scanned or lost or stolen payment  
 44 access device, whether credit card or contactless device.  
 45 Section 2. Subsections (3) and (4) of section 525.07,  
 46 Florida Statutes, are amended, and subsection (10) is added to  
 47 that section, to read:  
 48 525.07 Powers and duties of department; inspections;  
 49 unlawful acts.-  
 50 (3) Each person who owns or manages ~~All persons who own or~~  
 51 ~~operate~~ a petroleum fuel measuring device shall be responsible  
 52 for ensuring accurate measure by the device within the  
 53 tolerances defined by the rule. An appropriate security seal  
 54 shall be placed on all measuring devices found to be giving  
 55 accurate measure within the tolerances defined by the department  
 56 in such a way that the metering adjustment cannot be changed  
 57 without breaking the seal.  
 58 (4) A ~~Any~~ measuring device that is found to be operating  
 59 outside the tolerances defined by the department shall be deemed  
 60 inaccurate and the department, at its discretion, shall either:  
 61 (a) Give, in writing, the ~~operator or~~ owner or manager of

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

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62 the measuring device a reasonable time to repair the measuring  
63 device; or

64 (b) Condemn or prohibit the further use of the measuring  
65 device by using an appropriate security seal to obstruct the  
66 mechanism so that it cannot be operated without breaking the  
67 seal. The measuring device shall not be operated in this state  
68 again without the written consent of the department.

69 (10) (a) Each person who owns or manages a retail petroleum  
70 fuel measuring device shall have affixed to or installed onto  
71 the measuring device a security measure to restrict the  
72 unauthorized access of customer payment card information. The  
73 security measure must include one or more of the following:

74 1. The placement of pressure-sensitive security tape over  
75 the panel opening that leads to the scanning device for the  
76 retail petroleum fuel measuring device in a manner that will  
77 restrict the unauthorized opening of the panel.

78 2. A device or system that will render the retail petroleum  
79 fuel measuring device or the scanning device in the measuring  
80 device inoperable if there is an unauthorized opening of the  
81 panel.

82 3. A device or system that encrypts the customer payment  
83 card information in the scanning device.

84 4. Another security measure approved by the department.

85 (b) The owner or manager of a retail petroleum fuel  
86 measuring device without a security measure or with an altered  
87 or damaged security measure, upon written notice from the  
88 department of such noncompliance, shall have 5 calendar days to  
89 comply with this subsection. After the fifth day of  
90 noncompliance, the department may prohibit further use of the

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91 retail petroleum fuel measuring device until a security measure  
92 is installed, replaced, or repaired. A repeat violation found on  
93 the same retail petroleum fuel measuring device will be cause  
94 for the department to immediately take the measuring device out  
95 of service.

96 (c) For purposes of this subsection, the terms "scanning  
97 device" and "payment card" have the same meanings as defined in  
98 s. 817.625.

99 (d) This subsection applies only to retail petroleum fuel  
100 measuring devices that have a scanning device.

101 Section 3. Section 817.611, Florida Statutes, is amended to  
102 read:

103 817.611 Traffic in or possess counterfeit credit cards.—Any  
104 person who traffics in, ~~or~~ attempts to traffic in, or possesses  
105 5 ~~10~~ or more counterfeit credit cards, invoices, vouchers, sales  
106 drafts, or other representations or manifestations of  
107 counterfeit credit cards, or credit card account numbers of  
108 another in any 6-month period is guilty of a felony of the  
109 second degree, punishable as provided in s. 775.082, s. 775.083,  
110 or s. 775.084.

111 Section 4. Paragraph (e) of subsection (3) of section  
112 921.0022, Florida Statutes, is amended to read:

113 921.0022 Criminal Punishment Code; offense severity ranking  
114 chart.—

115 (3) OFFENSE SEVERITY RANKING CHART

116 (e) LEVEL 5

117

Florida Statute	Felony Degree	Description
-----------------	---------------	-------------

118	591-02542-16	2016912c1	
	316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
119	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
120 121	<u>316.80(2)</u>	<u>2nd</u>	<u>Unlawful conveyance; obtaining fuel fraudulently.</u>
122 123	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
124 125	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
126	379.367(4)	3rd	Willful molestation of a commercial harvester's

	591-02542-16	2016912c1	
			spiny lobster trap, line, or buoy.
127	379.3671 (2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
128	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
129	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
130	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
131	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation

	591-02542-16		2016912c1	
			premiums.	
132	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.	
133	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.	
134	790.01(2)	3rd	Carrying a concealed firearm.	
135	790.162	2nd	Threat to throw or discharge destructive device.	
136	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.	
137	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.	
138	790.23	2nd	Felons in possession of	

	591-02542-16		2016912c1	
			firearms, ammunition, or electronic weapons or devices.	
139	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.	
140	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.	
141	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.	
142	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.	
143	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.	
144	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.	

145	591-02542-16		2016912c1	
	812.019(1)	2nd	Stolen property; dealing in or trafficking in.	
146				
	812.131(2)(b)	3rd	Robbery by sudden snatching.	
147				
	812.16(2)	3rd	Owning, operating, or conducting a chop shop.	
148				
	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.	
149				
	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.	
150				
	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.	
151				
152				

	591-02542-16		2016912c1	
	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.	
153				
	<u>817.611</u>	<u>2nd</u>	<u>Traffic in or possess counterfeit credit cards.</u>	
154				
155				
	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.	
156				
	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.	
157				
	827.071(4)	2nd	Possess with intent to	

	591-02542-16		2016912c1	
			promote any photographic material, motion picture, etc., which includes sexual conduct by a child.	
158	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.	
159	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.	
160	843.01	3rd	Resist officer with violence to person; resist arrest with violence.	
161	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.	
162				

	591-02542-16		2016912c1	
	847.0137	3rd	Transmission of pornography by electronic device or equipment.	
	(2) & (3)			
163	847.0138	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.	
	(2) & (3)			
164	874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.	
165	874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.	
166	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).	
167	893.13(1)(c)2.	2nd	Sell, manufacture, or	

591-02542-16

2016912c1

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 recreational facility or community center.

168

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.

169

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.,

591-02542-16

2016912c1

(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.

170

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.

171

893.13(4)(b)

2nd

Deliver to minor 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).

172

893.1351(1)

3rd

Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

591-02542-16

2016912c1

173  
174  
175

Section 5. This act shall take effect October 1, 2016.



The Florida Senate

## Committee Agenda Request

**To:** Senator Anitere Flores, Chair  
Committee on Fiscal Policy

**Subject:** Committee Agenda Request

**Date:** February 11, 2016

---

I respectfully request that **Senate Bill #912**, relating to Fraudulent Activities Associated with Payment Systems, be placed on the:

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

*Anitere Flores*

---

Senator Anitere Flores  
Florida Senate, District 37

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/16  
Meeting Date

912  
Bill Number (if applicable)

Topic Fraudulent Activities Assoc w/ Payment Systems 26112  
Amendment Barcode (if applicable)

Name Samuel Bailey

Job Title Corporal

Address 2608 E 8th Avenue  
Street  
Tampa FL 33605  
City State Zip

Phone 813 362-0375

Email L.Bowden@HCSO.tampa.fl.us

Speaking  For  Against  Information

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

Representing Hillsborough County Sheriff's Office

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)

2-17-16

Meeting Date

912

Bill Number (if applicable)

Topic skimming

Amendment Barcode (if applicable)

Name Lori Killinger

Job Title attorney/lobbyist

Address 315 S. Calhoun St. Ste 830

Phone 8502225702

Street

Tallahassee

FL

32301

City

State

Zip

Email lkillinger@lw-law.com

Speaking:  For  Against  Information

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

Representing RaceTrac

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/16  
Meeting Date

5B0912  
Bill Number (if applicable)

Topic Fraudulent Activities Assoc. w/ Payment Systems Amendment Barcode (if applicable)

Name Dennis Strange

Job Title Captain

Address 2500 West Colonial Dr

Phone 407/254-7000

Street

Deland FL 32804

City

State

Zip

Email dennis.strange@dcfl.net

Speaking:  For  Against  Information

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

Representing Deland County Sheriff's Office

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/16

Meeting Date

912

Bill Number (if applicable)

Topic Fraudulent Activities

Amendment Barcode (if applicable)

Name TIM STANFIELD

Job Title \_\_\_\_\_

Address 101 N. Monroe

Phone 681 4220

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/16

Meeting Date

SB 912

Bill Number (if applicable)

Topic ~~POD~~ Fraudulent Activities

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 W Adams St

Phone 224-7174

Street

TLH

City

FL

State

37301

Zip

Email bbevis@aifca

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against

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

Representing Associated Industries of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/16  
Meeting Date

SB 912  
Bill Number (if applicable)

Topic Fraudulent Activities Associated w/ Payment Systems

Amendment Barcode (if applicable)

Name Jonathan Rees

Job Title Deputy Director, Legislative Affairs

Address 400 S. Monroe St.

Phone (850) 617-7700

Tallahassee FL 32399  
City State Zip

Email Jonathan.Rees@freshfromtallahassee.com

Speaking:  For  Against  Information

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

Representing Florida Department of Agriculture and Consumer Services

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/16

Meeting Date

SB912

Bill Number (if applicable)

Topic Fraudulent Activities assoc. w/ Payment systems

Amendment Barcode (if applicable)

Name Jennifer Martin

Job Title Director of Governmental Affairs

Address 3692 Coolidge Ct.

Phone 558-1050

Street

Tallahassee

FL

State

32317

Zip

Email Jennifer.Martin@lscu.coop

Speaking:  For  Against  Information

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

Representing Florida Credit Union Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/2016

Meeting Date

SB 0912

Bill Number (if applicable)

Topic FRAUDULENT ACTIVITIES ASSOCIATED w/ PAYMENT SYSTEM

Amendment Barcode (if applicable)

Name RICHARD FORTIN

Job Title SERGEANT VOLUSIA COUNTY SHERIFFS OFFICE

Address 101 EAST CANAL STREET  
Street

Phone 386-423-3301

NEW SMYRNA FL 32168  
City State Zip

Email RFORTIN@VCSO.US

Speaking:  For  Against  Information

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

Representing FLORIDA SHERIFFS 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.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/16

Meeting Date

912

Bill Number (if applicable)

Topic Payment Systems

Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title Vice President & General Counsel

Address 227 S. Adams St.

Phone 222-4082

Street

Tallahassee

City

FL

State

32301

Zip

Email samantha@fpf.org

Speaking:  For  Against  Information

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

Representing Florida Petroleum Marketers & Convenience Store 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**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

---

**BILL:** CS/CS/SB 948

**INTRODUCER:** Fiscal Policy Committee; Commerce and Tourism Committee; and Senator Richter

**SUBJECT:** Secondhand Dealers

**DATE:** February 19, 2016

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>McAloon</u>	<u>Cibula</u>	<u>JU</u>	<u>Favorable</u>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Fav/CS</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 948 revises the laws governing transactions by secondhand dealers. The bill amends the definition of “secondhand goods” include gift cards and credit memos. The bill defines the term “automated kiosk” and amends the definition of “secondhand dealer” to include any secondhand dealer who is engaged in the business of purchasing secondhand goods by means of an automated kiosk.

The bill requires a secondhand dealer to maintain digital photos of the goods it acquires and provides requirements for recordkeeping when secondhand goods are purchased at an automated kiosk.

The bill extends the period from which a secondhand dealer must hold certain items, from 15 to 30 days from the initial acquisition. Additionally, any secondhand good acquired by use of an automated kiosk must be held for 30 days after the date the good is acquired.

The bill subjects a secondhand dealer to a noncriminal penalty punishable by a fine of up to \$2,500 when certain conditions are met.

The bill also allows a secondhand good to be kept at a location outside the jurisdiction of the appropriate law enforcement agency if there is an agreement between the law enforcement official and the secondhand dealer, and the secondhand dealer can and will deliver the good to the appropriate law enforcement official within 2 days of the request.

The bill is effective July 1, 2016.

## II. Present Situation:

The Florida Statutes regulate secondhand dealers and secondary metal recyclers in the trade of secondhand goods.<sup>1</sup> A secondhand dealer is any person, corporation, or other business organization or entity that is not a secondary metals recycler and is engaged in the business of purchasing, consigning, or trading secondhand goods.<sup>2</sup> Secondhand goods are personal property previously owned or used, which is purchased, consigned, or traded as used property. Secondhand goods do not include office furniture, pianos, books, clothing, organs, coins, motor vehicles, costume jewelry, cardio and strength training or conditioning equipment designed primarily for indoor use, and secondhand sports equipment that is not permanently labeled with a serial number.<sup>3</sup>

A secondhand dealer is not permitted to engage in the business of purchasing, consigning, or trading secondhand goods from any location without registering with the Department of Revenue.<sup>4</sup>

Upon each acquisition of secondhand goods, a secondhand dealer must complete a transaction form that details the goods purchased and the seller's identity. The secondhand dealer must retain this document for at least 3 years and forward a copy to the appropriate law enforcement agency within 24 hours after the acquisition of the secondhand goods.<sup>5</sup> In addition to the descriptive statements of the secondhand goods and the seller's identity, the transaction record must also include:

- A statement of the date, time, and place of the transaction;
- A summary of the goods acquired, including brand name, model number, serial number, and other unique identifiers; and
- A description of the person from whom the goods were acquired, including his or her right thumbprint, name and address, and a physical description.<sup>6</sup>

Secondhand dealers are required to hold all secondhand goods for at least 15 days after they acquire the property.<sup>7</sup> If a law enforcement officer has probable cause to believe that the goods held by a secondhand dealer are stolen, the officer may place a 90-day written hold order on the goods. This prevents the secondhand dealer from selling the goods and preserves them for use as evidence in a criminal trial.<sup>8</sup> Additionally, this allows for the possibility of the goods to be returned to their rightful owner.

---

<sup>1</sup> See ch. 538, F.S.

<sup>2</sup> Section 538.03(1)(g), F.S.

<sup>3</sup> Section 538.03(1)(h), F.S.

<sup>4</sup> Section 538.09, F.S. Pawnbrokers were formerly regulated as secondhand dealers, but are now separately regulated under ch. 539, F.S.

<sup>5</sup> Section 538.04, F.S.

<sup>6</sup> Sections 538.04(1), F.S.

<sup>7</sup> Section 538.06(1), F.S.

<sup>8</sup> Section 538.06(3), F.S.

Law enforcement agencies with jurisdiction enforce compliance with registration, record keeping, holding periods, and inspection requirements.<sup>9</sup> A person who knowingly violates the requirements governing secondhand dealers in ch. 538, F.S., commits a first degree misdemeanor, punishable by up to 1 year in jail and a \$10,000 fine.<sup>10</sup>

### **Methods for Return of Stolen Goods held by a Secondhand Dealer**

A victim of a theft may recover his or her goods, or their value, through one of three methods:

- A victim may purchase his or her items back from the secondhand dealer, and then file a civil action against the thief for reimbursement of the cost expended.
- A court may order restitution or return of the goods to the secondhand dealer or victim of the crime.<sup>11</sup> If the court orders return of the goods or restitution to the victim, the court must also order restitution to the secondhand dealer from the person who sold the goods to the secondhand dealer.<sup>12</sup>
- A victim may file a civil action for replevin against the secondhand dealer.<sup>13</sup>

Replevin is an action for the repossession of personal property that was wrongfully taken or detained by the defendant, where the plaintiff secures a bond for and holds the property until the court decides the rightful owner.<sup>14</sup> Petitions for replevin must contain the following information:

- Proof of ownership or entitlement to the property in question and a description of the property;
- A description of how, to the best of plaintiff's knowledge, the property was wrongfully taken by the defendant; and
- A statement that the property was not taken under any legal basis such as execution, tax, or fine.<sup>15</sup>

In an action for replevin, a court is required to award the prevailing party attorney fees and costs. When the petitioner is the prevailing party, the court may also order payment of the filing and service fees.<sup>16</sup>

Victims of theft and prevailing plaintiffs in an action for replevin are entitled to damages for loss of use, which are limited to no more than the value of the property before it was taken or damaged.<sup>17</sup>

Additionally, any person who traffics property that he or she knows to be stolen is subject to felony charges of dealing in stolen property under s. 812.019, F.S.

---

<sup>9</sup> Section 538.05, F.S.

<sup>10</sup> Section 538.07(1), F.S.

<sup>11</sup> Section 538.07(2), F.S.

<sup>12</sup> Section 538.06(4), F.S.

<sup>13</sup> Section 538.08, F.S.

<sup>14</sup> BLACK'S LAW DICTIONARY (10th ed. 2014) (defining the term "replevin"); *see also*, ch. 78, F.S., "Replevin."

<sup>15</sup> Sections 78.055 and 538.08, F.S.

<sup>16</sup> Section 538.08(2), F.S. Otherwise, the filing and services fees are waived.

<sup>17</sup> *Foresight Enterprises, Inc. v. Leisure Time Properties, Inc.*, 466 So.2d 283, 286 (Fla. 5th DCA 1985).

### Summary Procedure

Summary procedure is an expedited process for consideration of civil disputes, which is provided in s. 51.011, F.S.<sup>18</sup> It streamlines civil litigation by shortening the time period for responding to a complaint, permitting fewer pleadings, and restricting the reasons for which a party may postpone the case. The procedure is only available to actions specified by statute or rule and is not currently available in actions of replevin against a secondhand dealer.<sup>19</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 538.03, F.S., to define an “automated kiosk” as an interactive device that is permanently installed within a secure retail space and that has the following technological functions:

- Remotely monitored and attended by a live representative during all business operating hours;
- Verification of a seller’s identity by official identification issued in the United States;
- Automated reading and recording of an item’s serial number;
- Ability to compare item serial numbers against databases of stolen items;
- Secure storage of goods accepted by the kiosk; and
- Capture and storage of images of the item during the transaction.

The bill amends the definition of a “secondhand dealer” to include any secondhand dealer who is engaged in the business of purchasing secondhand goods by means of an automated kiosk.

The bill amends the definition of “secondhand goods” to include gift certificates and credit memos<sup>20</sup> which are purchased, consigned, or traded by a secondhand dealer.

**Section 2** amends s. 538.04, F.S., to require secondhand dealers to include digital photos of the goods acquired in the report that is submitted to law enforcement upon acquisition of goods.

The bill requires when secondhand goods are acquired by means of an automated kiosk, the serial number reported to law enforcement may be the International Mobile Station Equipment Identity (IMEI), the mobile equipment identifier (MEID), or another unique identifying number assigned to the device by the manufacturer. If the IMEI, MEID, or other unique identifying number is not available at the time of receipt or purchase, the report must be updated with the IMEI, MEID, or other unique identifying number as soon as possible but no later than 10 business days after acquisition.

The holding requirements of ss. 538.06 and 538.09(3), F.S., do not begin until all required reports are complete and submitted to the appropriate law enforcement official.

---

<sup>18</sup> Daniel Morman, *Application of Summary Procedure by Agreement: A Proposal to Expedite Litigation*, 76 FLA. BAR J. 12, 12 (Feb. 2002).

<sup>19</sup> Section 51.011, F.S.

<sup>20</sup> Section 501.95, F.S., defines “credit memo” as a certificate, card, stored value card, or similar instrument issued in exchange for returned merchandise when the certificate, card, or similar instrument is redeemable for merchandise, food, or services regardless of whether any cash may be paid to the owner of the certificate, card, or instrument as part of the redemption transaction.

**Section 3** amends s. 538.06, F.S., to increase the time from 15 to 30 days that a secondhand dealer must hold a precious metal;<sup>21</sup> gemstone; jewelry; an antique furnishing, fixture, or decorative object; and an item of art as defined in s. 686.501, F.S.<sup>22</sup> The bill defines the term “antique” to mean that the item is at least 30 years old and has a special value because of its age.

The bill also prohibits a secondhand dealer who uses an automated kiosk from selling, bartering, exchanging, altering, adulterating, using, or in any way disposing of any secondhand good within 30 days after the date it was acquired.

**Section 4** amends s. 538.08, F.S., to modify the processes by which a person may file an action for replevin to re-take possession of his or her goods currently in possession of a secondhand dealer. Specifically, the bill:

- Expands parties eligible to file a replevin action to include an individual who can display a right of possession to the property (lienor). Current law only allows a party who alleges ownership of the property to file such an action.
- Entitles a plaintiff who files an action for replevin to the summary procedure provided for in s. 51.011, F.S.
- Subjects a secondhand dealer to a noncriminal violation, punishable by a fine of up to \$2,500, if the following occur:
  - An owner or lienor makes a written demand for return of the property and provides proof of ownership or proof of the right of possession to the secondhand dealer at least 5 days before filing a replevin action;
  - The secondhand dealer knows or should have known based on the proof provided above, the property belongs to the owner or lienor;
  - The secondhand dealer fails to return the property and does not file an action for interpleader<sup>23</sup> to determine conflicting claims to the property; and
  - The owner or lienor prevails in the replevin action against the secondhand dealer.

**Section 5** amends s. 538.09, F.S., to reference s. 538.06, F.S., regarding the change of the holding period from 15 days to 30 days for certain secondhand goods.

The bill allows storage of secondhand goods outside the appropriate law enforcement official’s jurisdiction if it is agreed upon with such law enforcement official. The secondhand dealer must provide proof that he or she is able to and agrees to deliver the stored secondhand good to the appropriate law enforcement official within 2 business days of the request.

**Section 6** provides the bill is effective July 1, 2016.

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<sup>21</sup> Section 538.03(1), F.S. defines “precious metals” as any item containing any gold, silver, or platinum, or any combination thereof, excluding any chemical or any automotive, photographic, electrical, medical, or dental materials, or electric parts.

<sup>22</sup> Section 686.501, F.S., defines “art” as a painting, sculpture, drawing, work of graphic art, pottery, weaving, batik, macramé, quilt, print, photograph, or craft work executed in materials including, but not limited to, clay, textile, paper, fiber, wood, tile, metal, plastic, or glass. The term includes a rare map which is offered as a limited edition or a map 80 years old or older; or a rare document or rare print which includes, a print, engraving, etching, woodcut, lithograph, or serigraph which is offered as a limited edition, or one 80 years old or older.

<sup>23</sup> Generally, interpleader is suit to determine a right to property held by a disinterested third party (called a stakeholder) who is in doubt about ownership and who therefore deposits the property with the court to permit interested parties to litigate ownership. BLACK’S LAW DICTIONARY (10th ed. 2014) (defining the term “interpleader”).

**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:

Victims of property theft will have more efficient and less costly judicial remedies to recover their stolen goods when the goods are found at the business of a secondhand dealer.

Secondhand dealers may incur extra costs related to the requirement to hold property for 30 days and the digital storage of photographs of the property. Additionally, secondhand dealers will now be subject to a noncriminal penalty of up to \$2,500, if specific conditions are met.

## C. Government Sector Impact:

To the extent that the bill results in additional replevin actions, judicial workloads may increase.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 538.03, 538.04, 538.06, 538.08, and 538.09, F.S.

**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 Fiscal Policy on February 17, 2016:**

The committee substitute:

- Defines the term “automated kiosk”;
- Amends the definition of “secondhand dealer” to include a secondhand dealer engaged in business of purchasing secondhand goods by an automatic kiosk;
- Amends the definition of “secondhand goods” to include gift cards and credit memos;
- Clarifies the conditions that must be met to subject a secondhand dealer to a noncriminal violation;
- Conforms a statute reference regarding the change of the holding period from 15 days to 30 days for certain secondhand goods;
- Provides requirements for recordkeeping when secondhand goods are purchased at an automated kiosk;
- Prohibits a secondhand dealer from selling, bartering, exchanging, altering, adulterating, using, or in any way disposing of any secondhand good within 30 days after the date when the good is acquired by use of an automated kiosk; and
- Allows a secondhand good to be kept at a location outside the jurisdiction of the appropriate law enforcement agency, if there is an agreement between the law enforcement official and the secondhand dealer, and the secondhand dealer can and will deliver the good to the appropriate law enforcement official within 2 days of the request.

**CS by Commerce and Tourism on January 19, 2016:**

- Revises the 30-day hold to apply only to antique furnishings, fixtures, and decorative objects, in addition to precious metals, gemstones, jewelry, and specific items of art; all other items acquired by a secondhand dealer will continue to be subject to a 15-day hold period.
- Subjects secondhand dealers to a noncriminal penalty of up to \$2,500 in cases where the dealer loses in an action for replevin, and where specific requirements are met by the claimant.

- B. **Amendments:**

None.



LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/18/2016	.	
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	.	
	.	

The Committee on Fiscal Policy (Bean) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 103 - 127

and insert:

The plaintiff is entitled to the summary procedure provided in s. 51.011. Upon the receipt of the complaint a petition for a writ by a secondhand dealer, the secondhand dealer shall hold the property at issue until the court determines the respective interests of the parties.

(4) In addition to the civil complaint ~~petition~~ for return remedy, the state may file a motion as part of a pending



12 criminal case related to the property. The criminal court has  
13 jurisdiction to determine ownership, to order return or other  
14 disposition of the property, and to order ~~any~~ appropriate  
15 restitution to any person. Such order shall be entered upon  
16 hearing after proper notice has been given to the secondhand  
17 dealer, the victim, and the defendant in the criminal case.

18 (5) A secondhand dealer commits a noncriminal violation,  
19 punishable as provided in s. 775.083 by a fine of up to \$2,500,  
20 if all of the following occur:

21 (a) An owner or a lienor makes a written demand for return  
22 of the property and provides proof of ownership or proof of the  
23 right of possession to the secondhand dealer at least 5 calendar  
24 days before filing a replevin action.

25 (b) The secondhand dealer knows or should have known based  
26 on the proof provided under paragraph (a) that the property  
27 belongs to the owner or lienor.

28 (c) The secondhand dealer fails to return the property and  
29 does not file an action in interpleader to determine conflicting  
30 claims to the property.

31 (d) The owner or lienor prevails in the replevin action  
32 against the secondhand dealer.

33 Section 4. Paragraph (h) of subsection (1) of section  
34 538.03, Florida Statutes, is amended to read:

35 538.03 Definitions; applicability.—

36 (1) As used in this part, the term:

37 (h) "Secondhand goods" means personal property previously  
38 owned or used, which is not regulated metals property regulated  
39 under part II and which is purchased, consigned, or traded as  
40 used property. The term includes gift certificates and credit



41 memos as defined in s. 501.95 which are purchased, consigned, or  
42 traded by a secondhand dealer. The term does ~~Such secondhand~~  
43 ~~goods do~~ not include office furniture, pianos, books, clothing,  
44 organs, coins, motor vehicles, costume jewelry, cardio and  
45 strength training or conditioning equipment designed primarily  
46 for indoor use, and secondhand sports equipment that is not  
47 permanently labeled with a serial number. As used in ~~For~~  
48 ~~purposes of~~ this paragraph, the term "secondhand sports  
49 equipment" does not include golf clubs.

50 Section 5. Subsection (3) of section 538.09, Florida  
51 Statutes, is amended to read:

52 538.09 Registration.-

53 (3) The secondhand dealer's registration shall be  
54 conspicuously displayed at her or his registered location. A  
55 secondhand dealer must hold secondhand goods at the registered  
56 location for the period required by s. 538.06 ~~until 15 days~~  
57 ~~after the secondhand transaction~~ or until any extension of the  
58 holding period has expired, whichever is later.

59  
60 ===== T I T L E A M E N D M E N T =====

61 And the title is amended as follows:

62 Delete lines 12 - 16

63 and insert:

64 plaintiff in a replevin action is entitled to a  
65 certain summary procedure; providing that a secondhand  
66 dealer commits a noncriminal violation under certain  
67 circumstances; providing a penalty; amending s.  
68 538.03, F.S.; revising the definition of the term  
69 "secondhand goods"; amending s. 538.09, F.S.; revising



70 the period of time a secondhand dealer must hold  
71 secondhand goods at a registered location; providing  
72 an



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Bean) recommended the following:

**Senate Substitute for Amendment (776422) (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Present paragraphs (c) through (j) of subsection (1) of section 538.03, Florida Statutes, are redesignated as paragraphs (d) through (k), respectively, a new paragraph (c) is added to that subsection, and present paragraphs (g) and (h) of that subsection are amended, to read:

538.03 Definitions; applicability.-



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

(c) "Automated kiosk" means an interactive device that is permanently installed within a secure retail space and that has the following technological functions:

1. Remotely monitored and attended by a live representative during all business operating hours;
2. Verification of a seller's identity by official identification issued in the United States;
3. Automated reading and recording of item serial numbers;
4. Ability to compare item serial numbers against databases of stolen items;
5. Secure storage of goods accepted by the kiosk; and
6. Capture and storage of images during the transaction.

(h)(g) "Secondhand dealer" means any person, corporation, or other business organization or entity which is not a secondary metals recycler subject to part II and which is engaged in the business of purchasing, consigning, or trading secondhand goods. The term includes any secondhand dealer engaged in the business of purchasing secondhand goods by means of an automated kiosk.

~~(i)(h)~~ "Secondhand goods" means personal property previously owned or used, which is not regulated metals property regulated under part II and which is purchased, consigned, or traded as used property. The term includes gift certificates and credit memos as defined in s. 501.95 which are purchased, consigned, or traded by a secondhand dealer. The term does not include office furniture, pianos, books, clothing, organs, coins, motor vehicles, costume jewelry, cardio and strength training or conditioning equipment designed



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41 primarily for indoor use, and secondhand sports equipment that  
42 is not permanently labeled with a serial number. As used in For  
43 purposes of this paragraph, the term "secondhand sports  
44 equipment" does not include golf clubs.

45 Section 2. Paragraphs (c) and (d) of subsection (1) of  
46 section 538.04, Florida Statutes, are redesignated as paragraphs  
47 (d) and (e), respectively, and a new paragraph (c) is added to  
48 that subsection, and subsection (8) is added to that section to  
49 read:

50 538.04 Recordkeeping requirements; penalties.—

51 (1) A secondhand dealer shall complete a secondhand dealers  
52 transaction form at the time of the actual transaction. A  
53 secondhand dealer shall maintain a copy of a completed  
54 transaction form on the registered premises for at least 1 year  
55 after the date of the transaction. However, the secondhand  
56 dealer shall maintain a copy of the transaction form for not  
57 less than 3 years. Unless other arrangements are agreed upon by  
58 the secondhand dealer and the appropriate law enforcement  
59 official, the secondhand dealer shall, within 24 hours after  
60 acquiring any secondhand goods, deliver to such official a  
61 record of the transaction on a form approved by the Department  
62 of Law Enforcement. Such record shall contain:

63 (c) Digital photos of the goods, clearly showing the items  
64 required to be included on the record as provided in paragraph  
65 (b).

66 (8) When secondhand goods are purchased by means of an  
67 automated kiosk, the serial number reported pursuant to this  
68 section may be the International Mobile Station Equipment  
69 Identity (IMEI), the mobile equipment identifier (MEID), or



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70 other unique identifying number assigned to the device by the  
71 manufacturer. If the IMEI, MEID, or other unique identifying  
72 number is not available at the time of receipt or purchase, the  
73 report filed pursuant to this section must be updated with the  
74 IMEI, MEID, or other unique identifying number as soon as  
75 possible, but no later than 10 business days after the date of  
76 acquisition. The holding requirements of s. 538.06 and s.  
77 538.09(3) do not begin until all required reports are complete  
78 and submitted to the appropriate law enforcement official.

79 Section 3. Subsection (1) of section 538.06, Florida  
80 Statutes, is amended to read:

81 538.06 Holding period.—

82 (1) (a) A secondhand dealer may ~~shall~~ not sell, barter,  
83 exchange, alter, adulterate, use, or in any way dispose of any  
84 secondhand good:

85 1. That is a precious metal, a gemstone, jewelry; an  
86 antique furnishing, fixture, or decorative object; or an item of  
87 art as defined in s. 686.501 within 30 calendar days after the  
88 date on which the good was acquired.

89 2. That is not described in subparagraph 1. ~~goods~~ within 15  
90 calendar days ~~after~~ ~~of~~ the date on which the good was acquired  
91 of acquisition of the goods.

92 3. Within 30 calendar days after the date on which the good  
93 is acquired if the secondhand dealer uses an automated kiosk.

94  
95 Such holding periods are not applicable when the person known by  
96 the secondhand dealer to be the person from whom the goods were  
97 acquired desires to redeem, repurchase, or recover the goods,  
98 provided the dealer can produce the record of the original



99 transaction with verification that the customer is the person  
 100 from whom the goods were originally acquired.

101 (b) As used in this subsection, the term "antique" means  
 102 the item is at least 30 years old and has special value because  
 103 of its age.

104 Section 4. Section 538.08, Florida Statutes, is amended to  
 105 read:

106 538.08 Stolen goods; complaint ~~petition~~ for return.-

107 (1) If the secondhand dealer contests the identification,  
 108 ~~or~~ ownership, or right of possession of the property, the person  
 109 alleging ownership or right of possession of the property may,  
 110 provided that a timely report of the theft of the goods was made  
 111 to the proper authorities, bring an action for replevin in the  
 112 county or circuit court. The complaint may be ~~by petition~~ in  
 113 substantially the following form:

114

115 Plaintiff A. B. sues defendant C. D., and alleges:

116 1. This is an action to recover possession of personal  
 117 property in ..... County, Florida.

118 2. The description of the property is: ...(list  
 119 property)... To the best of plaintiff's knowledge, information,  
 120 and belief, the value of the property is \$.....

121 3. Plaintiff is the lawful owner of the property or is  
 122 entitled to ~~the~~ possession of the property under a security  
 123 agreement dated ....., ...(year)..., a copy of which is  
 124 attached.

125 4. To plaintiff's best knowledge, information, and belief,  
 126 the property is located at .....

127 5. The property is wrongfully detained by defendant.



128 Defendant came into possession of the property by ...(describe  
 129 method of possession)... To plaintiff's best knowledge,  
 130 information, and belief, defendant detains the property because  
 131 ...(give reasons)....

132 6. The property has not been taken under an execution or  
 133 attachment against plaintiff's property.

134

135 (2) The filing fees shall be waived by the clerk of the  
 136 court, and the service fees shall be waived by the sheriff. The  
 137 court shall award the prevailing party attorney ~~attorney's~~ fees  
 138 and costs. In addition, when the filing party prevails in the  
 139 replevin action, the court shall order payment of filing fees to  
 140 the clerk and service fees to the sheriff.

141 (3) Upon the filing of the complaint ~~petition~~, the court  
 142 shall set a hearing to be held at the earliest possible time.  
 143 The plaintiff is entitled to the summary procedure provided in  
 144 s. 51.011. Upon the receipt of the complaint a ~~petition for a~~  
 145 ~~writ by a secondhand dealer~~, the secondhand dealer shall hold  
 146 the property at issue until the court determines the respective  
 147 interests of the parties.

148 (4) In addition to the civil complaint ~~petition~~ for return  
 149 remedy, the state may file a motion as part of a pending  
 150 criminal case related to the property. The criminal court has  
 151 jurisdiction to determine ownership, to order return or other  
 152 disposition of the property, and to order ~~any~~ appropriate  
 153 restitution to any person. Such order shall be entered upon  
 154 hearing after proper notice has been given to the secondhand  
 155 dealer, the victim, and the defendant in the criminal case.

156 (5) A secondhand dealer commits a noncriminal violation,



157 punishable as provided in s. 775.083 by a fine of up to \$2,500,  
158 if all of the following occur:

159 (a) An owner or a lienor makes a written demand for return  
160 of the property and provides proof of ownership or proof of the  
161 right of possession to the secondhand dealer at least 5 calendar  
162 days before filing a replevin action.

163 (b) The secondhand dealer knows or should have known based  
164 on the proof provided under paragraph (a) that the property  
165 belongs to the owner or lienor.

166 (c) The secondhand dealer fails to return the property and  
167 does not file an action in interpleader to determine conflicting  
168 claims to the property.

169 (d) The owner or lienor prevails in the replevin action  
170 against the secondhand dealer.

171 Section 5. Subsection (3) of section 538.09, Florida  
172 Statutes, is amended to read:

173 538.09 Registration.—

174 (3) The secondhand dealer's registration shall be  
175 conspicuously displayed at her or his registered location. A  
176 secondhand dealer must hold secondhand goods at the registered  
177 location for the period required by s. 538.06 until 15 days  
178 after the secondhand transaction or until any extension of the  
179 holding period has expired, whichever is later. Storage at a  
180 registered location outside the appropriate law enforcement  
181 official's jurisdiction is permissible only upon agreement with  
182 such law enforcement official and if the secondhand dealer  
183 provides proof that he or she is able to and agrees to deliver  
184 the stored secondhand goods to the appropriate law enforcement  
185 official within 2 business days upon request.



186 Section 6. This act shall take effect July 1, 2016.

187

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

189 And the title is amended as follows:

190 Delete everything before the enacting clause

191 and insert:

192

A bill to be entitled

193

An act relating to secondhand dealers; amending s.

194

538.03, F.S.; revising definitions; amending s.

195

538.04, F.S.; requiring that the record of a

196

secondhand dealer transaction include digital photos

197

of the items; specifying what may be used as a serial

198

number; providing that certain holding requirements do

199

not begin until certain reports are submitted to the

200

appropriate law enforcement official; amending s.

201

538.06, F.S.; revising the required holding period for

202

certain goods acquired by a dealer; defining the term

203

"antique"; amending s. 538.08, F.S.; authorizing an

204

action in replevin against a secondhand dealer based

205

on a right of possession to stolen goods; revising the

206

form for a complaint for return of stolen goods;

207

providing that a plaintiff in a replevin action is

208

entitled to a certain summary procedure; providing

209

that a secondhand dealer commits a noncriminal

210

violation under certain circumstances; providing a

211

penalty; amending s. 538.09, F.S.; revising the period

212

of time a secondhand dealer must hold secondhand goods

213

at a registered location; authorizing a secondhand

214

dealer to store secondhand goods outside the



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215     appropriate law enforcement official's jurisdiction,  
216     subject to certain conditions; providing an effective  
217     date.

By the Committee on Commerce and Tourism; and Senator Richter

577-02272-16

2016948c1

A bill to be entitled

An act relating to secondhand dealers; amending s. 538.04, F.S.; requiring that the record of a secondhand dealer transaction include digital photos of the items; amending s. 538.06, F.S.; increasing the required holding period for certain goods acquired by a dealer; defining the term "antique"; amending s. 538.08, F.S.; authorizing an action in replevin against a secondhand dealer based on a right of possession to stolen goods; revising the form for a complaint for return of stolen goods; providing that a claimant in a replevin action is entitled to a certain summary procedure; providing that a secondhand dealer commits a noncriminal violation when an owner or lienor prevails in a replevin action under certain circumstances; providing a penalty; providing an effective date.

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

Section 1. Paragraphs (c) and (d) of subsection (1) of section 538.04, Florida Statutes, are redesignated as paragraphs (d) and (e), respectively, and a new paragraph (c) is added to that subsection, to read:

538.04 Recordkeeping requirements; penalties.—

(1) A secondhand dealer shall complete a secondhand dealers transaction form at the time of the actual transaction. A secondhand dealer shall maintain a copy of a completed transaction form on the registered premises for at least 1 year after the date of the transaction. However, the secondhand dealer shall maintain a copy of the transaction form for not less than 3 years. Unless other arrangements are agreed upon by

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

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2016948c1

the secondhand dealer and the appropriate law enforcement official, the secondhand dealer shall, within 24 hours after acquiring any secondhand goods, deliver to such official a record of the transaction on a form approved by the Department of Law Enforcement. Such record shall contain:

(c) Digital photos of the goods, clearly showing the items required to be included on the record as provided in paragraph (b).

Section 2. Subsection (1) of section 538.06, Florida Statutes, is amended to read:

538.06 Holding period.—

(1) (a) A secondhand dealer ~~may~~ shall not sell, barter, exchange, alter, adulterate, use, or in any way dispose of any secondhand good that is:

1. A precious metal, a gemstone, jewelry, an antique furnishing, fixture, or decorative object, or an item of art as defined in s. 686.501 within 30 calendar days after the date on which the good was acquired.

2. Not described in subparagraph 1. ~~goods~~ within 15 calendar days ~~after~~ of the date on which the good was acquired ~~of acquisition of the goods.~~

Such holding periods are not applicable when the person known by the secondhand dealer to be the person from whom the goods were acquired desires to redeem, repurchase, or recover the goods, provided the dealer can produce the record of the original transaction with verification that the customer is the person from whom the goods were originally acquired.

(b) As used in this subsection, the term "antique" means

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

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62 the item is at least 30 years old and has special value because  
63 of its age.

64 Section 3. Section 538.08, Florida Statutes, is amended to  
65 read:

66 538.08 Stolen goods; ~~complaint petition~~ for return.-

67 (1) If the secondhand dealer contests the identification,  
68 ~~or~~ ownership, or right of possession of the property, the person  
69 alleging ownership or right of possession of the property may,  
70 provided that a timely report of the theft of the goods was made  
71 to the proper authorities, bring an action for replevin in the  
72 county or circuit court. The complaint may be ~~by petition~~ in  
73 substantially the following form:

74 Plaintiff A. B. sues defendant C. D., and alleges:

75 1. This is an action to recover possession of personal  
76 property in ..... County, Florida.

77 2. The description of the property is: ... (list  
78 property)... To the best of plaintiff's knowledge, information,  
79 and belief, the value of the property is \$.....

80 3. Plaintiff is the lawful owner of the property or is  
81 entitled to ~~the~~ possession of the property under a security  
82 agreement dated ....., ... (year)..., a copy of which is  
83 attached.

84 4. To plaintiff's best knowledge, information, and belief,  
85 the property is located at .....

86 5. The property is wrongfully detained by defendant.  
87 Defendant came into possession of the property by ... (describe  
88 method of possession)... To plaintiff's best knowledge,  
89 information, and belief, defendant detains the property because  
90

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91 ... (give reasons)...

92 6. The property has not been taken under an execution or  
93 attachment against plaintiff's property.  
94

95 (2) The filing fees shall be waived by the clerk of the  
96 court, and the service fees shall be waived by the sheriff. The  
97 court shall award the prevailing party attorney ~~attorney's~~ fees  
98 and costs. In addition, when the filing party prevails in the  
99 replevin action, the court shall order payment of filing fees to  
100 the clerk and service fees to the sheriff.

101 (3) Upon the filing of the complaint petition, the court  
102 shall set a hearing to be held at the earliest possible time.  
103 The claimant is entitled to the summary procedure provided in s.  
104 51.011. Upon the receipt of the complaint a petition for a writ  
105 by a secondhand dealer, the secondhand dealer shall hold the  
106 property at issue until the court determines the respective  
107 interests of the parties.

108 (4) In addition to the civil complaint petition for return  
109 remedy, the state may file a motion as part of a pending  
110 criminal case related to the property. The criminal court has  
111 jurisdiction to determine ownership, ~~to~~ order return or other  
112 disposition of the property, and ~~to~~ order ~~any~~ appropriate  
113 restitution to any person. Such order shall be entered upon  
114 hearing after proper notice has been given to the secondhand  
115 dealer, the victim, and the defendant in the criminal case.

116 (5) A secondhand dealer commits a noncriminal violation,  
117 punishable pursuant to s. 775.083 by a fine of up to \$2,500, if:

118 (a) The owner or lienor who prevailed in the replevin  
119 action made a written demand for return of the property and

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120 provided proof of ownership or proof of the right of possession  
121 to the secondhand dealer at least 5 calendar days before filing  
122 the replevin action;

123 (b) The secondhand dealer knew or should have known based  
124 on the proof provided under paragraph (a) that the property  
125 belonged to the owner or lienor; and

126 (c) The secondhand dealer did not file an action for  
127 interpleader to determine conflicting claims to the property.

128 Section 4. This act shall take effect July 1, 2016.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/2016  
Meeting Date

SB 948  
Bill Number (if applicable)

818396  
Amendment Barcode (if applicable)

Topic 2ND HAND DEALERS

Name SLATER BATLIS

Job Title

Address 215 S MONROE ST #602

Phone 850 222 8900

Street

TALLAHASSEE FL 32301

Email swdcardenas@flsenate.gov

City

State

Zip

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.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/16

Meeting Date

948

Bill Number (if applicable)

818396

Amendment Barcode (if applicable)

Topic 2ND HAND DEALERS

Name DOUGLAS MULDOON

Job Title DIRECTOR OF LAW ENFORCEMENT RELATIONS

Address 10121 BARNES CANYON ROAD  
Street

Phone 321-863-9167

SAN DIEGO CA 92121  
City State Zip

Email DOUG.MULDOON@OUTERWALL.COM

Speaking:  For  Against  Information

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

Representing ECO ATM / OUTERWALL

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)

2/17/2016

948

*Meeting Date*

*Bill Number (if applicable)*

Topic Secondhand Dealers

*Amendment Barcode (if applicable)*

Name Sarrah Carroll

Job Title Lobbyist

Address 123 S. Adams

Phone 850-671-4401

*Street*

Tallahassee

FL

32301

Email carroll@sostrategy.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Sheriffs 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)

2/17/16

Meeting Date

948

Bill Number (if applicable)

Topic Second hand dealers

Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title Vice President's General Counsel

Address 227 S. Adams St.

Phone 222-4082

Street

Tallahassee FL 32301

City

State

Zip

Email samantha@fca.org

Speaking:  For  Against  Information

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

Representing Florida Retail Federation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/CS/SB 954

INTRODUCER: Fiscal Policy Committee; Criminal Justice Committee; and Senator Simmons

SUBJECT: Electronic Monitoring Devices

DATE: February 18, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Cannon</u>	<u>CJ</u>	<b>Fav/CS</b>
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Recommend: Favorable</b>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Fav/CS</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 954 repeals s. 948.11(7), F.S., and moves its provisions into newly created s. 843.23, F.S. Section 843.23, F.S., makes it a third degree felony for a person to intentionally and without authority remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device that must be worn or used by that person or another person pursuant to a court order or an order by the Florida Commission on Offender Review.

The bill also makes it a third degree felony for a person to request or solicit another person to remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device that is being worn as described above.

The bill clarifies that the Department of Corrections (department) may electronically monitor offenders sentenced to community control only when the court has imposed electronic monitoring as a condition of community control.

The bill will have an insignificant prison bed impact on the department. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2016.

## II. Present Situation:

Electronic monitoring devices are used to keep track of the location of arrestees, criminal defendants, and people who have been placed on probation, community control,<sup>1</sup> or conditional release<sup>2</sup> (community supervision).

Judges generally have the discretion to require criminal defendants and offenders on community supervision to wear an electronic monitoring device.<sup>3</sup> Judges are required to impose electronic monitoring in certain instances, for example when offenders placed on community supervision for specified sexual offenses.<sup>4</sup> The Florida Commission on Offender Review also has the authority to determine the conditions of release, including ordering an offender to wear an electronic monitoring device when an offender is released on conditional release, control release, parole, or conditional medical release.<sup>5</sup>

Section 948.11, F.S., provides that the Department of Corrections (department) may, at its discretion, electronically monitor an offender sentenced to community control. Any offender who violates the terms of community control and is restored to community control may be supervised by an electronic monitoring device.<sup>6</sup> However, the department does not exercise such authority because courts have held that an offender's community control may not be revoked for noncompliance with electronic monitoring when such monitoring was ordered by the department instead of a judge.<sup>7</sup>

Section 948.11(7), F.S., makes it a third degree felony<sup>8</sup> for a person to intentionally alter, tamper with, damage, or destroy any electronic monitoring equipment required pursuant to a court or Florida Commission on Offender Review order, unless the person is the owner of the equipment or an agent of the owner performing ordinary maintenance and repairs.

Section 948.11(7), F.S., does not make it a crime to circumvent the operation of the electronic monitoring device unless the circumvention involves altering, tampering, damaging, or destroying an electronic monitoring device. It is also not a crime to solicit another person to remove, destroy, alter, tamper with, damage, or circumvent an electronic monitoring device.

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<sup>1</sup> Community control is a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Section 948.001(3), F.S.

<sup>2</sup> Conditional release requires mandatory postrelease supervision for specified inmates. The conditions of supervision for conditional releasees are established by the Florida Commission on Offender Review. Conditional releasees are supervised by the Department of Corrections probation officers. Section 947.1405, F.S.

<sup>3</sup> See ss. 907.041(4)(b), 947.1405, 948.101(1)(d), and 948.30(2)(e), (3) F.S.

<sup>4</sup> Section 948.30(2)(e)(3), F.S.

<sup>5</sup> Section 947.13, F.S.

<sup>6</sup> Section 948.11(2), F.S.

<sup>7</sup> *Carson v. State*, 531 So.2d 1069 (Fla. 4th DCA 1988); *Anthony v. State*, 854 So.2d 744, 747-748 (Fla. 2d DCA 2003).

<sup>8</sup> A third degree felony is punishable by up to five years in prison and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

According to the department there were 4,458 offenders on electronic monitoring.<sup>9</sup>

Offenders Tracked by Electronic Monitoring December 2015			
Supervision Type*	Sex Offenders**	Others	Total
Community Control	164	965	1,129
Post Prison	215	149	364
Probation	2,352	613	2,965
Total Active Global Positioning	2,731	1,727	4,458
* Includes Active and Active-Suspense offenders.			
**Based on primary offense.			

**III. Effect of Proposed Changes:**

The bill repeals s. 948.11(7), F.S., and moves its provisions into newly created s. 843.23, F.S. Section 843.23, F.S., makes it a third degree felony for a person to intentionally and without authority to remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device that must be worn or used by that person or another person pursuant to a court order or an order by the Florida Commission on Offender Review.

The bill also makes it a third degree felony for a person to request, authorize, or solicit a person to remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device that is being worn as described above.

The bill defines “electronic monitoring device” to include any device that is used to track the location of a person.

The bill clarifies that the department may electronically monitor offenders sentenced to community control only when the court has imposed electronic monitoring as a condition of community control.

The bill is effective October 1, 2016.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

<sup>9</sup> Department of Corrections, Florida’s Supervised Population Monthly Status Report, *Table 2: Offenders Tracked by Electronic Monitoring – December 2015*, available at <http://www.dc.state.fl.us/pub/spop/2015/12/tab02.html> (last visited February 12, 2016).

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on October 28, 2015, and determined that that the bill as originally filed would have an insignificant prison bed impact on the department (an increase of ten or fewer beds). It does not appear that the amendments made to the bill would alter that determination.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 843.23 of the Florida Statutes.

This bill substantially amends section 948.11 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/CS by Fiscal Policy on February 17, 2016:**

The Committee Substitute corrects a drafting error.

**CS by Criminal Justice on January 25, 2016:**

The Committee Substitute clarifies that any person who intentionally removes, destroys, alters, tampers with, damages or circumvents the operation of an electronic monitoring device can be prosecuted under the bill.

B. Amendments:

None.

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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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707340

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
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	.	
	.	

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The Committee on Fiscal Policy (Bradley) recommended the following:

1       **Senate Amendment**

2

3       Delete line 31

4       and insert:

5       (a) Remove, destroy, alter, tamper with, damage, or  
6       circumvent

By the Committee on Criminal Justice; and Senator Simmons

591-02540-16

2016954c1

A bill to be entitled

An act relating to electronic monitoring devices; creating s. 843.23, F.S.; defining the term "electronic monitoring device"; prohibiting a person from removing, destroying, altering, tampering with, damaging, or circumventing the operation of an electronic monitoring device being worn or used pursuant to any court order or an order by the Florida Commission on Offender Review; prohibiting the request, authorization, or solicitation of a person to perform such an act; providing criminal penalties; amending s. 948.11, F.S.; specifying that the Department of Corrections may electronically monitor an offender sentenced to community control when the court has imposed electronic monitoring as a condition of community control; deleting a provision imposing criminal penalties on persons who intentionally alter, tamper with, damage, or destroy electronic monitoring equipment; providing an effective date.

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

Section 1. Section 843.23, Florida Statutes, is created to read:

843.23 Tampering with an electronic monitoring device.-

(1) As used in this section, the term "electronic monitoring device" includes any device that is used to track the location of a person.

(2) It is unlawful for a person to intentionally and without authority:

(a) Remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device that must be

Page 1 of 2

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

591-02540-16

2016954c1

worn or used by that person or another person pursuant to a court order or pursuant to an order by the Florida Commission on Offender Review; or

(b) Request, authorize, or solicit a person to remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device required to be worn or used pursuant to a court order or pursuant to an order by the Florida Commission on Offender Review.

(3) A person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Subsections (1) and (7) of section 948.11, Florida Statutes, are amended to read:

948.11 Electronic monitoring devices.-

(1) The Department of Corrections may, at its discretion, electronically monitor an offender sentenced to community control when the court has imposed electronic monitoring as a condition of community control.

~~(7) A person who intentionally alters, tampers with, damages, or destroys any electronic monitoring equipment pursuant to court or commission order, unless such person is the owner of the equipment, or an agent of the owner, performing ordinary maintenance and repairs, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

Section 3. This act shall take effect October 1, 2016.

Page 2 of 2

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Anitere Flores, Chair  
Committee on Fiscal Policy

**Subject:** Committee Agenda Request

**Date:** February 11, 2016

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I respectfully request that **Senate Bill 954**, relating to Electronic Monitoring Devices, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons", written over a horizontal line.

Senator David Simmons  
Florida Senate, District 10

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

17 Feb 16  
Meeting Date

954  
Bill Number (if applicable)

Topic Electronic Monitoring Devices

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title Pres & CEO

Address 204 S. Monroe  
Street

Phone 577-3032

Fall FL 32301  
City State Zip

Email barney@smartjusticealliance.org

Speaking:  For  Against  Information

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

Representing Fla. 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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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/2016

Meeting Date

Topic \_\_\_\_\_

Bill Number 954

(if applicable)

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-17-16

Meeting Date

SB 0954

Bill Number (if applicable)

Topic ELECTRONIC MONITORING DEVICES

Amendment Barcode (if applicable)

Name TIM QUIGLEY

Job Title DEPUTY SHERIFF

Address 951 SINGLETON DR.

Phone 386-736-5333

Street

DELAND

City

FL

State

32724

Zip

Email TQUIGLEY@VCSO.US

Speaking:  For  Against  Information

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

Representing FLORIDA SHERIFF'S 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.

**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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**BILL:** CS/CS/CS/SB 1220

**INTRODUCER:** Fiscal Policy Committee; Judiciary Committee; Governmental Oversight and Accountability Committee; and Senator Garcia

**SUBJECT:** Public Records

**DATE:** February 19, 2016

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Fav/CS</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 1220 provides guidance to judges in determining whether to grant or deny enforcement costs, including reasonable attorney fees, in actions requiring agencies to disclose public records. A court must assess and award the reasonable costs of enforcement, including reasonable attorney fees, against the responsible agency if it determines that the:

- Agency unlawfully refused to permit the public record to be inspected or copied; and
- Complainant provided written notice identifying the public record request to the agency's custodian of public records at least 5 days before filing the civil action, except as provided below.

The complainant is not required to provide written notice of the public record request, as required above, if the agency does not prominently post the contact information for the agency's custodian of public records in the agency's primary administrative building in which public records are routinely created, sent, received, maintained, and requested and on the agency's website, if the agency has website.

A court may not assess and award any reasonable costs of enforcement, including reasonable attorney fees, against the agency if the court determines that the request to inspect or copy the public record was made primarily to harass the agency or cause a violation of ch. 119, F.S. The bill has a positive fiscal impact on state government. See Section V. Fiscal Impact Statement.

The bill is effective upon becoming law.

## II. Present Situation:

### Public Records Requirements

The Florida Constitution provides that every individual has a right of access to public records, unless exempted, which are made or received in connection with official public business. This right applies to records of the legislative, executive, and judicial branches.<sup>1</sup>

The Public Records Act, codified in ch. 119, F.S., expressly guarantees every person's right to inspect and copy any state or local government public record<sup>2</sup> at any reasonable time, under reasonable conditions, and under the supervision of the public records custodian.<sup>3</sup> The Public Records Act also applies to a private contractor if that private business acts on behalf of a governmental entity.<sup>4</sup>

An agency, as defined by ch. 119, F.S., may not impose greater conditions on responding to a public records request than that required by law. For example, an agency may not require a person seeking a public record to disclose his or her background information.<sup>5</sup> Nor may an agency require an individual to put his or her request in writing as a condition of production.<sup>6</sup> An agency must honor a request whether a person requests records by phone, in writing, or in person, provided that the request is sufficient to identify the records sought.<sup>7</sup>

### Custodian of Public Records

A custodian of public records is “the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.”<sup>8</sup>

A custodian is required to perform statutorily required duties related to maintaining records and handling public records requests, which duties include:<sup>9</sup>

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<sup>1</sup> Article I, s. 24(a), FLA. CONST.

<sup>2</sup> Section 119.011(12), F.S., defines “public record” as “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

<sup>3</sup> Section 119.07(1)(a), F.S.

<sup>4</sup> Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.” The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32, 36-37 (Fla. 1992).

<sup>5</sup> *Bevan v. Wanichka*, 505 So.2d 1116, 1118 (Fla. 2d DCA 1987).

<sup>6</sup> *Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So.2d 302, n.1 (Fla. 3d DCA 2001); Op. Att’y Gen. Informal Opinion (Dec. 16, 2003), available at <http://myfloridalegal.com/ago.nsf/informalprintview/7AA59B4C58D0818085256DFF00627B55> (last visited Feb. 12, 2016).

<sup>7</sup> Op. Att’y Gen. Fla. 80-57, pg. 3 (1980), available at <http://www.myfloridalegal.com/ago.nsf/printview/29B1FE397E99E1238525658D005C903B> (last visited Feb. 12, 2016).

<sup>8</sup> Section 119.011(5), F.S.

<sup>9</sup> See ss. 119.021 and 119.07(1)-(4), F.S.

- Acknowledging a public records request and responding in good faith;
- Producing records after redacting exempt information or providing the statutory citation for an exemption if the entire document is exempt;
- Maintaining records that are the subject of public records litigation;
- Ensuring records are secure if public records are provided by remote electronic means;
- Providing supervision if someone wishes to photograph records; and
- Providing certified copies of public records upon payment of a fee.

Public records custodians are also responsible for supervising the production of records by all agency personnel. Section 119.07(1)(a), F.S., provides that “[e]very person who has custody of a public record shall permit the record to be inspected and copied . . . at any reasonable time, under reasonable conditions, and under reasonable supervision by the custodian of the public records.”

### **Enforcing Public Records Laws and Attorney Fees**

The Florida Constitution requires the Legislature to enact laws governing the enforcement of public records requirements, including the “maintenance, control, destruction, disposal, and disposition of records.”<sup>10</sup>

Florida law provides that a person may enforce the right to a public record by a lawsuit against an agency. In those lawsuits, the court must set an immediate hearing, giving the case priority over other cases. If a court orders an agency to open its records for inspection, the agency must comply within 48 hours.<sup>11</sup> If the court finds that the agency unlawfully refused access to a public record, the court will order the public agency to pay costs and attorney fees.<sup>12</sup> An unjustified delay in turning over public records is considered an unlawful refusal, and a court will award attorney fees even if the delay is not willful or is due to incompetence.<sup>13</sup>

Enforcement lawsuits are composed of two parts: the request for production of a record and the assessment of fees. The assessment of attorney fees is a legal consequence independent of the public records request.<sup>14</sup> Once an enforcement action is filed, the court will require a public agency to pay the requestor’s attorney fees even after the agency has produced the records.<sup>15</sup>

The public policy behind awarding attorney fees is to encourage people to pursue their right to access government records after an initial denial. In addition, granting attorney fees makes it more likely that public agencies will comply with public records laws.<sup>16</sup>

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<sup>10</sup> Article I, s. 24(c), FLA. CONST.

<sup>11</sup> Section 119.11(1) and (2), F.S.

<sup>12</sup> Section 119.12, F.S.

<sup>13</sup> *Lilker v. Suwannee Valley Transit Auth.*, 133 So.3d 654, 655-656 (Fla. 1st DCA 2014); *Barfield v. Town of Eatonville*, 675 So.2d 223, 225 (Fla. 5th DCA 1996).

<sup>14</sup> *Mazer v. Orange County*, 811 So.2d 857, 859 (Fla. 5th DCA 2002).

<sup>15</sup> *Mazer*, 811 So.2d at 860; *Barfield*, 675 So.2d at 224; *Althouse v. Palm Beach County Sheriff’s Office*, 92 So.3d 899, 902 (Fla. 4th DCA 2012).

<sup>16</sup> *New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So.2d 27, 29 (Fla. 1993).

## Public Records and Private Contractors

Public agencies, including local and statewide governmental entities and municipal officers may hire contractors to provide services or act on behalf of the public agency. Contractors can be individuals or business entities. Private contractors who act on behalf of a public agency are required by law and the terms of their contracts to comply with public records laws in the same manner as a public agency.<sup>17</sup>

Every public records contract for services must include a provision that requires the contractor to comply with public records law. Specifically, a contractor must:

- Keep and maintain public records typically required by the public agency to perform the service;
- Provide public access to public records on the same terms and conditions that the public agency would provide the record and at the same cost authorized by law;
- Protect from disclosure records that are exempt from disclosure requirements or confidential; and
- Retain records as required by law and transfer at no cost all public records to the public agency upon termination of the contract.<sup>18</sup>

A public agency is required to enforce the terms of its contract if a contractor fails to abide by public records laws.<sup>19</sup> Actions may include unilateral cancellation of the contract by a state agency if a contractor refuses to allow public access to materials the contractor receives in conjunction with the contract.<sup>20</sup>

If a contractor fails to comply with a public records request, the requestor may sue the contractor to enforce the right to have access to the records. If a court determines that the contractor unlawfully withheld public records, the court must order the contractor to pay for the cost of the lawsuit and the requestor's attorney fees in the same manner that a public agency would be liable.<sup>21</sup> Once a lawsuit is filed, a contractor may also be held liable for attorney fees even after providing the requested records.

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<sup>17</sup> Section 119.0701(1), F.S. *News and Sun-Sentinel Co. v. Schwab, Twitty and Hanser Architectural Group, Inc.*, 596 So.2d 1029 (Fla. 1992). Op. Att'y Gen. Fla. Informal Opinion (Dec. 31, 2014), available at <http://www.myfloridalegal.com/ago.nsf/Opinions/4BD600F7EBC22FA885257DC1004950F0> (last visited Feb. 12, 2016).

<sup>18</sup> Section 119.0701(2), F.S. Upon termination of a contract, the contractor must destroy any duplicate public records that are exempt or confidential and exempt from disclosure. All records stored electronically must be provided to the public agency in a format compatible with the information technology systems of the public agency. Section 119.0701(2)(d), F.S.

<sup>19</sup> Section 119.0701(3), F.S.

<sup>20</sup> Section 287.058(1)(c), F.S., provides that state agency contracts which exceed \$35,000 must include a provision that permits the state to unilaterally cancel the contract if the contractor refuses to permit access to public records. This does not apply to contracts related to certain state employee benefits.

<sup>21</sup> Sections 119.0701(2) and 119.12, F.S.; *New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So.2d 27, 29 (Fla. 1993).

### ***When is a Private Contractor an Agency for Public Records Purposes?***

An Attorney General Opinion (AGO) concludes that a court must examine the nature and scope of services provided, citing in support *Parsons & Whittemore*, which held that a contract with a public agency alone is insufficient to trigger public records requirements.<sup>22</sup>

In contrast, other courts have applied a totality of factors test, which asks the following questions:<sup>23</sup>

- Whether the public agency created the contractor;
- How much public funding was involved;
- How much the public agency regulated the contractor;
- The comingling of decision making processes;
- Whether the contractor was performing a government function; and
- The goals of the contractor.<sup>24</sup>

A contractor's uncertainty as to whether it is an agency for public records purposes is not necessarily considered an unlawful delay or refusal. A court may consider uncertainty to be reasonable, and not impose attorney fees and costs.<sup>25</sup>

### **Public Records Requests, Settlements, and Attorney Fees**

Over the past few years, there has been an increase in what appears to be lawsuits filed on facial basis that an agency or contractor failed to provide public records, but may have been attempts to collect attorney fees. Agencies often settle the matters because settlements are less costly than litigation.<sup>26</sup>

Two Gulf Stream residents allegedly filed 1,700 public records requests with the Town of Gulf Stream over 2 years. When the Town of Gulf Stream did not fulfil the requests, one of the residents then sued the city for failure to meet the requests.<sup>27</sup> The Town of Gulf Stream has allegedly spend more than \$1 million fielding public records requests and on legal fees, including a class action racketeering suit it filed against several residents and companies related to the residents' actions.<sup>28</sup>

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<sup>22</sup> Op. Att'y Gen. Fla. 2014-06 (June 18, 2014), available at <http://www.myfloridalegal.com/ago.nsf/Opinions/FFA361674B780AE085257CFD00650CCB> (last visited Feb. 12, 2016); *Parsons & Whittemore, Inc. v. Metropolitan Dade County*, 429 So.2d 343, 346 (Fla. 3d DCA 1983).

<sup>23</sup> *News and Sun-Sentinel Co.*, 596 So.2d at 1031.

<sup>24</sup> *Id.* at 1032.

<sup>25</sup> *New York Times Co.*, 616 So.2d at 29; *Stanfield v. Salvation Army*, 695 So.2d 501, 502 (Fla. 5th DCA 1997).

<sup>26</sup> For example, the City of Dunedin settled a matter for \$2,500 rather than spending \$10,000 to fight the public records request lawsuit. Mike Brassfield, Tampa Bay Times, *Lawsuits from Public Records Group are a Nuisance, Florida Cities Say*, July 6, 2015, available at <http://www.tampabay.com/news/humaninterest/lawsuits-from-public-records-group-are-a-nuisance-florida-cities-say/2236362> (last visited Feb. 12, 2016).

<sup>27</sup> John Kennedy and Joan Musgrave, Palm Beach Post, *Florida Bill Targets Type of Suit Used by Gulf Stream Resident O'Boyle*, updated Oct. 5, 2015, available at <http://www.mypalmbeachpost.com/news/news/state-regional-govt-politics/florida-bill-targets-type-of-suit-used-by-gulf-str/nns5L/> (last visited Feb. 12, 2016).

<sup>28</sup> *Supra* note 26.

The Town of Gulf Stream filed the federal lawsuit against a resident, the Citizen’s Awareness Foundation, Inc., Our Public Records, LLC, a law firm, and other defendants based on their use of public records laws. The case was dismissed by the federal judge, who stated:

To the extent Defendants are abusing the rights affording them by the Florida public records laws, those abuses must be addressed in the individual lawsuits filed, or through a change in the laws by the Florida Legislature.<sup>29</sup>

Citizen’s Awareness Foundation, Our Public Records, LLC, and a law firm have filed more than 100 lawsuits across 27 counties.<sup>30</sup> The lawsuits are filed against government contractors as well as government entities. In one case, the records request was emailed over a weekend, and when the businesses failed to comply, the requestors filed a lawsuit and demanded a settlement in excess of costs and fees. The groups implemented a quota of generating 25 new lawsuits per week.

In another example, a circuit court in Duval County denied a plaintiff relief in a lawsuit to enforce a public records request and assess attorney fees.<sup>31</sup> According to the court order, the plaintiff did not provide advance notice or written notice of any kind prior to the request and secretly documented the requests and denials on video, later admitting to having done so to present as evidence in a subsequent lawsuit. The court found that the manner in which the plaintiff made the request ensured that “they obtained exactly what they wanted, namely, an initial denial of an unreasonable and bogus request.”<sup>32</sup> The court ruled the plaintiff’s method of requesting public records an abuse of public records laws and “nothing more than a scam.”<sup>33</sup> The final order stated that the plaintiff and his attorney, who had an arrangement to split his attorney fees with the plaintiff, had “a financial interest in assuring that his requests for public records [were] refused.”<sup>34</sup> The court noted that in 2014, the plaintiff had filed 18 public records lawsuits in Duval County and the same attorney represented the plaintiff in approximately 13 of those cases.<sup>35</sup> The case is currently on appeal.<sup>36</sup>

### III. Effect of Proposed Changes:

The bill provides that a court must assess and award the reasonable costs of enforcement, including reasonable attorney fees, against the responsible agency if it determines that the:

- Agency unlawfully refused to permit the public record to be inspected or copied; and

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<sup>29</sup> *Town of Gulf Stream v. O’Boyle, et al.*, Opinion and Order, Case No. 15-80182-CIV-MARRA, U.S. District Court, Southern District of Florida, June 30, 2015 available at <http://law.justia.com/cases/federal/district-courts/florida/flsdce/9:2015cv80182/456973/47/> (last visited Feb. 12, 2016).

<sup>30</sup> Tristram Korten and Trevor Aaronson, Miami Herald, Florida Center for Investigative Reporting, *In Lawsuits Statewide, Questions of Profits and Public Records*, (Nov. 9, 2014) available at <http://www.miamiherald.com/news/state/florida/article3683176.html> (last visited Feb. 12, 2016).

<sup>31</sup> Final Order Denying Relief Under Public Records Act, *Jeffrey Marcus Gray v. Lutheran Social Services of Northeast Florida, Inc.*, No. 2014-CA-4647 (Fla. 4th Cir. Ct. 2014).

<sup>32</sup> *Id.* at 6.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 4.

<sup>35</sup> *Id.* at 7.

<sup>36</sup> A Notice of Appeal was filed with the First District Court of Appeal in Case Number 1D14-5793 (December 19, 2014). The last action on this case occurred on September 28, 2015, when the court denied oral arguments.

- Complainant provided written notice identifying the public record request to the agency's custodian of public records at least 5 days before filing the civil action, except as provided below.

The complainant is not required to provide written notice of the public record request, as required above, if the agency does not prominently post the contact information for the agency's custodian of public records in the agency's primary administrative building in which public records are routinely created, sent, received, maintained, and requested and on the agency's website, if the agency has website.

A court may not assess and award any reasonable costs of enforcement, including reasonable attorney fees, against the agency if the court determines that the request to inspect or copy the public record was made primarily to harass the agency or cause a violation of ch. 119, F.S.

The bill is effective upon becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The bill does not appear to require counties or municipalities to take an action requiring the significant expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

##### **B. Public Records/Open Meetings Issues:**

The bill requires a court to assess reasonable costs of enforcement, including reasonable attorney fees, if the agency unlawfully refused to permit a public record to be inspected or copied and the complainant provided written notice identifying the public record request to the agency's custodian of public records at least 5 days before filing a civil action. This effectively imposes a requirement on the public to make a public record request in writing, instead of verbally, in order to recover reasonable costs of enforcement and attorney fees. A request may be made verbally, but if the agency unlawfully refuses to honor the request, then the requestor must provide the written notice in order to recover costs and fees.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Private contractors which are agencies under the public records laws may spend less in settlements and attorney fees related to public records requests.

Individuals and groups who file public records lawsuits may incur additional costs to send letters to public records custodians. There would be little or no additional costs, however, to send an email instead of letter.

**C. Government Sector Impact:**

Governmental entities may spend less in settlements and enforcement costs related to public records requests.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill requires the complainant to provide written notice identifying the public record request to the agency. This may be interpreted either as requiring that the complainant identify a previous record request (date of submitted request) or identify the public record (the document) that was previously requested or both. The written notice is required under the bill for the court to award costs and fees to the complainant when the court also finds that the agency unlawfully refused access to the public record (the document).

**VIII. Statutes Affected:**

This bill substantially amends section 119.12 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/CS/CS by Fiscal Policy on February 17, 2016:**

The CS removes the provisions that allowed a court to not assess reasonable costs of enforcement and attorney fees if it determined:

- That any alleged delay or error in permitting a public record to be inspected or copied was a technical violation of ch. 119, F.S., which amounted to harmless error under the circumstances; or
- The civil action was frivolous, malicious, or *reasonably appears* to have been intended to harass an agency.

**CS/CS by Judiciary on February 9, 2016:**

This CS differs from the previous version by removing some of the court's discretion to award enforcement costs and attorney fees. This bill specifies circumstances under which a court must award enforcement costs, including attorney fees, and when the court is prohibited from awarding those enforcement costs and attorney fees. The instances in

which the court may not award costs and fees are expanded to include instances in which the request was malicious, reasonably intended to harass the agency, or brought to primarily cause a violation of the public records request laws or if the alleged delay or error was a technical violation that amounted to harmless error.

**CS by Governmental Oversight and Accountability on January 26, 2016:**

The CS provides that the court may not award enforcement costs if the court determines that the plaintiff made his or her public records request frivolously or in bad faith.

**B. Amendments:**

None.



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Sachs) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Section 119.12, Florida Statutes, is amended to read:

119.12 Attorney ~~Attorney's~~ fees.—

(1) If a civil action is filed against an agency to enforce the provisions of this chapter ~~and if the court determines that such agency unlawfully refused to permit a public record to be~~



~~inspected or copied~~, the court shall assess and award, ~~against the agency responsible~~, the reasonable costs of enforcement, including reasonable attorney attorneys' fees, against the responsible agency if the court determines that:

(a) The agency unlawfully refused to permit a public record to be inspected or copied; and

(b) The complainant provided written notice identifying the public record request to the agency's custodian of public records at least 5 business days before filing the civil action, except as provided under subsection (3).

(2) The court may not assess and award any reasonable costs of enforcement, including reasonable attorney fees, against the responsible agency if the court determines that the request to inspect or copy the public record was made primarily to harass the agency or cause a violation of this chapter.

(3) The complainant is not required to provide written notice of the public record request to the agency's custodian of public records as provided in paragraph (1)(b) if the agency does not prominently post the contact information for the agency's custodian of public records in the agency's primary administrative building in which public records are routinely created, sent, received, maintained, and requested and on the agency's website, if the agency has a website.

Section 2. This act shall take effect upon becoming a law.

===== 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:



670232

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A bill to be entitled  
An act relating to public records; amending s. 119.12,  
F.S.; revising the circumstances under which a court  
must assess and award the reasonable costs of  
enforcement against an agency in a civil action to  
enforce ch. 119, F.S.; prohibiting a court from  
assessing and awarding the reasonable costs of  
enforcement against an agency if certain conditions  
exist; specifying circumstances under which a  
complainant is not required to provide certain written  
notice of a public record request; providing an  
effective date.

By the Committees on Judiciary; and Governmental Oversight and Accountability; and Senator Garcia

590-03314-16

20161220c2

A bill to be entitled

An act relating to public records; amending s. 119.12, F.S.; requiring a complainant to provide specified written notice to an agency's custodian of public records in order to be awarded the reasonable costs of enforcement in a civil action for enforcement of ch. 119, F.S.; specifying circumstances under which a court may not assess and award the reasonable costs of enforcement against a responsible agency; providing an exception to the requirement that a complainant provide written notice before filing a civil action; providing an effective date.

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

Section 1. Section 119.12, Florida Statutes, is amended to read:

119.12 ~~Attorney~~ ~~Attorney's~~ fees.—

(1) If a civil action is filed against an agency to enforce the provisions of this chapter and ~~if~~ the court determines that the complainant provided written notice clearly and conspicuously identifying the public record request to the agency's custodian of public records at least 5 business days before filing the civil action, except as provided under subsection (3), and that the ~~such~~ agency unlawfully refused to permit a public record to be inspected or copied, the court shall assess and award, against the agency responsible, the reasonable costs of enforcement, including reasonable attorney ~~attorneys'~~ fees, against the responsible agency.

(2) The court may not assess and award any reasonable costs of enforcement, including reasonable attorney fees, against the

Page 1 of 2

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

590-03314-16

20161220c2

responsible agency if the court determines that:

(a) The civil action or the request to inspect or copy a public record was frivolous, malicious, or reasonably appears to have been intended to harass the agency, or was brought or made for the primary purpose of causing a violation of this chapter; or

(b) Any alleged delay or error in permitting a public record to be inspected or copied was a technical violation of this chapter which constituted harmless error under the circumstances.

(3) The complainant is not required to provide written notice of the public record request to the agency's custodian of public records as provided in subsection (1) if the agency does not post the contact information for the agency's custodian of public records in the agency's primary administrative building in which public records are routinely created, sent, received, maintained, and requested or on the agency's website.

Section 2. This act shall take effect upon becoming a law.

Page 2 of 2

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

**The Florida Senate**  
State Senator René García  
38<sup>th</sup> District

Please reply to:

District Office:

1490 West 68 Street  
Suite # 201  
Hialeah, FL 33014  
Phone# (305) 364-3100

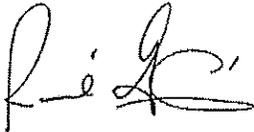
February 10<sup>th</sup>, 2016

The Honorable Senator Anitere Flores  
Chairwoman, Fiscal Policy Committee  
225 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Dear Senator Flores,

Please have this letter serve as my formal request to have **SB 1220: Public Records**, be heard in the next possible Fiscal Policy Committee Meeting. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,



State Senator René García  
District 38  
RG:AD

CC: Jennifer Hrdlicka, Tamra Lyon

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/16  
Meeting Date

1220  
Bill Number (if applicable)

670232  
Amendment Barcode (if applicable)

Topic Public Records

Name Ben Wilcox

Job Title \_\_\_\_\_

Address 1719 Old Fort Dr.  
Street

Phone 544-4448

Tall. Fl. 32301  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Common Cause Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-17-16

Meeting Date

SB1220

Bill Number (if applicable)

670232

Amendment Barcode (if applicable)

Topic Public Records

Name JoAnne Alvarez

Job Title 911 Dispatcher

Address 14689 SW 6 St

Street

Phone 954-629-9970

Pembroke Pines FL 33027

City

State

Zip

Email K9jake@kellsouth.net

Speaking:  For  Against  Information

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

Representing myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

2-17-16

Meeting Date

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

5B 1220

Bill Number (if applicable)

670232

Amendment Barcode (if applicable)

Topic PUBLIC RECORDS

Name ANTHONY MARCIANO

Job Title SERGEANT

Address 10221 DORCHESTER DR

Street

BOCA RATON FL 33428

City

State

Zip

Phone 954 632 6878

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing MYSELF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/2014  
Meeting Date

SB 1220 and  
Bill Number (if applicable)

670232  
Amendment Barcode (if applicable)

Topic Public Records

Name DAVID SIGERSON

Job Title

Address 1121 So Military Trl  
Street

Phone 954 336-3544

Deerfield Bch FL 33442  
City State Zip

Email sigerson@Law@aol.com

Speaking:  For  Against  Information

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

Representing Town of Pembroke Park & The City of Margate

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17  
Meeting Date

1220  
Bill Number (if applicable)  
670232  
Amendment Barcode (if applicable)

Topic Public Records

Name Rich Templin

Job Title \_\_\_\_\_

Address 135 S. Monroe  
Street

Phone 229-6826

Tallahassee FL 32301  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida AFL-CIO

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2-17-10

Meeting Date

SB 1220

Bill Number (if applicable)

070232

Amendment Barcode (if applicable)

Topic Public Records

Name Christine Saint Louis

Job Title Bus operation

Address 2319 Meadow oak cir

Street

Phone 407-756-0334

Kissimmee FL 34746

City

State

Zip

Email cyersgirl@hotmail.com

Speaking: [ ] For [ ] Against [ ] Information

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

Representing SELF

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2-17-16  
Meeting Date

SB 1220  
Bill Number (if applicable)

670232  
Amendment Barcode (if applicable)

Topic Public Records

Name Beverly Glenn

Job Title Bus Operator

Address 4466 Great Harbor Lane  
Street

Phone 407-913-3877

Kissimmee 31  
City State Zip

Email rence693@gmail.com

Speaking:  For  Against  Information

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

Representing SELF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/16

Meeting Date

1220

Bill Number (if applicable)

Topic PUBLIC RECORDS

670232

Amendment Barcode (if applicable)

Name VICTOR M. LEON-BONNET

Job Title ~~DISNEY DISTRIBUTION SERVICES~~

Address 7845 CHEDISTON CIR.

Phone (407) 496-3609

Street

ORLANDO

City

FL

State

32817

Zip

Email

Speaking:  For  Against  Information

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

Representing SELF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/16  
Meeting Date

SB1220  
Bill Number (if applicable)

Topic Public Records

670232  
Amendment Barcode (if applicable)

Name GERARD POMMERS

Job Title

Address 8164 English Elm Cir  
Street

Phone

Spring Hill FL 34606  
City State Zip

Email

Speaking:  For  Against  Information

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

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/16  
Meeting Date

1220  
Bill Number (if applicable)  
670232  
Amendment Barcode (if applicable)

Topic Public Records

Name Karelyn Martin

Job Title ~~Disney Distribution Warehouse~~

Address 434 Caraway Dr.  
Street

Phone 407-961-1824

Kissimmee FL 34759  
City State Zip

Email Karelyn@aol.com

Speaking:  For  Against  Information

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

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

17 FEBRUARY  
Meeting Date

SB 1220  
Bill Number (if applicable)

670232  
Amendment Barcode (if applicable)

Topic PUBLIC RECORDS

Name ALICE-MARIE TUCKER

Job Title \_\_\_\_\_

Address 6075 WATERLOO AVE  
Street

Phone 3215081976

PORT ST JOHN FL 32927  
City State Zip

Email amkjtucker@msn.com

Speaking:  For  Against  Information

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

Representing SELF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/16

Meeting Date

SB 1220

Bill Number (if applicable)

#670232

Amendment Barcode (if applicable)

Topic Public Records

Name Michael V. Cocco

Job Title

Address 2833 Mayflower Loop

Street

Phone 352 255 1317

Clermont

FL

34714

City

State

Zip

Email mcocco362@gmail.com

Speaking: [X] For [ ] Against [ ] Information

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

Representing SELF

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/16

Meeting Date

SB 1220

Bill Number (if applicable)

Topic Public Records

670232

Amendment Barcode (if applicable)

Name William Bodack

Job Title \_\_\_\_\_

Address 714 Avenida Sexta Apt 207

Phone 727-742-9713

Street

Clermont  
City

FL

State

34714

Zip

Email bodack@gmail.com

Speaking:  For  Against  Information

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

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/16

Meeting Date

SB 1220

Bill Number (if applicable)

670232

Amendment Barcode (if applicable)

Topic Public Records

Name Luis A. Rivera Landrau

Job Title

Address 2510 Hamlet Ln Street

Phone 787-667-6005

Kissimmee City

FL State

34746 Zip

Email

Speaking: [ ] For [ ] Against [ ] Information

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

Representing self

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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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)

17 Feb 2016  
Meeting Date

1220  
Bill Number (if applicable)  
670232  
Amendment Barcode (if applicable)

Topic Public Records

Name Barbara Pitussen

Job Title President

Address 336 E College Ave #101

Phone 224-4555

Tallahassee FL 32301  
City State Zip

Email sunshine@floridafaf.org

Speaking:  For  Against  Information

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

Representing First Amendment Foundation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/2016  
Meeting Date

1220  
~~1220~~

Bill Number (if applicable)

670232  
Amendment Barcode (if applicable)

Topic Public Records Atty Fees

Name Sam Morley

Job Title General Counsel

Address 336 E. College Ave.  
Street

Phone 850 212 4395

Tall. FL 32301  
City State Zip

Email smorley@flpress.com

Speaking:  For  Against  Information

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

↳ of Amendment

Representing Florida Press Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/2016  
Meeting Date

1220  
Bill Number (if applicable)

670232  
Amendment Barcode (if applicable)

Topic SUNSHINE

Name GAIL MARIE FERRY

Job Title CHAIR

Address PO BOX 1766

Phone 954 860 4055

POMPANO BEACH FLORIDA 33061  
Street City State Zip

Email workingfolk@hotmail.com

Speaking:  For  Against  Information

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

Representing COMMUNICATIONS WORKERS of AMERICA COUNCIL of FLORIDA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/16  
Meeting Date

SB/220  
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Diana Arteaga

Job Title Director Govt Relations

Address 444 SW 2nd Ave  
Street

Phone \_\_\_\_\_

Miami FL  
City State Zip

Email darteaga@miamigov.com

Speaking:  For  Against  Information

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

Representing City of Miami

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/16

Meeting Date

SB 1220

Bill Number (if applicable)

Topic SB 1220

Amendment Barcode (if applicable)

Name Tazia K. Stagg, M.D., M.P.H.

Job Title physician (General Preventive Medicine and Public Health)

Address 2905 E Okara Road  
Street

Phone 813 469 9202

Tampa  
City

FL  
State

33612  
Zip

Email tazia.stagg@gmail.com

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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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)

2/17/16

Meeting Date

SB 1220

Bill Number (if applicable)

Topic PUBLIC RECORDS

Amendment Barcode (if applicable)

Name CHARLIE LATHAM

Job Title MAYOR

Address 11 N. 3RD ST.

Phone \_\_\_\_\_

Street

JAX BEACH

City

FL

State

32250

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing CITY OF JACKSONVILLE BEACH

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

(NOT FOR COLB)

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

02.17.16

Meeting Date

SB1220

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name JoAnne Alvarez

Job Title 911 Dispatcher

Address 16659 SW 6 St

Phone 954 431 7564

Street

Pembroke Pines FL

City

State

33027

Zip

Email K9jake@bellsouth.net

Speaking:  For  Against  Information

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

Representing myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/16  
Meeting Date

SB 1220  
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Craig Conn

Job Title

Address 301 S. Brmough  
Street

Phone 222 9684

Tall FL 32301  
City State Zip

Email Kconn@flcities.com

Speaking:  For  Against  Information

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

Representing Florida League of Citics

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17

Meeting Date

1220

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Rich Templin

Job Title

Address 135 S. Monroe

Phone 224-6926

Street

Tallahassee

FL

32301

City

State

Zip

Email

Speaking: [X] For [ ] Against [ ] Information

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

Representing Florida AFL-CIO

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

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THE FLORIDA SENATE

APPEARANCE RECORD

2/17/16

Meeting Date

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

SB 1220

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Lisa Hurley

Job Title Legislative Director

Address 100 S. Monroe St

Phone 850 922 4300

Tallahassee FL 32301

City State Zip

Email lhurley@fl-1.com

Speaking:  For  Against  Information

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

Representing FL Assoc of Counties

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-17-16

Meeting Date

SB1220

Bill Number (if applicable)

Topic PUBLIC RECORDS

Amendment Barcode (if applicable)

Name TIM QUIGLEY

Job Title DEPUTY SHERIFF

Address 951 SINGLETON DR.  
Street

Phone 386-736-5333

DELAND FL 32724  
City State Zip

Email TQUIGLEY@VESO.VS

Speaking:  For  Against  Information

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

Representing FLORIDA SHERIFF'S 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.**

**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: SB 1226

INTRODUCER: Senator Ring

SUBJECT: Administrative Procedures

DATE: February 16, 2016

REVISED: \_\_\_\_\_

---

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
2.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	<b>Recommend: Favorable</b>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Pre-meeting</b>

---

## I. Summary:

SB 1226 requires a statement of estimated regulatory costs (SERC) to include the adverse impacts and regulatory costs estimated to occur five years after the effective date of a rule. If a portion of the rule is not fully implemented on the effective date of the rule, the SERC must be adjusted to include the adverse impacts and regulatory costs expected to occur within the first five years after full implementation of that portion of the rule.

With these changes to the SERC, more administrative rules may exceed the cost thresholds (\$1 million within 5 years), requiring more rules to be ratified by the legislature prior to taking effect.

This bill has an indeterminate fiscal impact on state agencies.

## II. Present Situation:

### Rulemaking Authority and Legislative Ratification

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy.<sup>1</sup> Rulemaking authority is delegated by the Legislature in law to an agency, and authorizes an agency to adopt, develop, establish, or otherwise create a rule.<sup>2</sup> An agency may not engage in rulemaking unless it has a legislative grant of authority to do so.<sup>3</sup> The statutory authority for rulemaking must be specific enough to guide an agency's rulemaking and an agency rule must not exceed the bounds of authority granted by the Legislature.<sup>4</sup>

---

<sup>1</sup> Section 120.52(16), F.S.

<sup>2</sup> Section 120.52(17), F.S.

<sup>3</sup> See ss. 120.52(8) and 120.536(1), F.S.

<sup>4</sup> See *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26 (Fla. 1st DCA 2008) and *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla 1st DCA 2000).

Prior to the adoption, amendment, or repeal of any rule an agency must file a notice of the proposed rule in the Florida Administrative Register.<sup>5</sup> The notice of the proposed rule must include:

- An explanation of the purpose and effect;
- The specific legal authority for the rule;
- The full text of the rule; and
- A summary of the agency's SERC, if one is prepared.<sup>6</sup>

Within 21 days of the notice, the public may provide an agency with information regarding the SERC or provide proposals for a lower cost alternative to the rule.<sup>7</sup>

### ***SERC Requirements***

Agencies must prepare a SERC for a rule that has an adverse impact on small businesses or that increases regulatory costs more than \$200,000 within 1 year after implementation of the rule.<sup>8</sup>

A SERC must include estimates of:

- The number of people and entities effected by the proposed rule;
- The cost to the agency and other governmental entities to implement the proposed rule;
- Transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule's impact on small businesses, counties, and cities.<sup>9</sup>

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of \$1 million within the first 5 years of implementation on:

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness,<sup>10</sup> productivity, or innovation; or
- Regulatory costs, including any transactional costs.<sup>11</sup>

If the economic analysis results in an adverse impact or regulatory costs in excess of \$1 million within 5 years after implementation of the rule, then the rule must be ratified by the Legislature in order to take effect.<sup>12</sup>

---

<sup>5</sup> See ss. 120.54(2)(a) and 120.55(1)(b), F.S.

<sup>6</sup> Section 120.54(3)(a)1., F.S.

<sup>7</sup> See ss. 120.54(3)(a)1. and 120.541(1)(a), F.S.

<sup>8</sup> Section 120.541(1)(a), F.S.

<sup>9</sup> Section 120.541(2)(b)-(e), F.S. A small city has an unincarcerated population of 10,000 or less. A small county has an unincarcerated population of 75,000 or less. A small business employs less than 200 people, and has a net worth of \$5 million or less.

<sup>10</sup> Business competitiveness includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

<sup>11</sup> Section 120.541(2)(a), F.S.

<sup>12</sup> Section 120.541(3), F.S. Legislative ratification is not required for adoption of federal standards, amendments to the Florida Building Code, or amendments to the Florida Fire Prevention Code. See s. 120.541(4), F.S.

**III. Effect of Proposed Changes:**

The bill requires a SERC to include the adverse impacts and regulatory costs estimated to occur within 5 years after the effective date of a rule. If a portion of the rule is not fully implemented on the effective date of the rule, the SERC must be adjusted to include the adverse impacts and regulatory costs expected to occur within the first 5 years after full implementation of that portion of the rule.

The bill may result in more rules that require legislative ratification due to an increased number of rules that have adverse impacts and regulatory costs that exceed \$1 million within 5-years of full implementation.

The bill is effective on July 1, 2016.

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

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

**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:**

If the provisions of the bill result in agencies publishing more SERCs, then there may be additional opportunities for public input on proposed rules through the additional SERCs.

**C. Government Sector Impact:**

The bill has an indeterminate fiscal impact on state agencies. To meet the additional SERC requirements created in the bill, agencies may have to complete more SERCs. The workload increase maybe require agencies to devote more resources to rulemaking. The bill may also result in more rules being subject to legislative ratification before they may become effective.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Agencies may experience some difficulty making estimates for projected costs associated with unimplemented portions of a rule.

Additional administrative rules may be subject to ratification by the Legislature prior to taking effect because the recognition of additional costs may result in rules exceeding the adverse impacts and regulatory cost thresholds. To the extent the ratification process delays the full implementation of a legislatively mandated policy or program, the intent of the Legislature regarding that particular policy or program may be frustrated. The delay may be upwards of 14 months (in the case of a rule that is identified in May of one year and not being ratified until the next legislative session). On the other hand, a better estimate of the full costs and impacts of the policy or program on the private sector will be available for review by the Legislature.

**VIII. Statutes Affected:**

This bill substantially amends section 120.541 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 Ring

29-01538-16

20161226\_\_

1                   A bill to be entitled  
2           An act relating to administrative procedures; amending  
3           s. 120.541, F.S.; providing additional requirements  
4           for the calculation of estimated adverse impacts and  
5           regulatory costs; providing an effective date.

6  
7 Be It Enacted by the Legislature of the State of Florida:

8  
9           Section 1. Subsection (5) is added to section 120.541,  
10 Florida Statutes, to read:

11           120.541 Statement of estimated regulatory costs.—

12           (5) For purposes of subsections (2) and (3), adverse  
13 impacts and regulatory costs likely to occur within 5 years  
14 after implementation of the rule include adverse impacts and  
15 regulatory costs estimated to occur within 5 years after the  
16 effective date of the rule. However, if any provision of the  
17 rule is not fully implemented upon the effective date of the  
18 rule, the adverse impacts and regulatory costs associated with  
19 such provision must be adjusted to include any additional  
20 adverse impacts and regulatory costs estimated to occur within 5  
21 years after implementation of such provision.

22           Section 2. This act shall take effect July 1, 2016.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Governmental Oversight and Accountability, *Chair*  
Judiciary, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on Education  
Children, Families, and Elder Affairs  
Commerce and Tourism

**SENATOR JEREMY RING**  
29th District

February 11, 2016

The Honorable Anitere Flores  
Committee on Fiscal Policy  
225 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Madam Chair,

I am writing to respectfully request your cooperation in placing Senate Bill 1226, relating to Administrative Procedures, on the Committee on Fiscal Policy agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring  
Senator District 29

cc: Jennifer Hrdlicka, Staff Director  
Tamra Lyon, Committee Administrative Assistant

**REPLY TO:**

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Governmental Oversight and Accountability, *Chair*  
Judiciary, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on Education  
Children, Families, and Elder Affairs  
Commerce and Tourism

**SENATOR JEREMY RING**  
29th District

February 16, 2016

The Honorable Anitere Flores  
Committee on Fiscal Policy  
225 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Madam Chair,

I appreciate you including SB 1226, relating to Administrative Procedures, and SB 268, related to Bullying and Harassment Policies in Schools, on the Committee on Fiscal Policy agenda. Unfortunately, I will not be in Tallahassee tomorrow due to a family commitment. Therefore, I respectfully request that my Legislative Assistant J.J. Piskadlo be allowed to present the bill on my behalf.

Please do not hesitate to contact me if you or your staff have any questions.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring  
Senator District 29

cc: Jennifer Hrdlicka, Staff Director  
Tamra Lyon, Committee Administrative Assistant

**REPLY TO:**

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
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 Fiscal Policy

---

BILL: SB 1300

INTRODUCER: Senator Dean

SUBJECT: At-risk Vessels

DATE: February 16, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Rogers</u>	<u>EP</u>	<b>Favorable</b>
2.	<u>Betta</u>	<u>DeLoach</u>	<u>AGG</u>	<b>Recommend: Favorable</b>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Favorable</b>

---

## I. Summary:

SB 1300 creates s. 327.4107, F.S., to prevent vessels in neglected or deteriorating condition from reaching a likely and foreseeable state of disrepair. The bill:

- Prohibits vessels at risk of becoming derelict anchoring on, mooring on, or occupying the waters of the state;
- Provides conditions under which a vessel may be considered at risk of becoming derelict;
- Provides that violations may be enforced by a uniform boating citation mailed to the registered owner of the vessel;
- Provides civil penalties for vessel owners whose vessels are determined to be at risk of becoming derelict; and
- Provides an exemption for vessels that are moored to a private dock or wet slip with the consent of the owner for the purpose of being repaired.

The bill has an insignificant, positive fiscal impact on state funds.

The bill is effective July 1, 2016.

## II. Present Situation:

### Derelict Vessels

A derelict vessel is a vessel<sup>1</sup> that is left, stored, or abandoned:

- In a wrecked, junked, or substantially dismantled condition upon any public waters of this state;
- At a port in the state without the consent of the agency that has jurisdiction of a port; or

---

<sup>1</sup> Section 327.02, F.S., defines vessel to include every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

- Docked, grounded, or beached upon the property of another without the consent of the owner of the property.<sup>2</sup>

### ***Removal of Derelict Vessels***

Section 327.70, F.S., provides chs. 327 and 328, F.S., concerning vessel safety and vessel title certificates, liens, and registration, are enforced by the Division of Law Enforcement of the Florida Fish and Wildlife Conservation Commission (FWC) and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officer as defined in s. 943.10, F.S.<sup>3</sup>

Two statutes authorize the relocation or removal of a vessel:

- Section 327.44, F.S., allows for the relocation or removal of a vessel that unreasonably or unnecessarily constitutes a navigational hazard or interferes with another vessel; and
- Section 823.11, F.S., allows for the relocation or removal of a derelict vessel from public waters if the derelict vessel obstructs or threatens to obstruct navigation or in any way constitutes a danger to the environment, property, or persons.

The costs incurred for relocating or removing a derelict vessel are recoverable against the vessel owner. A vessel owner who neglects or refuses to pay the costs of removal, storage, and destruction of the vessel, less any salvage value obtained by disposal of the vessel, is not entitled to be issued a certificate of registration for such vessel, or any other vessel or motor vehicle, until those costs are paid.<sup>4</sup>

### ***Punishment for Violations of Derelict Vessel Provisions***

It is unlawful to store, leave, or abandon a derelict vessel in Florida.<sup>5</sup> Those who are found in violation of this provision commit a first degree misdemeanor.<sup>6</sup> Additionally, s. 376.16, F.S., provides that violation of derelict vessel laws also subjects the violator to a civil penalty of up to \$50,000 per violation per day.<sup>7</sup> Each day during any portion of which the violation occurs constitutes a separate offense.<sup>8</sup>

### ***Costs of Removal of Derelict Vessels***

According to the FWC, removal costs for derelict vessels are approximately \$350 to \$450 per foot of vessel length. However, a floating vessel may be towed to a boat ramp or hoist and pulled

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<sup>2</sup> Section 823.11(1)(b), F.S.

<sup>3</sup> Section 943.10, F.S., defines law enforcement officer as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

<sup>4</sup> Section 705.103(4), F.S.

<sup>5</sup> Section 823.11(2), F.S.

<sup>6</sup> A first degree misdemeanor is punishable by a term of imprisonment of no more than a year and a fine of up to \$1,000. Sections 775.082, and 775.083, F.S.

<sup>7</sup> Section 376.16(1), F.S.

<sup>8</sup> *Id.*

from the water at a much lower cost. Relocation may cost nothing if a law enforcement officer is able to tow it to a suitable location. Costs for professional towing services are approximately \$200 per hour.<sup>9</sup>

The FWC maintains a statewide database of vessels investigated by a law enforcement officer and deemed to be either derelict or at risk of becoming derelict, although the database related to at-risk vessels is largely incomplete. This is because the current effort related to at-risk vessels is a voluntary, community-oriented policing effort. A total of 166 derelict vessels were removed by local governments in 2014 at a cost of approximately \$665,500, which is an average removal cost of \$4,009 per vessel.<sup>10</sup>

The FWC held six public meetings in 2015 to engage the public on the problem of derelict vessels and possible solutions. Participants were asked to respond to a survey to indicate their levels of support for eight solutions to address the derelict vessels problem. The concept of prohibiting a vessel at risk of becoming derelict from anchoring on Florida waters received 85.2 percent support from respondents.<sup>11</sup>

### ***Local Government Authority***

Local governments are only authorized to enact and enforce regulations regarding the mooring or anchoring of vessels that are located within marked boundaries of a mooring field.<sup>12</sup> The inability to regulate vessels outside of mooring fields has led to problems that include:

- The locations where anchored vessels accumulate;
- Unattended vessels;
- Anchored vessels which are dragging anchor or not showing proper lighting;
- Vessels which are not maintained properly; and
- Vessels which become derelict.<sup>13</sup>

### **III. Effect of Proposed Changes:**

**Section 1** creates s. 327.4107, F.S., to prevent vessels in neglected or deteriorating condition from reaching a likely and foreseeable state of disrepair. Vessels at risk of becoming derelict may not anchor on, moor on, or occupy the waters of the state.

The bill provides that an officer of the FWC or of any other law enforcement agency specified in s. 327.70, F.S., may determine that a vessel is at risk of becoming derelict if any of the following conditions exist:

- The vessel is taking on, or has taken on, water without an effective means to dewater;
- Spaces on the vessel which are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time;

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<sup>9</sup> Fish and Wildlife Conservation Commission, *2016 Agency Bill Analysis for HB 7025*, (Jan. 6, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Section 327.60, F.S.

<sup>13</sup> Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, *Anchoring and Mooring Pilot Program, Report of Findings and Recommendations* (Dec. 31, 2013), pg. 3, available at <http://myfwc.com/media/2704721/FindingsRecommendations.pdf> (last visited Feb. 16, 2016).

- The vessel has broken loose or is in danger of breaking loose from its anchor; or
- The vessel is left or stored aground unattended in such a state that would prevent the vessel from getting underway, is listing due to water intrusion, or is sunken or partially sunken.

A person who anchors or moors a vessel at risk of becoming derelict on the waters of this state or allows such a vessel to occupy such waters commits a noncriminal infraction, punishable by a civil penalty as provided in s. 327.73, F.S. (Section 3). The civil penalties are in addition to any other penalties provided for in law.

Vessels that are moored to a private dock or wet slip with the consent of the owner for the purpose of being repaired are exempt from the above described noncriminal infraction.

**Section 2** amends s. 327.70, F.S., to provide that violations of s. 327.4107, F.S., relating to vessels at risk of becoming derelict may be enforced by a uniform boating citation mailed to the registered owner of the vessel.

**Section 3** amends s. 327.73, F.S., to provide the following civil penalties for a violation of s. 327.4107, F.S.:

- For a first offense, \$50;
- For a second offense occurring 30 days or more after a first offense, \$100; and
- For a third or subsequent offense occurring 30 days or more after a previous offense, \$250.

A person who fails to appear before the county court or otherwise respond to a uniform boating citation will be charged, in addition to any other violations, with a second degree misdemeanor<sup>14</sup> of failing to respond to a citation.

The civil penalties are remitted by the clerk of court to the Department of Revenue and deposited into the Marine Resources Conservation Trust fund for boating and education purposes.<sup>15</sup>

**Section 4** provides the bill is effective July 1, 2016.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

<sup>14</sup> A second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and a fine not to exceed \$500. Sections 775.082, and 775.083, F.S.

<sup>15</sup> Section 327.73(8), F.S.

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

None.

**B. Private Sector Impact:**

The bill may have a negative but indeterminate effect on boat owners due to new penalties imposed on vessel owners whose vessels are found to be in danger of becoming derelict. These effects are not anticipated to be significant.<sup>16</sup>

**C. Government Sector Impact:**

The bill may have a positive but indeterminate impact on local and state governments if individuals repair or move their vessels rather than allow them to become derelict.

A positive but indeterminate fiscal impact may result from the penalties imposed for violations of the provisions of the bill. According to the FWC, these effects are not anticipated to be significant.<sup>17</sup>

The proposed Senate General Appropriations Bill for the 2016-2017 fiscal year, SB 2500, includes \$1,500,000 from the General Revenue Fund for the removal of derelict vessels.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 327.70 and 327.73.

This bill creates the following section of the Florida Statutes: 327.4107.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

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

None.

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<sup>16</sup> Florida Fish and Wildlife Conservation Commission, *2016 Agency Bill Analysis for HB 7025*, (Jan. 6, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>17</sup> *Id.*

B. Amendments:

None.

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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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By Senator Dean

5-00194A-16

20161300\_\_

A bill to be entitled

An act relating to at-risk vessels; creating s. 327.4107, F.S.; prohibiting a vessel that is at risk of becoming derelict from anchoring on, mooring on, or occupying the waters of this state; authorizing an officer of the Fish and Wildlife Conservation Commission or of specified law enforcement agencies to determine that a vessel is at risk of becoming derelict if certain conditions exist; providing that a person who anchors or moors such a vessel or allows it to occupy waters of this state commits a noncriminal infraction; providing penalties; providing applicability; amending s. 327.70, F.S.; providing for enforcement of such violations by citation mailed to the owner of the vessel; amending s. 327.73, F.S.; providing civil penalties for such violations; providing an effective date.

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

Section 1. Section 327.4107, Florida Statutes, is created to read:

327.4107 Vessels at risk of becoming derelict on waters of this state.—

(1) To prevent vessels in neglected or deteriorating condition from reaching a likely and foreseeable state of disrepair, a vessel that is at risk of becoming derelict pursuant to subsection (2) may not anchor on, moor on, or occupy the waters of this state.

(2) An officer of the commission or of a law enforcement agency specified in s. 327.70 may determine that a vessel is at risk of becoming derelict if any of the following conditions

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

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20161300\_\_

exist:

(a) The vessel is taking on, or has taken on, water without an effective means to dewater.

(b) Spaces on the vessel which are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time.

(c) The vessel has broken loose or is in danger of breaking loose from its anchor.

(d) The vessel is left or stored aground unattended in such a state that would prevent the vessel from getting underway, is listing due to water intrusion, or is sunken or partially sunken.

(3) A person who anchors or moors a vessel at risk of becoming derelict on the waters of this state or allows such a vessel to occupy such waters commits a noncriminal infraction, punishable as provided in s. 327.73.

(4) The penalty under this section is in addition to other penalties provided by law.

(5) This section does not apply to a vessel that is moored to a private dock or wet slip with the consent of the owner for the purpose of receiving repairs.

Section 2. Paragraph (a) of subsection (2) of section 327.70, Florida Statutes, is amended to read:

327.70 Enforcement of this chapter and chapter 328.—

(2) (a) Noncriminal violations of the following statutes may be enforced by a uniform boating citation mailed to the registered owner of an unattended vessel anchored, aground, or moored on the waters of this state:

1. Section 327.33(3) (b), relating to navigation rules.

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

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20161300\_\_

62 2. Section 327.4107, relating to vessels at risk of  
 63 becoming derelict.

64 ~~3.2-~~ Section 327.44, relating to interference with  
 65 navigation.

66 ~~4.3-~~ Section 327.50(2), relating to required lights and  
 67 shapes.

68 ~~5.4-~~ Section 327.53, relating to marine sanitation.

69 ~~6.5-~~ Section 328.48(5), relating to display of decal.

70 ~~7.6-~~ Section 328.52(2), relating to display of number.

71 Section 3. Paragraph (y) is added to subsection (1) of  
 72 section 327.73, Florida Statutes, to read:

73 327.73 Noncriminal infractions.-

74 (1) Violations of the following provisions of the vessel  
 75 laws of this state are noncriminal infractions:

76 (y) Section 327.4107, relating to vessels at risk of  
 77 becoming derelict on waters of this state, for which the civil  
 78 penalty is:

79 1. For a first offense, \$50.

80 2. For a second offense occurring 30 days or more after a  
 81 first offense, \$100.

82 3. For a third or subsequent offense occurring 30 days or  
 83 more after a previous offense, \$250.

84  
 85 Any person cited for a violation of any provision of this  
 86 subsection shall be deemed to be charged with a noncriminal  
 87 infraction, shall be cited for such an infraction, and shall be  
 88 cited to appear before the county court. The civil penalty for  
 89 any such infraction is \$50, except as otherwise provided in this  
 90 section. Any person who fails to appear or otherwise properly

5-00194A-16

20161300\_\_

91 respond to a uniform boating citation shall, in addition to the  
 92 charge relating to the violation of the boating laws of this  
 93 state, be charged with the offense of failing to respond to such  
 94 citation and, upon conviction, be guilty of a misdemeanor of the  
 95 second degree, punishable as provided in s. 775.082 or s.  
 96 775.083. A written warning to this effect shall be provided at  
 97 the time such uniform boating citation is issued.

98 Section 4. This act shall take effect July 1, 2016.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-17-16  
Meeting Date

1300  
Bill Number (if applicable)

Topic At Risk Vessels

Amendment Barcode (if applicable)

Name Lisa Henning

Job Title Consultant

Address 242 Office Plaza Dr.

Phone \_\_\_\_\_

Street

Tallahassee FL 32301

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing Marine Industries Association of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/16

Meeting Date

1300

Bill Number (if applicable)

Topic AT RISK VESSELS

Amendment Barcode (if applicable)

Name STEPHEN JAMES

Job Title

Address 100 S. MONROE

Phone (850) 922-4300

Street

TALLAHASSEE, FL 32301

City

State

Zip

Email

Speaking:  For  Against  Information

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

Representing FLA ASSOCIATION OF COUNTIES

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: CS/CS/SB 1318

INTRODUCER: Environmental Preservation and Conservation Committee; Agriculture Committee; and Senator Dean

SUBJECT: Shellfish Harvesting

DATE: February 16, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Becker</u>	<u>AG</u>	<u>Fav/CS</u>
2.	<u>Hinton</u>	<u>Rogers</u>	<u>EP</u>	<u>Fav/CS</u>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Favorable</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1318 amends s. 597.010, F.S., concerning shellfish harvesting, by:

- Authorizing the harvesting of shellfish from a sovereign submerged land lease;
- Authorizing individuals to use one dredge or mechanical harvesting device per lease at any one time;
- Defining the terms “shellfish” and “dredge or mechanical harvesting device”;
- Authorizing the Board of Trustees of the Internal Improvement Trust Fund to permit the harvest of shellfish using a dredge or mechanical harvesting device in a submerged lands lease under certain conditions;
- Prohibiting the use of dredge or mechanical harvesting devices on public shellfish beds;
- Providing that violations of shellfish harvesting statutes, rules, or lease conditions will result in revocation of the violator’s lease and denial of any future application to use sovereign submerged lands;
- Shifting the responsibility for setting the amount of oysters, clams, and mussels to be obtained for relaying or transplanting from the Department of Agriculture and Consumer Services (DACS) to the Fish and Wildlife Conservation Commission (FWC); and
- The bill repeals duplicative provisions that are contained in s. 379.2525, F.S., and the requirement for the FWC to set the noncultured shellfish harvesting seasons in Apalachicola Bay by rule and the related reporting requirements.

The bill does not have a fiscal impact on state government.

The bill is effective July 1, 2016.

## II. Present Situation:

### History of Shellfishing

Shellfish, such as oysters, scallops, clams, and mussels occur throughout Florida waters. Evidence suggests that humans harvested shellfish as far back as 150,000 years ago. Native Americans hand collected clams and oysters in shallow coastal waters and later fished with rakes and tongs from canoes and skiffs to access deeper waters.<sup>1</sup>

### Shellfish Aquaculture

Over the past century, aquacultural cultivation of shellfish has increasingly replaced direct harvest of natural stocks. Shellfish aquaculture often involves “planting” empty shells on the beds of submerged lands and “seeding” the shells with larva. The shellfish grow to maturity and are then harvested.<sup>2</sup>

Currently, there are two main approaches to commercial aquaculture cultivation for production in the United States. The first is spatially-intensive, where shallow-water operations cultivate hatchery-reared seed by using bags, cages, or nets to exclude predators. The other more spatially-extensive operation relies on natural set or hatchery seed that are planted on leased beds, which are eventually dredge harvested.<sup>3</sup>

### Methods of Harvest

“Contemporary on-bottom shellfish cultivation uses rake-like dredges to harvest planted shellfish seed or to collect naturally recruited stocks from leased beds.”<sup>4</sup> The type of mechanical dredge used depends on the type of shellfish harvested. Oysters may be collected by dragging a steel frame with bladed teeth and a collection bag behind the boat or using a suction dredge that lifts the oysters off the beds. Clams may be collected by a hydraulic dredge which loosens the clams with high pressure jets and collects the clams in chain mesh bags. Hydraulic escalator dredges are also used to collect clams by dislodging the clams with water pressure. Harvesters collect scallops with a steel-framed structure with a cutting bar on the leading edge that rides above the surface of the substrate, kicking up sea scallops and collecting them into an attached bag.<sup>5</sup>

### National Pollutant Discharge Elimination System Permit

Aquaculture is subject to industrial waste water rules under the Clean Water Act. The Clean Water Act prohibits the discharge of pollutants through a point source into a water of the United

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<sup>1</sup> National Oceanic and Atmospheric Administration (NOAA), *Technical Memorandum NMFS-NE-220, Review of the Ecological Effects of Dredging in the Cultivation and Harvest of Molluscan Shellfish*, (Dec. 23, 2011) available at <http://www.nefsc.noaa.gov/publications/tm/tm220/> (last visited Feb. 12, 2016).

<sup>2</sup> University of Florida Institute of Food and Agricultural Sciences, Online Resource Guide for Florida Shellfish Aquaculture, *About the Industry*, (last updated Feb. 2, 2016) available at <http://shellfish.ifas.ufl.edu/industry/> (last visited Feb. 12, 2016).

<sup>3</sup> *Supra* note 1.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

States unless the person has a National Pollutant Discharge Elimination System (NPDES) permit.<sup>6</sup> A NPDES permit is required for an aquaculture facility that produces more than 100,000 pounds of live weight per year and discharge 30 or more days from a farm, excluding rainfall events. Otherwise, following aquaculture best management practices (BMPs) is required.<sup>7</sup>

### **Requirements for Engaging in Aquaculture on Sovereign Submerged Lands**

Sovereign submerged lands are lands in Florida that include tidal lands, islands, sand bars, shallow banks, and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally-influenced waters.<sup>8</sup>

To conduct aquaculture activities on sovereign submerged lands in Florida, an individual must obtain a lease from the Board of Trustees of the Internal Improvement Trust Fund (BOT).<sup>9</sup> The Department of Agriculture and Consumer Services (DACS) accepts and reviews applications and provides recommendations to the BOT. The BOT may approve, approve with modifications, or deny the application.<sup>10</sup> Individuals are not allowed to remove oysters from natural or artificial reefs by dredge or other mechanical devices.<sup>11</sup>

Certified aquaculture activities that apply appropriate BMPs adopted by the DACS are exempt from obtaining an environmental resource permit from the Department of Environmental Protection or a water management district.<sup>12</sup> The following are examples of BMPs for aquaculture:

- Land-based facilities must be designed and operated in a manner which minimizes adverse impacts to the receiving waters, adjacent wetlands, and uplands.
- Sediment removal and disposal must be conducted in a manner that eliminates or minimizes adverse impacts to the receiving waters.
- Prior to commencement of the aquaculture activities on the approved grow-out site, the grow-out boundaries are posted to delineate the corners and perimeters, per the lease agreement.
- No vessel of any description shall be moored on or adjacent to the grow-out premises for a period exceeding 24 hours, regardless of whether the vessel is periodically moved.
- Culture materials placed on the grow-out area must be a suitable substrate for attachment of oyster larvae.

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<sup>6</sup> EPA, *National Pollutant Discharge Elimination System (NPDES): NPDES Frequent Questions*, available at <http://www.epa.gov/npdes/npdes-frequent-questions#pane-1> (last visited Feb. 12, 2016).

<sup>7</sup> Florida Department of Agriculture and Consumer Services, Division of Aquaculture, *Aquaculture Best Management Practices Manual September 2015*, pg. 5, available at [https://www.flrules.org/gateway/readRefFile.asp?refId=5760&filename=BMP%20RULE%20AND%20MANUAL\\_FINAL.docx](https://www.flrules.org/gateway/readRefFile.asp?refId=5760&filename=BMP%20RULE%20AND%20MANUAL_FINAL.docx) (last visited Feb. 12, 2016).

<sup>8</sup> Rule 18-21.003(61), F.A.C.; s. 253.03(1), F.S.

<sup>9</sup> Sections 253.68 and 597.010, F.S.

<sup>10</sup> Rule 18-21.021(1)(q), F.A.C.

<sup>11</sup> Except in Apalachicola Bay on private grounds leased or granted by the state prior to July 1, 1989. Section 597.010(18)(a), F.S.

<sup>12</sup> Section 373.406(8), F.S.

- Shellfish farmers are permitted to sell only to a certified shellfish processor or must become a certified shellfish processor to sell shellfish for human consumption to a retailer or the consumer.<sup>13</sup>

An individual engaging in aquaculture must obtain an aquaculture certificate of registration from the DACS.<sup>14</sup> This certification exempts such an individual from the requirement to purchase or possess a Florida Fish and Wildlife Conservation Commission (FWC) commercial freshwater fishing/dealers license or saltwater products license or shellfish endorsement in order to possess, transport, or sell marine aquaculture products.<sup>15</sup> Further, a commercial harvester who is harvesting pursuant to a valid saltwater products license and a valid Apalachicola Bay oyster harvesting license is exempt from the requirement to possess a shellfish endorsement from the FWC. Otherwise, a commercial harvester may not harvest or possess oysters for commercial purposes in or on state waters or sell oysters unless the commercial harvester is harvesting pursuant to a valid saltwater products license with a shellfish endorsement.<sup>16</sup>

Currently, all submerged land aquaculture leases issued pursuant to ch. 253, F.S., prohibit the use of dredges or mechanical harvesting devices. However, some shellfish leases issued pursuant to ch. 379, F.S., allow the use of dredges or mechanical harvesting devices but only if the lease document specifically allows such harvesting devices.<sup>17</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 597.010, F.S., related to shellfish harvesting and regulation.

The bill defines:

- “Shellfish” as oysters, clams, mussels, and scallops; and
- “Dredge or mechanical harvesting device” as a dredge, scrape, rake, drag, or other device that is towed by a vessel or self-propelled and that is used to harvest shellfish. The term does not include handheld or hand drawn hydraulically or mechanically operated devices used to harvest cultured clams from leased sovereign submerged lands.

The bill authorizes harvesting of shellfish from a sovereign submerged land lease pursuant to ch. 253, F.S.

The bill allows the BOT to authorize the use of a dredge or mechanical harvesting device as a special lease condition of a sovereign submerged land lease if:

- The use of the dredge or mechanical harvesting device does not adversely impact the public health, safety, and welfare of adjacent natural resources; and
- Aquaculture BMPs are adopted pursuant to ch. 120, F.S., which:

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<sup>13</sup> *Supra* note 7 at 45-51

<sup>14</sup> Section 597.004(1), F.S.

<sup>15</sup> Florida Fish and Wildlife Conservation Commission, Aquaculture Certificate, *available at* <http://myfwc.com/license/aquaculture-certificate/> (last visited Feb. 12, 2016). *See also* Rule 68B-27.018, F.A.C.

<sup>16</sup> Rule 68B-27.018, F.A.C.

<sup>17</sup> The Department of Agriculture and Consumer Services, *Agency Analysis of SB 1318*, (Jan. 19, 2016) (on file with the Senate Committee on Environmental Preservation and Conservation).

- Describe the approved size and specifications of the dredge or mechanical harvesting device to be used;
- Provide conditions for deploying and using an approved dredge or mechanical harvesting device; and
- Specify requirements for monitoring potential impacts at, and adjacent to, the sovereign submerged land lease site by the leaseholder.

The bill also authorizes the use of the dredge or mechanical harvesting device for harvesting shellfish from a sovereign submerged land lease if it was previously authorized as an existing condition of a perpetual shellfish lease issued pursuant to former ch. 370, F.S.

Only one dredge or mechanical harvesting device per lease may be possessed or operated at any time at a lease site. The bill prohibits:

- A dredge or mechanical harvesting device from being used for the taking of shellfish from public shellfish beds in state waters;
- A dredge or mechanical harvesting device from being possessed on state waters from 5 p.m. to sunrise; and
- The harvesting of shellfish from natural reefs.

The bill specifies that a violation of any of the above described provisions is a violation of the sovereign submerged land lease agreement and will result in the revocation of all leases held by the violator and denial of any future use of sovereign submerged land.

The bill moves and revises provisions related to the responsibilities of the DACS and the FWC with respect to shellfish development. The bill removes general responsibilities related to control of pollution around grounds, reefs, or beds; to improve or enlarge reefs and beds; to protect products produced on leased or granted reefs and beds; and to provide recommendations to the Legislature as needed. The DACS and the FWC are charged with the overall protection of grounds, reefs, or beds, which would include the general responsibilities that are removed.

The bill provides that the DACS *may* designate areas for taking of oysters and clams to be plated on public areas. The bill moves the responsibility of establishing the amount of oysters, clams, and mussels to be obtained for relaying or transplanting from the DACS to the FWC.

The bill repeals duplicative provisions that are contained in s. 379.2525, F.S., and the requirement for the FWC to set the noncultured shellfish harvesting seasons in Apalachicola Bay by rule and the related reporting requirements.

**Section 2** provides the bill is effective July 1, 2016.

#### **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 a positive impact on individuals or companies who engage in aquaculture by allowing the harvest of shellfish with a dredge or other mechanical device.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 597.010 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/CS by Environmental Preservation and Conservation on February 9, 2016:**

The committee substitute:

- Amends the definition of shellfish by removing the word “aquaculture;”
- Removes a condition required for the BOT to authorize the use of a dredge or a mechanical harvesting device; and
- Provides that the use of a dredge or mechanical harvesting device for the harvesting of shellfish from a sovereign submerged land lease is authorized if such use was previously authorized as an existing condition of a perpetual shellfish lease issued pursuant to ch. 370, F.S.

**CS by Agriculture on February 1, 2016:**

The committee substitute:

- Repeals an outdated provision regarding shellfish development and replaces it with language regarding interagency coordination to protect shellfish beds, grounds, and reefs.
- Defines “dredge or mechanical harvesting device.”
- Specifies that best management practices must be used to dredge or mechanically harvest shellfish.
- Authorizes the use of only one dredge or mechanical harvesting device per lease to be possessed or operated at any one time.
- Prohibits the use of dredge or mechanical harvesting devices on public shellfish beds.
- Prohibits the possession of any dredges or mechanical devices on the waters of the state from 5 p.m. until sunrise.
- Prohibits harvesting shellfish from natural reefs.
- Removes the requirement that a harvester must notify the FWC 48 hours in advance of any dredging or mechanical harvesting activity and that each vessel display its lease number in 12-inch high numbers.
- Provides that violations of shellfish harvesting statutes, rules, or lease conditions will result in the revocation of all leases held by the violator and denial of any future use of sovereign submerged land.
- Authorizes, rather than requires, the department to designate areas for the taking of oysters and clams to be planted on public areas.
- Removes provisions relating to dredging of dead shells and oyster culture.

**B. Amendments:**

None.

By the Committees on Environmental Preservation and Conservation; and Agriculture; and Senator Dean

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1 A bill to be entitled  
 2 An act relating to shellfish harvesting; amending s.  
 3 597.010, F.S.; revising provisions directing the  
 4 Department of Agriculture and Consumer Services, in  
 5 cooperation with the Fish and Wildlife Conservation  
 6 Commission and the Department of Environmental  
 7 Protection, to protect specified shellfish beds,  
 8 grounds, and reefs; defining the terms "dredge or  
 9 mechanical harvesting devices" and "shellfish";  
 10 providing for the harvesting of shellfish from  
 11 sovereign submerged land leases; providing for the  
 12 Board of Trustees of the Internal Improvement Trust  
 13 Fund to authorize the use of dredges or mechanical  
 14 harvesting devices as special lease conditions of  
 15 sovereign submerged land leases under certain  
 16 circumstances; limiting the number of such dredges or  
 17 mechanical harvesting devices per lease; prohibiting  
 18 certain use and possession of such dredges or  
 19 mechanical harvesting devices; providing penalties;  
 20 removing provisions relating to shellfish harvesting  
 21 seasons and removal of oysters, clams, or mussels from  
 22 natural reefs; authorizing the department, rather than  
 23 requiring, to designate areas for the taking of  
 24 oysters and clams to be planted on public lands;  
 25 deleting a provision allowing such takings to be  
 26 planted on leases and grants; specifying that the  
 27 commission, rather than the department, shall  
 28 establish the amount of oysters, clams, and mussels  
 29 that may be relayed or transplanted; removing  
 30 provisions relating to dredging of dead shells and  
 31 oyster culture; making technical changes; providing an

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

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32 effective date.

33  
34 Be It Enacted by the Legislature of the State of Florida:35  
36 Section 1. Subsections (14) and (17) through (25) of  
37 section 597.010, Florida Statutes, are amended to read:

38 597.010 Shellfish regulation; leases.—

39 (14) SHELLFISH DEVELOPMENT.—The department, in cooperation  
 40 with the Fish and Wildlife Conservation Commission and the  
 41 Department of Environmental Protection, shall protect all clam  
 42 beds, oyster beds, shellfish grounds, and oyster reefs from  
 43 damage or destruction resulting from improper cultivation,  
 44 propagation, planting, or harvesting. To this end, the  
 45 Department of Health is authorized and directed to cooperate  
 46 with the department and to make available its laboratory testing  
 47 facilities and apparatus.

48 ~~(a) The department shall improve, enlarge, and protect the~~  
 49 ~~natural oyster and clam reefs and beds of this state to the~~  
 50 ~~extent it may deem advisable and the means at its disposal will~~  
 51 ~~permit.~~

52 ~~(b) The Fish and Wildlife Conservation Commission shall, to~~  
 53 ~~the same extent, assist in protecting shellfish aquaculture~~  
 54 ~~products produced on leased or granted reefs and beds.~~

55 ~~(c) The department, in cooperation with the commission,~~  
 56 ~~shall provide the Legislature with recommendations as needed for~~  
 57 ~~the development and the proper protection of the rights of the~~  
 58 ~~state and private holders therein with respect to the oyster and~~  
 59 ~~clam business.~~

60 (17) SHELLFISH HARVESTING FROM SOVEREIGN SUBMERGED LAND

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61 LEASES; USE OF DREDGE OR MECHANICAL HARVESTING DEVICE ~~SEASONS;~~  
 62 SPECIAL PROVISIONS RELATING TO APALACHICOLA BAY.-

63 (a) As used in this subsection, the term:

64 1. "Dredge or mechanical harvesting device" means a dredge,  
 65 scrape, rake, drag, or other device that is towed by a vessel or  
 66 self-propelled and that is used to harvest shellfish. The term  
 67 does not include handheld or handdrawn hydraulically or  
 68 mechanically operated devices used to harvest cultured clams  
 69 from leased sovereign submerged lands, and this subsection does  
 70 not apply to such handheld or handdrawn devices.

71 2. "Shellfish" means oysters, clams, mussels, and scallops.

72 (b) The harvesting of shellfish from a sovereign submerged  
 73 land lease may be authorized pursuant to chapter 253.

74 (c) The Board of Trustees of the Internal Improvement Trust  
 75 Fund may authorize the use of a dredge or a mechanical  
 76 harvesting device as a special lease condition of a sovereign  
 77 submerged land lease issued under chapter 253 if:

78 1. The use of the dredge or mechanical harvesting device  
 79 does not adversely impact the public health, safety, or welfare  
 80 of adjacent natural resources; and

81 2. Aquaculture best management practices have been adopted  
 82 pursuant to chapter 120 which:

83 a. Describe the approved size and specifications of the  
 84 dredge or mechanical harvesting device to be used.

85 b. Provide conditions for deploying and using an approved  
 86 dredge or mechanical harvesting device.

87 c. Specify requirements for monitoring potential impacts  
 88 at, and adjacent to, the sovereign submerged land lease site by  
 89 the leaseholder.

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90 (d) The use of a dredge or mechanical harvesting device for  
 91 the harvesting of shellfish from a sovereign submerged land  
 92 lease is authorized if such use was previously authorized as an  
 93 existing condition of a perpetual shellfish lease issued  
 94 pursuant to former chapter 370.

95 (e) Only one dredge or mechanical harvesting device per  
 96 lease may be possessed or operated at any time at a lease site.

97 (f) A dredge or mechanical harvesting device authorized by  
 98 this subsection may not be used for taking shellfish for any  
 99 purpose from public shellfish beds in waters of the state, and  
 100 such dredge or mechanical harvesting device may not be possessed  
 101 on the waters of the state from 5 p.m. until sunrise.

102 (g) This subsection does not authorize the harvesting of  
 103 shellfish from natural reefs.

104  
 105 A violation of this subsection is a violation of the lease  
 106 agreement and will result in the revocation of all leases held  
 107 by the violator and denial of any future use of sovereign  
 108 submerged land.

109 ~~(a) The Fish and Wildlife Conservation Commission shall by~~  
 110 ~~rule set the noncultured shellfish harvesting seasons in~~  
 111 ~~Apalachicola Bay.~~

112 ~~(b) If the commission changes the harvesting seasons by~~  
 113 ~~rule as set forth in this subsection, for 3 years after the new~~  
 114 ~~rule takes effect, the commission, in cooperation with the~~  
 115 ~~department, shall monitor the impacts of the new harvesting~~  
 116 ~~schedule on the bay and on local shellfish harvesters to~~  
 117 ~~determine whether the new harvesting schedule should be~~  
 118 ~~discontinued, retained, or modified. In monitoring the new~~

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119 ~~schedule and in preparing its report, the following information~~  
 120 ~~shall be considered:~~

121 ~~1. Whether the bay benefits ecologically from the new~~  
 122 ~~harvesting schedule.~~

123 ~~2. Whether the new harvesting schedule enhances the~~  
 124 ~~enforcement of shellfish harvesting laws in the bay.~~

125 ~~3. Whether the new harvesting schedule enhances natural~~  
 126 ~~shellfish production, oyster relay and planting programs, and~~  
 127 ~~shell planting programs in the bay.~~

128 ~~4. Whether the new harvesting schedule has more than a~~  
 129 ~~short-term adverse economic impact, if any, on local shellfish~~  
 130 ~~harvesters.~~

131 ~~(18) REMOVING OYSTERS, CLAMS, OR MUSSELS FROM NATURAL~~  
 132 ~~REEFS; LICENSES, ETC.; PENALTY.~~

133 ~~(a) It is unlawful to use a dredge or any means or~~  
 134 ~~implement other than hand tongs in removing oysters from the~~  
 135 ~~natural or artificial state reefs or beds. This restriction~~  
 136 ~~shall apply to all areas of Apalachicola Bay for all shellfish~~  
 137 ~~harvesting, excluding private grounds leased or granted by the~~  
 138 ~~state prior to July 1, 1989, if the lease or grant specifically~~  
 139 ~~authorizes the use of implements other than hand tongs for~~  
 140 ~~harvesting. Except in Apalachicola Bay, upon the payment of \$25~~  
 141 ~~annually, for each vessel or boat using a dredge or machinery in~~  
 142 ~~the gathering of clams or mussels, a special activity license~~  
 143 ~~may be issued by the Fish and Wildlife Conservation Commission~~  
 144 ~~pursuant to subsection (15) or s. 379.361 for such use to such~~  
 145 ~~person.~~

146 ~~(b) Approval by the department to harvest shellfish by~~  
 147 ~~dredge or other mechanical means from privately held shellfish~~

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148 ~~leases or grants in Apalachicola Bay shall include, but not be~~  
 149 ~~limited to, the following conditions:~~

150 ~~1. The use of any mechanical harvesting device other than~~  
 151 ~~ordinary hand tongs for taking shellfish for any purpose from~~  
 152 ~~public shellfish beds in Apalachicola Bay shall be unlawful.~~

153 ~~2. The possession of any mechanical harvesting device on~~  
 154 ~~the waters of Apalachicola Bay from 5 p.m. until sunrise shall~~  
 155 ~~be unlawful.~~

156 ~~3. Leaseholders or grantees shall notify the department no~~  
 157 ~~less than 48 hours prior to each day's use of a dredge or scrape~~  
 158 ~~in order for the department to notify the Fish and Wildlife~~  
 159 ~~Conservation Commission that a mechanical harvesting device will~~  
 160 ~~be deployed.~~

161 ~~4. Only two dredges or scrapes per lease or grant may be~~  
 162 ~~possessed or operated at any time.~~

163 ~~5. Each vessel used for the transport or deployment of a~~  
 164 ~~dredge or scrape shall prominently display the lease or grant~~  
 165 ~~number or numbers, in numerals which are at least 12 inches high~~  
 166 ~~and 6 inches wide, in such a manner that the lease or grant~~  
 167 ~~number or numbers are readily identifiable from both the air and~~  
 168 ~~the water.~~

169 ~~Any violation of this paragraph or of any other statutes, rules,~~  
 170 ~~or conditions referenced in the lease agreement shall be~~  
 171 ~~considered a violation of the license and shall result in~~  
 172 ~~revocation of the lease or a denial of use or future use of a~~  
 173 ~~mechanical harvesting device.~~

174 ~~(c) Oysters may be harvested from natural or public or~~  
 175 ~~private leased or granted grounds by common hand tongs or by~~  
 176

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177 ~~hand, by scuba diving, free diving, leaning from vessels, or~~  
 178 ~~wading. In Apalachicola Bay, this provision shall apply to all~~  
 179 ~~shellfish.~~

180 ~~(18)(19)~~ FISHING FOR RELAYING OR TRANSPLANTING PURPOSES.—

181 (a) The department ~~may shall~~ designate areas for the taking  
 182 of oysters and clams to be planted on ~~leases, grants, and~~ public  
 183 areas. Oysters, clams, and mussels may be taken for relaying or  
 184 transplanting at any time during the year so long as, in the  
 185 opinion of the department, the public health will not be  
 186 endangered. The amount of oysters, clams, and mussels to be  
 187 obtained for relaying or transplanting shall be established by  
 188 the Fish and Wildlife Conservation Commission. The area relayed  
 189 or transplanted to, and relaying or transplanting time periods  
 190 shall be established in each case by the department.

191 (b) Application for a special activity license issued  
 192 pursuant to subsection (15) for obtaining oysters, clams, or  
 193 mussels for relaying from closed public shellfish harvesting  
 194 areas to open areas or certified controlled purification plants  
 195 or for transplanting sublegal-sized oysters, clams, or mussels  
 196 must be made to the department. In return, the department may  
 197 assign an area and a period of time for the oysters, clams, or  
 198 mussels to be relayed or transplanted to be taken. All relaying  
 199 and transplanting operations shall take place under the  
 200 direction of the department.

201 (c) Relayed oysters, clams, or mussels shall not be  
 202 subsequently harvested for any reason without written permission  
 203 or public notice from the department.

204 ~~(19)(20)~~ OYSTER AND CLAM REHABILITATION.—The board of  
 205 county commissioners ~~of the several counties~~ may appropriate and

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206 expend such sums as it may deem proper for the purpose of  
 207 planting or transplanting oysters, clams, oyster shell, clam  
 208 shell, or cultch or to perform such other acts for the  
 209 enhancement of the oyster and clam industries of the state, out  
 210 of any sum in the county treasury not otherwise appropriated.

211 ~~(21) DREDGING OF DEAD SHELLS PROHIBITED.—The dredging of~~  
 212 ~~dead shell deposits is prohibited in the state.~~

213 ~~(20)(22)~~ COOPERATION WITH UNITED STATES FISH AND WILDLIFE  
 214 SERVICE.—The department shall cooperate with the United States  
 215 Fish and Wildlife Service, under existing federal laws, rules,  
 216 and regulations, and is authorized to accept donations, grants,  
 217 and matching funds from the Federal Government in order to carry  
 218 out its oyster resource and development responsibilities. The  
 219 department is further authorized to accept any and all donations  
 220 including funds, oysters, or oyster shells.

221 ~~(21)(23)~~ OYSTER AND CLAM SHELLS PROPERTY OF DEPARTMENT.—

222 (a) Except for oysters used directly in the half-shell  
 223 trade, 50 percent of all shells from oysters and clams shucked  
 224 commercially in the state shall be and remain the property of  
 225 the department when such shells are needed and required for  
 226 rehabilitation projects and planting operations, in cooperation  
 227 with the Fish and Wildlife Conservation Commission, when  
 228 sufficient resources and facilities exist for handling and  
 229 planting such shells shell, and when the collection and handling  
 230 of such shells shell is practicable and useful, except that bona  
 231 fide holders of leases and grants may retain 75 percent of such  
 232 shells shell as they produce for aquacultural purposes. Storage,  
 233 transportation, and planting of shells so retained by lessees  
 234 and grantees shall be carried out under the conditions of the

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235 lease agreement or with the written approval of the department  
 236 and shall be subject to such reasonable time limits as the  
 237 department may fix. In the event of an accumulation of an excess  
 238 of shells, the department is authorized to sell shells only to  
 239 private growers for use in oyster or clam cultivation on bona  
 240 fide leases and grants. No profit shall accrue to the department  
 241 in these transactions, and shells are to be sold for the  
 242 estimated moneys spent by the department to gather and stockpile  
 243 the shells. Planting of shells obtained from the department by  
 244 purchase shall be subject to the conditions set forth in the  
 245 lease agreement or in the written approval as issued by the  
 246 department. Any shells not claimed and used by private oyster  
 247 cultivators 10 years after shells are gathered and stockpiled  
 248 may be sold at auction to the highest bidder for any private  
 249 use.

250 (b) ~~If whenever~~ the department determines that it is  
 251 unfeasible to collect oyster or clam shells, the shells become  
 252 the property of the producer.

253 (c) ~~If whenever~~ oyster or clam shells are owned by the  
 254 department and it is not useful or feasible to use them in the  
 255 rehabilitation projects, and if a when no leaseholder has not  
 256 exercised his or her option to acquire them, the department may  
 257 sell such shells for the highest price obtainable. Such The  
 258 ~~shells thus sold~~ may be used in any manner and for any purpose  
 259 at the discretion of the purchaser.

260 (d) Moneys derived from the sale of shell shall be  
 261 deposited in the General Inspection Trust Fund for shellfish  
 262 programs.

263 (e) The department may publish notice, in a newspaper

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264 serving the county, of its intention to collect the oyster and  
 265 clam shells and shall notify, by certified mail, each shucking  
 266 establishment from which shells are to be collected. The notice  
 267 shall contain the period of time the department intends to  
 268 collect the shells in that county and the collection purpose.

269 ~~(24) OYSTER CULTURE. The department, in cooperation with~~  
 270 ~~the Fish and Wildlife Conservation Commission and the Department~~  
 271 ~~of Environmental Protection, shall protect all clam beds, oyster~~  
 272 ~~beds, shellfish grounds, and oyster reefs from damage or~~  
 273 ~~destruction resulting from improper cultivation, propagation,~~  
 274 ~~planting, or harvesting and control the pollution of the waters~~  
 275 ~~over or surrounding beds, grounds, or reefs, and to this end the~~  
 276 ~~Department of Health is authorized and directed to lend its~~  
 277 ~~cooperation to the department, to make available its laboratory~~  
 278 ~~testing facilities and apparatus.~~

279 ~~(22)(25)~~ REQUIREMENTS FOR OYSTER OR CLAM VESSELS.—

280 (a) All vessels used for the harvesting, gathering, or  
 281 transporting of oysters or clams for commercial purposes shall  
 282 be constructed and maintained to prevent contamination or  
 283 deterioration of shellfish. To this end, all such vessels shall  
 284 have be provided with false bottoms and bulkheads fore and aft  
 285 to prevent onboard shellfish from coming in contact with any  
 286 bilge water. ~~No~~ Dogs or other animals are not shall be allowed  
 287 at any time on vessels used to harvest or transport shellfish. A  
 288 violation of ~~any provision of~~ this subsection will, at a  
 289 minimum, shall result in ~~at least~~ the revocation of the  
 290 violator's license.

291 (b) For the purpose of this subsection, "harvesting,  
 292 gathering, or transporting of oysters or clams for commercial

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293 purposes" means to harvest, gather, or transport oysters or  
294 clams with the intent to sell and shall apply to a quantity of  
295 two or more bags of oysters per vessel or more than one 5-gallon  
296 bucket of unshucked hard clams per person or more than two 5-  
297 gallon buckets of unshucked hard clams per vessel.

298 Section 2. This act shall take effect July 1, 2016.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Environmental Preservation and  
Conservation, *Chair*  
Agriculture, *Vice Chair*  
Appropriations Subcommittee on General  
Government  
Children, Families, and Elder Affairs  
Community Affairs  
Ethics and Elections

**SENATOR CHARLES S. DEAN, SR.**  
5th District

February 9, 2016

The Honorable Anitere Flores  
413 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Flores,

I respectfully request you place Senate Bill 1318, relating to Shellfish Regulations, on your Fiscal Policy Committee agenda at your earliest convenience.

If you have any concerns, please do not hesitate to contact me personally.

Sincerely,

A handwritten signature in black ink that reads "Charles S. Dean".

Charles S. Dean  
State Senator District 5

cc: Jennifer Hrdlicka, Staff Director

**REPLY TO:**

- 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-17-16

Meeting Date

1318

Bill Number (if applicable)

Topic SB 1318

Amendment Barcode (if applicable)

Name Patrick Be. U

Job Title Lobbyist

Address P. O. Box 10242

Phone 850-544-0784

Street

TALL FL 32302

Email pebell@earthlink.net

City

State

Zip

Speaking:  For  Against  Information

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

Representing Webb's Seafood

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Committee on Fiscal Policy

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**BILL:** CS/CS/CS/SB 1602

**INTRODUCER:** Fiscal Policy Committee; Community Affairs Committee; Regulated Industries Committee; and Senator Galvano

**SUBJECT:** Elevators

**DATE:** February 18, 2016

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Caldwell</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Present</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	<u>Fav/CS</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/CS/CS/SB 1602 creates s. 399.031, F.S., and provides requirements for new elevators in private residences. Specifically, the bill requires all new elevators in private residences to:

- Meet minimum distance requirements between the hoistway face of the hoistway doors and the hoistway edge of the landing sill for swinging and sliding doors;
- Be equipped with doors or gates that can withstand a force of 75 pounds without permanent deformation or displacing the door from its guides or track;
- Meet minimum distance requirements between the hoistway face of the landing door and the hoistway face of the car door or gate for different types of doors and gates; and
- Be equipped with a device that stops the downward motion of the elevator car under certain circumstances.

The provisions must be adopted into the Florida Building Code by October 1, 2016.

The bill provides that s. 339.031, F.S., may be cited as the “Maxwell Erik ‘Max’ Grablin Act.”

The bill has no impact to state government.

## II. Present Situation:

### Elevator Regulation

The “Elevator Safety Act” (the act) establishes minimum standards for elevator safety.<sup>1</sup> The Bureau of Elevator Safety (bureau) of the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (department) is the agency charged with enforcing the provisions of the act.<sup>2</sup> The Elevator Safety and Technical Advisory Council within the department provides technical assistance to the division and makes recommendations regarding the rules for the operation, maintenance, servicing, construction, alteration, installation, and inspection of vertical conveyances.<sup>3</sup>

The term “elevator” includes a wide variety of mechanical devices, including escalators, dumbwaiters, moving walks, inclined stairway lifts, and inclined or vertical wheelchair lifts.<sup>4</sup> According to the division, there were approximately 51,070 active elevator accounts in Florida as of August 1, 2015.<sup>5</sup>

### Elevator Safety Code

Section 399.02(1), F.S., requires the Elevator Safety Code to be the same as or similar to the latest editions of the American Society of Mechanical Engineers (ASME) code, which provides minimum model standards for the installation, operation, and maintenance of elevators.<sup>6</sup> The ASME codes are intended to be adopted by the state and local agencies with jurisdiction over elevator safety. Standard ASME A17 serves as the basis for the Florida Elevator Safety Act and Florida Elevator Safety Code.<sup>7</sup> Standard ASME A17 establishes minimum safety requirements for the benefit of the general public and the operation of conveyances.

The Elevator Safety Code requires that any alteration, relocation, or reclassification of an existing elevator must be in compliance with the edition of the Florida Building Code that is in effect at the time of receipt of the construction permit application to alter, relocate, or change classification.<sup>8</sup>

### Elevator Inspections

The owner of the elevator is responsible for the safe operation, proper maintenance, inspection, and correction of code deficiencies of the elevator.<sup>9</sup> Elevators must have a certificate of

---

<sup>1</sup> Section 399.001, F.S.

<sup>2</sup> Section 399.10, F.S. The department also has rulemaking authority to enforce the provisions of the act.

<sup>3</sup> See s. 399.1061, F.S.

<sup>4</sup> Section 399.01(6), F.S.

<sup>5</sup> See Department of Business and Professional Regulation, Division of Hotels and Restaurants, *2014-2015 Annual Report*, available at: [http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2014\\_15.pdf](http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2014_15.pdf) (last visited Feb. 10, 2016).

<sup>6</sup> The ASME standards specified in s. 399.02(1), F.S., are ASME A17.1, A17.3, and A18.1.

<sup>7</sup> Rule 61C-5.001(1), F.A.C. Additionally, the bureau is authorized to enforce the provisions of the Florida Building Code related to the inspection and regulation of elevators. Section 399.02(6)(a) and (7), F.S.

<sup>8</sup> See s. 399.03, F.S.

<sup>9</sup> Section 399.02(5)(b), F.S.

operation before they may be operated.<sup>10</sup> Certificates of operation are valid for 2 years and expire at the end of the period unless revoked.<sup>11</sup>

Elevators are generally required to have a pre-use inspection by a certified elevator inspector who is not employed or associated, or does not have a conflict of interest, with the elevator construction permit holder or elevator owner and who is certified as meeting the safety provisions of the Florida Building Code, including the performance of all required safety tests.<sup>12</sup>

Elevators must be annually inspected by a certified elevator inspector.<sup>13</sup> The certified elevator inspector may be a private elevator inspector, a state-employed elevator inspector, or an inspector for a municipality or county under contract with the department.<sup>14</sup>

An elevator inspection is not required if the elevator is not an escalator or a dumbwaiter, serves only two adjacent floors, and is covered by a service maintenance contract that remains in effect. A statement verifying the existence and performance of each service maintenance contract must be filed at least annually with the division, and if the service maintenance contract is cancelled, then the cancellation must be reported to the division.<sup>15</sup>

### **Elevators in Private Residences**

An inspection upon installation and a certificate of operation are not required for vertical conveyances, including stairway chairlifts and inclined or vertical wheelchair lifts, located in private residences.<sup>16</sup>

Section 399.01(9), F.S., defines the term “private residence” to mean a separate dwelling or a separate apartment in a multiple unit dwelling which is occupied by members of a single-family.

### ***Safety Concerns***

There are multiple reports of injuries or fatalities involving children and elevators in private residences.<sup>17</sup>

---

<sup>10</sup> Section 399.07(5), F.S.

<sup>11</sup> Section 399.07(1), F.S. The certificates may only be renewed for vertical conveyances that have a current satisfactory inspection.

<sup>12</sup> Section 339.03(5), F.S.

<sup>13</sup> Section 399.061(1), F.S.

<sup>14</sup> *Id.* In 2000, the Legislature amended s. 399.061, F.S., (s. 4, ch. 2000-356, L.O.F.) to provide for the use of private elevator inspectors. The privatization of elevator inspections has helped to increase the number of licensed inspectors and has helped the bureau increase the number of inspections conducted each year, as mandated by the annual inspection requirement. *See* Office of Program Policy Analysis & Governmental Accountability, *Privatization Has Helped Improve Elevator Safety: Additional State Oversight is Needed*, Report No. 08-18, (April 2008).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Section 399.03(5), F.S.

<sup>17</sup> *See* The Safety Institute, *Safety Advocates Petition CPSC for Mandatory Residential Elevator Standard Citing Numerous Deaths* (November 10, 2014) available at: <http://www.thesafetyinstitute.org/safety-advocates-petition-cpsc-for-mandatory-residential-elevator-standard-citing-numerous-deaths/> (last visited Feb. 10, 2016), and CBS News, *In-home elevator accidents causing catastrophic harm to kids* (November 10, 2014) available at: <http://www.cbsnews.com/news/in-home-elevator-accidents-causing-catastrophic-harm-to-kids/> (last visited Feb. 10, 2016).

Safety advocates filed a petition with the Consumer Product Safety Commission (commission) requesting mandatory safety standards for the design and installation of residential elevators to reduce the space between the interior elevator doors (elevator car/gate) and the exterior doors (hoistway or swing doors).<sup>18</sup> The petition is based on concerns related to injuries and fatalities to children caused when a child gains access to the space between the interior and exterior door. Injuries occur when a child is trapped between the doors or between a door and the landing. If the elevator is called, the child can be carried along and may be crushed when the child's body meets the sill.

The ASME standard for residential elevators requires a 5-inch clearance between interior and exterior doors. ASME A17.1, s. 5.3.1.7.2, provides:

Clearance Between Hoistway Doors or Gates and Landing Sills and Car Doors or Gates. The clearance between the hoistway doors or gates and the hoistway edge of the landing sill shall not exceed 75 mm (3 in.). The distance between the hoistway face of the landing door or gate and the car door or gate shall not exceed 125 mm (5 in.).

The petition noted that some states have enacted standards that are more stringent than those required by the ASME. The petition also noted that elevator codes in other states restrict any gaps between the hoistway doors and the car doors or gates to 3 inches.<sup>19</sup>

The commission invited written comments concerning the petition but has not taken further action.<sup>20</sup>

Maxwell Erik Grablin, of Bradenton, Florida, was crushed by an elevator in his three-story home while in the elevator shaft searching for his pet hamster. Reports indicate that the elevator did not have a sensor. A sensor would have stopped the elevator when it detected his presence, e.g., a sensor similar in function to the sensor on garage doors that stops and reverses the descent of the door when faced with an obstruction.<sup>21</sup>

### III. Effect of Proposed Changes:

**Section 1** creates s. 399.031, F.S., to provide clearance and safety device requirements for elevators in private residences.

---

<sup>18</sup> See Petition for Recall to Repair/Retrofit and Rulemaking, by petitioners: The Safety Institute, Carol Pollack-Nelson, Ph.D., and Cash, Krugler and Fredricks, L.L.C., filed with the United States Consumer Products Safety Commission (November 13, 2014), available at: <http://www.thesafetyinstitute.org/wp-content/uploads/2014/11/20141110-Elevator-Petition-For-Recall-To-Repair-and-Mandatory-Rulemaking.pdf> (last visited Feb. 10, 2016).

<sup>19</sup> *Id.*

<sup>20</sup> See Consumer Product Safety Commission, *Petition Requesting Rulemaking on Residential Elevators*, 80 FR 3226, Fed. Reg., pp. 3226-3227 (Jan. 22, 2015), available at: <https://www.federalregister.gov/articles/2015/01/22/2015-00907/petition-requesting-rulemaking-on-residential-elevators> (last visited Feb. 10, 2016).

<sup>21</sup> See Kate Irby, *After Florida boy suffocates in elevator shaft chasing pet hamster, his parents on safety mission*, The Miami Herald (January 18, 2016), available at: <http://www.miamiherald.com/news/state/florida/article55252190.html> (last visited Feb. 10, 2016).

The bill requires that elevators installed in a private residence provide a distance between the hoistway face of the hoistway doors and the hoistway edge of the landing sill that may not exceed 3/4 inch for swinging doors and 2 1/4 inches for sliding doors.

The bill also requires that horizontal sliding car doors and folding car doors be designed and installed to withstand a force of 75 pounds without permanent deformation or displacing the door from its guides or track. According to an elevator inspector, this provision relates to the rigidity of the elevator doors. Rigidity standards may prevent a child from warping the door in order to fit in the space provided.

The bill provides standards for different types of elevator car and hoistway doors, including manual and power-operated horizontal sliding doors, folding doors, and swinging doors. Generally, the gap between the hoistway doors and the car doors or gate cannot exceed 4 inches.

The bill also requires that all elevators in a private residence be equipped with a device that stops the downward motion of the elevator car within 2 inches of the platform if the elevator is interrupted anywhere on its underside during downward motion.<sup>22</sup> The force required to operate the device must not exceed 15 pounds. If the device is activated, the elevator could only resume its descent after the elevator has been manually reset.

The bill applies to all new elevators installed in a private residence.

The bill provides that this section may be cited as the “Maxwell Erik ‘Max’ Grablin Act.”

The bill requires the Florida Building Commission to adopt the clearance and safety device requirements for elevators in private residences into the Florida Building Code by October 1, 2016.

**Section 2** provides that the bill is effective on July 1, 2016.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

---

<sup>22</sup> ASME 5.3.1.1.1 requires a stopping distance of 75 mm (3 inches) in private residence elevators.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

There is no impact to state government. Local government will enforce the provisions of the bill while conducting building inspections.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 399.031 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/CS/CS by Fiscal Policy on February 17, 2016:**

The committee substitute requires the Florida Building Commission to adopt into the Florida Building Code the requirements for elevators in private residences created by the bill by October 1, 2016.

**CS/CS by Community Affairs on February 9, 2016:**

Changes the phrase “residential dwelling” to “private residence” in line 83 to maintain consistent term usage.

**CS by Regulated Industries on January 27, 2016:**

- Increases the maximum permissible distance for the spaces between the edge of the landing sill, the hoistway doors, and the car doors to 4 inches.
  - Requires that horizontal sliding car doors and folding car doors must be designed to withstand a force of 75 pounds under specified conditions.
  - Provides these standards for different types of elevator car and hoistway doors.

- Requires that all elevators in a private residence be equipped with a device that stops the elevator car's downward motion within 2 inches if the platform of the elevator is interrupted anywhere on its underside in its downward motion, and provides additional requirements for operation of the device.
- Removes a definition of the term "private residence."
- Limits the application of the bill to all new elevators in a private residence, and does not apply to existing elevators.

B. Amendments:

None.



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
	.	
	.	
	.	

The Committee on Fiscal Policy (Bean) recommended the following:

1       **Senate Amendment (with title amendment)**

2  
3       Between lines 83 and 84

4       insert:

5       Section 2. The Florida Building Commission shall adopt s.  
6       399.031, Florida Statutes, into the Florida Building Code  
7       pursuant to s. 553.73(8), Florida Statutes.

8  
9       ===== T I T L E   A M E N D M E N T =====

10       And the title is amended as follows:

11       Delete line 11



12       and insert:  
13       applicability; directing the Florida Building  
14       Commission to adopt the provisions of the act into the  
15       Florida Building Code; providing an effective date.



586396

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/18/2016	.	
	.	
	.	
	.	

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The Committee on Fiscal Policy (Bean) recommended the following:

- 1       **Senate Amendment to Amendment (243006)**
- 2
- 3       Delete line 5
- 4       and insert:
- 5       Section 2. By October 1, 2016, the Florida Building
- 6       Commission shall adopt s.

By the Committees on Community Affairs; and Regulated Industries; and Senator Galvano

578-03235-16

20161602c2

1 A bill to be entitled  
2 An act relating to elevators; creating s. 399.031,  
3 F.S.; providing a short title; providing clearance  
4 requirements for elevators installed in private  
5 residences; requiring certain doors and gates to  
6 withstand a specified amount of force; requiring  
7 certain doors to reject a sphere of a specified size  
8 under certain circumstances; requiring all such  
9 elevators to be equipped with a certain device;  
10 providing requirements for the device; providing  
11 applicability; providing an effective date.

12  
13 Be It Enacted by the Legislature of the State of Florida:

14  
15 Section 1. Section 399.031, Florida Statutes, is created to  
16 read:

17 399.031 Clearance requirements between elevator doors for  
18 elevators inside a private residence.-

19 (1) This section may be cited as the "Maxwell Erik 'Max'  
20 Grablin Act."

21 (2) For elevators installed in a private residence:

22 (a) The distance between the hoistway face of the hoistway  
23 doors and the hoistway edge of the landing sill may not exceed  
24 3/4 inch for swinging doors and 2 1/4 inches for sliding doors.

25 (b)1. Horizontal sliding car doors and gates shall be  
26 designed and installed to withstand a force of 75 pounds applied  
27 horizontally on an area 4 inches by 4 inches at right angles to  
28 and at any location on the car door without permanent  
29 deformation. The deflection may not exceed 3/4 inch and may not  
30 displace the door from its guides or tracks. The force must be  
31 applied while the door is in the fully closed position.

Page 1 of 3

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

578-03235-16

20161602c2

32 2. Folding car doors shall be designed and installed to  
33 withstand a force of 75 pounds applied horizontally using a 4-  
34 inch-diameter sphere at any location within the folds on the car  
35 door without permanent deformation. The deflection may not  
36 exceed 3/4 inch and may not displace the door from its guides or  
37 tracks. The force must be applied while the door is in the fully  
38 closed position.

39 (c) The distance between the hoistway face of the landing  
40 door and the hoistway face of the car door or gate shall conform  
41 to one of the following:

42 1. If a power-operated horizontally sliding hoistway and  
43 car doors are used, the measurement between the leading edge of  
44 the doors or sight guard, if provided, may not exceed 4 inches.  
45 If it is possible for a user to detach or disconnect either door  
46 from the operator and such detachment or disconnection allows  
47 the user to operate the door manually, the requirement in  
48 subparagraph 5. applies.

49 2. If swinging hoistway doors and folding car doors are  
50 used and both doors are in the fully closed position, the space  
51 between the hoistway door and the folding door must reject a 4-  
52 inch-diameter sphere at all points.

53 3. If swinging hoistway doors and car gates are used, the  
54 space between the hoistway door and the car gate must reject a  
55 4-inch-diameter sphere at all points.

56 4. If the car doors are powered and arranged so that they  
57 cannot be closed until after the hoistway door is closed, and  
58 the car doors automatically open when the car is at a landing  
59 and the hoistway door is opened, the measurement between the  
60 hoistway face of the hoistway door and the hoistway face of the

Page 2 of 3

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

578-03235-16

20161602c2

61 car door at its leading edge may not exceed 4 inches. If it is  
62 possible for a user to detach or disconnect either door from the  
63 operator and such detachment or disconnection allows the user to  
64 operate the door manually, the requirement in subparagraph 5.  
65 applies.

66 5. If swinging or horizontally sliding hoistway doors and  
67 manual horizontally sliding car doors are used and both doors  
68 are in the fully closed position, the space between the swinging  
69 or horizontally sliding hoistway door and the manual  
70 horizontally sliding car doors must reject a 4-inch-diameter  
71 sphere at all points.

72 (3) The underside of the platform of an elevator car shall  
73 be equipped with a device that, if the platform of the elevator  
74 car is obstructed anywhere on its underside in its downward  
75 travel, interrupts the electric power to the driving machine  
76 motor and brake, if provided, and stops the elevator car's  
77 downward motion within 2 inches. The stroke of the device may  
78 not be less than the stopping distance of the platform of the  
79 elevator car. The force required to operate the device may not  
80 exceed 15 pounds. Downward motion shall be permitted to resume  
81 only after the elevator has been manually reset.

82 (4) This section applies to all new elevators in a private  
83 residence.

84 Section 2. This act shall take effect July 1, 2016.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Reapportionment, *Chair*  
Agriculture  
Appropriations  
Appropriations Subcommittee on Education  
Education Pre-K - 12  
Health Policy  
Rules

**JOINT COMMITTEE:**  
Joint Legislative Budget Commission

### SENATOR BILL GALVANO

*Majority Leader*  
26th District

February 9, 2016

Senator Anitere Flores  
225 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Madame Chair Flores:

I respectfully request that SB 1602 Elevators, be scheduled for a hearing in the Committee on Fiscal Policy at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in cursive script that reads "Bill".

Bill Galvano

cc: Jennifer Hrdlicka  
Tamra Lyon

**REPLY TO:**

- 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205 (941) 741-3401
- 330 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

Senate's Website: [www.flisenate.gov](http://www.flisenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:  
Reapportionment, *Chair*  
Agriculture  
Appropriations  
Appropriations Subcommittee on Education  
Education Pre-K - 12  
Health Policy  
Rules

JOINT COMMITTEE:  
Joint Legislative Budget Commission

## SENATOR BILL GALVANO

*Majority Leader*  
26th District

February 16, 2016

Senator Anitere Flores, Chair  
Committee on Fiscal Policy  
225 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Madame Chair Flores:

Thank you for placing Senate Bill 1602, relating to Elevator Safety, on the committee's agenda. Unfortunately, my schedule does not allow me to be present to personally present this bill. I respectfully request that my aide, Kathy Galca, be allowed to present this bill in my absence.

Thank you for your consideration.

Sincerely,



Bill Galvano

cc: Jennifer Hrdlicka  
Tamra Lyon

REPLY TO:

- 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205 (941) 741-3401
- 330 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

ANDY GARDINER  
President of the Senate

GARRETT RICHTER  
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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: PCS/SB 7036 (163570)

INTRODUCER: Fiscal Policy Committee (Recommended by the Appropriations Subcommittee on Education) and Governmental Oversight and Accountability Committee

SUBJECT: School District Purchasing

DATE: February 9, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	_____	McVaney	_____	<b>GO Submitted as Committee Bill</b>
1.	Sikes	Elwell	AED	<b>Recommend: Fav/CS</b>
2.	Pace	Hrdlicka	FP	<b>Pre-meeting</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/SB 7036 requires each district school board and Florida College System institution board of trustees to review the state term contracts and purchasing agreements available through the Department of Management Services (DMS) pursuant to s. 287.056, F.S., before purchasing nonacademic commodities and services. The bill also:

- Requires each bid specification for nonacademic commodities and services to include a statement that the state term contracts and purchasing agreements have been reviewed; and
- Authorizes each district school board to use the cooperative state purchasing programs managed through the regional consortium service organizations.

The bill may result in indeterminate cost savings for district school boards.

## II. Present Situation:

### Chapter 287, Florida Statutes

Chapter 287, F.S., regulates state agency<sup>1</sup> procurement of personal property and services.<sup>2</sup> Agencies may use a variety of procurement methods, depending on the cost<sup>3</sup> and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

- "Single source contracts," which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- "Invitations to bid," which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- "Requests for proposals," which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- "Invitations to negotiate," which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services, by an agency dealing with a limited number of vendors.<sup>4</sup>

Generally, local governments are not subject to the procurement provisions of ch. 287, F.S.; however, they may look to the chapter for guidance in the procurement of goods and services. Many local governments have local policies or ordinances to address competitive solicitations.

### State Contracts and Purchasing Agreements

Statewide contracts and purchasing agreements enable eligible users to pool their buying power to lower total costs and reduce administrative burden in the purchase of products and services.<sup>5</sup> The DMS competitively procures state term contracts and establishes purchasing agreements for selected products and services.<sup>6</sup> State agencies must, and other eligible users may, purchase commodities and contractual services from state term contracts and purchasing agreements.<sup>7</sup> Other eligible users include any local government; school board or other special district,

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<sup>1</sup> Section 287.012(1), F.S., defines "agency" as any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

<sup>2</sup> See s. 287.001, F.S.

<sup>3</sup> For example, s. 287.057(1), F.S., requires all projects that exceed \$35,000 to be competitively bid. Section 287.012(6), F.S., defines "competitive solicitation" as the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement. However, other contractual services and commodities are not subject to competitive-solicitation requirements. See s. 287.057(3)(e), F.S.

<sup>4</sup> Section 287.057, F.S.

<sup>5</sup> Department of Management Services, *State Contracts and Agreements*, available at [http://www.dms.myflorida.com/business\\_operations/state\\_purchasing/state\\_contracts\\_and\\_agreements](http://www.dms.myflorida.com/business_operations/state_purchasing/state_contracts_and_agreements) (last visited Feb. 2, 2016).

<sup>6</sup> Section 287.042(1)(a) and (2)(a), F.S.

<sup>7</sup> Section 287.056(1), F.S.

authority, or government entity; and any independent, nonprofit college or university located within the state and accredited by the Southern Association of Colleges and Schools.<sup>8</sup>

### **School Purchasing Requirements**

Purchases by school districts and Florida College System institutions must comply with requirements of law and rules of the State Board of Education.<sup>9</sup> Each school district and the Florida College System institution board of trustees is required to establish purchasing rules and regulations.<sup>10</sup> The district school board and the Florida College System institution board are permitted to make purchases from current county contracts if such contracts are to the economic advantage of these entities and the county purchasing agent is authorized by law to make purchases for the benefit of other governmental agencies within the county.<sup>11</sup>

School district purchasing regulations must be secured from the DMS and prior to any purchase the school district must give consideration to the lowest price available under the DMS regulations. The DMS should meet with education administrators to expand the inventory of standard items for common usage in all schools.<sup>12</sup>

Section 1001.451, F.S., authorizes school districts with 20,000 or fewer unweighted full-time equivalent students, certain developmental (laboratory) schools, and the Florida School for the Deaf and the Blind to enter into cooperative agreements to form regional consortium service organizations to provide purchasing.

Section 1006.27, F.S., requires the Department of Education to assist district school boards with procuring school buses, contractual needs, equipment, and supplies at reasonable prices by providing a plan under which district school boards may voluntarily pool their bids for such purchases.

Section 1006.283, F.S., authorizes a consortium of school districts to implement an instructional materials program that includes purchase of instructional materials.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 1010.04, F.S., to require each district school board and Florida College System institution board of trustees to review the available DMS state term contracts and purchasing agreements to determine if it is economically advantageous to use the state term contracts and purchasing agreements before purchasing nonacademic commodities and services. The bill also:

- Requires each bid specification for nonacademic commodities and services to include a statement that the state term contracts and purchasing agreements have been reviewed; and
- Authorizes each district school board to use the cooperative state purchasing programs managed through the regional consortium service organizations.

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<sup>8</sup> Section 287.056(1), F.S., and Rule 60A-1.005, F.A.C.

<sup>9</sup> Section 1010.04(1)(a), F.S.

<sup>10</sup> Section 1010.04(2), F.S. *See also* Rules 6A-1.012, and 6A-14.0734 F.A.C.

<sup>11</sup> Section 1010.04(3), F.S.

<sup>12</sup> Section 1001.42(12)(j), F.S.

**Section 2** provides that the bill is effective July 1, 2016.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shares with counties and municipalities.

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 shift some contracting dollars towards businesses that have entered into purchasing agreements with the DMS and vendors who hold state term contracts.

C. Government Sector Impact:

District school boards and Florida College System institutions may realize some cost savings to the extent goods and services are available at lower costs through the state term contracts and purchasing agreements. District school boards may also realize cost savings by utilizing cooperative state purchasing programs managed through regional consortium service organizations.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill amends section 1010.04 of the Florida Statutes.

**IX. Additional Information:**

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

**Recommended CS by Appropriations Subcommittee on Education on January 28, 2016:**

The committee substitute:

- Requires district school boards to review the Department of Management Services' state term contracts and purchasing agreements prior to purchasing nonacademic commodities and contractual services, rather than requiring district school boards use these state term contracts and purchasing agreements, and extends the review requirement to Florida College System institution boards of trustees.
- Requires each bid specification for nonacademic commodities and services to include a statement that the state term contracts and purchasing agreements have been reviewed.
- Authorizes each district school board to use the cooperative state purchasing programs managed through the regional consortium service organizations.

- B. **Amendments:**

None.



594-02723-16

Proposed Committee Substitute by the Committee on Fiscal Policy  
(Appropriations Subcommittee on Education)

A bill to be entitled

An act relating to school district purchasing;  
amending s. 1010.04, F.S.; requiring each district  
school board and Florida College System institution  
board of trustees to review certain agreements and  
contracts before purchasing nonacademic commodities  
and contractual services under certain circumstances  
to determine whether their use is economically  
advantageous; requiring that bid specifications  
include a specified statement; authorizing each  
district school board to also use specified  
cooperative state purchasing programs; providing an  
effective date.

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

Section 1. Subsection (1) of section 1010.04, Florida  
Statutes, is amended to read:

1010.04 Purchasing.—

(1) (a) Purchases and leases by school districts and Florida  
College System institutions shall comply with the requirements  
of law and rules of the State Board of Education.

(b) Before purchasing nonacademic commodities and  
contractual services, each district school board and Florida  
College System institution board of trustees shall review the  
purchasing agreements and state term contracts available under  
s. 287.056 to determine whether it is in the board's or the



594-02723-16

board of trustees' economic advantage to use the agreements and  
contracts. Each bid specification for nonacademic commodities  
and contractual services must include a statement indicating  
that the purchasing agreements and state term contracts  
available under s. 287.056 have been reviewed. Each district  
school board may also use the cooperative state purchasing  
programs managed through the regional consortiums service  
organizations pursuant to their authority under s. 1001.451(3).  
(c) ~~(b)~~ Purchases and leases by state universities shall  
comply with the requirements of law and regulations of the Board  
of Governors.

Section 2. This act shall take effect July 1, 2016.

**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.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: SB 7036

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: School District Purchasing

DATE: February 9, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	_____	McVaney	_____	<b>GO Submitted as Committee Bill</b>
1.	Sikes	Elwell	AED	<b>Recommend: Fav/CS</b>
2.	Pace	Hrdlicka	FP	<b>Pre-meeting</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

SB 7036 requires each district school board, when purchasing nonacademic commodities and services, to use state term contracts and purchasing agreements available through the Department of Management Services (DMS), unless the district school board determines that it is not the economic advantage of that school district to use the contracts and agreements.

For each determination that the agreements and contracts are not to the economic advantage of the school district, the district school board must provide a written statement justifying such determination and post the statement on the district school board's website.

The bill may result in indeterminate cost savings for district school boards.

## II. Present Situation:

### Chapter 287, Florida Statutes

Chapter 287, F.S., regulates state agency<sup>1</sup> procurement of personal property and services.<sup>2</sup> Agencies may use a variety of procurement methods, depending on the cost<sup>3</sup> and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

- "Single source contracts," which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- "Invitations to bid," which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- "Requests for proposals," which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- "Invitations to negotiate," which are used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services, by an agency dealing with a limited number of vendors.<sup>4</sup>

Generally, local governments are not subject to the procurement provisions of ch. 287, F.S.; however, they may look to the chapter for guidance in the procurement of goods and services. Many local governments have local policies or ordinances to address competitive solicitations.

### State Contracts and Purchasing Agreements

Statewide contracts and purchasing agreements enable eligible users to pool their buying power to lower total costs and reduce administrative burden in the purchase of products and services.<sup>5</sup> The DMS competitively procures state term contracts and establishes purchasing agreements for selected products and services.<sup>6</sup> State agencies must, and other eligible users may, purchase commodities and contractual services from state term contracts and purchasing agreements.<sup>7</sup> Other eligible users include any local government; school board or other special district,

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<sup>1</sup> Section 287.012(1), F.S., defines "agency" as any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

<sup>2</sup> See s. 287.001, F.S.

<sup>3</sup> For example, s. 287.057(1), F.S., requires all projects that exceed \$35,000 to be competitively bid. Section 287.012(6), F.S., defines "competitive solicitation" as the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement. However, other contractual services and commodities are not subject to competitive-solicitation requirements. See s. 287.057(3)(e), F.S.

<sup>4</sup> Section 287.057, F.S.

<sup>5</sup> Department of Management Services, *State Contracts and Agreements*, available at [http://www.dms.myflorida.com/business\\_operations/state\\_purchasing/state\\_contracts\\_and\\_agreements](http://www.dms.myflorida.com/business_operations/state_purchasing/state_contracts_and_agreements) (last visited Feb. 2, 2016).

<sup>6</sup> Section 287.042(1)(a) and (2)(a), F.S.

<sup>7</sup> Section 287.056(1), F.S.

authority, or government entity; and any independent, nonprofit college or university located within the state and accredited by the Southern Association of Colleges and Schools.<sup>8</sup>

### **School Purchasing Requirements**

Purchases by school districts and Florida College System institutions must comply with requirements of law and rules of the State Board of Education.<sup>9</sup> Each school district and the Florida College System institution board of trustees is required to establish purchasing rules and regulations.<sup>10</sup> The district school board and the Florida College System institution board are permitted to make purchases from current county contracts if such contracts are to the economic advantage of these entities and the county purchasing agent is authorized by law to make purchases for the benefit of other governmental agencies within the county.<sup>11</sup>

School district purchasing regulations must be secured from the DMS and prior to any purchase the school district must give consideration to the lowest price available under the DMS regulations. The DMS should meet with education administrators to expand the inventory of standard items for common usage in all schools.<sup>12</sup>

Section 1001.451, F.S., authorizes school districts with 20,000 or fewer unweighted full-time equivalent students, certain developmental (laboratory) schools, and the Florida School for the Deaf and the Blind to enter into cooperative agreements to form regional consortium service organizations to provide purchasing.

Section 1006.27, F.S., requires the Department of Education to assist district school boards with procuring school buses, contractual needs, equipment, and supplies at reasonable prices by providing a plan under which district school boards may voluntarily pool their bids for such purchases.

Section 1006.283, F.S., authorizes a consortium of school districts to implement an instructional materials program that includes purchase of instructional materials.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 1010.04, F.S., to require each district school board, when purchasing nonacademic commodities and services, to use the state term contracts and purchasing agreements available through the DMS, unless the district school board determines that it is not to the economic advantage of that school district to use the agreements and contracts.

For each determination that the agreements and contracts are not to the economic advantage of the school district, the district school board must provide a written statement justifying such determination and post the statement on the district school board's website.

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<sup>8</sup> Section 287.056(1), F.S., and Rule 60A-1.005, F.A.C.

<sup>9</sup> Section 1010.04(1)(a), F.S.

<sup>10</sup> Section 1010.04(2), F.S. *See also* Rules 6A-1.012, and 6A-14.0734 F.A.C.

<sup>11</sup> Section 1010.04(3), F.S.

<sup>12</sup> Section 1001.42(12)(j), F.S.

**Section 2** provides that the bill is effective July 1, 2016.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shares with counties and municipalities.

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 shift some contracting dollars towards businesses that have entered into purchasing agreements with the DMS and vendors who hold state term contracts.

C. Government Sector Impact:

District school boards may realize some cost savings to the extent goods and services are available at lower costs through the state term contracts and purchasing agreements.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill amends section 1010.04 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.)

**See PCS 163570 by Fiscal Policy (Recommended by Appropriations Subcommittee on Education on January 28, 2016).**

- B. **Amendments:**

None.

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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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By the Committee on Governmental Oversight and Accountability

585-01765-16

20167036\_\_

1 A bill to be entitled  
 2 An act relating to school district purchasing;  
 3 amending s. 1010.04, F.S.; requiring each district  
 4 school board to use certain agreements and contracts  
 5 for purchasing nonacademic commodities and contractual  
 6 services under certain circumstances; requiring a  
 7 district school board to post a written justification  
 8 for certain determinations on the board's website;  
 9 providing an effective date.  
 10  
 11 Be It Enacted by the Legislature of the State of Florida:  
 12  
 13 Section 1. Subsection (1) of section 1010.04, Florida  
 14 Statutes, is amended to read:  
 15 1010.04 Purchasing.—  
 16 (1) (a) Purchases and leases by school districts and Florida  
 17 College System institutions shall comply with the requirements  
 18 of law and rules of the State Board of Education.  
 19 (b) For purchasing nonacademic commodities and contractual  
 20 services, each district school board must use the purchasing  
 21 agreements and state term contracts available under s. 287.056,  
 22 unless the district school board determines that it is not to  
 23 the economic advantage of that school district to use the  
 24 agreements and contracts. For each determination that the  
 25 agreements and contracts are not to the economic advantage of  
 26 the school district, the district school board must provide a  
 27 written statement justifying such determination and post the  
 28 statement on the district school board's website.  
 29 (c) ~~(b)~~ Purchases and leases by state universities shall

Page 1 of 2

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

585-01765-16

20167036\_\_

30 comply with the requirements of law and regulations of the Board  
 31 of Governors.  
 32 Section 2. This act shall take effect July 1, 2016.

Page 2 of 2

**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 / 17 / 2016

Meeting Date

Topic \_\_\_\_\_

Bill Number 7036

(if applicable)

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

# CourtSmart Tag Report

Room: KN 412  
Caption: Fiscal Policy

Case No.:  
Judge:

Type:

Started: 2/17/2016 4:09:09 PM

Ends: 2/17/2016 5:42:58 PM

Length: 01:33:50

4:09:09 PM Quroum present  
4:09:57 PM Chair comments  
4:10:51 PM Take up SB 532 by Senator Gibson  
4:11:15 PM Explanation of the bill  
4:11:42 PM Questions  
4:11:47 PM No amendments  
4:11:51 PM Appearance cards  
4:11:55 PM Ron Labasky  
4:13:02 PM Senator Stargel for a question  
4:13:48 PM Senator Margolis for a quesiton  
4:14:08 PM Pamela Burch Fort  
4:14:19 PM Senator Gibson for a response  
4:15:57 PM Senator Sachs for a question  
4:16:08 PM Senator Gibson for a response  
4:16:14 PM Follow-up  
4:16:35 PM Senator Stargel for a question  
4:17:43 PM Debate?  
4:17:56 PM Senator Gibson closes  
4:19:00 PM Roll call  
4:19:07 PM SB 532 passes  
4:19:47 PM Take up SB 784 by Senator Flores  
4:20:12 PM Explanation of the bill  
4:21:02 PM Questions?  
4:21:09 PM Appearance Cards  
4:21:12 PM Barney Bishop  
4:21:17 PM Colleen Macken  
4:21:30 PM Janet Mabry  
4:21:31 PM Bill Bunkley  
4:21:50 PM Samatha Sexton  
4:22:00 PM Cortney Grager  
4:22:09 PM Richard Fortin  
4:22:17 PM Dennis Strange  
4:22:27 PM Dr. Brook Bells  
4:28:16 PM Debate?  
4:28:20 PM Senator Flores closes  
4:29:09 PM Roll call  
4:29:36 PM SB 784 passes  
4:30:00 PM Take up SB 948 by Senator Richter  
4:30:21 PM Explanation of the bill  
4:31:21 PM Amendment barcode: 818396  
4:31:41 PM Explanation  
4:32:18 PM Slater Batliss  
4:32:21 PM Douglas Muldoon  
4:32:29 PM Substitute amendment  
4:32:49 PM Sarrah Carroll  
4:32:54 PM Samatha Padgett  
4:32:59 PM Waives close  
4:33:17 PM Roll call  
4:33:23 PM SB 948 passes  
4:33:43 PM SB 22 by Senator Montford  
4:33:53 PM Explanation  
4:34:47 PM Barcode: 529976 by Sachs

4:34:57 PM Explanation  
4:35:07 PM Adopted  
4:35:09 PM Debate?  
4:35:13 PM Senator Montford waives close  
4:35:18 PM roll call  
4:35:19 PM SB 22 passes  
4:35:46 PM SB 132 by Grimsley  
4:36:05 PM Explanation  
4:36:30 PM Barcode: 753626 by Legg  
4:36:42 PM Explanation  
4:37:20 PM Questions?  
4:37:27 PM Amendment adopted  
4:37:34 PM Brian Pitts  
4:40:06 PM Catherine Baer  
4:40:22 PM Chris Nuland  
4:40:29 PM Tim Nungesser  
4:40:36 PM Dr. Lee Gross  
4:41:47 PM Questions?  
4:41:50 PM Senator Sachs  
4:42:00 PM Sal Nuzzo  
4:42:58 PM John Hallman  
4:43:06 PM Paul Lambert  
4:43:11 PM Mary Thomas  
4:43:22 PM Bill as amended  
4:43:25 PM Senator Grimsley waives close  
4:43:30 PM roll call  
4:43:32 PM SB 132 passes  
4:43:54 PM SB 620 by Senator Grimsley  
4:44:01 PM Explanation  
4:44:32 PM TP for a moment  
4:44:45 PM SB 550 by Senator Dean  
4:44:58 PM Explanation  
4:45:38 PM Brian Pitts  
4:47:05 PM Debate?  
4:47:07 PM Senator Dean closes  
4:47:22 PM Roll call  
4:47:27 PM SB 550 passes  
4:47:49 PM SB 1300 by Senator Dean  
4:48:05 PM Explanation  
4:48:40 PM Lisa Henning  
4:48:45 PM Stephen James  
4:48:57 PM Senator Dean waives close  
4:49:02 PM roll call  
4:49:04 PM SB 1300 passes  
4:49:23 PM SB 1318 by Senator Dean  
4:49:37 PM Explanation  
4:50:22 PM Patrick Bell waives in support  
4:50:30 PM Senator Dean waives close  
4:50:37 PM roll call  
4:50:38 PM SB 1318 passes  
4:51:01 PM Back to SB 620 by Senator Grimsley  
4:51:16 PM Explanation  
4:51:47 PM Barcode 789460 by Senator Margolis  
4:52:02 PM Explanation  
4:52:19 PM AA barcode 927632  
4:52:49 PM Explanation  
4:53:09 PM AA adopted  
4:53:13 PM Jack McRay opposed  
4:53:22 PM Claudia Diavant  
4:53:28 PM Marty Cassini  
4:53:44 PM Amendment adopted  
4:53:49 PM Barcode 336552 by Senator Hays

4:53:57 PM Explanation  
4:54:06 PM withdrawn  
4:54:15 PM Bill as amended  
4:54:38 PM Marty Cussini  
4:54:50 PM Questions?  
4:55:21 PM Mary Thomas  
4:55:26 PM Jack McCrae  
4:55:35 PM Senator Stargel for a questin  
4:56:13 PM Senator Grimsley close  
4:56:17 PM Roll call  
4:56:20 PM SB 620 passes  
4:56:43 PM Take up SB 1602 by Senator Galvano  
4:57:28 PM Explanation  
4:57:54 PM Barcode: 243006 by Senator Bean  
4:58:07 PM Explanation  
4:58:32 PM AA : 586396 explanation  
4:59:07 PM Amendment adopted  
4:59:20 PM Waive close  
4:59:26 PM SB 1602 passes  
4:59:58 PM SB 44 by Senator Garcia  
5:00:04 PM Explanation  
5:00:28 PM Barcode 286084  
5:00:35 PM Explanation  
5:00:45 PM amendment adopted  
5:01:02 PM waives close  
5:01:06 PM roll call  
5:01:12 PM SB 44 passes  
5:01:34 PM SB 1220 by Senator Garcia  
5:01:56 PM Stike all amendment  
5:02:02 PM Amendment barcode: 670232 explanation by Senator Garcia  
5:04:33 PM Appearance cards:  
5:04:35 PM Ben Wilcox  
5:04:41 PM Joanna Alvarez  
5:04:47 PM Antony Marciano  
5:04:53 PM David Sigerson  
5:05:03 PM Rich Templin  
5:05:08 PM Christine Saint Louis  
5:05:17 PM Beverly Glenn  
5:05:21 PM Victor Leon-Bonet  
5:05:28 PM Gerard Bommers  
5:05:34 PM Karelyn Martin  
5:05:39 PM Alice Tucker  
5:05:45 PM Michael Cecco  
5:05:56 PM Louis Landrow  
5:06:07 PM Barbara Peterson  
5:07:00 PM Sam Morley  
5:07:06 PM Gail Perry  
5:07:27 PM Amendment adopted  
5:07:41 PM Diana Acteaga  
5:07:47 PM Tazia Stagg  
5:09:33 PM Mayor Charlie Latham  
5:09:38 PM Joanne Alvarez  
5:09:48 PM Craig Conn  
5:09:51 PM Rich Templin  
5:09:58 PM Lisa Hurley  
5:10:06 PM Tim Quigley  
5:10:25 PM Debate?  
5:10:30 PM Senator Garcia to close  
5:11:40 PM Roll call  
5:12:04 PM SB 1220 passes  
5:12:42 PM SB 954 by Senator Simmons  
5:12:57 PM Explanation

5:14:09 PM Barcode 707340 by Senator Bradley  
5:14:17 PM Explanation  
5:14:22 PM Amendment adopted  
5:14:24 PM Bill as amended  
5:14:27 PM Appearance cards:  
5:14:29 PM Barney Bishop  
5:14:35 PM Brian Pitts  
5:16:27 PM Tom Quigley  
5:16:37 PM Debate?  
5:16:41 PM Waives close  
5:16:43 PM roll call  
5:16:47 PM SB 954 passes  
5:17:14 PM SB 700 by Senator Soto  
5:17:29 PM Senator Sach moves to vote yes on 550, 1300, 1318, 620, 1602 and 44  
5:17:56 PM Senator Abruzzo moves to vote yes on 532, 784, 948 and 22  
5:18:13 PM SB 700 by Senator Soto  
5:18:30 PM PCS 365564 introduced  
5:18:46 PM Explanation  
5:20:07 PM Questions?  
5:20:15 PM Samatha Sexton  
5:20:20 PM Christina Spudeas  
5:20:29 PM Brian Pitts  
5:20:33 PM Richard Fortin  
5:20:39 PM Barney Bishop  
5:20:44 PM Coleen Mackin  
5:20:50 PM Bruce Miller  
5:21:05 PM Dennis Strange  
5:21:11 PM Ron Draa  
5:21:28 PM Senator Hukill for a question  
5:22:15 PM Follow-up  
5:23:12 PM Senator Flores for comments  
5:23:43 PM Follow up by Senator Hukill  
5:24:41 PM PCS adopted  
5:24:49 PM Waive close  
5:24:54 PM Roll call  
5:24:56 PM SB 700 passes  
5:25:29 PM SB 818 by Senator Latvala  
5:25:42 PM Explanation  
5:26:25 PM Brian Pitts  
5:28:49 PM Samatha Sexton  
5:29:02 PM Waives close  
5:29:06 PM Roll call  
5:29:11 PM SB 818 passes  
5:29:40 PM SB 204 by Senator Clemmons  
5:29:55 PM Explanation  
5:30:09 PM Barcode 204224 by Senator Clemmons  
5:30:18 PM Explanation  
5:31:01 PM Amendment adopted  
5:31:05 PM Appearance cards  
5:31:12 PM Speakers  
5:31:17 PM Brian Pitts  
5:32:38 PM Ron Watson  
5:32:46 PM Christina Harrison  
5:32:57 PM Bill as amended  
5:33:01 PM Senator Clemmons to close  
5:33:16 PM Roll call  
5:33:29 PM SB 204 passes  
5:33:55 PM Senator Bradley has the Chair  
5:34:06 PM SB 912 by Senator Flores  
5:34:21 PM Explanation  
5:35:50 PM Barcode: 261112  
5:36:02 PM Explanation

**5:36:48 PM** Corp. Bailey waives in support  
**5:37:00 PM** Amendment adopted  
**5:37:09 PM** Appearance cards:  
**5:37:11 PM** Lori Killinger  
**5:37:28 PM** Dennis Strange  
**5:37:36 PM** Tim Stanfield  
**5:37:51 PM** Brewster Bevis  
**5:37:55 PM** Jonathan Reese  
**5:38:06 PM** Jennifer Martin  
**5:38:17 PM** Richard Fortin  
**5:38:33 PM** Samatha Padgett  
**5:39:07 PM** Senator Clemmons comment  
**5:39:45 PM** Debate?  
**5:39:50 PM** Senator Flores closes  
**5:40:12 PM** Roll call  
**5:40:15 PM** SB 912 passes  
**5:41:23 PM** Motions  
**5:41:32 PM** Senator Bean votes yes on bills hands list to AA adopted  
**5:41:49 PM** Senator Clemmons votes yes on 532 and 784  
**5:41:52 PM** Senator Bradley votes yea on 948, 22, 132, 550, 1300, 1318, 1602, 620, 44  
**5:42:16 PM** Senator Hays votes yes on 532 and 784  
**5:42:36 PM** Meeting adjourned