

Tab 1	CS/SB 154 by CJ, Thurston (CO-INTRODUCERS) Garcia ; (Similar to CS/CS/H 00039) Autism Awareness Training for Law Enforcement Officers						
788614	A	S	RCS	ACJ, Thurston	Delete L.21 - 23:	03/22 10:21 AM	
Tab 2	SB 458 by Brandes (CO-INTRODUCERS) Rouson ; (Identical to H 00387) Florida Criminal Justice Reform Task Force						
531458	A	S	L RCS	ACJ, Brandes	Delete L.93:	03/22 10:21 AM	
Tab 3	CS/SB 536 by BI, Brandes ; (Similar to CS/H 00681) Unclaimed Funds Held by the Clerks of Court						
Tab 4	SB 878 by Lee ; (Identical to H 00301) Supreme Court Reporting Requirements						
Tab 5	SB 892 by Simmons ; Youthful Offenders						
Tab 6	SB 898 by Simmons (CO-INTRODUCERS) Artiles ; (Identical to H 00065) Civil Remedies for Terrorism						

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

MEETING DATE: Wednesday, March 22, 2017
TIME: 9:00—10:30 a.m.
PLACE: Mallory Horne Committee Room, 37 Senate Office Building

MEMBERS: Senator Bean, Chair; Senator Bracy, Vice Chair; Senators Baxley, Clemens, and Perry

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 154 Criminal Justice / Thurston (Similar CS/CS/H 39, Compare H 219)	Autism Awareness Training for Law Enforcement Officers; Requiring the Department of Law Enforcement to establish a continued employment training component relating to autism spectrum disorder, etc. CJ 02/06/2017 Fav/CS CF 02/21/2017 Favorable ACJ 03/22/2017 Fav/CS AP	Fav/CS Yeas 5 Nays 0
2	SB 458 Brandes (Identical H 387)	Florida Criminal Justice Reform Task Force; Creating the task force within the legislative branch; prescribing duties of the task force; specifying public records and public meetings requirements applicable to the task force, etc. CJ 03/13/2017 Favorable ACJ 03/22/2017 Fav/CS AP RC	Fav/CS Yeas 5 Nays 0
3	CS/SB 536 Banking and Insurance / Brandes (Similar CS/H 681)	Unclaimed Funds Held by the Clerks of Court; Repealing provisions relating to the deposit of unclaimed funds with the Chief Financial Officer to the credit of the State School Fund; requiring the clerk to report as unclaimed property a surplus under certain circumstances; repealing provisions relating to qualifications and appointment of a surplus trustee in foreclosure actions, etc. BI 03/06/2017 Fav/CS ACJ 03/22/2017 Favorable AP	Favorable Yeas 5 Nays 0
4	SB 878 Lee (Identical H 301)	Supreme Court Reporting Requirements; Requiring the Supreme Court to issue an annual report regarding certain cases; specifying data to be included in such report; providing for future legislative review and repeal, etc. JU 03/07/2017 Favorable ACJ 03/22/2017 Favorable AP RC	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations Subcommittee on Criminal and Civil Justice
Wednesday, March 22, 2017, 9:00—10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	SB 892 Simmons	Youthful Offenders; Revising the criteria allowing a court to sentence as a youthful offender a person who is found guilty of, or who pled nolo contendere or guilty to, committing a felony before the person turned 21 years of age, etc. CJ 03/13/2017 Favorable ACJ 03/22/2017 Favorable AP	Favorable Yeas 5 Nays 0
6	SB 898 Simmons (Identical H 65)	Civil Remedies for Terrorism; Creating a cause of action relating to terrorism; specifying a measure of damages; prohibiting claims by specified individuals, etc. JU 03/07/2017 Favorable ACJ 03/22/2017 Favorable RC	Favorable Yeas 5 Nays 0
7	Update from the Department of Management Services on the Oversight of Maintenance and Repair of the State's Privately Operated Prisons		Not Considered
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/CS/SB 154 (639172)

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

SUBJECT: Autism Awareness Training for Law Enforcement Officers

DATE: March 22, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Crosier</u>	<u>Hendon</u>	<u>CF</u>	<u>Favorable</u>
3.	<u>McAuliffe</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
4.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

PCS/CS/SB 154 requires the Florida Department of Law Enforcement (FDLE) to establish continued employment training relating to autism spectrum disorder (ASD). Instruction must include, but is not limited to, instruction on the recognition of the symptoms and characteristics of an individual on the autism disorder spectrum and appropriate responses to a person exhibiting such symptoms and idiosyncrasies. Completion of the training may count toward the 40 hours of required instruction for continued employment or appointment as a law enforcement officer.

The FDLE is currently developing a course that will address the symptoms of ASD, how to respond to it, and who to call for assistance. This course will be available to all Florida law enforcement officers in the Spring of 2017, and completion of this course may count toward an officer's mandatory retraining credit. The FDLE believes this course should meet the objectives of the bill. The FDLE states the estimated total costs of developing this course (\$10,548) will be covered by current budget resources. Course development is funded by the Criminal Justice Standards and Training Trust Fund.

The bill is effective October 1, 2017.

II. Present Situation:

Autism Spectrum Disorder

The Centers for Disease Control (CDC) estimates that one in 68 children have been identified with autism spectrum disorder.¹ The CDC defines “autism spectrum disorder” as a developmental disability that can cause significant social, communication, and behavioral challenges. Though there is nothing about how ASD people look that sets them apart from other people, the CDC states that people with ASD may communicate, interact, behave, and learn in ways that are different from most other people. The range of abilities of people with ASD can span from gifted to severely challenged.²

Though formerly diagnosed separately, autistic disorder, pervasive developmental disorder, and Asperger syndrome are now included in the diagnosis of ASD.³

The following definitions are codified in Florida law:

- “Autism” is a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.⁴
- “Developmental disability” is a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.⁵
- “Autism spectrum disorder” is any of the following disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association:
 - Autistic disorder;
 - Asperger’s syndrome; and
 - Pervasive developmental disorder not otherwise specified.⁶

Interactions between law enforcement and persons with autism can be dangerous. Law enforcement officers may not understand the behaviors of a person with autism and such behaviors can be seen as a threat. Such interactions can lead to tragic results. An article in the Miami Herald July 20, 2016, reported that a caretaker for a man with autism was shot when the

¹ “Autism Spectrum Disorder (ASD), Autism and Developmental Disabilities Monitoring (ADDM) Network,” National Center on Birth Defects and Developmental Disabilities, Centers for Disease Control and Prevention, available at <http://www.cdc.gov/ncbddd/autism/addm.html> (last visited on February 9, 2017). Data is from the Autism and Developmental Disabilities Monitoring Network.

² “Autism Spectrum Disorder (ASD), Facts about ASD,” National Center on Birth Defects and Developmental Disabilities, Centers for Disease Control and Prevention, available at <http://www.cdc.gov/ncbddd/autism/facts.html> (last visited on February 9, 2017).

³ *Id.*

⁴ Section 393.063(5), F.S.

⁵ Section 393.063(12), F.S.

⁶ Sections 627.6686(2)(b) and 641.31098(2)(b), F.S.

autistic patient would not obey police commands. The caretaker recovered but the case highlights the dangers when law enforcement encounters persons with autism.⁷

Law Enforcement Training on Autism Spectrum Disorder

In order to maintain certification as a law enforcement officer, the officer must satisfy the continuing training and education requirements of s. 943.135, F.S., which requires officers, as a condition of continued employment or appointment, to receive continuing training or education at the rate of 40 hours every 4 years. The officer's employing agency⁸ must document that the continuing training or education is job-related and consistent with the needs of the employing agency, and report completion of the training to the Criminal Justice Standards and Training Commission (CJSTC) within the FDLE.⁹

The CJSTC does not currently offer specific post-basic training on ASD. Employing agencies that want to offer ASD training may seek such training directly from vendors, such as CIT International, or from CJSTC-certified training schools (contracting with vendors). CJSTC-certified training schools receive funding each fiscal year to provide post-basic training to officers at no charge.¹⁰ Additionally, ASD training is currently provided in the Crisis intervention Team Training (CIT) program ("Memphis Model"), a law enforcement-based crisis intervention team training program,¹¹ which is facilitated by the Florida Sheriffs Association.¹²

⁷ <http://www.miamiherald.com/news/local/crime/article90905442.html>

⁸ "Employing agency" means any agency or unit of government or any municipality or the state or any political subdivision thereof, or any agent thereof, which has constitutional or statutory authority to employ or appoint persons as officers. The term also includes any private entity which has contracted with the state or county for the operation and maintenance of a nonjuvenile detention facility. Section 943.10(4), F.S.

⁹ The CJSTC is a 19-member commission composed of law enforcement and correctional officers and officials, a state and county correctional institution administrator, and a state resident. Section 943.11, F.S. Its duties include, but are not limited to, "creating entry-level curricula and certification testing for criminal justice officers in Florida, establishing minimum standards for employment and certification, and revoking the certification of officers who fail to maintain these minimum standards of conduct." "Overview," Florida Department of Law Enforcement, available at <http://www.fdle.state.fl.us/cms/CJSTC/Overview.aspx> (last visited on February 9, 2017), and s. 943.12, F.S. Most of the information in this section of the analysis regarding law enforcement training on ASD is from the 2017 FDLE Legislative Bill Analysis (SB 154), dated December 20, 2017, Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice). This document is further referenced in this analysis as "FDLE Analysis." This section of the analysis also incorporates additional information provided by the FDLE via phone and e-mail communications (on file with the Senate Committee on Criminal Justice).

¹⁰ Currently, FDLE/CJSTC is providing more than \$5.1 million dollars to the training schools, which equates to \$67 per officer. The training schools are provided quarterly disbursements and provide training that meets local needs in accordance with CJSTC rules.

¹¹ The CIT program ("Memphis Model") is a crisis intervention team training program that was created in Memphis, Tennessee, in the late 1980's to provide "a collaborative approach to safely and effectively address the needs of persons with mental illnesses, link them to appropriate services, and divert them from the criminal justice system if appropriate." Watson, Amy C. and Fulambarker, Anjali J. "The Crisis Intervention Team Model of Police Response to Mental Health Crises: A Primer for Mental Health Practitioners," *Best Pract Ment Health*. 2012 Dec; 8(2): 71. This article is available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3769782/> (last visited on February 9, 2017). The model includes "specialized training for a select group of officers that volunteer to become CIT officers," but also includes "an organizational and community intervention that involves changes in police department procedures as well as collaboration with mental health providers and other community stakeholders." *Id.* "CIT curriculums may also include content on developmental disabilities, older adult issues, trauma and excited delirium." *Id.*

¹² During the 2015 Regular Session, the Attorney General's Office (through the Department of Legal Affairs) was appropriated recurring funding for three fiscal years to contract with the Florida Sheriffs Association to provide this CIT

The topic of ASD is included in two sections of the Florida Law Enforcement Academy basic recruit curriculum:

- Chapter 3 (Interactions in a Diverse Community), Unit 2 (Communicating in a Diverse Society), Lesson 3 (Developmental Disabilities); and
- Chapter 6 (Calls for Service), Unit 6 (Responding to a Person in Crisis), Lesson 2 (Intervention and Referral).

There is no set number of training hours dedicated specifically to autism spectrum disorder. For the purpose of reference, Chapter 3 (Interactions in a Diverse Community) is 40 classroom hours and Chapter 6 (Calls for Service) is 36 classroom hours. Instructors for each of the referenced chapters are given resources such as videos and links to informational websites to aid classroom instruction. An instructor guide is provided to all instructors that, along with the required activities, includes suggested activities. Examples of suggested activities are reviewing websites such as floridaautismcenter.info, florida-card.org, and autismfl.com, reviewing case law, and inviting a guest speaker from the Autism Society or a member of the Exceptional Student Education Program (ESE).

The FDLE's Criminal Justice Professionalism Division¹³ is developing a course that will address the symptoms of ASD, how to respond to persons with ASD, and who to call for assistance in responding to persons with ASD. The course is expected to be available to officers in Spring 2017.

III. Effect of Proposed Changes:

The bill creates s. 943.1727, F.S., to require the FDLE to establish a continued employment training component relating to autism spectrum disorder as defined in s. 627.6686, F.S.¹⁴ Instruction must include, but is not limited to, instruction on the recognition of the symptoms and characteristics of an individual on the autism disorder spectrum and appropriate responses to a person exhibiting such symptoms and idiosyncrasies. Completion of the training component may count toward the 40 hours of instruction for continued employment or appointment as a law enforcement officer required under s. 943.135, F.S.

The bill takes effect on October 1, 2017.

program training statewide. According to the FDLE, if state funding is not appropriated beyond FY 2017-18, ASD training will still be available for Florida law enforcement agencies from vendors and the CJSTC-certified training schools.

¹³ The Criminal Justice Professionalism Division provides staff support to the Criminal Justice Standards & Training Commission (CJSTC), the Florida Medical Examiners Commission, and the Florida Accreditation Office. It is also responsible for the FDLE Criminal Justice Executive Institute, the Bureau of Professional Development, the Florida Alcohol Testing Program, the Florida Drug Abuse Resistance Education (D.A.R.E.) Program, and FDLE member training. "Overview," Florida Department of Law Enforcement, available at <http://www.fdle.state.fl.us/cms/CJSTC/Overview.aspx> (last visited on January 23, 2017).

¹⁴ Section 627.6686(2)(b), F.S., defines "autism spectrum disorder" as any of the following disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association: autistic disorder; Asperger's syndrome; and pervasive developmental disorder not otherwise specified.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires the FDLE to establish a continued employment training component relating to autism spectrum disorder. The FDLE is currently developing a course that will address the symptoms of ASD and will be available to all Florida law enforcement officers in the Spring of 2017. The FDLE believes this course should meet the objectives of the bill and the estimated total costs of developing this course (\$10,548) will be paid from the Criminal Justice Standards and Training Trust Fund.¹⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 943.1727 of the Florida Statutes.

¹⁵ FDLE Analysis and additional information provided by the FDLE via phone and e-mail communications (on file with the Senate Committee on Criminal Justice).

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on March 22, 2017:

The Committee Substitute:

- Replaces the word “idiosyncrasies” with the word “characteristics” so that instruction on autism spectrum disorder will include instruction on the recognition of the *characteristics* of an individual on the autism disorder spectrum and appropriate responses to a person exhibiting such *characteristics*.

CS by Criminal Justice on February 6, 2017:

The Committee Substitute:

- Deletes reference to the term “online” so that continued employment training relating to autism spectrum disorder may be delivered by any appropriate means.
- Defines the term “autism spectrum disorder” by reference to the definition of that term in s. 627.6686, F.S.

- B. **Amendments:**

None.



788614

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/22/2017	.	
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Appropriations Subcommittee on Criminal and Civil Justice
(Thurston) recommended the following:

Senate Amendment

Delete lines 21 - 23
and insert:
recognition of the symptoms and characteristics of an individual
on the autism disorder spectrum and appropriate responses to a
person exhibiting such symptoms and characteristics. Completion

By the Committee on Criminal Justice; and Senators Thurston and Garcia

591-01706-17

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A bill to be entitled

An act relating to autism awareness training for law enforcement officers; creating s. 943.1727, F.S.; requiring the Department of Law Enforcement to establish a continued employment training component relating to autism spectrum disorder; specifying instruction to be included in the training component; providing that completion of the training may count toward continued employment instruction requirements; providing an effective date.

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

Section 1. Section 943.1727, Florida Statutes, is created to read:

943.1727 Continued employment training relating to autism spectrum disorder.—The department shall establish a continued employment training component relating to autism spectrum disorder as defined in s. 627.6686. The training component shall include, but need not be limited to, instruction on the recognition of the symptoms and idiosyncrasies of an individual on the autism disorder spectrum and appropriate responses to a person exhibiting such symptoms and idiosyncrasies. Completion of the training component may count toward the 40 hours of instruction for continued employment or appointment as a law enforcement officer required under s. 943.135.

Section 2. This act shall take effect October 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Aaron Bean, Chair
Appropriations Subcommittee on Criminal and Civil Justice

Subject: Committee Agenda Request

Date: March 6, 2017

I respectfully request that **Senate Bill #154**, relating to Autism Awareness for Law Enforcement Officers , be placed on the:

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

A handwritten signature in blue ink, appearing to read "Perry E. Thurston, Jr.", written over a horizontal line.

Senator Perry E. Thurston, Jr.
Florida Senate, District 33



The Florida Senate

Committee Agenda Request

To: Senator Aaron Bean, Chair
Appropriations Subcommittee on Criminal and Civil Justice

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Senator Perry E. Thurston, Jr.
Florida Senate, District 33



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Rules, *Vice Chair*
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Education
Judiciary
Regulated Industries

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR PERRY E. THURSTON, JR.

Democratic Caucus Rules Chair
33rd District

March 6th, 2017

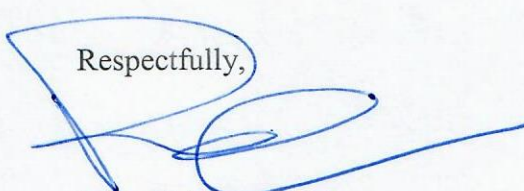
The Honorable Aaron Bean
Florida Senate
306 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Bean,

I am writing this letter because my bill, SB 154 Autism Awareness Training for Law Enforcement Officers, has been referred to the Senate Appropriations Subcommittee on Criminal and Civil Justice Committee. I am respectfully requesting that you place this bill on your committee's calendar at the earliest convenience possible.

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

Respectfully,



Perry E. Thurston, Jr.
District 33

REPLY TO:

- 2151 NW 6th Street, Fort Lauderdale, Florida 33311 (954) 321-2705 FAX: (954) 321-2707
- 208 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Rules, *Vice Chair*
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Education
Judiciary
Regulated Industries

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR PERRY E. THURSTON, JR.

Democratic Caucus Rules Chair
33rd District

March 6th, 2017

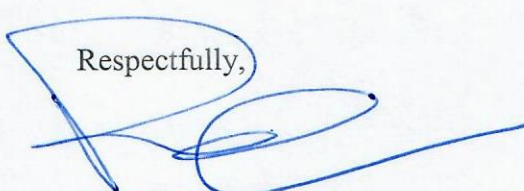
The Honorable Aaron Bean
Florida Senate
306 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

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Respectfully,



Perry E. Thurston, Jr.
District 33

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- 2151 NW 6th Street, Fort Lauderdale, Florida 33311 (954) 321-2705 FAX: (954) 321-2707
- 208 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/2017

154

Meeting Date

Bill Number (if applicable)

Topic Autism Awareness Training for Law Enforcement Officers

Amendment Barcode (if applicable)

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-877-2165

Street

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

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)

March 22, 2017

Meeting Date

CS/SB 154

Bill Number (if applicable)

Topic Criminal Justice Reform - Autism Awareness Training

Amendment Barcode (if applicable)

Name Scott McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

Street

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

City

State

Zip

Speaking: For Against Information

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

Representing Southern Poverty Law Center

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/17

Meeting Date

154

Bill Number (if applicable)

Topic Autism Awareness Training for LEO

Amendment Barcode (if applicable)

Name GARY BRADFORD

Job Title Government Relations

Address 300 E. Brevard St.

Street

Phone 800-733-3722

Tallahassee

City

FL

State

32301

Zip

Email GARY@FLPBA.COM

Speaking: For Against Information

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

Representing FLORIDA POLICE Benevolent Assc. (PBA)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/SB 458 (496256)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice and Senators Brandes and Rouson

SUBJECT: Florida Criminal Justice Reform Task Force

DATE: March 22, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Hrdlicka</u>	<u>CJ</u>	Favorable
2.	<u>McAuliffe</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Fav/CS
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 458 creates a 28-member joint legislative entity called Florida Criminal Justice Reform Task Force for conducting a comprehensive review of the state's criminal justice system, court system, and corrections system. The task force must submit a report of its findings, conclusions, and recommendations for proposed legislation to the President of the Senate and the Speaker of the House of Representatives by the date of convening of the 2018 Regular Legislative Session (January 9, 2018). The task force will be assigned legislative support staff under an appointed executive director. Membership on the task force is prohibited for certain individuals and groups that provide corrections, mental health, substance abuse, reentry, or similar criminal justice-related services. The task force expires January 31, 2018.

The bill may increase workload for legislative staff and increase agency expenses relating to travel reimbursement for task force members. However, increases in workload and expenses should be absorbed within existing resources of the affected agencies. See Section V. C. below.

The bill is effective upon becoming law.

II. Present Situation:

The Florida Department of Corrections (DOC) is the third largest state prison system in the country. It incarcerates approximately 100,000 inmates in correctional facilities and supervises nearly 140,000. As of June 30, 2015, there were 11,000 correctional officers. The department's annual budget is \$2.4 billion for 2016.¹

According to an article in the February 2016 State Legislatures Magazine, at least 25 states have used what is commonly called justice reinvestment to develop and adopt prison reforms.² The process involves an analysis of the data on what drives prison populations and costs, enactment of policies that address those factors, investments that support carrying out the changes, and oversight and measurement to ensure the desired results are being achieved.

The article indicates that half the states have reduced their prison populations since 2009. Five states, Alabama, Idaho, Mississippi, Nebraska, and Utah, adopted reforms in 2014 and 2015 that have a collective projected savings or avoided cost of more than \$1.7 billion over the next two decades.³

In June 2016, the Florida Government Efficiency Task Force recommended that the Legislature introduce a bill for consideration during the 2017 Legislative Session to establish an inter-branch, bipartisan criminal justice task force of stakeholders from both inside and outside of state government to conduct an operational review of the DOC.⁴

The task force cited the prison population, the number of correctional officers, and the cost of maintaining this system as significant factors behind the need for a task force. It states that the \$2.4 billion budget represents more than half of the total \$4.9 billion appropriated to criminal and civil justice.

The task force also cited the 2015 Office of Program Policy and Accountability (OPPAGA) study on the DOC's operations as further rationale for reform.⁵ In 2015, OPPAGA contracted with an independent consultant for a study of operations of the DOC. Specifically, the report reviewed correctional officer staffing, security operations, inmate programs, and a risk and needs assessment.

The study found that DOC's staffing is inexperienced due to high turnover and the number of staff is insufficient.⁶ The rate of turnover in Fiscal Year 2014-15 was 17.6 percent and there were more than 2,900 separations.⁷ In addition, half of the correctional officers had less than 3.1 years

¹ Florida Department of Corrections. *Annual Report*, Fiscal Year 2014=2015
http://www.dc.state.fl.us/pub/annual/1415/FDC_AR2014-15.pdf.

²Allison Lawrence, *Justice Reinvestment: States Tackle Prison Reform*, *State Legislatures Magazine*, National Conference of State Legislatures, February 2016, available at <http://www.ncsl.org/bookstore/state-legislatures-magazine/prison-break.aspx> (last visited March 9, 2017).

³ *Id.*

⁴ Government Efficiency Task Force, *Final Report*, June 30, 2016.

⁵ OPPAGA, *Study of Operations of the Florida Department of Corrections*, Report No. 15-FDC, November 2015, available at <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=15-FDC> (last visited March 9, 2017).

⁶ *Id.* at p. 122.

⁷ *Id.* at p. 18.

of work experience. The study also found that correctional officer staffing levels at times appeared to drop below the minimum acceptable levels.⁸ Many staff had not completed basic training; nearly 1,400 officers were on temporary employment authorization.

The study also found that certain policies or procedures led to inmate idleness, the mixing of populations, or the ability to move contraband articles, all of which could lead to violence or other problems arising within the facility and population.⁹ The perimeter security systems were found to be outdated, in poor operational condition, and fencing is in disrepair.¹⁰ “The study recommended the DOC review comprehensive staffing, perimeter security, emergency management plans, facility repairs, contraband and abuse policies, inmate safety and interaction policies, and inmate programs and their effectiveness.”¹¹

III. Effect of Proposed Changes:

The bill creates the Florida Criminal Justice Reform Task Force (task force) for conducting a comprehensive review of the state’s criminal justice system, court system, and corrections system.

Membership

The task force is composed of 28 members.

The following members are appointed:

- Two members of the Senate, appointed by the President of the Senate;
- Two members of the House of Representatives, appointed by the Speaker of the House of Representatives;
- Two circuit judges, one of whom must have presided over a mental health court or drug court, appointed by the chair of the Conference of Circuit Judges of Florida;
- Two county court judges, appointed by the chair of the Conference of County Court Judges;
- A justice of the Supreme Court or judge of a district court of appeal, appointed by the Chief Justice of the Supreme Court;
- A representative of the Florida State University Project on Accountable Justice, appointed by the chair of the organization’s executive board;
- Two county commissioners, appointed by the Florida Association of Counties;
- Appointed by the Governor from a list of three nominees recommended by the chairs of the committees in the Senate and the House of Representatives with jurisdiction over criminal justice matters, are:
 - A representative from a victim’s advocacy group;
 - A formerly incarcerated individual who has demonstrated exceptional commitment to rehabilitation and community improvement; and
 - Two representatives of the faith community, either clergy or employees of faith-based policy organizations.

⁸ *Id.* at pp. 28-30.

⁹ *Id.* at pp. 54, 72, 104, and 122.

¹⁰ *Id.* at p. 48.

¹¹ Government Efficiency Task Force, *Final Report*, June 30, 2016.

The rest of the membership consists of:

- The chairs of the committees of the Senate and House of Representatives with jurisdiction over criminal justice matters, or their designees;
- Two designees of the Executive Office of the Governor with demonstrated knowledge in the criminal justice field;
- The Attorney General or his or her designee;
- The Secretary of Corrections or his or her designee;
- The Secretary of Juvenile Justice or his or her designee;
- The president of the Florida Prosecuting Attorneys Association or his or her designee;
- The president of the Florida Public Defender Association or his or her designee;
- The president of the Florida Association of Criminal Defense Lawyers or his or her designee;
- The president of the Florida Sheriffs Association or his or her designee; and
- The president of the Florida Police Chiefs Association or his or her designee.

Terms of Membership

Task force appointments must be made within 30 days of the effective date of the bill. For those appointments that are selected from a list of nominees jointly recommended by the chairs of the Senate and House of Representatives committees with jurisdiction over criminal justice matters, the chairs must submit the names of nominees to the Governor within 15 days of the effective date of this act.

All members must serve the duration of the task force. The original appointing authority fills any vacancies. Membership must reflect the racial, gender, geographic, and economic diversity of the state, as well as the diversity and demographics of the state's prison population. Any member may be removed by the Governor for misfeasance, malfeasance, or willful neglect of duty.

Task force members serve without compensation but are entitled to receive reimbursement for per diem and travel expenses as provided in s. 112.061, F.S.

Membership on the task force is prohibited for individuals employed by or under contract with an entity that contracts with the state or local governments and for representatives from trade associations, professional groups, or other groups that provide corrections, mental health, substance abuse, reentry, or similar criminal justice-related services.

Duties

The task force is authorized and directed to study, evaluate, analyze, and undertake a comprehensive review of the state's adult criminal justice system, using a data-driven approach, to develop sentencing and corrections policy recommendations for proposed legislation. The policy recommendations must accomplish the following goals:

- Reduce correctional populations and associated correctional spending by focusing prison capacity on offenders who committed serious offenses or who are violent;
- Hold offenders accountable more efficiently by implementing or expanding research-based supervision and sentencing practices; and

- Reinvest savings into strategies shown to decrease recidivism, including reentry outcomes.

The task force is required to request technical assistance from nongovernmental research groups, including, but not limited to, the Justice Reinvestment Initiative.¹² The Department of Corrections, the Department of Law Enforcement, the Office of the State Courts Administrator, the Department of Juvenile Justice, the Office of Program Policy Analysis and Government Accountability, and any other state agency or department must provide assistance, data, and other information to the task force as requested.

Meetings

The task force must:

- Hold its first meeting within 60 days of the effective date of the bill, upon the call of the Senate President and the Speaker of the House of Representatives. At the first meeting, the task force elects a chair and any other offices the members deem necessary.
- Hold a minimum of four regular meetings.
- Meet upon the call of the chair or a request of a majority of the membership (a majority constitutes a quorum).

Written notice is required for all meetings at least 5 days before the date the meeting is scheduled. Emergency meetings may be scheduled at the request of the entire membership and without the 5-day written notice. All meetings must be open to the public.

Staffing

The President of the Senate and the Speaker of the House of Representatives jointly appoint an executive director and are authorized to assign legislative staff to provide support for the task force.

Task Force Records

The task force is subject to policies governing public records disclosure prescribed in the joint rules of the Senate and House of Representatives. The task force shall maintain records of its meetings.

Report

The task force must submit a report of its findings, conclusions, and recommendations for proposed legislation to the President of the Senate and the Speaker of the House of Representatives by the date of convening of the 2018 Regular Session of the Legislature (January

¹² The U.S. Department of Justice's Office of Justice Programs administers the Justice Reinvestment Initiative. Generally, a state that requests assistance is assigned a technical assistance provider to provide guidance to the state to review the state's criminal justice system and make recommendations for reform. However, as of January 2012, the program was not accepting new sites. Office of Justice Programs, Bureau of Justice Administration, Justice Reinvestment Initiative, *How Do I Participate? State Site Selection Process*, available at https://www.bja.gov/programs/justicereinvestment/how_do_i_participate.html (last visited March 9, 2017).

9, 2018). Upon submission of the report, the task force is dissolved and discharged of further duties.

Expiration

This section expires January 31, 2018.

The act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires the presiding officers of the Legislature to appoint an executive director and assign staff to assist the task force. Most likely, this workload will be absorbed within existing legislative resources.

The bill allows task force members to be reimbursed travel costs. It is unclear which governmental entity will be responsible for such costs for those members not headquartered in Tallahassee. If the Office of Legislative Services (OLS) is assigned the obligation for reimbursement of travel expenses, there will be a nominal impact to the OLS budget,¹³ and should not exceed \$50,000.

¹³ Office of Legislative Services, Bill Analysis for Senate Bill 458, January 27, 2017.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

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 Criminal and Civil Justice on March 22, 2017:

The committee substitute makes membership on the task force prohibited for individuals employed by or under contract with an entity that contracts with the state or local governments and for representatives from trade associations, professional groups, or other groups that provide corrections, mental health, substance abuse, reentry, or similar criminal justice-related services.

- B. **Amendments:**

None.



531458

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/22/2017	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 93
and insert:
population. Individuals employed by or under contract with an
entity that contracts with the state or local governments to
provide corrections, mental health, substance abuse, reentry, or
similar criminal justice-related services are not eligible for
membership on the task force. Representatives from trade
associations, professional groups, or other organizations whose



531458

11 membership or board consists of entities that provide
12 corrections, mental health, substance abuse, reentry, or similar
13 criminal justice-related services are not eligible for
14 membership on the task force. Any member may be removed by the
15 Governor for

By Senator Brandes

24-00551-17

2017458__

A bill to be entitled

An act relating to the Florida Criminal Justice Reform Task Force; creating the task force within the legislative branch; specifying membership of the task force; establishing the manner of appointments and the terms of membership; prescribing duties of the task force; specifying requirements for meetings of the task force; requiring the task force to submit a report to the Legislature by a specified date; providing for staffing; specifying public records and public meetings requirements applicable to the task force; authorizing reimbursement for per diem and travel expenses; providing for expiration; providing an effective date.

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

Section 1. Florida Criminal Justice Reform Task Force.—The Florida Criminal Justice Reform Task Force is created within the legislative branch of state government for the purpose of conducting a comprehensive review of the state's criminal justice system, court system, and corrections system.

(1) MEMBERSHIP.—The task force is composed of 28 members, as follows:

(a) Two members of the Senate, appointed by the President of the Senate, not including any member designated pursuant to paragraph (k).

(b) Two members of the House of Representatives, appointed by the Speaker of the House of Representatives, not including any member designated pursuant to paragraph (k).

(c) Two circuit judges, one of whom must have presided over a mental health court or drug court, appointed by the chair of

24-00551-17

2017458__

the Conference of Circuit Judges of Florida.

(d) Two county court judges, appointed by the chair of the Conference of County Court Judges of Florida.

(e) A justice of the Supreme Court or judge of a district court of appeal, appointed by the Chief Justice of the Supreme Court.

(f) A representative of the Florida State University Project on Accountable Justice, appointed by the chair of the organization's executive board.

(g) A representative from a victim's advocacy group, appointed by the Governor from a list of three nominees recommended by the chairs of the committees in the Senate and the House of Representatives with jurisdiction over criminal justice matters.

(h) Two county commissioners, appointed by the Florida Association of Counties.

(i) A formerly incarcerated individual who has demonstrated exceptional commitment to rehabilitation and community improvement, appointed by the Governor from a list of three nominees jointly recommended by the chairs of the committees in the Senate and House of Representatives with jurisdiction over criminal justice matters.

(j) Two representatives of the faith community, either clergy or employees of faith-based policy organizations, appointed by the Governor from a list of three nominees jointly recommended by the chairs of the committees in the Senate and the House of Representatives with jurisdiction over criminal justice matters.

(k) The chairs of the committees of the Senate and House of

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62 Representatives with jurisdiction over criminal justice matters,
 63 or their designees.

64 (l) Two designees of the Executive Office of the Governor
 65 with demonstrated knowledge in the criminal justice field.

66 (m) The Attorney General or his or her designee.

67 (n) The Secretary of Corrections or his or her designee.

68 (o) The Secretary of Juvenile Justice or his or her
 69 designee.

70 (p) The president of the Florida Prosecuting Attorneys
 71 Association or his or her designee.

72 (q) The president of the Florida Public Defender
 73 Association or his or her designee.

74 (r) The president of the Florida Association of Criminal
 75 Defense Lawyers or his or her designee.

76 (s) The president of the Florida Sheriffs Association or
 77 his or her designee.

78 (t) The president of the Florida Police Chiefs Association
 79 or his or her designee.

80 (2) TERMS OF MEMBERSHIP.—Appointments to the task force
 81 shall be made within 30 days of the effective date of this act.
 82 For appointments that are selected from a list of nominees
 83 jointly recommended by the chairs of the committees of the
 84 Senate and the House of Representatives with jurisdiction over
 85 criminal justice matters, the respective chairs shall submit the
 86 names of nominees to the Governor within 15 days of the
 87 effective date of this act. All members shall serve for the
 88 duration of the task force. Any vacancy shall be filled by the
 89 original appointing authority for the remainder of the task
 90 force. The task force membership must reflect the racial,

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91 gender, geographic, and economic diversity of the state, as well
 92 as the diversity and demographics of the state's prison
 93 population. Any member may be removed by the Governor for
 94 misfeasance, malfeasance, or willful neglect of duty.

95 (3) DUTIES.—

96 (a) The task force is authorized and directed to study,
 97 evaluate, analyze, and undertake a comprehensive review of the
 98 state's adult criminal justice system, using a data-driven
 99 approach, to develop sentencing and corrections policy
 100 recommendations for proposed legislation that will accomplish
 101 the following goals:

102 1. Reduce correctional populations and associated
 103 correctional spending by focusing prison capacity on serious
 104 offenses and violent criminals.

105 2. Hold offenders accountable more efficiently by
 106 implementing or expanding research-based supervision and
 107 sentencing practices.

108 3. Reinvest savings into strategies shown to decrease
 109 recidivism, including reentry outcomes.

110 (b) The task force shall request technical assistance from
 111 nongovernmental research groups, including, but not limited to,
 112 the Justice Reinvestment Initiative. The Department of
 113 Corrections, the Department of Law Enforcement, the Office of
 114 the State Courts Administrator, the Department of Juvenile
 115 Justice, the Office of Program Policy Analysis and Government
 116 Accountability, and any other state agency or department shall
 117 provide assistance, data, and other information to the task
 118 force upon request.

119 (4) MEETINGS.—The task force shall hold its first meeting

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 120 within 60 days of the effective date of this act, upon the call
 121 of the President of the Senate and the Speaker of the House of
 122 Representatives. At the first meeting, the task force shall
 123 elect a chair and any other offices as it deems necessary from
 124 among its membership. The task force shall hold a minimum of
 125 four regular meetings. The task force shall meet upon the call
 126 of the chair or a request of a majority of the membership. A
 127 majority of the membership of the task force constitutes a
 128 quorum. All members must be notified in writing of all meetings
 129 at least 5 days before the date on which a meeting of the task
 130 force is scheduled. However, an emergency meeting may be held
 131 without the 5 days' written notice if the meeting is scheduled
 132 at the request of the entire membership.

133 (5) REPORT.—The task force shall submit a report of its
 134 findings, conclusions, and recommendations for proposed
 135 legislation to the President of the Senate and the Speaker of
 136 the House of Representatives by the date of convening of the
 137 2018 Regular Session of the Legislature. Upon submission of the
 138 report, the task force is dissolved and discharged of further
 139 duties.

140 (6) STAFFING.—The President of the Senate and the Speaker
 141 of the House of Representatives shall appoint an executive
 142 director and are authorized to assign legislative staff to
 143 provide support for the task force.

144 (7) PUBLIC RECORDS AND PUBLIC MEETINGS.—The task force is
 145 subject to policies governing public records disclosure
 146 prescribed in the joint rules of the Senate and the House of
 147 Representatives. All meetings of the task force must be open to
 148 the public, and regularly scheduled meetings must be publicly

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 149 noticed at least 5 days before the date of the meeting. The task
 150 force shall maintain records of its meetings.
 151 (8) PER DIEM AND TRAVEL EXPENSES.—Task force members shall
 152 serve without compensation but are entitled to receive
 153 reimbursement for per diem and travel expenses as provided in s.
 154 112.061, Florida Statutes.

155 (9) EXPIRATION.—This section expires January 31, 2018.
 156 Section 2. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator Aaron Bean,
Appropriations Subcommittee on
Criminal and Civil Justice

Subject: Committee Agenda Request

Date: March 13th, 2017

I respectfully request that **Senate Bill #458**, relating to **Florida Criminal Justice Reform Task Force**, be placed on the:

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

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

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/17
Meeting Date

458
Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Arthur Rosenberg

Job Title Attorney

Address 3000 Biscayne Blvd, #106

Phone 850-509-2085

Miami FL 33137
City State Zip

Email athur@floridalegal.org

Speaking: For Against Information

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

Representing Florida Legal Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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)

3/22/17
Meeting Date

SB 458
Bill Number (if applicable)

Topic CRIMINAL JUSTICE REFORM TASK FORCE

Amendment Barcode (if applicable)

Name KARA GROSS

Job Title LEGISLATIVE COUNSEL

Address 4500 BISCAYNE BLVD
Street

Phone 786-363-4436

MIAMI FL
City State Zip

Email KGROSS@ACLUFL.ORG

Speaking: For Against Information

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

Representing ACLU 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)

3/22/2017

Meeting Date

458

Bill Number (if applicable)

Topic Florida Criminal Justice Reform Task Force

Amendment Barcode (if applicable)

Name Honorable Carlos Martinez

Job Title Public Defender, 11th Circuit

Address 1320 NW 14th Street

Phone 305-545-1600

Street

Miami

FL

33125

Email cmartinez@pdmiami.com

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)

3/22/2017

Meeting Date

458

Bill Number (if applicable)

Topic Florida Criminal Justice Reform Task Force

Amendment Barcode (if applicable)

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-877-2165

Street

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

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)

March 22, 2017

Meeting Date

SB 458

Bill Number (if applicable)

Topic Criminal Justice Reform

Amendment Barcode (if applicable)

Name Scott McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

Street

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

City

State

Zip

Speaking: For Against Information

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

Representing Southern Poverty Law Center

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

3/22/2017

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

458

Meeting Date

Bill Number (if applicable)

Topic Fla Cnm Justice Reform Task Force

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 SOUTH MONROE ST

Phone (850) 681-0024

Street Tallahassee, FL 32301

Email jorge@flapartners.com

City State Zip

Speaking: For Against Information

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

Representing Fla Association of Criminal Defense Lawyers

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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)

3/22/17
Meeting Date

SB 458
Bill Number (if applicable)

Topic FL. CJ Reform TASK FORCE

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title State Director

Address 824 N. Dunal St

Phone 954 557 0216

Jacksonville FL 32303

Email

Speaking: For Against Information

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

Representing Right on Crime

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/17

Meeting Date

SB 458

Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Logan Pike

Job Title Director of Public Affairs

Address 100 N. Duval St.

Phone 850-386-3131

City TLH State FL Zip 32301

Email lpike@jamesmadison.org

Speaking: For Against Information

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

Representing James Madison Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/22

Meeting Date

458

Bill Number (if applicable)

Topic Criminal Justice Task Force

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 2d W Park Av

Phone

Street

Tallahassee

FL

32301

City

State

Zip

Email

Speaking: For Against Information

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

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 536

INTRODUCER: Banking and Insurance Committee and Senator Brandes

SUBJECT: Unclaimed Funds Held by the Clerks of Court

DATE: March 22, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Favorable</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 536 repeals statutes relating to surplus trustees. A surplus trustee is an entity that holds and administers surplus proceeds from a foreclosure sale. The primary duty of a surplus trustee is to locate the owner of record and return the surplus funds to the owner. The bill repeals the surplus trustee statute and requires unclaimed surplus funds to be remitted to the Department of Financial Services (DFS) after 1 year and be distributed pursuant to the Florida Disposition of Unclaimed Property Act. Under the Act, the owner obtains the money by filing a claim with the DFS. If the DFS denies the claim, the owner is entitled to a hearing and an appeal to contest the denial.

The bill repeals section 43.19, Florida Statutes, relating to money held in the court registry. The statute provides that in cases where the right to withdraw money from the court registry is not in dispute and has remained with the court for 5 years, the court shall direct the money be deposited with DFS. The repeal of section 43.19, Florida Statutes, means that the court will remit the unclaimed money to the DFS after 1 year, instead of 5 years, for disposition pursuant to the Florida Disposition of Unclaimed Property Act.

The bill has an indeterminate, but likely insignificant, fiscal impact on the DFS and the Clerks of the Court. The bill has an indeterminate fiscal impact on surplus trustees.

The bill has an effective date of July 1, 2017.

II. Present Situation:

Unclaimed Property Pursuant to Chapter 717, F.S., and Section 43.19, F.S.

Section 43.19, F.S., provides for the disposition of unclaimed money paid into the court registry. Section 43.19(1), F.S., provides that in a case in which the right to withdraw money in the court registry is not in dispute and the money has remained in the registry for 5 years or more, the court shall direct that the money be deposited with the Chief Financial Officer (CFO) to the credit of the State School Fund. A person entitled to any of the money may obtain an order directing the payment of the money to the claimant by petitioning the court and providing written notice to the state attorney and proof of entitlement to the money.¹ A court has noted that the state attorney is not required to appear at the proceeding so there could be a case where no representative of the state is party to the proceeding.²

Chapter 717, F.S., is the Florida Disposition of Unclaimed Property Act.³ It provides that intangible property held for the owner by a court that has not been claimed by the owner for more than 1 year after it became payable is presumed unclaimed.⁴ Upon the payment or delivery of unclaimed property to the DFS, the state assumes custody and responsibility for the safekeeping of the property.⁵ Section 717.118, F.S., requires the DFS to attempt to locate owners of unclaimed property if the value is more than \$250. The original property owner retains the right to recover the proceeds of the property, and any person claiming an interest in the property delivered to the DFS may file a claim for the property, subject to certain requirements.⁶ The DFS is required to make a determination on a claim within 90 days. If a claim is determined in favor of the claimant, the DFS must deliver or pay to the claimant the property or the amount the DFS actually received or the proceeds, if it has been sold by the DFS.⁷ Any person aggrieved by a decision of the DFS may petition for a hearing pursuant to ss. 120.569 and 120.570, F.S.⁸

If the property remains unclaimed, all proceeds from abandoned property are then deposited by the DFS into the Unclaimed Property Trust Fund.⁹ The DFS is allowed to retain up to \$15 million to make prompt payment of verified claims and to cover costs incurred by the DFS in administering and enforcing the Florida Disposition of Unclaimed Property Act. All remaining funds received are deposited into the State School Fund.¹⁰

Section 43.19, F.S., provides that if the right to withdraw money in the court registry is not in dispute and the money has remained in the registry for 5 years or more, the court shall direct that the money be deposited with the CFO. Section 717.113, F.S., provides that money held by a

¹ s. 43.19(3), F.S.

² *Crescenzo v. Atwater*, 136 So.3d 1248, 1256 (Fla. 2d DCA 2014).

³ s. 717.001, F.S.

⁴ s. 717.113, F.S. One court has called the legal effect of the presumption that the property is unclaimed “unclear.” See *Crescenzo v. Atwater*, 136 So.3d 1248, 1255 (Fla. 2d DCA 2014).

⁵ s. 717.1201, F.S.

⁶ ss. 717.117 and 717.124, F.S.

⁷ s. 717.124, F.S.

⁸ s. 717.126, F.S.

⁹ s. 717.123, F.S.

¹⁰ s. 717.123, F.S.

court for more than 1 year after it becomes payable is presumed unclaimed. A court has described the legal effect of the presumption as “unclear.”¹¹

Claims under s. 43.19, F.S., may be assigned in accordance with contract law. In *Crescenzo v. Atwater*, an entity called Interest Recovery, Inc., obtained an assignment of the right to \$13,857.69 placed in the registry of the court for \$10.¹² Section 717.135, F.S., requires certain disclosures or a fee limitation before a claimant’s representative can obtain unclaimed property from the DFS on a claimant’s behalf.

Judicial Sales of Real Property

Foreclosure is the legal process for enforcement of a security interest in real property. In most foreclosures, the property is sold and the proceeds of the sale are applied against the debt. In some cases, the property is sold for more than the debt. The difference is known as the surplus. Section 45.032, F.S., governs the disbursement of surplus funds after a judicial sale.

Section 45.031(1), F.S., requires a final judgment in a foreclosure action to contain:

- A notice of potential surplus;
- A statement indicating that a subordinate lienholder must file a claim for surplus funds no later than 60 days after the sale;
- A statement indicating that the property owner does not need to assign his or her rights in the property to claim surplus funds; and
- A statement indicating that the owner does not need any type of representation to claim such funds.

The clerk of the court conducts the sale, files a certificate of sale, files a certificate of title, and disburses the proceeds pursuant to the final judgment.¹³ If there are funds remaining after the disbursement, the clerk holds the surplus funds for 60 days pending a court order.¹⁴ If the owner of record claims the surplus during the 60-day period and there is no subordinate lienholder, the court orders the clerk to deduct applicable service charges¹⁵ and pay the remainder to the owner of record.¹⁶ If any person other than the owner of record claims an interest in the surplus, the court holds a hearing to determine who is entitled to the surplus.¹⁷ If no one claims the surplus, the clerk appoints a surplus trustee to find the owner of record.¹⁸ The DFS has a rotation system for assignment of cases to all qualified surplus trustees.¹⁹

In *Saulnier v. Bank of America*,²⁰ the court held that a subordinate lienholder was not entitled to the surplus because the subordinate lienholder did not make a claim within the 60-day statutory

¹¹ *Crescenzo v Atwater*, 136 So.3d 1248, 1255 (Fla. 2d DCA 2014).

¹² *Crescenzo v. Atwater*, 136 So.3d 1248, 1251-1252 (Fla. 2d DCA 2014).

¹³ s. 45.031(3)-(7), F.S.

¹⁴ s. 45.032(3), F.S.

¹⁵ s. 45.035, F.S., provides that the clerk may charge specified service charges relating to judicial sales.

¹⁶ s. 45.032(3)(a), F.S.

¹⁷ s. 45.032(3)(b), F.S.

¹⁸ s. 45.032(c), F.S.

¹⁹ s. 45.034(5), F.S.

²⁰ 187 So.3d 854 (Fla. 4th DCA 2015).

time limit. The court rejected the subordinate lienholder's claim that it should be excused from missing the time limit because it did not receive actual notice. The court stated that the statutes do not contain provisions excusing a lienholder for lack of actual notice. Even assuming there was not actual notice, the court said notice by publication is sufficient.

Surplus Trustees

A surplus trustee is an entity that holds and administers surplus proceeds from a foreclosure.²¹ The primary duty of a surplus trustee is to locate the owner of record within 1 year after appointment. When the surplus trustee locates the owner of record, it files a petition with the court seeking disbursement of the surplus funds.²² A surplus trustee is entitled to the following service charges and fees:

- Upon obtaining a court order, a cost advance of 2 percent of the surplus; and
- Upon obtaining a court order disbursing the surplus to the owner of record, a service charge of 10 percent of the surplus.²³

If the surplus trustee is unable to locate the owner of record within 1 year of appointment, the clerk notifies the surplus trustee that the appointment is terminated. The clerk treats the remaining funds as unclaimed property to be deposited with the CFO pursuant to ch. 717, F.S.²⁴

Surplus trustees are certified by the DFS.²⁵ Persons wishing to be certified must submit an application and a \$25 fee to the DFS by June 1. The DFS must approve or deny the application by June 30. Certifications are effective from July 1 until June 30. The DFS renews a certification upon receipt of a \$25 fee and sworn statement certifying the surplus trustee continues to meet the statutory qualifications.²⁶

The surplus trustee program began in 2007. Since that time, surplus trustees have been appointed in 10,033 cases.²⁷ The total value of those cases is \$85,032,758 (6,970 cases involved a surplus of less than \$5,000 and 3,063 cases involved a surplus greater than \$5,000).²⁸

III. Effect of Proposed Changes:

Section 1 repeals s. 43.19, F.S. Once s. 43.19, F.S., is repealed, money in the court registry that has not been claimed after 1 year is presumed unclaimed.²⁹ Once the property is unclaimed, the clerk will report the property to DFS pursuant to s. 717.117, F.S. Claimants or their representatives may claim the money by filing a claim with the DFS.³⁰

Section 2 amends s. 45.032, F.S., relating to the disbursement of surplus funds after a judicial sale. This section provides that if no claim is filed during the 60-day period after the clerk issues

²¹ s. 45.034(2), F.S.

²² s. 45.034(6), F.S.

²³ s. 45.034(7), F.S.

²⁴ s. 45.032(4), F.S.

²⁵ s. 45.034(3), F.S.

²⁶ s. 45.034(4), F.S.

²⁷ Department of Financial Services, *Analysis of SB 536* (February 19, 2017) at p. 5.

²⁸ *Id.*

²⁹ s. 717.113, F.S.

³⁰ s. 717.124, F.S.

a certificate of disbursement or if any surplus funds remain after payment to a subordinate lienholder, the clerk shall report and remit the surplus to DFS pursuant to ss. 717.117 and 717.119, F.S. The clerk will report and remit the surplus after 1 year as provided in s. 717.113, F.S.

Section 2 provides that, for purposes of establishing entitlement to the property, only the owner of record or the estate or beneficiary of a deceased owner of record is entitled to the surplus. Any surplus of less than \$10 escheats to the clerk.

Section 4 repeals s. 45.034, F.S., to eliminate the qualifications and appointment of a surplus trustee in foreclosure actions.

Section 5 amends s. 45.035, F.S., to delete service charges relating to a surplus trustee that the clerk of court can collect for:

- Notifying a surplus trustee of his or her appointment;
- Furnishing the surplus trustee with a copy of the final judgment;
- Furnishing the surplus trustee with the certificate of disbursements; and
- Disbursing the surplus trustee's cost advance.

According to the DFS, there are 79 surplus trustee entities. Some people own more than one surplus trustee entities.³¹ Representatives of surplus trustees believe that surplus trustees help discover and correct errors, such as when the owner of record is incorrect or when a surplus trustee is erroneously appointed after a subordinate lienholder has timely filed a claim.³²

Sections 3, 6, 7, and 8 amend ss. 45.033, 717.124, 717.138, and 717.401, F.S., respectively, to delete references to ss. 43.19 and 45.034, F.S., made obsolete by this act.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³¹ Department of Financial Services, *Analysis of SB 536* (February 19, 2017) at p. 2. A list of the surplus trustees can be found at <http://www.myfloridacfo.com/aadir/SurplusTrustees/SurplusTrusteeEntities2016-2017.pdf> (last accessed February 28, 2017).

³² White Paper by the Citizens for Judicial Process (on file with the Committee on Banking and Insurance).

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

None.

B. Private Sector Impact:

There will be an indeterminate fiscal impact on current surplus trustees.

C. Government Sector Impact:

The DFS anticipates a negligible decrease in recurring revenues. The DFS has received \$8,400 in application and renewal fees since the implementation of the surplus trustee law in 2007.³³

The Florida Clerk of Courts Operations Corporation anticipates a negligible indeterminate fiscal impact to the clerks of court due to the elimination of the fee for notification and appointment of the surplus trustees.³⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 45.032, 45.033, 45.035, 717.124, 717.138, and 717.1401.

This bill repeals the following sections of the Florida Statutes: 43.19 and 45.034.

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 Banking and Insurance on March 6, 2017:**

The CS provides that clerks of court should report unclaimed surplus funds pursuant to the Disposition of Unclaimed Property Act. The effect of this change is to require the clerks to hold the unclaimed money for 1 year instead of 60 days.

³³ Department of Financial Services, *Analysis of SB 536* (February 19, 2017) at p. 3.

³⁴ Clerk of the Courts Operations Corporation, *Analysis of SB 536* (February 14, 2017) at p. 3.

B. Amendments:

None.

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

By the Committee on Banking and Insurance; and Senator Brandes

597-02141-17

2017536c1

A bill to be entitled

An act relating to unclaimed funds held by the clerks of court; repealing s. 43.19, F.S., relating to the deposit of unclaimed funds with the Chief Financial Officer to the credit of the State School Fund; amending s. 45.032, F.S.; deleting a definition; requiring the clerk to report as unclaimed property a surplus under certain circumstances; specifying who is entitled to a surplus under certain circumstances; conforming provisions to changes made by the act; amending s. 45.033, F.S.; conforming a provision to changes made by the act; repealing s. 45.034, F.S., relating to qualifications and appointment of a surplus trustee in foreclosure actions; amending s. 45.035, F.S.; revising service charges that a clerk may receive and deduct from surplus; amending ss. 717.124, 717.138, and 717.1401, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Section 43.19, Florida Statutes, is repealed.

Section 2. Paragraph (d) of subsection (1), paragraph (c) of subsection (3), and subsection (4) of section 45.032, Florida Statutes, are amended to read:

45.032 Disbursement of surplus funds after judicial sale.—

(1) For purposes of ss. 45.031-45.035, the term:

~~(d) "Surplus trustee" means a person qualifying as a surplus trustee pursuant to s. 45.034.~~

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

597-02141-17

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(3) During the 60 days after the clerk issues a certificate of disbursements, the clerk shall hold the surplus pending a court order.

(c) If the remainder of the surplus has not been paid to the owner of record or any subordinate lienholder, it is subject to s. 717.113 and shall be reported and remitted to the Department of Financial Services in accordance with ss. 717.117 and 717.119. For purposes of establishing entitlement to the property, only the owner of record reported by the clerk, or the estate or beneficiary as defined in s. 731.201 of a deceased owner of record reported by the clerk, is entitled to the surplus. Any surplus of less than \$10 escheats to no claim is filed during the 60 day period, the clerk shall appoint a surplus trustee from a list of qualified surplus trustees as authorized in s. 45.034. Upon such appointment, the clerk shall prepare a notice of appointment of surplus trustee and shall furnish a copy to the surplus trustee. The form of the notice may be as follows:

~~(Caption of Action)~~

NOTICE OF APPOINTMENT
OF SURPLUS TRUSTEE

~~The undersigned clerk of the court certifies that he or she disbursed the proceeds received from the sale of the property as provided in the order or final judgment to the persons named in the certificate of disbursements, and that surplus funds of \$.... remain and are subject to disbursement to the owner of~~

Page 2 of 5

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

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59 ~~record. You have been appointed as surplus trustee for the~~
 60 ~~purpose of finding the owner of record in order for the clerk to~~
 61 ~~disburse the surplus, after deducting costs, to the owner of~~
 62 ~~record.~~

63 ~~WITNESS my hand and the seal of the court on . . . , . . . (year) . . .~~

64 ~~. . . (Clerk) . . .~~

65 ~~By . . . (Deputy Clerk) . . .~~

66
 67 ~~(4) If the surplus trustee is unable to locate the owner of~~
 68 ~~record entitled to the surplus within 1 year after appointment,~~
 69 ~~the appointment shall terminate and the clerk shall notify the~~
 70 ~~surplus trustee that his or her appointment was terminated.~~
 71 ~~Thirty days after termination of the appointment of the surplus~~
 72 ~~trustee, the clerk shall treat the remaining funds as unclaimed~~
 73 ~~property to be deposited with the Chief Financial Officer~~
 74 ~~pursuant to chapter 717.~~

75 Section 3. Paragraph (d) of subsection (3) of section
 76 45.033, Florida Statutes, is amended, and paragraph (e) of that
 77 subsection is redesignated as paragraph (d), to read:

78 45.033 Sale or assignment of rights to surplus funds in a
 79 property subject to foreclosure.—

80 (3) A voluntary transfer or assignment shall be a transfer
 81 or assignment qualified under this subsection, thereby entitling
 82 the transferee or assignee to the surplus funds or a portion or
 83 percentage of the surplus funds, if:

84 ~~(d) The transferor or assignee is qualified as a surplus~~
 85 ~~trustee, or could qualify as a surplus trustee, pursuant to s.~~
 86 ~~45.034.~~

87 Section 4. Section 45.034, Florida Statutes, is repealed.

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88 Section 5. Paragraphs (b) and (d) of subsection (2) of
 89 section 45.035, Florida Statutes, are amended, and paragraph (c)
 90 of that subsection is redesignated as paragraph (b), to read:

91 45.035 Clerk's fees.—In addition to other fees or service
 92 charges authorized by law, the clerk shall receive service
 93 charges related to the judicial sales procedure set forth in ss.
 94 45.031-45.034 and this section:

95 (2) If there is a surplus resulting from the sale, the
 96 clerk may receive the following service charges, which shall be
 97 deducted from the surplus:

98 ~~(b) The clerk is entitled to a service charge of \$15 for~~
 99 ~~notifying a surplus trustee of his or her appointment.~~

100 ~~(d) The clerk is entitled to a service charge of \$15 for~~
 101 ~~appointing a surplus trustee, furnishing the surplus trustee~~
 102 ~~with a copy of the final judgment and the certificate of~~
 103 ~~disbursements, and disbursing to the surplus trustee the~~
 104 ~~trustee's cost advance.~~

105 Section 6. Subsection (8) of section 717.124, Florida
 106 Statutes, is amended to read:

107 717.124 Unclaimed property claims.—

108 (8) This section applies to all unclaimed property reported
 109 and remitted to the Chief Financial Officer, including, but not
 110 limited to, property reported pursuant to ss. ~~43.19,~~ 45.032,
 111 732.107, 733.816, and 744.534.

112 Section 7. Section 717.138, Florida Statutes, is amended to
 113 read:

114 717.138 Rulemaking authority.—The department shall
 115 administer and provide for the enforcement of this chapter. The
 116 department has authority to adopt rules pursuant to ss.

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117 120.536(1) and 120.54 to implement the provisions of this
118 chapter. The department may adopt rules to allow for electronic
119 filing of fees, forms, and reports required by this chapter. The
120 authority to adopt rules pursuant to this chapter applies to all
121 unclaimed property reported and remitted to the Chief Financial
122 Officer, including, but not limited to, property reported and
123 remitted pursuant to ss. ~~43.19~~, 45.032, 732.107, 733.816, and
124 744.534.

125 Section 8. Section 717.1401, Florida Statutes, is amended
126 to read:

127 717.1401 Repeal.—This chapter shall not repeal, but shall
128 be additional and supplemental to the existing provisions of ss.
129 43.18, ~~43.19~~, and 402.17 and chapter 716.

130 Section 9. This act shall take effect July 1, 2017.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-22-17

Meeting Date

536

Bill Number (if applicable)

Topic Unclaimed Property

Amendment Barcode (if applicable)

Name Jon Costello

Job Title lobbyist

Address 119 S. Monroe

Phone 766-8654

Street

City

State

Zip

Email jon@reuphlan.com

Speaking: For Against Information

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

Representing Citizens for Judicial Process

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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)

3/22/17

Meeting Date

536

Bill Number (if applicable)

Topic Unclaimed Property / Clerks of Court

Amendment Barcode (if applicable)

Name Chasity O'Steen

Job Title General Counsel

Address 400 S. Monroe St.

Phone 850-413-2863

Street

Tallahassee

FL

32399

City

State

Zip

Email Chasity.O'Steen@myfloridacfo.com

Speaking: For Against Information

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

Representing CFO Atwater

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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)

3/22/2017
Meeting Date

536
Bill Number (if applicable)

Topic Unclaimed Funds Held by Clerks of Court

Amendment Barcode (if applicable)

Name Katie Crofoot

Job Title Assistant Vice President of Gov't Affairs

Address 1001 Thomesville Road suite 201
Street

Phone 850-224-2265

Tallahassee
City

FL
State

32302
Zip

Email kcrofoot@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.

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: SB 878

INTRODUCER: Senator Lee

SUBJECT: Supreme Court Reporting Requirements

DATE: March 22, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	Favorable
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 878 requires the Supreme Court to prepare an annual status report on cases that have been on the court's docket for more than 180 days without resolution.

For cases that remain unresolved 180 days after oral argument or the date of submission to the panel without oral argument, the report must, among other things:

- Identify the case type.
- Specify the number of days that have elapsed since the oral argument or the date the case was submitted to the panel for a decision.
- Explain why the Court failed to render a decision within the 180-day time period.
- State when the Court expects to render a decision or dispose of the case.

The report must also include data on cases resolved during the year preceding the date of the report that took longer than 180 days to resolve. This data, among other things, must identify the case type of each case and the number of days that elapsed between the oral argument or date the case was submitted to the panel and the date of the decision or disposition.

The report must be prepared in an electronic spreadsheet format that can be sorted and filtered based on the required elements of the report. The Court must submit the report between October 1 and October 15 of each year to the Governor, Attorney General, President of the Senate, and the Speaker of the House of Representatives.

Implementation of this bill will increase workload for court staff, but such increase can be absorbed within current resources.

The bill takes effect July 1, 2017 and is repealed July 1, 2022, unless reviewed and reenacted before that date.

II. Present Situation:

Statutory Reporting Requirements

Pursuant to section 25.075, F.S., the Supreme Court must develop a uniform case reporting system. The system includes a uniform means of reporting categories of cases, the time taken to dispose of the cases, and the outcome of the cases.¹

Specific to negligence cases, the clerk of court must report to the Office of the State Courts Administrator information on cases resolved by settlement, jury verdict and final judgment upon request of the President of the Senate and the Speaker of the House of Representatives.² Information required includes the name of each plaintiff and defendant, the verdict, the percentage of fault of each, information on economic and noneconomic damages awarded to each plaintiff, and the amount of punitive damages awarded.³

Reporting Requirements under Court Rules

The Florida Rules of Judicial Administration provide time standards for the resolution of trial and appellate cases based on what the Court considers a presumptively reasonable time period. Accordingly, the court rules contemplate that most cases should be completed within the specified time periods.

In trial courts, cases generally should be resolved within these time periods:

- Criminal (arrest to final disposition): Felony (180 days); Misdemeanor (90 days);
- Civil (filing to final disposition): Jury cases (18 months); Non-jury cases (12 months); Small claims (95 days);
- Domestic Relations (filing to final disposition): Uncontested (90 days); Contested (180 days);
- Probate: Uncontested, no federal estate tax return (12 months from issuance of letters of administration to final discharge); Uncontested, with federal estate tax return (12 months from the return's due date to final discharge); Contested (24 months from filing to final discharge);
- Juvenile Delinquency: Disposition hearing for a child not detained (120 days from filing of petition or from a child being taken into custody to hearing); for a child detained (36 days from date of detention to hearing);
- Juvenile Dependency: Disposition hearing for a child not sheltered (120 days from filing of petition for dependency to hearing); for a child sheltered (88 days from shelter hearing to disposition);
- Permanency Proceedings: Permanency hearing within 12 months of the date the child is sheltered to the date of the hearing.⁴

In addition to time standards applicable to trial courts, the court rules specify standards for:

¹ Section 25.075(1), F.S.

² Section 25.077, F.S.

³ *Id.*

⁴ Fla. R. Jud. Admin. 2.250(a)(I).

- Supreme Court and District Courts of Appeal: Rendering a decision within 180 days after oral argument or the submission of the case to the court panel for a decision without oral argument; for juvenile dependency or termination of parental rights cases, and within 60 days after either oral argument or the submission of the case to the court panel for a decision without oral argument.
- Florida Bar Referee:⁵ Report of referee within 180 days after being assigned to hear the case;
- Circuit Court acting as Appellate Court: 90 days after submission of the case to the judge for review.⁶

Any pending case exceeding the time standards must be detailed separately and listed in a report, submitted quarterly to the Chief Justice of the Supreme Court. The report must include for each case:

- The case number;
- The type of case;
- The case status;
- The date of arrest in criminal cases; and
- The original filing date in civil cases.

The court rules require the Office of the State Courts Administrator to provide the forms for submission of this information.⁷

III. Effect of Proposed Changes:

This bill requires the Supreme Court to prepare an annual status report on cases that are unresolved for more than 180 days after the oral argument or the date that the case is submitted to the panel for a decision or disposition. The report must also provide data on resolved cases in the year preceding the report which took longer than 180 days to resolve. The Court must submit the report to the Governor, Attorney General, President of the Senate, and the Speaker of the House of Representatives between October 1 and October 15 of each year.

Part I of the report must include the following information on each case:

- The case name and number;
- The case type, which must include civil, criminal not seeking the death penalty, criminal seeking the death penalty, court rules, bar discipline, and judicial discipline;
- A brief description of the case;
- The date the case was added to the docket;
- The date of oral argument or the date the case was submitted to the court panel for a decision without oral argument;

⁵ Art. V., Sec. 15 of the Fla. Const. gives the Supreme Court exclusive jurisdiction to regulate the admission to practice and discipline of attorneys. The Court's regulation of the Bar is provided through the Rules Regulating The Florida Bar, which establish The Florida Bar as an official arm of the Court. The referee, or judge who hears a grievance case against a member of the Bar, is a county or circuit judge, appointed by the circuit court's chief judge. The Florida Bar, *The Florida Bar: Referee Manual* (July 2015), http://www.floridasupremecourt.org/clerk/Referee_Manual_2015.pdf.

⁶ Fla. R. Jud. Admin. 2.250(a)(II).

⁷ Fla. R. Jud. Admin. 2.250(b).

- The number of days that have elapsed since the date of oral argument was heard or the date the case was submitted to the court panel for a decision without oral argument;
- A detailed explanation of why the court failed to render a decision or disposition within 180 days after the court heard oral argument or after the date the case was submitted to the court panel for a decision without oral argument; and
- The date or time period within which the court expects to render a decision or disposition.

Information in Part I is required for those cases remaining on the court's docket as of September 30 of the current year after 180 days have passed from the date of oral argument, or absent oral argument, from the date the case is submitted to a court panel for a decision.

Part II of the report must include:

- The case name and number;
- The case type;
- A brief description of the case;
- The date the case was added to the docket;
- The date of oral argument or the date the case was submitted to the court panel for a decision without oral argument;
- The date that a decision or disposition was issued; and
- The number of days that elapsed between the date oral argument was heard or the date the case was submitted to the court panel for a decision without oral argument and the date on which a decision or disposition was issued.

Information in Part II is required for each case that has been decided or disposed of between October 1 of the prior year and September 30 of the current year, for which the decision or disposition was not rendered within 180 days after oral argument or submission to the court panel in the absence of oral argument.

The bill requires the court to electronically submit the report in a spreadsheet format. The report must be created so that it can be sorted and filtered by case number, case type, date on which the case was added to the docket; the date of oral argument or the date the case was submitted to the court panel for decision without oral argument; the number of days since the date oral argument was heard or submitted to the court panel for a decision without oral argument, and the date of the decision or disposition.

The bill takes effect July 1, 2017 and is repealed July 1, 2022, unless it is reviewed and reenacted before that date.

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 Office of the State Courts Administrator (OSCA) expects an indeterminate impact from the bill. The bill may increase the OSCA workload of the Court as it collects and reports the required data.⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 25.052, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

⁸ Office of the State Courts Administrator, *2017 Judicial Impact Statement* (Mar. 7, 2017).

By Senator Lee

20-00914-17

2017878__

1 A bill to be entitled
 2 An act relating to Supreme Court reporting
 3 requirements; creating s. 25.052, F.S.; requiring the
 4 Supreme Court to issue an annual report regarding
 5 certain cases; specifying data to be included in such
 6 report; providing for future legislative review and
 7 repeal; providing an effective date.
 8
 9 Be It Enacted by the Legislature of the State of Florida:
 10
 11 Section 1. Section 25.052, Florida Statutes, is created to
 12 read:
 13 25.052 Annual report.-
 14 (1) Between October 1 and October 15 of each year, the
 15 Supreme Court shall provide a report with data as of September
 16 30 of that year, to the Governor, the Attorney General, the
 17 President of the Senate, and the Speaker of the House of
 18 Representatives consisting of two parts.
 19 (a) In part I of the report, the court shall provide the
 20 following information regarding each case on the court's docket
 21 as of September 30 of the current year, for which a decision or
 22 disposition has not been rendered within 180 days after oral
 23 argument was heard or after the date on which the case was
 24 submitted to the court panel for a decision without oral
 25 argument:
 26 1. The case name and number.
 27 2. The case type.
 28 3. A brief description of the case.
 29 4. The date on which the case was added to the court's
 30 docket.
 31 5. The date of oral argument or the date the case was
 32 submitted to the court panel for decision without oral argument.

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20-00914-17

2017878__

33 6. The number of days that have elapsed since the date the
 34 oral argument was heard or the date the case was submitted to
 35 the court panel for a decision without oral argument.
 36 7. A detailed explanation of the court's failure to render
 37 a decision or disposition within 180 days after oral argument
 38 was heard or after the date on which the case was submitted to
 39 the court panel for a decision without oral argument.
 40 8. The date on which, or the time period within which, the
 41 court expects to render a decision or disposition.
 42 (b) In part II of the report, the court shall provide the
 43 following information regarding each case decided or disposed of
 44 by the court between October 1 of the prior year and September
 45 30 of the current year, for which the decision or disposition
 46 was not rendered within 180 days after oral argument was heard
 47 or after the date on which the case was submitted to the court
 48 panel for a decision without oral argument:
 49 1. The information required in subparagraphs (a)1.-5. and
 50 7.
 51 2. The date that a decision or disposition was issued.
 52 3. The number of days that had elapsed between the date
 53 oral argument was heard or the date the case was submitted to
 54 the court panel for a decision without oral argument and the
 55 date on which a decision or disposition was issued.
 56 (2) The report shall be submitted in an electronic
 57 spreadsheet format capable of being sorted and filtered by the
 58 following elements:
 59 (a) The case number.
 60 (b) The case type.
 61 (c) The date on which the case was added to the court's

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62 docket.63 (d) The date of oral argument or the date the case was
64 submitted to the court panel for decision without oral argument.65 (e) The number of days that elapsed since the date oral
66 argument was heard or the date the case was submitted to the
67 court panel for a decision without oral argument.68 (f) The date of decision or disposition.69 (3) The case type of each case reported shall include
70 civil, criminal not seeking the death penalty, criminal seeking
71 the death penalty, court rules, bar discipline, or judicial
72 discipline.73 Section 2. This act is repealed July 1, 2022, unless
74 reviewed and reenacted by the Legislature before that date.75 Section 3. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: March 8, 2017

I respectfully request that **Senate Bill #878**, relating to Supreme Court Reporting Requirements, be placed on the:

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

A handwritten signature in blue ink that reads "Tom Lee".

Senator Tom Lee
Florida Senate, District 20

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: SB 892

INTRODUCER: Senator Simmons

SUBJECT: Youthful Offenders

DATE: March 22, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Hrdlicka</u>	<u>CJ</u>	Favorable
2.	<u>McAuliffe</u>	<u>Sadberry</u>	<u>ACJ</u>	Favorable
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 892 allows the court to impose a sentence as a youthful offender if a person committed a felony *before they turned 21 years of age*. Current law requires the person be under 21 at the time of sentencing.

The Criminal Justice Impact Conference (CJIC) has not determined the impact of the bill. However, CJIC has completed a preliminary estimate on the impact of SB 892 and has concluded that the bill will have no impact on state prison beds.

The bill is effective July 1, 2017.

II. Present Situation:

Florida provides an alternative sentencing scheme for certain youthful offenders convicted of a felony. A court may impose a sentence as a youthful offender in circuit court if the person:

- Was found guilty of, or plead nolo contendere or guilty to a felony that is not a capital or life felony;
- Is younger than 21 years of age at the time the sentence is imposed; and
- Has not previously been sentenced as a youthful offender.¹

If a court chooses to sentence a person as a youthful offender, it must sentence the youthful offender to any combination of the following penalties:

- Place the youthful offender on probation or in a community control program for no more than 6 years. Under this sentencing option, the court can choose to withhold adjudication of guilt or impose adjudication of guilt.²

¹ Section 958.04(1), F.S.

² Section 958.04(2)(a), F.S.

- Incarcerate the youthful offender for no more than a year. The incarceration must take place in a specified facility and is a condition of probation or community control.
- Incarcerate the youthful offender for a specified period followed by a term of probation or community control. If the incarceration is in specified Department of Corrections (DOC) facilities it cannot be for less than 1 year or longer than 4 years. The period of incarceration and probation or community control cannot exceed 6 years.
- Incarcerate the youthful offender for no more than 6 years.³

III. Effect of Proposed Changes:

The bill allows the court to impose a sentence as a youthful offender if a person committed a felony *before they turned 21 years of age*. Current law requires the person be under 21 at the time of sentencing.

A larger group of people will now be eligible for a youthful offender sentence.

The bill reenacts ss. 950.04(5), 958.045(8)(a), and 985.565, F.S., to incorporate changes made by the bill.

The bill is effective July 1, 2017.

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.

³ Any of these sentencing combinations cannot exceed the maximum sentence for the offence for which the youthful offender was found guilty. If a youthful offender is sentenced to a period of incarceration, the court must adjudicate the youthful offender guilty. Section 958.04(2), F.S.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) has not determined the impact of the bill. However, CJIC has completed a preliminary estimate on the impact of SB 892 and has concluded that the bill will have no impact on state prison beds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 958.04 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 958.03, 958.045, and 985.565.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.

By Senator Simmons

9-00516-17

2017892__

A bill to be entitled

An act relating to youthful offenders; amending s. 958.04, F.S.; revising the criteria allowing a court to sentence as a youthful offender a person who is found guilty of, or who pled nolo contendere or guilty to, committing a felony before the person turned 21 years of age; reenacting ss. 958.03(5), 958.045(8) (a), and 985.565(4) (c), F.S., relating to the definition of "youthful offender," the youthful offender basic training program, and classification as a youth offender, respectively, to incorporate the amendment made to s. 958.04, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (1) of section 958.04, Florida Statutes, is amended to read:

958.04 Judicial disposition of youthful offenders.—

(1) The court may sentence as a youthful offender any person:

(a) Who is at least 18 years of age or who has been transferred for prosecution to the criminal division of the circuit court pursuant to chapter 985;

(b) Who is found guilty of or who has tendered, and the court has accepted, a plea of nolo contendere or guilty to a crime that is, under the laws of this state, a felony if such crime was committed before the defendant turned 21 years of age ~~the offender is younger than 21 years of age at the time~~

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9-00516-17

2017892__

~~sentence is imposed; and~~

(c) Who has not previously been classified as a youthful offender under the provisions of this act; however, a person who has been found guilty of a capital or life felony may not be sentenced as a youthful offender under this act.

Section 2. For the purpose of incorporating the amendment made by this act to section 958.04, Florida Statutes, in a reference thereto, subsection (5) of section 958.03, Florida Statutes, is reenacted to read:

958.03 Definitions.—As used in this act:

(5) "Youthful offender" means any person who is sentenced as such by the court or is classified as such by the department pursuant to s. 958.04.

Section 3. For the purpose of incorporating the amendment made by this act to section 958.04, Florida Statutes, in a reference thereto, paragraph (a) of subsection (8) of section 958.045, Florida Statutes, is reenacted to read:

958.045 Youthful offender basic training program.—

(8) (a) The Assistant Secretary for Youthful Offenders shall continuously screen all institutions, facilities, and programs for any inmate who meets the eligibility requirements for youthful offender designation specified in s. 958.04, whose age does not exceed 24 years. The department may classify and assign as a youthful offender any inmate who meets the criteria of s. 958.04.

Section 4. For the purpose of incorporating the amendment made by this act to section 958.04, Florida Statutes, in a reference thereto, paragraph (c) of subsection (4) of section 985.565, Florida Statutes, is reenacted to read:

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9-00516-17

2017892__

59 985.565 Sentencing powers; procedures; alternatives for
60 juveniles prosecuted as adults.-

61 (4) SENTENCING ALTERNATIVES.-

62 (c) *Adult sanctions upon failure of juvenile sanctions.*-If
63 a child proves not to be suitable to a commitment program,
64 juvenile probation program, or treatment program under paragraph
65 (b), the department shall provide the sentencing court with a
66 written report outlining the basis for its objections to the
67 juvenile sanction and shall simultaneously provide a copy of the
68 report to the state attorney and the defense counsel. The
69 department shall schedule a hearing within 30 days. Upon
70 hearing, the court may revoke the previous adjudication, impose
71 an adjudication of guilt, and impose any sentence which it may
72 lawfully impose, giving credit for all time spent by the child
73 in the department. The court may also classify the child as a
74 youthful offender under s. 958.04, if appropriate. For purposes
75 of this paragraph, a child may be found not suitable to a
76 commitment program, community control program, or treatment
77 program under paragraph (b) if the child commits a new violation
78 of law while under juvenile sanctions, if the child commits any
79 other violation of the conditions of juvenile sanctions, or if
80 the child's actions are otherwise determined by the court to
81 demonstrate a failure of juvenile sanctions.

82
83 It is the intent of the Legislature that the criteria and
84 guidelines in this subsection are mandatory and that a
85 determination of disposition under this subsection is subject to
86 the right of the child to appellate review under s. 985.534.

87 Section 5. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Aaron Bean, Chair
Appropriations Subcommittee on Criminal and Civil Justice

Subject: Committee Agenda Request

Date: March 14, 2017

I respectfully request that **Senate Bill 892**, relating to Youthful Offenders, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons".

Senator David Simmons
Florida Senate, District 9

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/2017

Meeting Date

892

Bill Number (if applicable)

Topic Youthful Offenders

Amendment Barcode (if applicable)

Name Honorable Carlos Martinez

Job Title Public Defender, 11th Circuit

Address 1320 NW 14th Street

Phone 305-545-1600

Street

Miami

FL

33125

Email cmartinez@pdmiami.com

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)

March 22, 2017

Meeting Date

SB 892

Bill Number (if applicable)

Topic Criminal Justice Reform - Youthful Offenders

Amendment Barcode (if applicable)

Name Scott McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

Street

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

City

State

Zip

Speaking: For Against Information

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

Representing Southern Poverty Law Center

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: SB 898

INTRODUCER: Senators Simmons and Artiles

SUBJECT: Civil Remedies for Terrorism

DATE: March 22, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 898 creates a civil cause of action for a person who is injured by either an act of terrorism or a violation of a law that facilitates or furthers an act of terrorism. A successful plaintiff is entitled to a minimum of \$1,000 in damages or three times the actual damages sustained and reasonable attorney fees and court costs at the trial and appellate levels. In contrast, a defendant is entitled to recover reasonable attorney fees and court costs at the trial and appellate levels if it is determined that the claimant raised a claim that is not supported factually or legally.

When a court awards attorney fees and costs under the bill, it may not consider whether the opposing party is able to pay the fees and costs. The bill does not limit any other right to recover attorney fees or costs established in any other provision of law.

The cause of action authorized under the bill does not apply to a person who is injured while participating in an act of terrorism.

This bill has an indeterminate but likely insignificant fiscal impact on the state courts.

II. Present Situation:

Torts

A tort is an injury or civil wrong for which a harmed person may seek a remedy, generally in the form of damages. The basic purpose of tort law is to compensate the wronged person for his or her injury by the person responsible for the wrong. The loss is generally shifted from the injured person to the one who is at fault. While some acts may, at the same time, be both a crime and a

tort, a crime is committed against the public and redress is pursued by the state. A tort, however, is a private injury and redress is pursued by the injured party in a civil suit.¹

An intentional tort is committed by a person who acts with general or specific intent to harm someone² or engages in conduct that is substantially certain to bring about injury or death.³ Some general examples of intentional torts are assault, battery, false imprisonment, fraud, intentional infliction of emotional distress, and invasion of privacy. Beyond the usual economic and non-economic damages, a defendant may also be held liable for punitive damages if there is a finding that the defendant was personally guilty of intentional misconduct or gross negligence.⁴

While the statutes do not provide a specific cause of action for someone in Florida to recover for injuries sustained by terrorism, it is arguable that damages could be recovered through a cause of action for battery.

Civil Remedies for Criminal Practices in Chapter 772

Civil remedies are provided as redress for certain criminal practices enumerated in chapter 772, F.S. For example, a civil cause of action is provided for any person who proves by clear and convincing evidence that he or she has been injured by someone who has received proceeds derived from a pattern of criminal activity.⁵ The criminal activity referred to includes offenses relating to the manufacture, distribution, and use of explosives, homicide, assault and battery, kidnapping, weapons and firearms, arson, computer-related crimes, bribery, and the obstruction of justice.⁶

While punitive damages are not generally recoverable for claims arising under chapter 772, F.S., a prevailing plaintiff may recover threefold, or treble, the actual damages and a minimum of \$200 in damages, or \$1,000 under the Drug Dealer Liability Act, as well as attorney fees and court costs at trial and on appeal.⁷ A defendant, however, is entitled to recover reasonable attorney fees and court costs at the trial and appellate levels if it is determined that the claimant raised a claim that was without substantial fact or legal support. The court is precluded from considering whether the opposing party is able to pay fees and costs.⁸

If a civil remedy is applied under chapter 772, it does not preclude the application of any other remedy, whether civil or criminal, under any other provision of law.⁹ Additionally, if a defendant has been found guilty or pled guilty or nolo contendere to the same criminal act that is the basis of the plaintiff's civil cause of action under chapter 772, F.S., the defendant is estopped as if the plaintiff had been a party in the state's criminal action.¹⁰

¹ 55 FLA. JUR 2D TORTS s. 1 (2017).

² BLACK'S LAW DICTIONARY (14th ed. 2014).

³ 55 FLA. JUR 2D TORTS s. 6 (2017).

⁴ Section 768.72(2), F.S.

⁵ Sections 772.103(1) and 772.104, F.S.

⁶ Section 772.102(1), F.S. By definition, "criminal activity" means to commit, attempt to commit, conspire to commit, or solicit, coerce, or intimidate another person to commit the list of crimes in s. 772.102(1)(a).

⁷ Sections 772.104(1), 772.11(1), and 772.12, F.S.

⁸ Sections 772.104(3) and 772.11, F.S.

⁹ Section 772.18, F.S.

¹⁰ Section 772.14, F.S.

Terrorism

Terrorism is defined in the Florida Criminal Code as an activity that involves a violent act or an act dangerous to human life which is a violation of the criminal laws of the state or of the United States or involves a violation of s. 815.06, F.S., relating to offenses against users of computers and electronic devices, and is intended to:

- Intimidate, injure, or coerce a civilian population;
- Influence the policy of a government by intimidation or coercion; or
- Affect the conduct of government through the destruction of property, assassination, murder, kidnapping, or aircraft piracy.¹¹

Terrorism is not an independent crime in the statutes but is a qualifying offense for the crime of capital murder. For example, if a person unlawfully kills someone during the commission of a felony act of terrorism, the perpetrator can be prosecuted for first degree murder, a capital felony.¹²

If someone is convicted of committing a felony or misdemeanor that facilitated or furthered an act of terrorism, the court is required to reclassify the felony or misdemeanor to the next higher degree.¹³ Additionally, if the underlying crime is a first-degree misdemeanor or greater, the offense severity ranking is increased, thereby increasing the defendant's potential sentence.¹⁴

Federal Terrorism Statute

SB 898 is structured similarly to the federal Antiterrorism Act of 1990.¹⁵ The federal legislation also provides for the recovery of treble damages, cost of the suit, and attorney fees, but differs in that the injury sustained by the claimant must be for an act of international terrorism.¹⁶ The international provision requires that the act "occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished"¹⁷

Liability for Intentional Torts

Under the doctrine of joint and several liability, all of the defendants at fault for a plaintiff's damages are responsible for the total of each defendant's fault.¹⁸ With a few exceptions, s. 768.81, F.S., generally abolished the application of the doctrine. One of the exceptions allows the doctrine of joint and several liability to apply to "any action based upon an intentional tort."¹⁹

¹¹ Section 775.30, F.S.

¹² Section 782.04(1)(a)2.r., (3)r., and (4)s., F.S.

¹³ Section 775.31(1), F.S.

¹⁴ Section 775.31(2), F.S.

¹⁵ 18 U.S.C. s. 2331 *et. seq.*

¹⁶ 18 U.S.C. s. 2333(a).

¹⁷ 18 U.S.C. s. 2331(1)(C).

¹⁸ *Louisville & N. R. Co. v. Allen*, 65 So. 8 (Fla. 1914).

¹⁹ Section 768.81(4), F.S.

Attorney Fees and Sanctions for Raising Unsupported Claims or Defenses

Section 57.105, F.S., generally authorizes a court to award reasonable attorney fees, including prejudgment interest to the prevailing party from the losing party and the losing party's attorney for unsupported claims and defenses presented to the court. The statute further provides that its remedies are supplemental to other sanctions available under law or court rules.²⁰

Similar Legislation in Other States

Private William "Andy" Long, U.S. Army, was killed in uniform outside of an Arkansas Army recruiting office on June 1, 2009. Another soldier was wounded in the shooting but survived. The defendant in the case claimed to be a terrorist and had traveled to Yemen. In 2011, he pleaded guilty to capital murder and attempted capital murder and received a life sentence with no possibility of parole.²¹ Because of this incident, legislation has been enacted in Louisiana, Arkansas, Kansas, Tennessee, and North Carolina that permits victims of terrorist acts to recover damages as proposed in this legislation.²²

III. Effect of Proposed Changes:

SB 898 creates a civil cause of action for a person who is injured by an act of terrorism or by a violation of a law that facilitates or furthers an act of terrorism. A successful plaintiff is entitled to a minimum of \$1,000 or three times the actual damages sustained and reasonable attorney fees and court costs at the trial and appellate levels. The cause of action created by the bill does not apply to a person who is injured while participating in an act of terrorism.

A defendant is entitled to recover reasonable attorney fees and court costs at the trial and appellate levels if it is determined that the claimant raised a claim that is not supported factually or legally.

When a court awards attorney fees and costs under the bill, it may not consider whether the opposing party is able to pay the fees and costs. This new remedy does not limit any other right to recover attorney fees or costs established in any other provisions of law.

Because terrorism is an intentional tort and because the doctrine of joint and several liability applies to actions based on an intentional tort, a defendant who was a minor participant in an act of terrorism may be liable for all of a plaintiff's damages.²³

The bill takes effect July 1, 2017.

²⁰ Section 57.105(6), F.S.

²¹ See *Recruitment Shooting Suspect Doesn't Think Killing was Murder*, ASSOCIATED PRESS, Jun. 9, 2009, <http://www.foxnews.com/story/2009/06/09/recruitment-shooting-suspect-doesnt-think-killing-was-murder.html>; *Family seeks recognition for soldier slain in Ark.*, ASSOCIATED PRESS, Jul. 26, 2011, <http://www.cbs8.com/story/15152640/family-seeks-recognition-for-soldier-slain-in-ark>.

²² Center for Security Policy, *Andy's Law Signed by Governor McCrory in North Carolina*, (Aug. 24, 2015) available at <https://www.centerforsecuritypolicy.org/2015/08/24/andys-law-signed-by-governor-mccrory-in-north-carolina/>.

²³ See s. 768.81(4), F.S.

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:

This bill may provide a remedy for damages caused by terrorism when an international component does not exist. An international component is required for lawsuits for damages for terrorism under federal law. Additionally, by authorizing treble damages for injuries caused by acts of terrorism, the bill authorizes more compensation than that available under existing causes of action.

C. Government Sector Impact:

The Office of the State Courts Administrator has not yet provided a Judicial Impact Statement for SB 898. However, in an analysis of a similar bill from 2016, the Office of the State Courts Administrator noted that the fiscal impact of the legislation could not be accurately determined due to the unavailability of data needed to establish the effects on judicial time and workload resulting from the bill's provisions.²⁴ It appears unlikely that the bill will result in significant workload to the court system.

VI. Technical Deficiencies:

It is not clear in subsection (1) whether there must first be a conviction for an act of terrorism before a plaintiff may bring civil charges under this act. Similar sections in chapter 772, F.S., Civil Remedies for Criminal Practices, provide that a person need only prove by clear and convincing evidence that he or she has been injured by the underlying crime before proceeding with a civil suit. Perhaps the Legislature might consider adding similar language to this subsection to clarify that there does not need to be a conviction for an act of terrorism before a plaintiff may bring a civil suit for damages.

²⁴ Office of the State Court Administrator, *2016 Judicial Impact Statement for SB 996* (Jan. 26, 2016) (on file with the Senate Committee on Judiciary).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 772.13, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Simmons

9-00739-17

2017898__

1 A bill to be entitled
 2 An act relating to civil remedies for terrorism;
 3 creating s. 772.13, F.S.; creating a cause of action
 4 relating to terrorism; specifying a measure of
 5 damages; prohibiting claims by specified individuals;
 6 providing for attorney fees and court costs; providing
 7 construction; providing an effective date.
 8

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

10

11 Section 1. Section 772.13, Florida Statutes, is created to
 12 read:

13

14 772.13 Civil remedy for terrorism or facilitating or
furthering terrorism.-

15

16 (1) A person who is injured by an act of terrorism as
 17 defined in s. 775.30 or a violation of a law for which the
 18 penalty is increased pursuant to s. 775.31 for facilitating or
 19 furthering terrorism has a cause of action for threefold the
 20 actual damages sustained and, in any such action, is entitled to
 21 minimum damages in the amount of \$1,000 and reasonable attorney
 22 fees and court costs in the trial and appellate courts.

23

24 (2) A person injured by reason of his or her participation
 25 in the same act or transaction that resulted in the act of
 26 terrorism or resulted in the defendant's penalty increase
 27 pursuant to s. 775.31 may not bring a claim under this section.

28

29 (3) The defendant is entitled to recover reasonable
attorney fees and court costs in the trial and appellate courts
upon a finding that the claimant raised a claim that was without
support in fact or law.

Page 1 of 2

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

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30 (4) In awarding attorney fees and court costs under this
 31 section, the court may not consider the ability of the opposing
 32 party to pay such fees and court costs.

33

34 (5) This section does not limit a right to recover attorney
 35 fees or costs under other provisions of law.

35

Section 2. This act shall take effect July 1, 2017.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Aaron Bean, Chair
Appropriations Subcommittee on Criminal and Civil Justice

Subject: Committee Agenda Request

Date: March 8, 2017

I respectfully request that **Senate Bill 898**, relating to Civil Remedies for Terrorism, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons".

Senator David Simmons
Florida Senate, District 9

No Meeting
Materials
Available

CourtSmart Tag Report

Room: LL 37

Case No.:

Type:

Caption: Senate Appropriations Subcommittee on Criminal and Civil Justice

Judge:

Started: 3/22/2017 9:02:33 AM

Ends: 3/22/2017 9:37:38 AM

Length: 00:35:06

9:02:40 AM Sen. Bean (Chair)
9:03:28 AM S 892
9:04:50 AM Sen. Simmons
9:05:29 AM Sen. Bean
9:05:44 AM Honorable Carlos Martinez, Public Defender, 11th Circuit, Florida Public Defender Association, Inc.
(waives in support)
9:05:54 AM Scott McCoy, Senior Policy Counsel, Southern Poverty Law Center (waives in support)
9:06:34 AM S 898
9:06:40 AM Sen. Simmons
9:07:14 AM Sen. Bean
9:08:11 AM S 458
9:08:33 AM Am. 531458
9:08:42 AM Sen. Brandes
9:08:58 AM Sen. Bean
9:09:23 AM S 458 (cont.)
9:09:31 AM Arthur Rosenberg, Attorney, Florida Legal Services (waives in support)
9:09:38 AM Kara Gross, Legislative Counsel, ACLU of Florida (waives in support)
9:09:47 AM Honorable Carlos Martinez, Public Defender, 11th Circuit, Florida Public Defender Association, Inc.
(waives in support)
9:09:55 AM Matt Dunagan, Deputy Director, Florida Sheriffs Association (waives in support)
9:10:03 AM Scott McCoy, Senior Policy Counsel, Southern Poverty Law Center (waives in support)
9:10:11 AM Jorge Chamizo, Attorney, Florida Association of Criminal Defense Lawyers (waives in support)
9:10:16 AM Chelsea Murphy, State Director, Right on Crime (waives in support)
9:10:25 AM Logan Pike, Director of Public Affairs, James Madison Institute (waives in support)
9:10:36 AM Ingrid Delgado, Associate for Social Concerns and Respect Life, Florida Conference of Catholic Bishops
(waives in support)
9:11:40 AM S 536
9:11:45 AM Sen. Brandes
9:12:28 AM Sen. Bean
9:12:30 AM Sen. Clemens
9:12:39 AM Sen. Brandes
9:13:08 AM Sen. Bean
9:13:40 AM Jon Costello, Lobbyist, Citizens for Judicial Process
9:19:29 AM Sen. Bean
9:19:31 AM J. Costello
9:19:49 AM Sen. Bean
9:20:02 AM J. Costello
9:20:15 AM Sen. Bean
9:20:23 AM J. Costello
9:20:35 AM Sen. Bean
9:20:55 AM Chasity O'Steen, General Counsel, CFO Atwater
9:22:36 AM Sen. Bean
9:22:55 AM Katie Crofoot, Assistant Vice President of Government Affairs, Florida Bankers Association (waives in support)
9:23:19 AM Sen. Brandes
9:23:52 AM Sen. Bean
9:24:33 AM S 154
9:24:54 AM Sen. Thurston
9:25:00 AM Sen. Bean
9:25:02 AM Am. 788614
9:25:06 AM Sen. Thurston
9:25:29 AM Sen. Bean

9:25:45 AM Matt Dunagan, Deputy Director, Florida Sheriffs Association (waives in support)
9:25:52 AM Scott McCoy, Senior Policy Counsel, Southern Poverty Law Center (waives in support)
9:25:57 AM Gary Bradford, Government Relations, Florida Police Benevolent Association Scott McCoy, Senior Policy Counsel, Southern Poverty Law Center (waives in support)
9:26:21 AM S 154 (cont.)
9:27:05 AM S 878
9:27:13 AM Sen. Lee
9:27:43 AM Sen. Bean
9:27:51 AM Sen. Clemens
9:28:18 AM Sen. Lee
9:29:35 AM Sen. Clemens
9:29:39 AM Sen. Lee
9:29:44 AM Sen. Clemens
9:30:00 AM Sen. Lee
9:30:16 AM Sen. Bean
9:30:22 AM Sen. Bracy
9:30:42 AM Sen. Lee
9:30:59 AM Sen. Bean
9:31:19 AM Sen. Clemens
9:32:38 AM Sen. Bean
9:32:44 AM Sen. Baxley
9:33:19 AM Sen. Bean
9:33:24 AM Sen. Bracy
9:33:51 AM Sen. Bean
9:34:05 AM Sen. Lee
9:36:04 AM Sen. Bean
9:36:23 AM Sen. Lee
9:36:29 AM Sen. Bean
9:37:06 AM Sen. Bracy
9:37:24 AM Sen. Bean