

Tab 2 | **CS/SB 828** by **CJ, Rader**; (Similar to CS/CS/H 00599) Lewd or Lascivious Exhibition

Tab 3 | **CS/SB 1030** by **CJ, Bracy**; Mitigating Circumstances in Sentencing

Tab 4 | **SB 1068** by **Bean**; (Similar to CS/H 00785) Crime Victim Assistance

620832 A S RCS ACJ, Bean Delete L.32: 04/05 11:21 AM

Tab 5 | **SB 1658** by **Simpson**; (Similar to CS/H 00875) Statewide Task Force on Opioid Drug Abuse

Tab 6 | **SB 7082** by **CJ**; (Compare to H 07107) Controlled Substances

Tab 7 | **SB 1766** by **Gruters (CO-INTRODUCERS) Pizzo, Gainer**; (Similar to H 01315) Crime Stoppers Programs

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

MEETING DATE: Thursday, April 4, 2019
TIME: 10:00—11:30 a.m.
PLACE: Mallory Horne Committee Room, 37 Senate Building

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

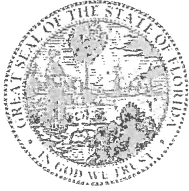
TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
1	Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointment to the office indicated.		
	Secretary of Corrections		
	Inch, Mark S. ()	Pleasure of Governor	Recommend Confirm Yeas 8 Nays 0
TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
2	CS/SB 828 Criminal Justice / Rader (Similar CS/CS/H 599)	Lewd or Lascivious Exhibition; Prohibiting certain lewd or lascivious acts in the presence of county correctional personnel; providing criminal penalties, etc. CJ 03/04/2019 Fav/CS ACJ 04/04/2019 Favorable AP	Favorable Yeas 8 Nays 0
3	CS/SB 1030 Criminal Justice / Bracy	Mitigating Circumstances in Sentencing; Revising the mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified; authorizing mitigation of the lowest permissible sentence when a defendant requires specialized treatment for a certain substance addiction and is amenable to treatment, etc. CJ 03/18/2019 Fav/CS ACJ 04/04/2019 Favorable AP	Favorable Yeas 8 Nays 0
4	SB 1068 Bean (Similar CS/H 785)	Crime Victim Assistance; Redefining the term "crime" to include the commission of certain lewd or lascivious offenses; increasing the maximum amount the Crime Victims' Services Office of the Department of Legal Affairs is required to pay for certain medical expenses of victims of specified crimes, etc. CJ 03/11/2019 Favorable ACJ 04/04/2019 Fav/CS AP	Fav/CS Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDAAppropriations Subcommittee on Criminal and Civil Justice
Thursday, April 4, 2019, 10:00—11:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	SB 1658 Simpson (Similar CS/H 875)	Statewide Task Force on Opioid Drug Abuse; Creating the Statewide Task Force on Opioid Drug Abuse for a specified purpose; providing for reimbursement of per diem and travel expenses for members; requiring the Department of Legal Affairs to provide the task force with necessary staff; requiring the task force to hold an organizational session before a specified date and quarterly meetings thereafter, etc. HP 03/18/2019 Favorable ACJ 04/04/2019 Temporarily Postponed AP	Temporarily Postponed
6	SB 7082 Criminal Justice (Compare H 7107)	Controlled Substances; Adding to Schedule V of the controlled substances list certain drug products in their finished dosage formulations which are approved by the United States Food and Drug Administration, etc. ACJ 04/04/2019 Favorable AP	Favorable Yeas 8 Nays 0
7	SB 1766 Gruters (Similar H 1315)	Crime Stoppers Programs; Prohibiting a person who engages in privileged communication, a law enforcement crime stoppers coordinator or his or her staff, or a member of a crime stoppers organization's board of directors from being required to disclose privileged communications or produce protected information; providing an exception; authorizing a person charged with a criminal offense to petition the court to inspect the protected information under certain circumstances, etc. CJ 03/18/2019 Favorable ACJ 04/04/2019 Favorable AP	Favorable Yeas 8 Nays 0

Other Related Meeting Documents

Amended



RON DESANTIS
GOVERNOR

RECEIVED
MAR 21 2019

COMMITTEE ON
ETHICS AND ELECTIONS

January 30, 2019

Secretary Jennifer Kennedy
Department of State
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, FL 32399-0250

Dear Secretary Kennedy,

Please be advised I have made the following appointment under the provisions of Section 20.315, Florida Statutes:

Mr. Mark Inch

As Secretary of the Department of Correction, subject to confirmation by the Senate. This appointment is effective January 14, 2019, for a term ending at the pleasure of the Governor.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron DeSantis".

Ron DeSantis
Governor

RD/mm

The Florida Senate
Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of
Mark S. Inch
Secretary of Corrections

NOTICE OF HEARING

TO: Secretary Mark S. Inch

YOU ARE HEREBY NOTIFIED that the Appropriations Subcommittee on Criminal and Civil Justice of the Florida Senate will conduct a hearing on your executive appointment on Thursday, April 4, 2019, in the Mallory Horne Committee Room, 37 Senate Building, commencing at 10:00 a.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 21st day of March, 2019

Appropriations Subcommittee on Criminal and
Civil Justice



Senator Jeff Brandes
As Chair and by authority of the committee

cc: Members, Appropriations Subcommittee on Criminal and Civil Justice
Office of the Sergeant at Arms

HAND DELIVERED

R: 12

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

2019 FEB 12 PM 2:13

STATE OF FLORIDA

County of Leon

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Secretary, Florida Department of Corrections
(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

Phil S. Inch

Signature

Sworn to and subscribed before me this 12th day of February, 2019

Stacey Hackney

Signature of Officer Administering Oath or of Notary Public

Stacey Hackney

Print Type, or Stamp Commissioned Name of Notary Public



STACEY HACKNEY
MY COMMISSION # GG 003956
EXPIRES: October 20, 2020
Bonded Thru Budget Notary Services

Personally Known OR Produced Identification

Type of Identification Produced

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: Home Office

Street or Post Office Box

MARK S. INCH

Print Name

City, State, Zip Code*

Phil S. Inch
Signature

500

STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections

I, Laurel M. Lee, Secretary of State,
do hereby certify that

Mark S. Inch

is duly appointed

Secretary,

Department of Corrections

for a term beginning on the Fourteenth day of January, A.D.,
2019, to serve at the pleasure of the Governor and is subject to
be confirmed by the Senate during the next regular session of the
Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Thirteenth day of February, A.D., 2019.*



Secretary of State



If photocopied or chemically altered, the word "VOID" will appear.

"State of Florida" appears in small letters across the face of this 8 1/2 x 11" document.

THE FLORIDA SENATE

COMMITTEE WITNESS OATH

CHAIR:

Please raise your right hand and be sworn in as a witness.

Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

WITNESS'S NAME: Mark S. Inch

ANSWER: I do.

Pursuant to §90.605(1), *Florida Statutes*: "The witness's answer shall be noted in the record."

COMMITTEE NAME: Senate Appropriations Subcommittee on Criminal and Civil Justice

DATE: April 4, 2019

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 4, 2019 -
Meeting Date

Bill Number (if applicable)

Topic Confirmation Hearing.

Amendment Barcode (if applicable)

Name Mark Fich.

Job Title Secretary -

Address 501 S. Calhoun ST-

Phone 850-717-3030 -

Tallahassee FL 32399
City State Zip

Email Mark.Fich@flc.myflorida.com

Speaking: For Against Information

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

Representing Florida Dept. of Corrections -

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

4.4.19

Meeting DateBill Number (if applicable)Topic Confirmation of DOC Secretary Mark InchAmendment Barcode (if applicable)Name Barney Bishop IIIJob Title President & CEOAddress 2215 Thomasville RoadPhone 850.510.9922*Street*TallahasseeFL32308Email barney@barneybishop.com*City**State**Zip*Speaking: For Against InformationWaive Speaking: In Support Against
*(The Chair will read this information into the record.)*Representing Florida Smart Justice AllianceAppearing at request of Chair: Yes NoLobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

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 828

INTRODUCER: Criminal Justice Committee and Senator Rader

SUBJECT: Lewd or Lascivious Exhibition

DATE: April 3, 2019 REVISED: _____

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

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

I. Summary:

CS/SB 828 expands the scope of the prohibition on lewd or lascivious exhibition in the presence of an employee of a correctional institution to include any person employed at or performing contractual work for a *county detention facility*. Current law prohibits such conduct in a state or private correctional facility only.

The Criminal Justice Impact Conference has determined the fiscal impact for this bill will be positive insignificant (increase of 10 or fewer prison beds). See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2019.

II. Present Situation:

Sexual Harassment at Correctional Facilities

Employees, specifically females, in many correctional institutions face sexual harassment and sexual abuse directed at them by prisoners.¹ For example, “gunning” refers to the practice of inmates exposing themselves and masturbating directly at female staff members.² Correctional

¹ 2010 (7) AELE Mo. L. J. 301, *Civil Liability for Sexual Harassment of Female Employees by Prisoners*, pg. 301, (July 2010), available at <http://www.aele.org/law/2010all07/2010-07MLJ301.pdf> (last visited April 1, 2019).

² *Id.* at 302.

agencies have a legal obligation to take reasonable measures to prevent and remedy sexual harassment in the workplace and failure to respond properly can result in extensive civil liability. Despite this fact, gunning and other lewd or lascivious conduct has been a crippling issue at both federal and state correctional institutions.³

Sexual Harassment at Federal Institutions

The sexual harassment of female employees at the federal level came to light almost a decade ago when the Equal Employment Opportunity Commission (EEOC) issued a report concluding that the Bureau of Prison (Bureau) mishandled harassment claims.⁴ The report detailed that Bureau employees were advised not to report things and that there was a fear of retaliation among employees.⁵ Additionally, the report concluded that anti-sexual harassment training occurred on an infrequent and inconsistent basis.⁶ In its recommendation, the EEOC advised the Bureau to establish a broad anti-harassment policy with effective procedures for preventing and addressing sexual harassment complaints.⁷

Despite the implementation of new policies required by that report, the problem still remains at federal prisons. In 2017, 524 female prison workers filed a class-action complaint, alleging that inmates at the Coleman Federal Correctional Complex in Sumter County, Florida, regularly made lewd comments and rape threats toward female employees in the prison. The parties to the complaint agreed to a \$20 million settlement, signifying one of the largest class-action sexual harassment settlements in U.S. history. In the case, the court also permitted a group of the women to take action against their employer for failing to address sexual harassment by non-employees.⁸

The terms of the settlement specified new procedures that would be in place, such as the requirement for prison staff to identify inmates who are harassing female workers, which could lead to those inmates losing privileges, in addition to providing notice to inmates that repeated harassment of female staffers would result in a referral to psychological services.⁹

Sexual Harassment at State Institutions

Similar problems have plagued state correctional facilities as well. Since 1987, the Department of Corrections (DOC) has paid more than \$5 million in settlements to state workers who alleged they were sexually harassed at work. In 2009, a class action lawsuit brought by mostly women

³ *Id.* at 301.

⁴ Caitlyn Dickerson, *Hazing, Humiliation, Terror: Working While Female in Federal Prison*, The New York Times (November 17, 2018), available at <https://www.nytimes.com/2018/11/17/us/prison-sexual-harassment-women.html> (last visited April 1, 2019).

⁵ EEO Commission Final Report on BOP, pg. 23 (November 24, 2010), available at <https://www.scribd.com/document/74311966/EEO-Commission-Final-Rpt-on-BOP-Nov-24-2010> (last visited April 1, 2019).

⁶ *Supra* n. 5 at pg. 12.

⁷ *Supra* n. 5 at pg. 28.

⁸ Hanna Kozłowska, *Female prison workers, harassed by inmates and ignored by bosses, stood up for their rights – and won*, Quartz, (February 16, 2017), available at <https://qz.com/910810/female-prison-workers-harassed-by-inmates-and-ignored-by-bosses-stood-up-for-their-rights-and-won/> (last visited April 1, 2019).

⁹ Mike Schneider, *Harassed Female Workers at Federal Prison Reach Settlement*, U.S. News, (February 13, 2017), available at <https://www.usnews.com/news/florida/articles/2017-02-13/harassed-female-workers-at-federal-prison-reach-settlement> (last visited April 1, 2019).

claimed inmates would expose themselves and masturbate in front of them. Further, the complaint alleged that the DOC failed to remedy the sexually hostile work environment created by male inmates. The lawsuit went into further detail, alleging that, upon seeing female staff members approaching a dorm, prisoners would commit the practice of “gunning,” exposing themselves and masturbating directly at the staff.¹⁰ In its discussion of the jury’s ruling, the court found that pursuant to Title VII (of the Civil Rights Act of 1964), the DOC is required to adopt reasonably remedial measures to protect its female employees from the sexually hostile environment that the inmates created.¹¹

The DOC appealed this decision, but the court upheld the judgment, ruling that exhibitionist masturbation, especially gunning, is sex based and highly offensive conduct. Furthermore, the court held that the jury was entitled to find that the DOC made almost no effort to protect its employees from this sex-based harassment.¹² As a result of this decision, the DOC paid out more than \$1.14 million in settlements.¹³

Lewd or Lascivious Exhibition

Section 800.09, F.S., was created in response to the class action lawsuit brought against the DOC in 2009, as a way to deter such lewd or lascivious conduct.¹⁴ Specifically, the law prohibits a person who is detained in a state correctional institution¹⁵ or a private correctional facility¹⁶ from doing any of the following in the presence of a person he or she knows or reasonably should know is an employee:

- Intentionally masturbating;
- Intentionally exposing the genitals in a lewd or lascivious manner; or
- Intentionally committing any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to:
 - Sadoomasochistic abuse;
 - Sexual bestiality; or
 - The simulation of any act involving sexual activity.¹⁷

An “employee” is defined as:

- Any person employed by or performing contractual services for a public or private entity operating a facility;

¹⁰ Lauren Sweeney, *Florida paid out \$11 million in sexual harassment claims to more than 300 state workers*, Wink News, (February 27, 2018), available at <http://www.winknews.com/2018/02/26/florida-paid-11-million-sexual-harassment-claims/> (last visited April 1, 2019).

¹¹ *Beckford v. Dep’t of Corrections*, 605 F.3d 951, 960 (11th Cir. 2010).

¹² *Id.*

¹³ *Supra*, n. 10.

¹⁴ Ch. 2010-64, s. 4, Laws of Fla. (2010).

¹⁵ “State correctional institution” means any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the DOC. Section 944.02(8), F.S.

¹⁶ “Private correctional facility” means any facility, which is not operated by the DOC, for the incarceration of adults or juveniles who have been sentenced by a court and committed to the custody of the DOC. Section 944.710(3), F.S.

¹⁷ Section 800.09(2)(a), F.S.

- Any person employed by or performing contractual services for the corporation operating the prison industry enhancement programs or the correctional programs under part II, ch. 946, F.S.; or
- Any person who is a parole examiner with the Florida Commission on Offender Review.¹⁸

Any person who violates s. 800.09(2)(a), F.S., commits a third degree felony.¹⁹ Since the law's passage in 2010, reports of such lewd or lascivious conduct has decreased in correctional facilities. For example, the DOC wrote 99 disciplinary reports at Charlotte Correctional Institution in Punta Gorda, Florida, for gunning in 2017, which was down from the average of 300 reports written at the prison every year prior to 2010.²⁰

III. Effect of Proposed Changes:

Current law prohibits lewd or lascivious exhibition in the presence of an employee in a state correctional institution or private correctional facility. The bill expands the scope of the prohibition on such conduct to include any person employed at or performing contractual work for a *county detention facility*.

Additionally, the bill defines a county detention facility as a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either a felony or misdemeanor.²¹

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

¹⁸ Section 800.09(1)(a), F.S.

¹⁹ Section 800.09(2)(b), F.S. A third degree felony is punishable by a term of imprisonment not exceeding 5 years, a fine of \$5,000, or both. Sections 775.082 and 775.083, F.S.

²⁰ *Supra*, n. 13.

²¹ This is the same definition as provided in s. 951.23(1)(a), F.S.

E. Other Constitutional Issues:

None identified.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has determined the fiscal impact for this bill will be positive insignificant (increase of 10 or fewer prison beds)²². According to the DOC, five offenders were sentenced under the current statute, with two of those offenders sentenced to prison during FY 2017-18.²³ The overall fiscal impact to the inmate and community supervision population is indeterminate²⁴.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 800.09 of the Florida Statutes.

IX. **Additional Information:**

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

CS by Criminal Justice on March 4, 2019:

The Committee Substitute clarifies that lewd or lascivious exhibition is prohibited in the presence of *any person employed at or performing contractual work* for a county detention facility.

²² Estimate from Office of Economic and Demographic Research, February 27, 2019 Criminal Justice Impact Conference.

²³ Information provided by EDR staff (on file with the Senate Criminal Justice Committee).

²⁴ The DOC, SB 828 Agency Analysis, 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 Criminal Justice; and Senator Rader

591-02644-19

2019828c1

1 A bill to be entitled
 2 An act relating to lewd or lascivious exhibition;
 3 amending s. 800.09, F.S.; prohibiting certain lewd or
 4 lascivious acts in the presence of county correctional
 5 personnel; providing criminal penalties; providing an
 6 effective date.

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

9
 10 Section 1. Section 800.09, Florida Statutes, is amended to
 11 read:

12 800.09 Lewd or lascivious exhibition in the presence of an
 13 employee.—

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

15 (a) "Employee" means:

16 1. Any person employed by or performing contractual
 17 services for a public or private entity operating a state
 18 correctional institution or private correctional facility; ~~or~~

19 2. Any person employed by or performing contractual
 20 services for the corporation operating the prison industry
 21 enhancement programs or the correctional work programs under
 22 part II of chapter 946; ~~The term also includes~~

23 3. Any person who is a parole examiner with the Florida
 24 Commission on Offender Review; ~~or~~

25 4. Any person employed at or performing contractual
 26 services for a county detention facility.

27 (b) "Facility" means a state correctional institution as
 28 defined in s. 944.02, ~~or~~ a private correctional facility as
 29 defined in s. 944.710, or a county detention facility as defined

591-02644-19

2019828c1

30 in s. 951.23.

31 (2) (a) A person who is detained in a facility may not:

32 1. Intentionally masturbate;

33 2. Intentionally expose the genitals in a lewd or
34 lascivious manner; or

35 3. Intentionally commit any other sexual act that does not
36 involve actual physical or sexual contact with the victim,
37 including, but not limited to, sadomasochistic abuse, sexual
38 bestiality, or the simulation of any act involving sexual
39 activity,

40

41 in the presence of a person he or she knows or reasonably should
42 know is an employee.

43 (b) A person who violates paragraph (a) commits lewd or
44 lascivious exhibition in the presence of an employee, a felony
45 of the third degree, punishable as provided in s. 775.082, s.
46 775.083, or s. 775.084.

47 Section 2. This act shall take effect July 1, 2019.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Vice Chair*
Agriculture
Appropriations Subcommittee on Health
and Human Services
Children, Families, and Elder Affairs

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR KEVIN J. RADER

29th District

March 4, 2019

Chairman Jeff Brandes
Appropriations Subcommittee on Criminal and Civil Justice
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chairman Brandes,

I respectfully request that you place CS/SB 828, relating to Lewd or Lascivious Exhibition, on the agenda of the Appropriations Subcommittee on Criminal and Civil Justice at your earliest convenience.

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

Kindest Regards,

A handwritten signature in black ink that reads "Kevin Rader".

Senator Kevin J. Rader
Florida Senate, District 29

cc: PK Jameson, Staff Director
Lisa Roberts, Administrative Assistant

REPLY TO:

- 5301 North Federal Hwy, Suite 135, Boca Raton, Florida 33487 (561) 443-8170
- 222 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4.4.19

828

Meeting Date

Bill Number (if applicable)

Topic Lewd and Lascivious Exhibition

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/4/19

Meeting Date

SB 828

Bill Number (if applicable)

Topic LEWD + LASCIVIOUS EXHIBITION

Amendment Barcode (if applicable)

Name DAVID ERICKS

Job Title CONSULTANT

Address 205 S ADAMS ST

Phone 850-224-0880

Street

TALLAHASSEE

City

FL

State

32801

Zip

Email DAVID@ERICKSCONSULTANTS.COM

Speaking: For Against Information

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

Representing FEDERATION OF PUBLIC EMPLOYEES

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

4-4-19

Meeting Date

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

828

Bill Number (if applicable)

Topic LEWD OR LASCIVIOUS

Amendment Barcode (if applicable)

Name ANTHONY MARCIANO

Job Title SERGEANT (BSO)

Address 23370 CAROLWOOD LN.

Phone 954 632 6878

Street

BOCA RATON FL 33428

Email AKTDM@ATT.NET

City

State

Zip

Speaking: For Against Information

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

Representing BROWARD DETENTION DEPUTIES

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-4-19

Meeting Date

828

Bill Number (if applicable)

Topic LEWD AND LASCIVIOUS

Amendment Barcode (if applicable)

Name PHIL CERULLI

Job Title BROWARD DETENTION DEPUTIES (DEPUTY)

Address 183 CORDOBA CIRCLE

Phone 561-351-1825

Street

ROYAL PALM BECH FL 33411

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing BROWARD DETENTION DEPUTIES

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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: CS/SB 1030

INTRODUCER: Criminal Justice Committee and Senator Bracy

SUBJECT: Mitigating Circumstances in Sentencing

DATE: April 3, 2019

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1030 authorizes a court to mitigate (reduce) a Criminal Punishment Code (Code) sentence if the defendant requires specialized treatment for a mental disorder, a substance addiction that predates the offense, or a physical disability, and the defendant is amenable to treatment. This mitigating circumstance applies to offenses committed on or after July 1, 2019 (the effective date of the bill).

Current law only authorizes mitigation of a Code sentence based on the defendant requiring specialized treatment for substance addiction if the defendant's offense is a nonviolent felony, the defendant's Code scoresheet total sentence points are 60 points or fewer, and the court determines that the defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program as part of the sentence. Further, current law precludes mitigation of a Code sentence based on the defendant requiring specialized treatment for a mental disorder if such disorder is related to substance abuse or addiction. The bill retains these current mitigating circumstances in the law but limits their application to offenses committed on or after October 1, 1998 (the effective date of the Code) but before July 1, 2019.

The Office of Economic and Demographic Research preliminarily estimates that the bill will have a "negative significant" prison bed impact (a decrease of more than 25 prison beds). See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2019.

II. Present Situation:

Criminal Punishment Code

The Criminal Punishment Code¹ (Code) is Florida's primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (levels 1-10).² Points are assigned and accrue based upon the severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses like a level 7 or 8 drug trafficking offense. The lowest permissible sentence is any nonstate prison sanction in which the total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.³ Generally, the permissible sentencing range under the Code is the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.⁴

Downward Departure Sentences

The "primary purpose" of the Code "is to punish the offender."⁵ However, a court may "mitigate" or "depart downward" from the scored lowest permissible sentence under the Code, if the court finds a valid, supported mitigating circumstance for the downward departure and determines the downward departure is appropriate. Section 921.0026(2), F.S., provides a non-exclusive list of mitigating circumstances. For example, s. 958.04, F.S., authorizes a court to sentence certain young adults as a "youthful offender." In lieu of incarceration, the court may place a youthful offender under supervision, on probation, or in a community control program, with or without an adjudication of guilt, under such conditions as the court may lawfully impose for a specified period.⁶ A youthful offender sentence is a mitigating circumstance listed in s. 921.0026(2)(1), F.S.

The stated legislative sentencing policy regarding downward departure sentences are that such sentences are "prohibited unless there are circumstances or factors that reasonably justify the downward departure."⁷ "The mitigating factors specifically listed by the legislature focus on the

¹ Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

² Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

³ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

⁴ If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

⁵ Section 921.002(1)(b), F.S. "Rehabilitation is a desired goal of the criminal justice system but is subordinate to the goal of punishment." *Id.*

⁶ Section 958.04(2)(a), F.S.

⁷ Section 921.0026(1), F.S.

nature of the crime, the conduct of the defendant or the mental capacity, condition, or attitude of the defendant.”⁸

“[T]he list of statutory departure reasons provided in section 921.0026(2) is not exclusive.”⁹ A court “can impose a downward departure sentence for reasons not delineated in section 921.0026(2), so long as the reason given is supported by competent, substantial evidence and is not otherwise prohibited.”¹⁰ Further, “[i]n evaluating a non-statutory mitigator, a court must determine whether the asserted reason for a downward departure is consistent with legislative sentencing policies.”¹¹

Whether dealing with statutory or nonstatutory mitigating circumstances, the court follows a two-step process to determine if a downward departure sentence is appropriate, unless the court determines in the first step of the process that it cannot depart downward. The first step is to determine if the court “*can* depart, i.e., whether there is a valid legal ground and adequate factual support for that ground in the case pending before it[.]”¹² If the first step is satisfied, the court moves on to the second step, which is for the court to determine if it “*should* depart, i.e., whether departure is indeed the best sentencing option for the defendant in the pending case.”¹³

History of Substance Addiction as a Reason for a Downward Departure Sentence

The pre-Code sentencing guidelines provided for the following mitigating circumstance: “The defendant requires specialized treatment for addiction, mental disorder, or physical disability, and the defendant is amenable to treatment.”¹⁴

With the enactment of the Code, this mitigating circumstance was modified.¹⁵ As modified, the mitigating circumstance read: “The defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction or for a physical disability, and the defendant is amenable to treatment.”¹⁶ The Code also specified that the defendant’s “substance abuse or addiction, including intoxication,¹⁷ at the time of the offense” was not a mitigating

⁸ *State v. Chestnut*, 718 So.2d 312, 313 (Fla. 5th DCA 1999).

⁹ *State v. Stephenson*, 973 So.2d 1259, 1263 (Fla. 5th DCA 2008) (citation omitted).

¹⁰ *State v. Henderson*, 108 So.3d 1137, 1140 (Fla. 5th DCA 2013) (citation omitted).

¹¹ *State v. Knox*, 990 So.2d 665, 669 (Fla. 5th DCA 2008).

¹² *Banks v. State*, 732 So.2d 1065, 1067 (Fla. 1999)(emphasis provided by the court).

¹³ *Id.* (emphasis provided by the court) (footnote omitted).

¹⁴ Section 921.0016, F.S. (1996). In 1993, the Legislature codified this mitigating factor which was created by the Florida Supreme Court in 1987. Chapter 93-406, s. 13, L.O.F.; *Barbera v. State*, 505 So.2d 413 (Fla. 1987). In *Barbera*, the court was persuaded that intoxication and drug dependency could mitigate a sentence because the defense of intoxication could be used by a jury to justify convicting a defendant of a lesser offense. In 1999, the Legislature eliminated the voluntary intoxication defense. Chapter 99-174, L.O.F.; s. 775.051, F.S.

¹⁵ Chapter 97-194, s. 8, L.O.F.

¹⁶ Section 921.0026(2)(d), F.S. (1997).

¹⁷ While s. 775.051, F.S., provides that voluntary intoxication resulting from the consumption, injection, or other use of alcohol or other controlled substances (except those legally prescribed) is not a defense to any offense, this does not necessarily preclude the Legislature from addressing substance abuse or addiction, including intoxication, as a mitigating circumstance. For example, while a defendant may not raise as a defense that the victim was a willing participant in the crime, the Legislature has authorized mitigation of a Code sentence based on this circumstance. Section 921.0026(2)(f), F.S.; *State v. Rife*, 789 So.2d 288 (Fla. 2001).

factor and did “not, under any circumstance, justify a downward departure from the permissible sentencing range.”¹⁸

In 2009, the Legislature created a mitigating circumstance in which substance abuse or addiction could be considered: “The defendant’s offense is a nonviolent felony, the defendant’s Criminal Punishment Code scoresheet total sentence points under s. 921.0024 are 52 points or fewer, and the court determines that the defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program as part of the sentence.”¹⁹ The only subsequent change to this mitigating circumstance occurred in 2011 when the Legislature increased total sentence points from 52 points to 60 points.²⁰ Further, since the 2009 change, the law specifies that, except for this mitigating circumstance, the defendant’s substance abuse or addiction, including intoxication, is not a mitigating factor.²¹

III. Effect of Proposed Changes:

The bill amends s. 921.0026, F.S., to authorize a court to mitigate (reduce) a Code sentence if the defendant requires specialized treatment for a mental disorder, a substance addiction that predates the offense, or a physical disability, and the defendant is amenable to treatment. This mitigating circumstance applies to offenses committed on or after July 1, 2019 (the effective date of the bill).

Currently, s. 921.0026(2)(m) and (3), F.S., only authorizes mitigation of a Code sentence based on the defendant requiring specialized treatment for substance addiction if the defendant’s offense is a nonviolent felony, the defendant’s Code scoresheet total sentence points are 60 points or fewer, and the court determines that the defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program as part of the sentence. Further, currently, s. 921.0026(2)(d), F.S., precludes mitigation of a Code sentence based on the defendant requiring specialized treatment for a mental disorder if such disorder is related to substance abuse or addiction. The bill retains these current mitigating circumstances in the law but limits their application to offenses committed on or after October 1, 1998 (the effective date of the Code) but before July 1, 2019.

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁸ Section 921.0026(3), F.S. (1997).

¹⁹ Section 921.0026(2)(m), F.S.; ch. 2009-64, s. 2, L.O.F. The term “nonviolent felony” has the same meaning as provided in s. 948.08(6), F.S., which defines “nonviolent felony” as a third degree felony violation of ch. 810, F.S., or any other felony offense that is not a forcible felony as defined in s. 776.08, F.S.

²⁰ Chapter 2011-33, s. 2, L.O.F.

²¹ Section 921.0026(3), F.S. Further, while current law provides for a mitigating circumstance based on the defendant requiring specialized treatment for a mental disorder if the defendant is amenable to treatment, that mental disorder cannot be related to substance abuse or addiction. Section 921.0026(2)(d), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of Economic and Demographic Research (EDR) preliminarily estimates that the committee substitute will have a “negative significant” prison bed impact (a decrease of more than 25 prison beds).²² The Department of Corrections estimates the fiscal impact of this bill to be indeterminate at this time.²³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 921.0026 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 775.08435, 921.002, and 921.00265.

²² The EDR estimate is on file with the Senate Committee on Criminal Justice.

²³ The DOC, SB 1030 Agency Analysis, p. 3.

IX. Additional Information:

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

CS by Criminal Justice on March 18, 2019:

The Committee Substitute:

- Specifies that the new mitigating circumstance for substance addiction, a mental disorder, or a physical disability applies to offenses committed on or after July 1, 2019.
- Specifies that the current mitigating circumstances relating to substance addiction, a mental disorder, or a physical disability apply to offenses committed on or after October 1, 1998, but before July 1, 2019.

- B. **Amendments:**

None.

By the Committee on Criminal Justice; and Senator Bracy

591-03157-19

20191030c1

1 A bill to be entitled
2 An act relating to mitigating circumstances in
3 sentencing; amending s. 921.0026, F.S.; revising the
4 mitigating circumstances under which a departure from
5 the lowest permissible sentence is reasonably
6 justified; authorizing mitigation of the lowest
7 permissible sentence when a defendant requires
8 specialized treatment for a certain substance
9 addiction and is amenable to treatment; making
10 technical changes; reenacting ss. 775.08435(1)(c),
11 921.002(3), and 921.00265(1), F.S., relating to the
12 prohibition on withholding adjudication in felony
13 cases, the Criminal Punishment Code, and recommended
14 and departure sentences, respectively, to incorporate
15 the amendment made to s. 921.0026, F.S., in references
16 thereto; providing an effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Section 921.0026, Florida Statutes, is amended
21 to read:

22 921.0026 Mitigating circumstances.—Except as otherwise
23 provided in this section, this section applies to any felony
24 offense, except any capital felony, committed on or after
25 October 1, 1998.

26 (1) A downward departure from the lowest permissible
27 sentence, as calculated according to the total sentence points
28 pursuant to s. 921.0024, is prohibited unless there are
29 circumstances or factors that reasonably justify the downward

591-03157-19

20191030c1

30 departure. Mitigating factors to be considered include, but are
31 not limited to, those listed in subsection (2). The imposition
32 of a sentence below the lowest permissible sentence is subject
33 to appellate review under chapter 924, but the extent of
34 downward departure is not subject to appellate review.

35 (2) Mitigating circumstances under which a departure from
36 the lowest permissible sentence is reasonably justified include,
37 but are not limited to:

38 (a) The departure results from a legitimate, uncoerced plea
39 bargain.

40 (b) The defendant was an accomplice to the offense and was
41 a relatively minor participant in the criminal conduct.

42 (c) The capacity of the defendant to appreciate the
43 criminal nature of the conduct or to conform that conduct to the
44 requirements of law was substantially impaired.

45 (d) For an offense committed on or after October 1, 1998,
46 but before July 1, 2019, the defendant requires specialized
47 treatment for a mental disorder that is unrelated to substance
48 abuse or addiction or for a physical disability, and the
49 defendant is amenable to treatment.

50 (e) For an offense committed on or after July 1, 2019, the
51 defendant requires specialized treatment for a mental disorder,
52 a substance addiction that predates the date of the offense, or
53 a physical disability, and the defendant is amenable to
54 treatment.

55 ~~(f)~~ (e) The need for payment of restitution to the victim
56 outweighs the need for a prison sentence.

57 ~~(g)~~ (f) The victim was an initiator, willing participant,
58 aggressor, or provoker of the incident.

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20191030c1

59 (h)~~(g)~~ The defendant acted under extreme duress or under
60 the domination of another person.

61 (i)~~(h)~~ Before the identity of the defendant was determined,
62 the victim was substantially compensated.

63 (j)~~(i)~~ The defendant cooperated with the state to resolve
64 the current offense or any other offense.

65 (k)~~(j)~~ The offense was committed in an unsophisticated
66 manner and was an isolated incident for which the defendant has
67 shown remorse.

68 (l)~~(k)~~ At the time of the offense the defendant was too
69 young to appreciate the consequences of the offense.

70 (m)~~(l)~~ The defendant is to be sentenced as a youthful
71 offender.

72 (n)~~(m)~~ For an offense committed on or after October 1,
73 1998, but before July 1, 2019, the defendant's offense is a
74 nonviolent felony, the defendant's Criminal Punishment Code
75 scoresheet total sentence points under s. 921.0024 are 60 points
76 or fewer, and the court determines that the defendant is
77 amenable to the services of a postadjudicatory treatment-based
78 drug court program and is otherwise qualified to participate in
79 the program as part of the sentence. Except as provided in this
80 paragraph, the defendant's substance abuse or addiction,
81 including intoxication at the time of the offense, is not a
82 mitigating factor for an offense committed on or after October
83 1, 1998, but before July 1, 2019, and does not, under any
84 circumstance, justify a downward departure from the permissible
85 sentencing range. For purposes of this paragraph, the term
86 "nonviolent felony" has the same meaning as provided in s.
87 948.08(6).

591-03157-19

20191030c1

88 (o)~~(n)~~ The defendant was making a good faith effort to
89 obtain or provide medical assistance for an individual
90 experiencing a drug-related overdose.

91 ~~(3) Except as provided in paragraph (2) (m), the defendant's~~
92 ~~substance abuse or addiction, including intoxication at the time~~
93 ~~of the offense, is not a mitigating factor under subsection (2)~~
94 ~~and does not, under any circumstances, justify a downward~~
95 ~~departure from the permissible sentencing range.~~

96 Section 2. For the purpose of incorporating the amendment
97 made by this act to section 921.0026, Florida Statutes, in
98 references thereto, paragraph (c) of subsection (1) of section
99 775.08435, Florida Statutes, is reenacted to read:

100 775.08435 Prohibition on withholding adjudication in felony
101 cases.—

102 (1) Notwithstanding the provisions of s. 948.01, the court
103 may not withhold adjudication of guilt upon the defendant for:

104 (c) A third degree felony that is a crime of domestic
105 violence as defined in s. 741.28, unless:

106 1. The state attorney requests in writing that adjudication
107 be withheld; or

108 2. The court makes written findings that the withholding of
109 adjudication is reasonably justified based on circumstances or
110 factors in accordance with s. 921.0026.

111 Section 3. For the purpose of incorporating the amendment
112 made by this act to section 921.0026, Florida Statutes, in a
113 reference thereto, subsection (3) of section 921.002, Florida
114 Statutes, is reenacted to read:

115 921.002 The Criminal Punishment Code.—The Criminal
116 Punishment Code shall apply to all felony offenses, except

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20191030c1

117 capital felonies, committed on or after October 1, 1998.

118 (3) A court may impose a departure below the lowest
119 permissible sentence based upon circumstances or factors that
120 reasonably justify the mitigation of the sentence in accordance
121 with s. 921.0026. The level of proof necessary to establish
122 facts supporting the mitigation of a sentence is a preponderance
123 of the evidence. When multiple reasons exist to support the
124 mitigation, the mitigation shall be upheld when at least one
125 circumstance or factor justifies the mitigation regardless of
126 the presence of other circumstances or factors found not to
127 justify mitigation. Any sentence imposed below the lowest
128 permissible sentence must be explained in writing by the trial
129 court judge.

130 Section 4. For the purpose of incorporating the amendment
131 made by this act to section 921.0026, Florida Statutes, in a
132 reference thereto, subsection (1) of section 921.00265, Florida
133 Statutes, is reenacted to read:

134 921.00265 Recommended sentences; departure sentences;
135 mandatory minimum sentences.—This section applies to any felony
136 offense, except any capital felony, committed on or after
137 October 1, 1998.

138 (1) The lowest permissible sentence provided by
139 calculations from the total sentence points pursuant to s.
140 921.0024(2) is assumed to be the lowest appropriate sentence for
141 the offender being sentenced. A departure sentence is prohibited
142 unless there are mitigating circumstances or factors present as
143 provided in s. 921.0026 which reasonably justify a departure.

144 Section 5. This act shall take effect July 1, 2019.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Criminal and
Civil Justice, *Vice Chair*
Criminal Justice
Finance and Tax
Innovation, Industry, and Technology

SENATOR RANDOLPH BRACY

11th District

April 1, 2019

The Honorable Chairman Jeff Brandes
416 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Brandes:

I write to request that the following bills be placed on the agenda of the Senate Appropriations Subcommittee on Criminal & Civil Justice:

SB 1030 Mitigating Circumstances in Sentencing: This bill allows for the consideration of substance addiction as a mitigating circumstance in sentencing.

Your consideration is tremendously appreciated. Please don't hesitate to let me know if you have any questions or concerns regarding the aforementioned legislation.

Sincerely,

A handwritten signature in black ink that reads "Randolph Bracy".

Senator Randolph Bracy

REPLY TO:

- 6965 Piazza Grande Avenue, Suite 211, Orlando, Florida 32835 (407) 297-2045 FAX: (888) 263-3814
- 213 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4.4.19

Meeting Date

1030

Bill Number (if applicable)

Topic Mitigating Circumstances in Sentencing

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-4-19

Meeting Date

CS/SB 1030

Bill Number (if applicable)

Topic Mitigating Circumstances in Sentencing

Amendment Barcode (if applicable)

Name MARK FONTAINE

Job Title DIRECTOR

Address 2868 MAHAN Drive

Phone 878-2196

Street

ORLANDO FL 32308

City

State

Zip

Email mfontaine@fadaa.org

Speaking: For Against Information

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

Representing FLORIDA Alcohol + Drug Abuse Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/4/19

Meeting Date

1030

Bill Number (if applicable)

Topic

Mitigation of Sentence

Amendment Barcode (if applicable)

Name

Nancy Daniels

Job Title

Legislative Consultant

Address

1030 N Gadsden

Phone

450 8488-6850

Street

Email

ndaniels@fldpa.org

City

State

Zip

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

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

Representing

Florida Public Defender Association

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/4/2019

Meeting Date

1030

Bill Number (if applicable)

Topic Sentencing Mitigation

Amendment Barcode (if applicable)

Name Carlos Martinez

Job Title Public Defender, 11th Judicial Circuit

Address 1320 NW 14th St.

Phone 305-545-1900

Street

Miami

City

Fl

State

33125

Zip

Email cmartinez@pdmiami.com

Speaking: For Against Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

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 1068 (123664)

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

SUBJECT: Crime Victim Assistance

DATE: April 8, 2019

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1068 expands the definition of the term “crime” for the purposes of providing assistance to a victim of a crime to include a violation of lewd or lascivious conduct, as described in section 800.04, Florida Statutes. The bill adds osteopathic physicians who hold an expert witness certificate pursuant to section 459.066, Florida Statutes to the list of eligible expert witnesses who may verify a mental injury to a minor for purposes of section 800.04, Florida Statutes.

The bill further specifies that intentionally touching of a person 16 or 17 years of age in a lewd or lascivious manner, or forcing or enticing a person 16 or 17 years of age to touch the actor, when such act is without the person’s consent and directly results in psychiatric or psychological injury, is considered a crime for the purposes of providing assistance to a victim of a crime.

The bill also increases the maximum payment from \$500 to \$1000 that can be made for a victim of sexual battery or a lewd or lascivious offense to obtain an initial forensic physical examination.

Although the fiscal impact of the bill is indeterminate, the Department of Legal Affairs (DLA) will likely incur costs associated with providing financial assistance to additional crime victims due to the expansion of the definition of crime and the increase to the allowable maximum payment. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2019.

II. Present Situation:

Assistance for Victims of a Crime

Florida law provides extensive assistance to victims of crimes. The Crime Victim's Services Office (Office) within the DLA is tasked with advocating for victims of crimes and informing them of their rights, among other things.¹ Current law defines a victim as:

- A person who suffers personal physical injury or death as a result of a crime;
- A person younger than 18 years of age who was present at the scene of a crime, saw or heard the crime, and suffered a psychiatric or psychological injury because of the crime but who was not physically injured;
- A person younger than 18 years of age who was the victim of a felony or misdemeanor offense of child abuse that resulted in a mental injury, but who was not physically injured;
- A person against whom a forcible felony was committed and who suffers a psychiatric or psychological injury as a direct result of that crime who does not otherwise sustain a personal physical injury or death; or
- An emergency responder who is killed answering a call for service in the line of duty.²

For the purposes of providing assistance to victims of a crime, the term crime is defined as:

- A felony or misdemeanor offense committed by an adult or a juvenile which results in a physical injury or death;
- A forcible felony committed by an adult or juvenile which directly results in psychiatric or psychological injury;
- A felony or misdemeanor offense of child abuse committed by an adult or a juvenile which results in a mental injury to a person younger than 18 years of age who was not physically injured by the criminal act;
- A violation of certain enumerated offenses³ that results in physical injury or death;
- An act involving the operation of a motor vehicle, boat, or aircraft that results in another person's injury or death that is intentionally inflicted through the use of the vehicle, boat, or aircraft;
- A criminal act committed outside the state against a resident of the state which would have been compensable if it had occurred in the state and which occurred in a jurisdiction that does not have an eligible crime victim compensation program;
- A violation of an enumerated offense⁴ related to online sexual exploitation and child pornography;
- A felony or misdemeanor that results in the death of an emergency responder while answering a call for service in the line of duty.⁵

In addition to providing advocacy and assistance to crime victims, the Office also administers a compensation program to ensure financial assistance is provided to victims of a crime. Injured

¹ Section 960.05, F.S.

² Section 960.03(14), F.S.

³ See ss. 316.027(2), 316.193, 316.1935, 327.35(1), 327.35(1), 782.071(1)(b), and 860.13(1)(a), F.S.

⁴ See ss. 827.071, 847.0135, 847.0137, and 847.0138, F.S.

⁵ Section 960.03(3)(a)-(f), F.S.

crime victims may be eligible for financial aid for medical care, lost income, mental health services, funeral expenses, and other expenses related to the injury.⁶

Among the types of financial aid a victim of a crime can receive is payment for medical expenses. Specifically, payment is made for a victim of sexual battery as defined in ch. 794, F.S., or a lewd or lascivious offense as defined in ch. 800, F.S., to obtain an initial forensic physical examination. A payment of up to \$500 will be made to cover the victim's examination, regardless of whether or not the victim is covered by health or disability insurance and whether the victim participates in the criminal justice system or cooperates with law enforcement.⁷ The defendant or juvenile offender of the crime for which the victim is obtaining a physical examination must make restitution to the Crimes Compensation Trust Fund⁸ in an amount equal to the compensation paid for the victim's exam.⁹

Lewd or Lascivious Conduct

Section 800.04, F.S., prohibits lewd or lascivious acts on a person under 16 years of age. The terms "lewd" and "lascivious" are synonymous and mean wicked, lustful or unchaste, licentious, or sensual intent on the person committing the act.¹⁰ Current law prohibits a person from committing a lewd or lascivious battery, which is defined as engaging in sexual activity¹¹ with a person 12 years of age or older but less than 16 years of age, or encouraging, forcing, or enticing any person less than 16 years of age to engage in sexual activity.¹² Additionally, intentionally touching in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forcing or enticing a person under 16 years of age to touch the perpetrator in such a manner, is lewd or lascivious molestation and is prohibited.¹³ In all instances of the commission of a lewd or lascivious offense, the victim's consent cannot be used as a defense.¹⁴ The law does not prohibit such conduct for people who are 16 or 17 years of age.

Expert Testimony in Child Abuse Cases and Expert Witness Certificate

Sections 458.3175 and 459.0066, F.S., require an expert witness who is licensed in another jurisdiction to obtain an "expert witness certificate" from the Florida Department of Health

⁶ Florida Office of the Attorney General, *Division of Victim Services*, available at <http://myfloridalegal.com/pages.nsf/main/1c7376f380d0704c85256cc6004b8ed3!OpenDocument> (last visited March 29, 2019).

⁷ Section 960.28(2), F.S.

⁸ The DLA is tasked with administering the Crimes Compensation Trust Fund, which is created for the purpose of providing for the payment of all necessary and proper expenses incurred by the operation of the DLA and the payment of claims. Money recovered through restitution is one source of funding for the Crimes Compensation Trust Fund. Section 960.21, F.S.

⁹ Section 960.28(5), F.S.

¹⁰ HG.org Legal Resources, *Statutory Definition of Lewd or Lascivious Conduct and Potential Punishments in Florida*, available at <https://www.hg.org/legal-articles/statutory-definition-of-lewd-or-lascivious-conduct-and-potential-punishments-in-florida-43848> (last visited March 29, 2019).

¹¹ "Sexual activity" means the oral, anal, or vagina penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object. However, sexual activity does not include an act done for a bona fide medical purpose. Section 800.04(1)(a), F.S.

¹² Section 800.04(4), F.S.

¹³ Section 800.04(5), F.S.

¹⁴ Section 800.04(2), F.S.

(DOH) before that expert witness may testify in medical negligence cases or provide an affidavit in the pre-suit portion of a medical negligence case. The certificate is good for 2 years, and only authorizes the physician to do the following:

- Provide a verified written medical expert opinion;
- Provide expert testimony about the prevailing professional standard of care in connection with medical negligence litigation pending in this state against a physician licensed in Florida; and
- Provide expert testimony in criminal child abuse and neglect cases pursuant to chapter 827, dependency cases pursuant to chapter 39, and cases involving sexual battery of a child pursuant to chapter 794 in this state.¹⁵

In criminal child abuse and neglect cases, s. 827.03(3), F.S., allows expert testimony in child abuse and neglect cases by physicians licensed under chapter 458, F.S., or 459, F.S., or by physicians who have obtained an expert witness certification. To provide expert testimony of mental injury in child abuse and neglect cases, physicians must be licensed under chapter 458, F.S., or 459, F.S., and have completed an accredited residency in psychiatry, or obtained an expert witness certification.

III. Effect of Proposed Changes:

The bill expands the definition of crime for the purposes of providing assistance to a victim of a crime to include a violation of lewd or lascivious conduct, as described in s. 800.04, F.S. The bill adds osteopathic physicians who hold an expert witness certificate pursuant to s. 459.066, F.S. to the list of eligible expert witnesses who may verify a mental injury to a minor for purposes of s. 800.04, F.S.

The bill further specifies that intentionally touching the breasts, genitals, genital area, or buttocks, or the clothing covering those areas, of a person 16 or 17 years of age in a lewd or lascivious manner, or forcing or enticing a person 16 or 17 years of age to touch the actor, when such act is without the person's consent and directly results in psychiatric or psychological injury, is considered a crime for the purposes of providing assistance to a victim of a crime.

The bill also increases the maximum payment from \$500 to \$1000 that can be made for a victim of sexual battery or a lewd or lascivious offense to obtain an initial forensic physical examination.

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁵ Section 459.006(2)(a)-(c), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

The fiscal impact of the bill is indeterminate. The bill increases the maximum payment that can be made for the purposes of a victim of a crime of sexual battery or a lewd or lascivious offense to obtain an initial forensic physical examination. In such an instance, the defendant or juvenile offender of the crime for which the victim is obtaining a physical examination must make restitution in the amount equal to the payment made to cover the medical cost. As a result, such defendant or juvenile offender may be ordered by the court to pay more money in restitution.

C. Government Sector Impact:

According to the DLA, during the 2018 calendar year, they received 470 claims related to lewd or lascivious acts. Of these, 233 were denied because the victims were sixteen or seventeen years of age.¹⁶

The bill also increases the allowable payment for medical expenses from a maximum of \$500, to a maximum of \$1,000 per claim.

In fiscal year 2017-18, the DLA approved 4,065 claims for sexual battery examinations for an approximate total cost of \$2,032,500 from the Crimes Compensation Trust Fund.¹⁷ The DLA has indicated that if this proposed legislation were to pass, it plans to pay

¹⁶ Email from the Department of Legal Affairs, March 14, 2019 (on file with Senate Criminal and Civil Justice Appropriations Committee).

¹⁷ Office of Attorney General Pam Bondi Department of Legal Affairs, *Division of Victim Services and Criminal Justice Programs*, pg. 13, (December 20, 2018), available at [http://myfloridalegal.com/webfiles.nsf/WF/MNOS-B7THCX/\\$file/FINAL+ANNUAL+REPORT+2017-18+12-14-18.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MNOS-B7THCX/$file/FINAL+ANNUAL+REPORT+2017-18+12-14-18.pdf) (last visited March 29, 2019).

approximately \$750 per claim for the first few years to assess the impact on the trust fund.

Although the actual fiscal impact of this change is indeterminate, assuming 4,065 claims plus 233 claims (for victims 16 or 17 years of age), at the maximum allowable of \$1,000 per claim, the total estimated impact is \$4,298,000; an increase of \$2,265,500. Payments of \$750 per claim would result in a total estimated impact of \$3,223,500; an increase of \$1,191,000. There would also be a corresponding revenue increase from the U.S. Victim Compensation Grant within the Federal Grants Trust Fund of approximately 40 cents for each dollar spent; however, according to the DLA, federal reimbursement can sometimes take up to 2-3 years.

According to the DLA, many service providers do not send in claims because they are aware that under current law they would be denied based on ineligibility. The DLA advises that it is reasonable to assume that the number of claims will increase over time if this legislation is passed.¹⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill seeks to expand the definition of “crime” for the purposes of providing assistance to victims of enumerated crimes. Specifically, lines 35-41 of the bill describes conduct that is not currently a crime. Therefore, the bill establishes eligibility for assistance to victims of an act that cannot currently be prosecuted.

Section 800.04, F.S., prohibits the commission of a lewd or lascivious offense against a person *less than 16 years of age*. A commission of the offense described in lines 35-41 of the bill is not a crime that can be prosecuted because a lewd or lascivious offense committed against a person *16 or 17 years of age* does not fall within the ambit of s. 800.04, F.S. Therefore, the DLA would be tasked with providing assistance to “victims” of a crime that cannot currently be prosecuted.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 960.03 and 960.28.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

**Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice
on April 4, 2019:**

¹⁸ *Supra* note 16

The committee substitute adds osteopathic physicians who hold an expert witness certificate to the list of eligible expert witnesses from which a mental illness must be verified.

B. Amendments:

None.

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



620832

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/05/2019	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete line 32
and insert:
pursuant to s. 458.3175 or s. 459.0066. The term also includes a
criminal act

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

And the title is amended as follows:

Delete line 5



620832

11 and insert:

12 offenses and, under certain provisions, to add
13 osteopathic physicians certified as expert witnesses
14 to the list of persons who must verify a certain
15 mental injury of a minor; amending s. 960.28, F.S.;
16 increasing the

By Senator Bean

4-01278A-19

20191068__

1 A bill to be entitled
2 An act relating to crime victim assistance; amending
3 s. 960.03, F.S.; redefining the term "crime" to
4 include the commission of certain lewd or lascivious
5 offenses; amending s. 960.28, F.S.; increasing the
6 maximum amount the Crime Victims' Services Office of
7 the Department of Legal Affairs is required to pay for
8 certain medical expenses of victims of specified
9 crimes; providing an effective date.

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

12
13 Section 1. Paragraph (a) of subsection (3) of section
14 960.03, Florida Statutes, is amended, and paragraph (g) is added
15 to that subsection, to read:

16 960.03 Definitions; ss. 960.01-960.28.—As used in ss.
17 960.01-960.28, unless the context otherwise requires, the term:

18 (3) "Crime" means:

19 (a) A felony or misdemeanor offense committed by an adult
20 or a juvenile which results in physical injury or death, a
21 violation of s. 800.04 or a forcible felony committed by an
22 adult or juvenile which directly results in psychiatric or
23 psychological injury, or a felony or misdemeanor offense of
24 child abuse committed by an adult or a juvenile which results in
25 a mental injury, as defined in s. 827.03, to a person younger
26 than 18 years of age who was not physically injured by the
27 criminal act. The mental injury to the minor must be verified by
28 a psychologist licensed under chapter 490, by a physician
29 licensed in this state under chapter 458 or chapter 459 who has

4-01278A-19

20191068__

30 completed an accredited residency in psychiatry, or by a
31 physician who has obtained certification as an expert witness
32 pursuant to s. 458.3175. The term also includes a criminal act
33 that is committed within this state but that falls exclusively
34 within federal jurisdiction.

35 (g) An act of intentionally touching in a lewd or
36 lascivious manner the breasts, genitals, genital area, or
37 buttocks, or the clothing covering those areas, of a person 16
38 or 17 years of age or forcing or enticing a person 16 or 17
39 years of age to so touch the actor, when such act is without the
40 person's consent and directly results in psychiatric or
41 psychological injury.

42 Section 2. Subsection (2) of section 960.28, Florida
43 Statutes, is amended to read:

44 960.28 Payment for victims' initial forensic physical
45 examinations.—

46 (2) The Crime Victims' Services Office of the department
47 shall pay for medical expenses connected with an initial
48 forensic physical examination of a victim of sexual battery as
49 defined in chapter 794 or a lewd or lascivious offense as
50 defined in chapter 800. Such payment shall be made regardless of
51 whether the victim is covered by health or disability insurance
52 and whether the victim participates in the criminal justice
53 system or cooperates with law enforcement. The payment shall be
54 made only out of moneys allocated to the Crime Victims' Services
55 Office for the purposes of this section, and the payment may not
56 exceed \$1,000 ~~\$500~~ with respect to any violation. The department
57 shall develop and maintain separate protocols for the initial
58 forensic physical examination of adults and children. Payment

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20191068__

59 under this section is limited to medical expenses connected with
60 the initial forensic physical examination, and payment may be
61 made to a medical provider using an examiner qualified under
62 part I of chapter 464, excluding s. 464.003(14); chapter 458; or
63 chapter 459. Payment made to the medical provider by the
64 department shall be considered by the provider as payment in
65 full for the initial forensic physical examination associated
66 with the collection of evidence. The victim may not be required
67 to pay, directly or indirectly, the cost of an initial forensic
68 physical examination performed in accordance with this section.

69 Section 3. This act shall take effect July 1, 2019.

Dale, Abram

From: Daniel Olson <Daniel.Olson@myfloridalegal.com>
Sent: Thursday, March 14, 2019 1:02 PM
To: Dale, Abram
Subject: SB 1068

Dale,

Let me know if the below write up helps with the fiscal impact on SB 1068.

Section 1:

Based upon the 2018 calendar year, L&L claims received which were 470, of which 233 were denied that could have otherwise been consider under this proposed legislation. Using the average claim payment from the 2015-2016 fiscal of \$446.00 per eligible claim, we estimate the initial cost would be \$103,918.00.

However keep in mind, that the majorly of the service providers never sent us a claim in 2018 because they knew we would have denied them based on ineligibility Therefore it is more than reasonable to assume that the number of claims will increase over time if this legislation is passed.

Daniel M. Olson
Director of Government Relations
Office of the Attorney General Ashley Moody
850-245-0188



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: March 13, 2019

I respectfully request that **Senate Bill # 1068**, relating to Crime Victim Assistance, be placed on the:

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

A handwritten signature in blue ink that reads "Aaron Bean".

Senator Aaron Bean
Florida Senate, District 4

THE FLORIDA SENATE APPEARANCE RECORD

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

4/4/19

Meeting Date

1068

Bill Number (if applicable)

620832

Amendment Barcode (if applicable)

Topic Crime Victim Assistance

Name Stephen Winn

Job Title Executive Director

Address 2544 Blairstone Pines Dr

Phone 878-7364

Street

Tallahassee FL 32301

City

State

Zip

Email winnsr@earthlink.net

Speaking: For Against Information

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

Representing Florida Osteopathic Medical Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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)

4/4/19

1068

Meeting Date

Bill Number (if applicable)

Topic Crime Victim Assistance

Amendment Barcode (if applicable)

Name Chief Gary Hester

Job Title Government Affairs

Address 2636 Mitcham Drive

Phone 850-219-3631

Street

Tallahassee

FL

32308

Email ghester@fpca.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

4/4/19

Meeting Date

1068

Bill Number (if applicable)

Topic Crime Victim Assistance

Amendment Barcode (if applicable)

Name Stephen Winn

Job Title Executive Director

Address 2544 Blairstone Pines Dr

Phone 878-7364

Street

Tallahassee FL 32301

City

State

Zip

Email winnsr@earthlink.net

Speaking: For Against Information

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

Representing Florida Osteopathic Medical Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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)

4/4/2019

Meeting Date

1068

Bill Number (if applicable)

Topic Crime Victim Assistance

Amendment Barcode (if applicable)

Name Daniel Olson

Job Title Director, Government Relations

Address 400 S Monroe

Street

Tallahassee

City

FL

State

32399

Zip

Phone _____

Email _____

Speaking: For Against Information

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

Representing Office of the Attorney General

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

4.4.19

Meeting Date

1068

Bill Number (if applicable)

Topic Crime Victim Assistance

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
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 1658

INTRODUCER: Senator Simpson

SUBJECT: Statewide Task Force on Opioid Drug Abuse

DATE: April 3, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Brown</u>	<u>HP</u>	<u>Favorable</u>
2.	<u>Dale</u>	<u>Jameson</u>	<u>ACJ</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1658 creates section 381.888, Florida Statutes, to establish the Statewide Task Force on Opioid Drug Abuse (task force) as an adjunct to the Department of Legal Affairs (DLA) for the purpose of researching opioid drug abuse; evaluating effective strategies for education, interdiction, arrest, prosecution, treatment, and prevention; and providing policy recommendations to the Legislature. The bill specifies the membership of the task force and requires the task force to meet at an organizational session by July 15, 2019, and at least four times annually thereafter. The bill enumerates specific duties of the task force related to its purpose, allows the task force to break into subcommittees that must report to the task force as a whole, and requires the task force to submit interim reports to the Legislature by December 1, 2020, and January 15, 2021, and a final report by December 1, 2022.

The DLA may have an indeterminate fiscal impact related to providing staff necessary to assist in the performance of its duties. Additionally, members are entitled to receive reimbursement for per diem and travel expenses pursuant to section 112.061, Florida Statutes.

The bill's provisions take effect upon becoming law.

II. Present Situation:

Opioid Abuse

Both nationally and in Florida, opioid addiction and abuse has become an epidemic. The Florida Department of Law Enforcement (FDLE) reported that, when compared to 2016, 2017 saw:

- 6,178 (8 percent more) opioid-related deaths;

- 6,932 (4 percent more) individuals died with one or more prescription drugs in their system;¹
- 3,684 (4 percent more) individuals died with at least one prescription drug in their system that was identified as the cause of death;
- Occurrences of heroin increased by 3 percent and deaths caused by heroin increased by 1 percent;
- Occurrences of fentanyl increased by 27 percent and deaths caused by fentanyl increased by 25 percent;
- Occurrences hydrocodone increased by 6 percent while deaths caused by hydrocodone decreased by 8 percent; and
- Occurrences of buprenorphine and deaths caused by buprenorphine increased by 19 percent.²

The federal Centers for Disease Control and Prevention (CDC) estimates that the nationwide cost of opioid misuse at \$78.5 billion per year.³

History of the Opioid Crisis in Florida

In the late 1990s, pharmaceutical companies reassured the medical community that patients would not become addicted to prescription opioid pain relievers, and health care providers began to prescribe them at greater rates. This subsequently led to widespread diversion and misuse of these medications before it became clear that these medications could indeed be highly addictive.⁴ Between the early 2000s and the early 2010s, Florida was infamous as the “pill mill capital” of the country. At the peak of the pill mill crisis, doctors in Florida bought 89 percent of all the oxycodone sold in the county.⁵

Between 2009 and 2011, the Legislature enacted a series of reforms to combat prescription drug abuse. These reforms included strict regulation of pain management clinics; creating the Prescription Drug Monitoring Program (PDMP); and stricter regulation on selling, distributing, and dispensing controlled substances.⁶ Between 2010 and 2014, deaths from prescription drugs dropped but deaths from illegal opioids, such as heroin, began to rise.⁷

In 2016, the opioid prescription rate was 75 per 100 persons in Florida. This rate was down from a high of 83 per 100. Drug overdose is now the leading cause of non-injury related death in the United States. Since 2000, drug overdose death rates increased by 137 percent, including a 200 percent increase in the rate of overdose deaths involving opioids. In 2015, over 52,000 deaths in the U.S. were attributed to drug poisoning, and over 33,000 (63 percent) involved an opioid. In 2015, 3,535 deaths occurred in Florida where at least one drug was identified as the

¹ The drugs were identified as either the cause of death or merely present in the decedent. These drugs may have also been mixed with illicit drugs and/or alcohol. These drugs were not necessarily opioids.

² FDLE, *Drugs Identified in Deceased Persons by Florida Medical Examiners 2017 Annual Report* (Nov. 2018) <http://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2017-Annual-Drug-Report.aspx> (last visited on April 1, 2019).

³ National Institute on Drug Abuse, *Opioid Overdose Crisis* (Jan. 2018) <https://www.drugabuse.gov/drugs-abuse/opioids/opioid-overdose-crisis> (last visited on April 1, 2019).

⁴ Id.

⁵ Lizette Alvarez, *Florida Shutting ‘Pill Mill’ Clinics*, THE NEW YORK TIMES (Aug. 31, 2011), available at <http://www.nytimes.com/2011/09/01/us/01drugs.html> (last visited on April 1, 2019).

⁶ See chs. 2009-198, 2010-211, and 2011-141, Laws of Fla.

⁷ Supra note 3

cause of death. More specifically, 2,535 deaths were caused by at least one opioid in 2015. Stated differently, seven lives per day were lost to opioids in Florida in 2015. Overall the state had a rate of opioid-caused deaths of 13 per 100,000. The three counties with the highest opioid death rate were Manatee County (37 per 100,000), Dixie County (30 per 100,000), and Palm Beach County (22 per 100,000).⁸

Early in 2017, the CDC declared the opioid crisis an epidemic and shortly thereafter, on May 3, 2017, Governor Rick Scott signed executive order 17-146 declaring the opioid epidemic a public health emergency in Florida.

House Bill 21

In 2018, the Florida Legislature passed HB 21 (ch. 2018-13, L.O.F.) to combat the opioid crisis. HB 21:

- Required additional training for practitioners on the safe and effective prescribing of controlled substances;
- Restricted the length of prescriptions for Schedule II opioid medications to 3 days or up to 7 days if medically necessary;
- Reworked the PDMP statute to require that prescribing practitioners check the PDMP prior to prescribing a controlled substance and to allow the integration of PDMP data with electronic health records and the sharing of PDMP data between Florida and other states; and
- Provided for additional funding for treatment and other issues related to opioid abuse.

The Attorney General's Opioid Working Group

In 2019, Florida Attorney General Ashley Moody convened an opioid working group with the primary goal of developing an overview of current programs and providing a practical set of recommendations for the Attorney General to combat the opioid crisis and addiction to opioids throughout the State of Florida.⁹ The working group published its findings on March 1, 2019, and concluded that Florida should combat this epidemic with a three-pronged approach to include prevention, enforcement, and treatment, with education being a crucial element of each prong.¹⁰

III. Effect of Proposed Changes:

This bill creates s. 381.888, F.S., to establish the Statewide Task Force on Opioid Drug Abuse as an adjunct to the Department of Legal Affairs (DLA). The bill states the purpose of the task force is researching opioid drug abuse, evaluating effective strategies for education, interdiction, arrest, prosecution, treatment and prevention, and providing policy recommendations to the Legislature.

The membership of the task force is established as follows:

⁸ Attorney General's Opioid Working Group, *Florida's Opioid Epidemic: Recommendations and Best Practices* (March 1, 2019), available at [https://myfloridalegal.com/webfiles.nsf/WF/TDGT-B9UTV9/\\$file/AG+Opioid+Working+Group+Report+Final+2-28-2019.pdf](https://myfloridalegal.com/webfiles.nsf/WF/TDGT-B9UTV9/$file/AG+Opioid+Working+Group+Report+Final+2-28-2019.pdf), (last visited on April 1, 2019).

⁹ Id.

¹⁰ For detailed findings, please see [https://myfloridalegal.com/webfiles.nsf/WF/TDGT-B9UTV9/\\$file/AG+Opioid+Working+Group+Report+Final+2-28-2019.pdf](https://myfloridalegal.com/webfiles.nsf/WF/TDGT-B9UTV9/$file/AG+Opioid+Working+Group+Report+Final+2-28-2019.pdf), (last visited on April 1, 2019).

- One representative appointed by the Attorney General, to serve as chair.
- One representative appointed by the Surgeon General, to serve as vice chair.
- One representative appointed by the Commissioner of Education.
- One representative appointed by the Commissioner of the Florida Department of Law Enforcement.
- One representative appointed by the Secretary of Children and Family Services.
- One representative appointed by the Secretary of Health Care Administration.
- One representative appointed by the Secretary of Corrections.
- One representative appointed by the Secretary of Juvenile Justice.
- One representative appointed by the President of the Senate.
- One representative appointed by the Speaker of the House of Representatives.
- Two sheriffs appointed by the Attorney General.
- Two police chiefs appointed by the Attorney General.
- Two state attorneys appointed by the Attorney General.
- Two public defenders appointed by the Attorney General.
- One representative appointed by the State Courts Administrator.
- Three representatives from addiction and recovery associations appointed by the Attorney General, each from different geographic areas of the state.
- One representative of the Florida Medical Association.
- One representative of the Florida Pharmacy Association.
- One representative of the insurance industry appointed by the Insurance Commissioner.

The bill specifies that members of the task force are entitled to receive per diem and travel expenses, and the DLA is required to provide the task force with staff necessary to assist the task force in the performance of its duties.

The task force must hold an organizational session by July 15, 2019, and meet at least four times per year thereafter. The chair of the task force may add additional meetings if extraordinary circumstances require. Additionally, the task force may break into subcommittees at the direction of the chair. Each subcommittee must present its findings to the task force as a whole.

The task force must submit interim reports to the Legislature by December 1, 2020, and January 15, 2021. The task force must submit its final report to the Legislature by December 1, 2022.

The bill requires the task force to do all of the following:

- Collect and organize data concerning:
 - The nature and extent of opioid drug abuse in this state, including, but not limited to, the overdose death rate, neonatal abstinence syndrome statistics, the Florida Youth Substance Abuse Survey, Automated Reports and Consolidated Ordering System data, and United States Drug Enforcement Administration seizure data for opioids, including fentanyl and synthetic fentanyl.
 - The current costs to state and local governments associated with the interdiction, prosecution, incarceration, education, monitoring, and treatment of opioid abuse and misuse in this state.
- Identify:

- Available federal, state, and local programs that provide services to combat opioid drug abuse.
- Whether there is any need for additional regulatory activity, including scheduling or emergency scheduling, of synthetic opioid derivatives including synthetic fentanyl derivatives.
- Identify and evaluate:
 - Best practices for the treatment of opioid drug abuse.
 - The sources of opioids being abused and misused and causes of opioid drug abuse.
 - Ways to reduce the demand for opioids, including, but not limited to, alternative pain management that does not involve the use of opioids.
 - Ways to reduce the availability of opioids to opioid drug abusers, including increased monitoring, expanded interdiction, and cooperation among law enforcement agencies at all levels.
 - Training and resources needed by law enforcement officers to deal with users and addicts of opioid drugs.
 - Best practices for law enforcement encounters with arrestees and others suffering from opioid addiction.
 - Best practices for treating arrestees in custody suffering from opioid addiction.
 - Alternatives to conviction or incarceration for arrestees suffering from opioid addiction.
 - Programs and protocols for consideration and use with inmates suffering from opioid addiction.
 - Programs for dealing with minors suffering from opioid drug abuse and addiction.
 - Educational programs for children, young adults, and adults on the dangers of opioid abuse and misuse.
- Evaluate methods to increase public awareness of the dangers of opioid abuse and misuse.
- Develop a list of projects and priorities to be funded by the Legislature or from other sources, including the proceeds arising from any judgments or settlements with opioid manufacturers, distributors, or others related to opioid drug abuse.

The provisions of the bill are effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

SB 1658 may have an indeterminate fiscal impact on the DLA related to providing staff necessary to assist the task force in the performance of its duties. Additionally, although the bill specifies members are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061, F.S., it is unclear if the funds to pay these costs are to come from the organization or agency the member represents or another entity.

VI. Technical Deficiencies:

The bill provides for the appointment of task force members by specified government officials.

The bill also provides for one member of the task force to be appointed by the State Courts Administrator (Lines 56-57 of the bill). Typically, appointments to a task force or commission on behalf of the judicial branch are made by the Chief Justice of the Supreme Court, as opposed to the State Courts Administrator.

Another appointment to the task force created by the bill is to be made by the Insurance Commissioner (lines 63-64 of the bill). Florida no longer has an Insurance Commissioner; that function is performed by the director of the Office of Insurance Regulation.

VII. Related Issues:

The bill requires the task force to submit interim reports on December 1, 2020, and January 15, 2021, and a final report December 1, 2022. Since these dates are only 45 days apart, it is unclear whether the task force will be able to provide any new information in the second required interim report. It may be advisable to increase the time between the first and second interim reports.

The Florida Department of Law Enforcement has respectfully recommended a comprehensive review of the Drug Policy Advisory Council (DPAC), as specified in s. 397.333, F.S., to address any duplication of efforts. Although not focused exclusively on opioid drug abuse, the council, which is housed within the Department of Health, has a similar structure and has similar requirements as the proposed task force.¹¹

¹¹ The DLE, SB 1658 Agency Analysis, p. 4-5.

VIII. Statutes Affected:

This bill creates section 381.888 of the Florida Statutes.

IX. Additional Information:

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

None.

B. **Amendments:**

None.

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

By Senator Simpson

10-01387A-19

20191658__

1 A bill to be entitled
2 An act relating to the Statewide Task Force on Opioid
3 Drug Abuse; creating s. 381.888, F.S.; creating the
4 Statewide Task Force on Opioid Drug Abuse for a
5 specified purpose; providing for the membership of the
6 task force; providing for reimbursement of per diem
7 and travel expenses for members; requiring the
8 Department of Legal Affairs to provide the task force
9 with necessary staff; requiring the task force to hold
10 an organizational session before a specified date and
11 quarterly meetings thereafter; authorizing the chair
12 to call for additional meetings in extraordinary
13 circumstances; specifying duties of the task force;
14 requiring the task force to submit reports to the
15 Legislature by specified dates; providing an effective
16 date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Section 381.888, Florida Statutes, is created to
21 read:

22 381.888 Statewide Task Force on Opioid Drug Abuse.—

23 (1) (a) There is created adjunct to the Department of Legal
24 Affairs the Statewide Task Force on Opioid Drug Abuse, a task
25 force as defined in s. 20.03. The task force is created for the
26 purpose of researching opioid drug abuse, evaluating effective
27 strategies for education, interdiction, arrest, prosecution,
28 treatment and prevention, and providing policy recommendations
29 to the Legislature.

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30 (b) The task force shall consist of the following members,
31 or their designees:

32 1. One representative appointed by the Attorney General,
33 who shall serve as chair.

34 2. One representative appointed by the Surgeon General, who
35 shall serve as vice chair.

36 3. One representative appointed by the Commissioner of
37 Education.

38 4. One representative appointed by the Commissioner of the
39 Florida Department of Law Enforcement.

40 5. One representative appointed by the Secretary of
41 Children and Family Services.

42 6. One representative appointed by the Secretary of Health
43 Care Administration.

44 7. One representative appointed by the Secretary of
45 Corrections.

46 8. One representative appointed by the Secretary of
47 Juvenile Justice.

48 9. One representative appointed by the President of the
49 Senate.

50 10. One representative appointed by the Speaker of the
51 House of Representatives.

52 11. Two sheriffs appointed by the Attorney General.

53 12. Two police chiefs appointed by the Attorney General.

54 13. Two state attorneys appointed by the Attorney General.

55 14. Two public defenders appointed by the Attorney General.

56 15. One representative appointed by the State Courts
57 Administrator.

58 16. Three representatives from addiction and recovery

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59 associations appointed by the Attorney General, each from
60 different geographic areas of the state.

61 17. One representative of the Florida Medical Association.

62 18. One representative of the Florida Pharmacy Association.

63 19. One representative of the insurance industry appointed
64 by the Insurance Commissioner.

65 (c) Members of the task force are entitled to receive
66 reimbursement for per diem and travel expenses in accordance
67 with s. 112.061.

68 (d) The Department of Legal Affairs shall provide the task
69 force with staff necessary to assist the task force in the
70 performance of its duties.

71 (2) The task force shall hold an organizational session by
72 July 15, 2019. Thereafter, the task force shall meet at least
73 four times per year. Additional meetings may be held if the
74 chair determines that extraordinary circumstances require an
75 additional meeting. A majority of the members of the task force
76 constitutes a quorum.

77 (3) The task force shall do all of the following:

78 (a) Collect and organize data concerning the nature and
79 extent of opioid drug abuse in this state, including, but not
80 limited to, the overdose death rate, neonatal abstinence
81 syndrome statistics, the Florida Youth Substance Abuse Survey,
82 Automated Reports and Consolidated Ordering System data, and
83 United States Drug Enforcement Administration seizure data for
84 opioids, including fentanyl and synthetic fentanyl.

85 (b) Collect and organize data concerning the current costs
86 to state and local governments associated with the interdiction,
87 prosecution, incarceration, education, monitoring, and treatment

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88 of opioid abuse and misuse in this state.

89 (c) Identify available federal, state, and local programs
90 that provide services to combat opioid drug abuse.

91 (d) Identify and evaluate best practices for the treatment
92 of opioid drug abuse.

93 (e) Identify and evaluate the sources of opioids being
94 abused and misused and causes of opioid drug abuse.

95 (f) Identify whether there is any need for additional
96 regulatory activity, including scheduling or emergency
97 scheduling, of synthetic opioid derivatives including synthetic
98 fentanyl derivatives.

99 (g) Identify and evaluate ways to reduce the demand for
100 opioids, including, but not limited to, alternative pain
101 management that does not involve the use of opioids.

102 (h) Identify and evaluate ways to reduce the availability
103 of opioids to opioid drug abusers, including increased
104 monitoring, expanded interdiction, and cooperation among law
105 enforcement agencies at all levels.

106 (i) Identify and evaluate training and resources needed by
107 law enforcement officers to deal with users and addicts of
108 opioid drugs.

109 (j) Identify and evaluate best practices for law
110 enforcement encounters with arrestees and others suffering from
111 opioid addiction.

112 (k) Identify and evaluate best practices for treating
113 arrestees in custody suffering from opioid addiction.

114 (l) Identify and evaluate alternatives to conviction or
115 incarceration for arrestees suffering from opioid addiction.

116 (m) Identify and evaluate programs and protocols for

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117 consideration and use with inmates suffering from opioid
118 addiction.

119 (n) Identify and evaluate programs for dealing with minors
120 suffering from opioid drug abuse and addiction.

121 (o) Identify and evaluate educational programs for
122 children, young adults, and adults on the dangers of opioid
123 abuse and misuse.

124 (p) Evaluate methods to increase public awareness of the
125 dangers of opioid abuse and misuse.

126 (q) Develop a list of projects and priorities to be funded
127 by the Legislature or from other sources, including the proceeds
128 arising from any judgments or settlements with opioid
129 manufacturers, distributors, or others related to opioid drug
130 abuse.

131 (4) At the chair's direction, the task force may break into
132 subcommittees or small groups that must present their findings
133 to the task force as a whole.

134 (5) The task force shall submit interim reports to the
135 President of the Senate and the Speaker of the House of
136 Representatives by December 1, 2020, and January 15, 2021, and
137 shall submit a final report of its recommendations to the
138 President of the Senate and the Speaker of the House of
139 Representatives by December 1, 2022.

140 Section 2. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: March 22, 2019

I respectfully request that **Senate Bill #1658**, relating to the opioid 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 "W. Simpson", written over a horizontal line.

Senator Wilton Simpson
Florida Senate, District 10

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 7082

INTRODUCER: Criminal Justice Committee

SUBJECT: Controlled Substances

DATE: April 3, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	_____	Jones	_____	CJ Submitted as Committee Bill
1.	Forbes	Jameson	ACJ	Recommend: Favorable
2.	_____	_____	AP	_____

I. Summary:

SB 7082 amends section 893.03, Florida Statutes, Florida’s controlled substance schedules, to reschedule the following substance from Schedule I to Schedule V: a drug product in finished dosage formulation which has been approved by the U.S. Food and Drug Administration (FDA) and which contains cannabidiol (CBD) derived from cannabis and no more than 0.1 percent tetrahydrocannabinols.

This scheduling language currently applies only to Epidiolex®, a pharmaceutical oral solution which contains highly purified CBD and which is used for the treatment of seizures associated with two rare and severe forms of epilepsy. Epidiolex® is the only CBD product currently approved by the FDA.

The bill codifies an emergency rule adopted by the Florida Attorney General, which reschedules the described drug product from Schedule I to Schedule V. The codification of this scheduling is consistent with federal law.

The Legislature’s Office of Economic and Demographic Research preliminarily estimates that the bill will have a “negative insignificant” prison bed impact (a decrease of 10 or fewer prison beds). See Section V. Fiscal Impact Statement.

The bill is effective upon becoming a law.

II. Present Situation:

Florida’s Controlled Substance Schedules

Section 893.03, F.S., classifies controlled substances into five categories or classifications, known as schedules. These schedules regulate the manufacture, distribution, preparation, and

dispensing of the substances listed in the schedules. The most important factors in determining which schedule may apply to a substance are the “potential for abuse”¹ of the substance and whether there is a currently accepted medical use for the substance. The controlled substance schedules are as follows:

- Schedule I substances (s. 893.03(1), F.S.) have a high potential for abuse and no currently accepted medical use in treatment in the United States. Use of these substances under medical supervision does not meet accepted safety standards.
- Schedule II substances (s. 893.03(2), F.S.) have a high potential for abuse and a currently accepted but severely restricted medical use in treatment in the United States. Abuse of these substances may lead to severe psychological or physical dependence.
- Schedule III substances (s. 893.03(3), F.S.) have a potential for abuse less than the Schedule I and Schedule II substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to moderate or low physical dependence or high psychological dependence. Abuse of anabolic steroids may lead to physical damage.
- Schedule IV substances (s. 893.03(4), F.S.) have a low potential for abuse relative to Schedule III substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule III substances.
- Schedule V substances (s. 893.03(5), F.S.) have a low potential for abuse relative to the substances in Schedule IV and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule IV substances.

Punishment of Prohibited Drug Acts Involving Cannabis and Schedule V Controlled Substances

Cannabis is a Schedule I controlled substance.² Schedule I is the most restrictive controlled substance schedule. Section 893.13, F.S., in part, punishes unlawful possession, sale, purchase, manufacture, delivery, and importation of a Schedule I controlled substance. Simple possession of 20 grams or less of cannabis is a first degree misdemeanor,³ and simple possession of more than 20 grams of cannabis is a third degree felony.⁴ Purchase, or possession with intent to purchase, cannabis is a third degree felony.⁵ Delivery, without consideration, of 20 grams or less of cannabis is a first degree misdemeanor.⁶ Generally, it is a third degree felony to deliver, sell, manufacture, import, or possess with the intent to sell, manufacture, or deliver cannabis.⁷ Section 893.135, F.S., punishes drug trafficking. Trafficking in significant quantities of cannabis is a first

¹ Pursuant to s. 893.035(3)(a), F.S., “potential for abuse” means a substance has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: (1) used in amounts that create a hazard to the user’s health or the safety of the community; (2) diverted from legal channels and distributed through illegal channels; or (3) taken on the user’s own initiative rather than on the basis of professional medical advice.

² Section 893.03(1)(c)7., F.S.

³ Section 893.13(6)(b), F.S. A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

⁴ Section 893.13(6)(a), F.S. A third degree felony is punishable by up to five years in state prison and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

⁵ Section 893.13(2)(a)2., F.S.

⁶ Section 893.13(3), F.S.

⁷ Section 893.13(1)(a)2. and (5)(b), F.S.

degree felony, which is subject to a 3, 7, or 15-year mandatory minimum term and mandatory fine based on the quantity of cannabis trafficked.⁸

Schedule V is the least restrictive controlled substance schedule. Section 893.13, F.S., in part, punishes unlawful possession, sale, purchase, manufacture, delivery, and importation of a Schedule V controlled substance. Simple possession of a Schedule V controlled substance is a second degree misdemeanor.⁹ Purchase, or possession with intent to purchase, a Schedule V controlled substance is a first degree misdemeanor.¹⁰ Generally, it is a first degree misdemeanor to deliver, sell, manufacture, import, or possess with the intent to sell, manufacture, or deliver a Schedule V controlled substance.¹¹ Drug trafficking offenses in s. 893.135, F.S., do not apply to Schedule V controlled substances.¹²

Scheduling of Epidiolex®

Epidiolex® is an oral solution developed by GW Pharmaceuticals (GW).¹³ According to GW, Epidiolex® is “a pharmaceutical formulation of highly purified cannabidiol (CBD)[.]”¹⁴ CBD is “a chemical constituent of the cannabis plant (commonly referred to as marijuana).”¹⁵ “However, CBD does not cause intoxication or euphoria (the ‘high’) that comes from tetrahydrocannabinol (THC).”¹⁶

In June of 2018, the U.S. Food and Drug Administration (FDA) announced that it approved Epidiolex® for the treatment of seizures associated with two rare and severe forms of epilepsy, Lennox-Gastaut syndrome and Dravet syndrome, in patients two years of age and older.¹⁷ Epidiolex® “is the first FDA-approved drug that contains a purified drug substance derived from marijuana.”¹⁸

⁸ Section 893.135(1)(a), F.S. A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

⁹ Section 893.13(6)(d), F.S. A second degree misdemeanor is punishable by up to 60 days in county jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

¹⁰ Section 893.13(2)(a)3., F.S.

¹¹ Section 893.13(1)(a)3. and (5)(c), F.S.

¹² See s. 893.135(1)(a)-(n), F.S.

¹³ *EPIDIOLEX® (cannabidiol) Oral Solution – the First FDA-approved Plant-derived Cannabinoid Medicine – Now Available by Prescription in the U.S.*, Press Release (Nov. 1, 2018), GW Pharmaceuticals, Ltd., available at <http://ir.gwpharm.com/news-releases/news-release-details/epidiolexr-cannabidiol-oral-solution-first-fda-approved-plant> (last visited on April 1, 2019). According to GW, Epidiolex® “will be marketed in the U.S. by its subsidiary, Greenwich Biosciences.” *Id.*

¹⁴ *FDA approves first drug Epidiolex placed in schedule V of Controlled Substance Act*, Press Release (Sept. 27, 2018), U.S. Drug Enforcement Administration, available at <https://www.dea.gov/press-releases/2018/09/27/fda-approved-drug-epidiolex-placed-schedule-v-controlled-substance-act> (last visited on April 1, 2019).

¹⁵ *Id.*

¹⁶ *FDA approves first drug comprised of an active ingredient derived from marijuana to treat rare, severe forms of epilepsy*, News Release (June 25, 2018), U.S. Food and Drug Administration, available at <https://www.fda.gov/newsevents/newsroom/pressannouncements/ucm611046.htm> (last visited on April 1, 2019).

¹⁷ *Id.*

¹⁸ See footnote 14, *supra*.

According to the FDA,

Epidiolex’s effectiveness was studied in three randomized, double-blind, placebo-controlled clinical trials involving 516 patients with either Lennox-Gastaut syndrome or Dravet syndrome. Epidiolex, taken along with other medications, was shown to be effective in reducing the frequency of seizures when compared with placebo.

The most common side effects that occurred in Epidiolex-treated patients in the clinical trials were: sleepiness, sedation and lethargy; elevated liver enzymes; decreased appetite; diarrhea; rash; fatigue, malaise and weakness; insomnia, sleep disorder and poor quality sleep; and infections.

Epidiolex must be dispensed with a patient Medication Guide that describes important information about the drug’s uses and risks. As is true for all drugs that treat epilepsy, the most serious risks include thoughts about suicide, attempts to commit suicide, feelings of agitation, new or worsening depression, aggression and panic attacks. Epidiolex also caused liver injury, generally mild, but raising the possibility of rare, but more severe injury. More severe liver injury can cause nausea, vomiting, abdominal pain, fatigue, anorexia, jaundice and/or dark urine.¹⁹

On September 28, 2018, the U.S. Department of Justice and the U.S. Drug Enforcement Administration (DEA) rescheduled Epidiolex® from Schedule I to Schedule V of the federal Controlled Substance Act (CSA).²⁰ Because Epidiolex® was approved by the FDA, the DEA determined it has a currently accepted medical use in treatment in the United States, and no longer met criteria for placement in Schedule I of the CSA.²¹ Epidiolex® was a Schedule I substance under federal law because it contains CBD, a chemical component of the cannabis plant, which is a Schedule I controlled substance.²²

¹⁹ See footnote 16, *supra*.

²⁰ *Schedules of Controlled Substances: Placement in Schedule V of Certain FDA-Approved Drugs Containing Cannabidiol; Corresponding Change to Permit Requirements*, 83 FR 48950 (Sept. 28, 2018), available at <https://www.federalregister.gov/documents/2018/09/28/2018-21121/schedules-of-controlled-substances-placement-in-schedule-v-of-certain-fda-approved-drugs-containing> (last visited on April 1, 2019). The U.S. Department of Health and Human Services advised the DEA “that it found the Epidiolex formulation to have a very low potential for abuse[.]” *Id.* The federal Controlled Substance Act is codified at 21 U.S.C. ss. 801-978.

²¹ *Id.*

²² *Id.*

On October 31, 2018, former Florida Attorney General Pam Bondi, pursuant to her emergency scheduling authority under s. 893.0355, F.S.,²³ rescheduled Epidiolex® from Schedule I of the Florida controlled substance schedules (s. 893.03, F.S.) to Schedule V of the schedules.²⁴ The full text of the emergency rule is:

2ER18-1 Rescheduling of a Drug Product in Finished Dosage Formulation That Has Been Approved by the U.S. Food and Drug Administration That Contains Cannabidiol (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) Derived from Cannabis and No More Than 0.1 Percent (w/w) Residual Tetrahydrocannabinols. Under the authority of Section 893.0355, Florida Statutes, a drug product in finished dosage formulation that has been approved by the U. S. Food and Drug Administration that contains cannabidiol (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual Tetrahydrocannabinols, is hereby rescheduled from a Schedule I to a Schedule V controlled substance.²⁵

Former Attorney General Bondi indicated in her findings in support of the emergency rule that she was required to give great weight to the scheduling rules adopted by the U.S. Attorney General “in order to achieve the original legislative purpose of the Florida Comprehensive Drug Abuse Prevention and Control Act of maintaining uniformity between the laws of Florida and those of the United States with respect to controlled substances.”²⁶ In addressing factors she was required to consider in making her decision whether to promulgate the emergency rule,²⁷ former Attorney General Bondi adopted the FDA’s findings regarding its approval of Epidiolex®, which she concluded had “fully and comprehensively” addressed all of those factors.²⁸

²³ Section 893.0355(2), F.S., delegates to the Attorney General the authority to adopt rules rescheduling specified substances to a less controlled schedule, or deleting specified substances from a schedule, upon a finding that reduced control of such substances is in the public interest. Rulemaking under s. 893.0355, F.S., must be in accordance with the procedural requirements of ch. 120, F.S., including the emergency rule provisions found in s. 120.54, F.S., except that s. 120.54(7), F.S. (petition to initiate rulemaking), does not apply. Section 893.0355(4), F.S.

²⁴ The text of Emergency Rule 2ER18-1 is available at https://www.flrules.org/gateway/notice_Files.asp?ID=21109642 (last visited on April 1, 2019).

²⁵ *Id.*

²⁶ *Findings of the Attorney General in Support of Emergency Rule 2ER18-1, F.A.C.*, dated Oct. 31, 2018 (on file with the Senate Committee on Criminal Justice). In making the public interest determination, the Attorney General must give great weight to the scheduling rules adopted by the United States Attorney General subsequent to such substances being listed in Schedules I, II, III, IV, and V, to achieve the original legislative purpose of the Florida Comprehensive Drug Abuse Prevention and Control Act of maintaining uniformity between the laws of Florida and the laws of the United States with respect to controlled substances. Section 893.0355(3), F.S.

²⁷ In determining whether reduced control of a substance is in the public interest, the Attorney General must consider the following: whether the substance has been rescheduled or deleted from any schedule by rule adopted by the United States Attorney General pursuant to s. 201 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. s. 811; the substance’s actual or relative potential for abuse; scientific evidence of the substance’s pharmacological effect, if known; the state of current scientific knowledge regarding the substance; the substance’s history and current pattern of abuse; the scope, duration, and significance of abuse; what, if any, risk there is to the public health; and the substance’s psychic or physiological dependence liability. Section 893.0355(2), F.S.

²⁸ See footnote 26, *supra*.

Former Attorney General Bondi provided the following justification for promulgating the emergency rule:

There are currently approximately 64 patients in the state of Florida who are legally using a FDA approved cannabidiol product for the treatment of seizures associated with Lennox-Gastaut syndrome or Dravet syndrome pursuant to clinical trial programs that have either ended or will end soon. Any delay caused by the rescheduling of the FDA approved cannabidiol product through the regular rulemaking process or by waiting for legislative action during the 2019 legislative session will likely cause a disruption in the supply of the product that will result in serious bodily harm to seriously ill Floridians. Attorney General Bondi recognizes that such circumstances constitute an immediate danger to the health, safety, and welfare of a limited but extremely vulnerable population of Floridians, and therefore, concludes that such circumstances justify the promulgation of emergency rule 2ER18-1 pursuant to Section 893.055 and Section 120.54(4).²⁹

The findings further provided that the above-described cannabidiol product “will become a Schedule V controlled substance in Florida and will become immediately legal and available to children who suffer illnesses such Lennox-Gastaut syndrome or Dravet syndrome.”³⁰ However, “non-FDA approved CBD extracts or any material, compound, mixture, or preparation other than Epidiolex that fall under the term Cannabis as set forth in Section 893.03(1)(c), remain a Schedule I controlled substance under the Florida Comprehensive Drug Abuse Prevention and Control Act.”³¹

Emergency Rule 2ER18-1 became effective upon filing with the Secretary of State on October 31, 2018.³² Rules adopted pursuant to s. 893.0355, F.S., must be reviewed each year by the Legislature, and each rule remains in effect until the effective date of legislation that provides for a different scheduling of a substance than that set forth in such rule.³³

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Certification of Department of Legal Affairs Emergency Rule Filed with the Department of State*, date stamped Oct. 31, 2018 (on file with the Senate Committee on Criminal Justice). Section 120.54(4)(d), F.S., provides that, subject to applicable constitutional and statutory provisions, an emergency rule becomes effective immediately on filing, or on a date less than 20 days thereafter if specified in the rule, if the adopting agency finds that such effective date is necessary because of immediate danger to the public health, safety, or welfare.

³³ Section 893.0355(6), F.S.

“Low-THC Cannabis” and Epidiolex®

The Compassionate Medical Cannabis Act of 2014³⁴ legalized “low-THC cannabis,” a low THC and high CBD form of cannabis,³⁵ for medical use³⁶ by patients suffering from cancer, epilepsy, and certain other specified medical conditions.³⁷

A “low-THC cannabis” product obtained from a medical marijuana treatment center is not an FDA-approved CBD product. As previously described, Epidiolex® is the only CBD product that is currently approved by the FDA. Further, Epidiolex® is *prescribed* by a physician. A “low-THC cannabis” product is not prescribed. In addition to other requirements, a *physician certification* from a qualified physician is required for a qualified patient to obtain a “low-THC cannabis” product from a medical marijuana treatment center.³⁸

Epidiolex® was subject to extensive nonclinical and clinical studies to determine its safety and efficacy for the treatment of Lennox-Gastaut syndrome and Dravet syndrome in patients two years of age and older.³⁹ In contrast, a “low-THC cannabis” product dispensed by a medical marijuana treatment center is tested by a medical marijuana testing laboratory to determine that the product meets the definition of “low-THC cannabis,” the THC concentration meets the potency requirements of s. 381.986, F.S., the labeling of the concentration of THC and CBD is accurate, and the product is safe for human consumption and free from contaminants that are unsafe for human consumption.⁴⁰

“Low-THC cannabis” described in s. 381.986(1)(e), F.S., is still cannabis and cannabis is a Schedule I controlled substance. As previously described, unlawful acts involving a Schedule I controlled substance are generally subject to significant criminal penalties. However, when a qualified patient lawfully obtains “low-THC cannabis” (as provided in s. 381.986, F.S.), he or she is not subject to criminal penalties.⁴¹ In contrast, as previously described, Epidiolex® is a Schedule V controlled substance pursuant to federal law and the Florida Attorney’s General’s emergency rule, and unlawful acts involving a Schedule V controlled substance are punished less severely than unlawful acts involving a Schedule I controlled substance.

³⁴ See ch. 2014-157, L.O.F., and s. 381.986, F.S.

³⁵ “Low-THC cannabis” means a plant of the genus *Cannabis*, the dried flowers of which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or resin that is dispensed from a medical marijuana treatment center. Section 381.986(1)(e), F.S.

³⁶ With specified exceptions, “medical use” means the acquisition, possession, use, delivery, transfer, or administration of marijuana authorized by a physician certification. Section 381.986(1)(j), F.S.

³⁷ Section 381.986(2), F.S.,

³⁸ Section 381.986(2)-(8), F.S.

³⁹ *Basis for the Recommendation to Place Cannabidiol in Schedule V of the Controlled Substance Act*, U.S. Food and Drug Administration, included as Addendum A to *Findings of the Attorney General in Support of Emergency Rule 2ER18-1*, F.A.C. See footnote 26, *supra*.

⁴⁰ Section 381.986(8)(e)10.d., F.S.

⁴¹ Notwithstanding s. 893.13, F.S., s. 893.135, F.S., s. 893.147, F.S., or any other provision of law, but subject to the requirements of this section, a qualified patient and the qualified patient’s caregiver may purchase from a medical marijuana treatment center for the patient’s medical use a marijuana delivery device and up to the amount of marijuana authorized in the physician certification, but may not possess more than a 70-day supply of marijuana at any given time and all marijuana purchased must remain in its original packaging. Section 381.986(14)(a), F.S.

III. Effect of Proposed Changes:

The bill amends s. 893.03, F.S., Florida's controlled substance schedules, to reschedule the following substance from Schedule I to Schedule V: "[a] drug product in finished dosage formulation which has been approved by the U. S. Food and Drug Administration and which contains cannabidiol (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and not more than 0.1 percent (w/w) residual tetrahydrocannabinols."

This scheduling language currently applies only to Epidiolex®, a pharmaceutical oral solution which contains highly purified CBD and which is used for the treatment of seizures associated with two rare and severe forms of epilepsy. Epidiolex® is the only CBD product currently approved by the FDA.

The bill codifies an emergency rule adopted by the Florida Attorney General, which reschedules the described drug product from Schedule I to Schedule V. The codification of this scheduling is consistent with federal law.

As previously described, unlawful acts involving Schedule V controlled substances are punished less severely than unlawful acts involving Schedule I controlled substances.

The bill is effective 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.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "negative insignificant" prison bed impact (a decrease of 10 or fewer prison beds).⁴² Forensic laboratories in the state do not currently have the ability to quantitate the amount of cannabidiol (CBD) or tetrahydrocannabinol (THC) in a product. Because of this, these products would be sent to private laboratories for testing which could result in a negative indeterminate fiscal impact to local and state law enforcement agencies.⁴³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 893.03 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 817.563, 831.31, 893.07, and 893.13.

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.

⁴² The EDR estimate is on file with the Senate Committee on Criminal Justice.

⁴³ The FDLE, SB 7082 Agency Analysis, p. 4.

By the Committee on Criminal Justice

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1 A bill to be entitled
2 An act relating to controlled substances; amending s.
3 893.03, F.S.; adding to Schedule V of the controlled
4 substances list certain drug products in their
5 finished dosage formulations which are approved by the
6 United States Food and Drug Administration; reenacting
7 ss. 817.563(2), 831.31, 893.07(5)(b), and
8 893.13(1)(a), (2)(a), (5)(c), and (6)(d), F.S.,
9 relating to controlled substances named or described
10 in s. 893.03, F.S.; the sale, manufacture, delivery,
11 or possession, with intent to sell, manufacture, or
12 deliver, of counterfeit controlled substances;
13 required reporting of certain theft or significant
14 loss of controlled substances; and prohibited acts and
15 penalties relating to controlled substances,
16 respectively, to incorporate the amendment made to s.
17 893.03, F.S., in references thereto; providing an
18 effective date.

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

21
22 Section 1. Subsection (5) of section 893.03, Florida
23 Statutes, is amended to read:

24 893.03 Standards and schedules.—The substances enumerated
25 in this section are controlled by this chapter. The controlled
26 substances listed or to be listed in Schedules I, II, III, IV,
27 and V are included by whatever official, common, usual,
28 chemical, trade name, or class designated. The provisions of
29 this section shall not be construed to include within any of the

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30 schedules contained in this section any excluded drugs listed
31 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded
32 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical
33 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted
34 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt
35 Anabolic Steroid Products."

36 (5) SCHEDULE V.—A substance, compound, mixture, or
37 preparation of a substance in Schedule V has a low potential for
38 abuse relative to the substances in Schedule IV and has a
39 currently accepted medical use in treatment in the United
40 States, and abuse of such compound, mixture, or preparation may
41 lead to limited physical or psychological dependence relative to
42 the substances in Schedule IV.

43 (a) Substances controlled in Schedule V include any
44 compound, mixture, or preparation containing any of the
45 following limited quantities of controlled substances, which
46 must include one or more active medicinal ingredients that are
47 not controlled substances in sufficient proportion to confer
48 upon the compound, mixture, or preparation valuable medicinal
49 qualities other than those possessed by the controlled substance
50 alone:

51 1. Not more than 200 milligrams of codeine per 100
52 milliliters or per 100 grams.

53 2. Not more than 100 milligrams of dihydrocodeine per 100
54 milliliters or per 100 grams.

55 3. Not more than 100 milligrams of ethylmorphine per 100
56 milliliters or per 100 grams.

57 4. Not more than 2.5 milligrams of diphenoxylate and not
58 less than 25 micrograms of atropine sulfate per dosage unit.

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59 5. Not more than 100 milligrams of opium per 100
60 milliliters or per 100 grams.

61 6. Not more than 0.5 milligrams of difenoxin and not less
62 than 25 micrograms of atropine sulfate per dosage unit.

63 (b) Unless a specific exception exists or unless listed in
64 another schedule, any material, compound, mixture, or
65 preparation that contains any quantity of the following
66 substances is controlled in Schedule V:

67 1. Brivaracetam.

68 2. Ezogabine.

69 3. Lacosamide.

70 4. Pregabalin.

71 (c) Stimulants. Unless specifically excepted or unless
72 listed in another schedule, any material, compound, mixture, or
73 preparation which contains any quantity of the following
74 substances having a stimulant effect on the central nervous
75 system, including its salts, isomers, and salts of isomers:
76 Pyrovalerone.

77 (d) A drug product in finished dosage formulation which has
78 been approved by the United States Food and Drug Administration
79 and which contains cannabidiol (2-[1R-3-methyl-6R-(1-
80 methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol)
81 derived from cannabis and not more than 0.1 percent (w/w)
82 residual tetrahydrocannabinols.

83 Section 2. For the purpose of incorporating the amendment
84 made by this act to section 893.03, Florida Statutes, in a
85 reference thereto, subsection (2) of section 817.563, Florida
86 Statutes, is reenacted to read:

87 817.563 Controlled substance named or described in s.

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88 893.03; sale of substance in lieu thereof.—It is unlawful for
89 any person to agree, consent, or in any manner offer to
90 unlawfully sell to any person a controlled substance named or
91 described in s. 893.03 and then sell to such person any other
92 substance in lieu of such controlled substance. Any person who
93 violates this section with respect to:

94 (2) A controlled substance named or described in s.
95 893.03(5) is guilty of a misdemeanor of the second degree,
96 punishable as provided in s. 775.082 or s. 775.083.

97 Section 3. For the purpose of incorporating the amendment
98 made by this act to section 893.03, Florida Statutes, in
99 references thereto, section 831.31, Florida Statutes, is
100 reenacted to read:

101 831.31 Counterfeit controlled substance; sale, manufacture,
102 delivery, or possession with intent to sell, manufacture, or
103 deliver.—

104 (1) It is unlawful for any person to sell, manufacture, or
105 deliver, or to possess with intent to sell, manufacture, or
106 deliver, a counterfeit controlled substance. Any person who
107 violates this subsection with respect to:

108 (a) A controlled substance named or described in s.
109 893.03(1), (2), (3), or (4) is guilty of a felony of the third
110 degree, punishable as provided in s. 775.082, s. 775.083, or s.
111 775.084.

112 (b) A controlled substance named or described in s.
113 893.03(5) is guilty of a misdemeanor of the second degree,
114 punishable as provided in s. 775.082 or s. 775.083.

115 (2) For purposes of this section, "counterfeit controlled
116 substance" means:

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117 (a) A controlled substance named or described in s. 893.03
118 which, or the container or labeling of which, without
119 authorization bears the trademark, trade name, or other
120 identifying mark, imprint, or number, or any likeness thereof,
121 of a manufacturer other than the person who in fact manufactured
122 the controlled substance; or

123 (b) Any substance which is falsely identified as a
124 controlled substance named or described in s. 893.03.

125 Section 4. For the purpose of incorporating the amendment
126 made by this act to section 893.03, Florida Statutes, in a
127 reference thereto, paragraph (b) of subsection (5) of section
128 893.07, Florida Statutes, is reenacted to read:

129 893.07 Records.—

130 (5) Each person described in subsection (1) shall:

131 (b) In the event of the discovery of the theft or
132 significant loss of controlled substances, report such theft or
133 significant loss to the sheriff of that county within 24 hours
134 after discovery. A person who fails to report a theft or
135 significant loss of a substance listed in s. 893.03(3), (4), or
136 (5) within 24 hours after discovery as required in this
137 paragraph commits a misdemeanor of the second degree, punishable
138 as provided in s. 775.082 or s. 775.083. A person who fails to
139 report a theft or significant loss of a substance listed in s.
140 893.03(2) within 24 hours after discovery as required in this
141 paragraph commits a misdemeanor of the first degree, punishable
142 as provided in s. 775.082 or s. 775.083.

143 Section 5. For the purpose of incorporating the amendment
144 made by this act to section 893.03, Florida Statutes, in
145 references thereto, paragraph (a) of subsection (1), paragraph

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146 (a) of subsection (2), paragraph (c) of subsection (5), and
147 paragraph (d) of subsection (6) of section 893.13, Florida
148 Statutes, are reenacted to read:

149 893.13 Prohibited acts; penalties.—

150 (1) (a) Except as authorized by this chapter and chapter
151 499, a person may not sell, manufacture, or deliver, or possess
152 with intent to sell, manufacture, or deliver, a controlled
153 substance. A person who violates this provision with respect to:

154 1. A controlled substance named or described in s.
155 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 5.
156 commits a felony of the second degree, punishable as provided in
157 s. 775.082, s. 775.083, or s. 775.084.

158 2. A controlled substance named or described in s.
159 893.03(1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 6., (2) (c) 7.,
160 (2) (c) 8., (2) (c) 9., (2) (c) 10., (3), or (4) commits a felony of
161 the third degree, punishable as provided in s. 775.082, s.
162 775.083, or s. 775.084.

163 3. A controlled substance named or described in s.
164 893.03(5) commits a misdemeanor of the first degree, punishable
165 as provided in s. 775.082 or s. 775.083.

166 (2) (a) Except as authorized by this chapter and chapter
167 499, a person may not purchase, or possess with intent to
168 purchase, a controlled substance. A person who violates this
169 provision with respect to:

170 1. A controlled substance named or described in s.
171 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 5.
172 commits a felony of the second degree, punishable as provided in
173 s. 775.082, s. 775.083, or s. 775.084.

174 2. A controlled substance named or described in s.

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175 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7.,
176 (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a felony of
177 the third degree, punishable as provided in s. 775.082, s.
178 775.083, or s. 775.084.

179 3. A controlled substance named or described in s.
180 893.03(5) commits a misdemeanor of the first degree, punishable
181 as provided in s. 775.082 or s. 775.083.

182 (5) A person may not bring into this state any controlled
183 substance unless the possession of such controlled substance is
184 authorized by this chapter or unless such person is licensed to
185 do so by the appropriate federal agency. A person who violates
186 this provision with respect to:

187 (c) A controlled substance named or described in s.
188 893.03(5) commits a misdemeanor of the first degree, punishable
189 as provided in s. 775.082 or s. 775.083.

190 (6)

191 (d) If the offense is possession of a controlled substance
192 named or described in s. 893.03(5), the person commits a
193 misdemeanor of the second degree, punishable as provided in s.
194 775.082 or s. 775.083.

195 Section 6. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/4/19

Meeting Date

SB 7082

Bill Number (if applicable)

Topic CONTROLLED SUBSTANCES

Amendment Barcode (if applicable)

Name DOUG RUSSELL

Job Title LOBBYIST

Address _____
Street

Phone 850 445 0206

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4.4.19

7082

Meeting DateBill Number (if applicable)Topic Controlled SubstancesAmendment Barcode (if applicable)Name Barney Bishop IIIJob Title President & CEOAddress 2215 Thomasville RoadPhone 850.510.9922*Street*TallahasseeFL32308Email barney@barneybishop.com*City**State**Zip*Speaking: For Against InformationWaive Speaking: In Support Against
*(The Chair will read this information into the record.)*Representing Florida Smart Justice AllianceAppearing at request of Chair: Yes NoLobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/4/2019

Meeting Date

7082

Bill Number (if applicable)

Topic Controlled Substances

Amendment Barcode (if applicable)

Name Daniel Olson

Job Title Director, Government Relations

Address 400 S Monroe

Phone _____

Street

Tallahassee

FL

32399

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Office of the Attorney General

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard 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 1766

INTRODUCER: Senators Gruters, Pizzo and Gainer

SUBJECT: Crime Stoppers Programs

DATE: April 3, 2019

REVISED: _____

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

I. Summary:

SB 1766 creates section 90.595, Florida Statutes, which establishes that communication between a person and a crime stoppers organization is *privileged* under the Florida Evidence Code (Code).

The bill defines “privileged communication” as the act of providing information to a crime stoppers organization for the purpose of reporting alleged criminal activity and provides that a person who engages in privileged communication with a crime stoppers organization, a law enforcement crime stoppers coordinator or his or her staff, or a member of a crime stoppers organization’s board of directors may not be required to disclose such communication or protected information, subject to exceptions.

However, a person charged with a criminal offense may petition the court to compel the disclosure of the protected information collected in connection with the privileged communication. Such information must be disclosed if the lack of disclosure would infringe on the accused’s constitutional right.

The bill provides that a person who discloses any information related to privileged communication or protected information commits a third degree felony, unless the disclosure is made pursuant to a court order.

The bill also establishes additional authorized uses of a grant awarded to a county from the Crime Stoppers Trust Fund.

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

The bill is effective July 1, 2019.

II. Present Situation:

Crime Stoppers

Crime Stoppers programs are non-profit organizations led by citizens against crime, founded on the concept that someone other than the criminal has information that can help solve a crime. These programs offer anonymity to anyone who can provide information about crimes and subsequently pay rewards when such information leads to an arrest.¹

The idea of providing a reward to someone with information about a crime originated in Albuquerque, New Mexico, when a detective was tasked with solving a homicide with no leads. He thought to make a video re-enactment of the murder and guarantee anonymity for anyone who was willing to call with information about the crime. After receiving calls following the re-enactment, one of which allowed police to solve a different crime, the detective persuaded the Albuquerque Police Department to permit citizens to establish the first Crime Stoppers program. Today, there are over 1,200 crime stopper organizations throughout the world.²

There are 27 crime stopper programs in Florida that operate collectively under the name Florida Association of Crime Stoppers, Inc. (Association).³ In order to expand the model of these programs by providing more stable funding, the Crime Stoppers Trust Fund (Fund) was created for the purpose of grant administration.⁴ The Department of Legal Affairs (DLA) administers the Fund and is tasked with establishing criteria for local governments to apply for funding.⁵

Crime Stoppers Trust Fund

The amount of funding available for a crime stoppers organization or a county is based upon all money deposited pursuant to s. 938.06, F.S., available unused funds, and money collected pursuant to financial consequences.⁶ Section 938.06, F.S., provides that, in addition to other fines that may be imposed, a court must assess a \$20 fee for any person convicted of any criminal offense, the proceeds of which are then deposited into the Fund.⁷ Such proceeds are placed in a separate account in the Fund and are designated according to the judicial circuit in which they were collected.⁸ A county may then apply to the DLA for a grant from the funds collected in the judicial circuit in which the county is located. However, such grants are awarded only to counties that are served by an organization that is an official member of the Association and in good standing.⁹

¹ Crime Stoppers USA, *Profile*, available at <https://www.crimestoppersusa.org/profile/> (last visited April 1, 2019).

² Florida Association of Crime Stoppers, *Where it all started*, available at <http://www.facsflorida.org/where-it-all-started> (last visited April 1, 2019).

³ Florida Association of Crime Stoppers, *Our History*, available at <http://www.facsflorida.org/who-we-are/our-history/> (last visited April 1, 2019).

⁴ Ch. 91-205, s. 13, Laws of Fla. (1991).

⁵ Section 16.555, F.S.

⁶ Fla. Admin. Code. R. 2A-9.003(2) (2018).

⁷ Section 938.06, F.S.

⁸ Section 16.555(4)(b), F.S.

⁹ Fla. Admin. Code. R. 2A-9.003(5)(c) (2018).

Money awarded from a grant to a county may only be used to support Crime Stoppers and its crime fighting programs.¹⁰ There is one crime stoppers program per county eligible to receive funding and eligible programs must complete and submit a performance-based grant proposal outlining its annual operational plan.¹¹ A county that is awarded a grant may use such funds to purchase items to assist in educating the public and increasing public awareness of Crime Stoppers.¹² The Fund is also used to reimburse programs for the payment of rewards. In order to obtain reimbursement from the Fund, the reward paid must have been for a tip that lead to an arrest, arrest warrant, or recovery of stolen property or drugs.¹³

Privileged Communications in the Evidence Code

The Florida Evidence Code (Code) specifies what types of evidence and testimony are admissible in court.¹⁴ The Code makes certain communications privileged, meaning their disclosure generally cannot be compelled, even in legal proceedings.¹⁵ Privileged communication is used to describe an interaction between two parties in which the law recognizes a private, protected relationship.¹⁶ Some examples of generally privileged communications include communications between a lawyer and client;¹⁷ a husband and wife;¹⁸ and a psychotherapist and a patient.¹⁹

Typically, such communication only loses its privileged status if the person who made the original disclosure of such information waives the privilege, thus permitting the communication to be subject to general rules of evidence. A person is deemed to have waived the privilege if he or she voluntarily discloses or makes the communication when he or she does not have a reasonable expectation of privacy, or consents to the disclosure of any significant part of the communication.²⁰

Crime Stoppers Privileged Communication in Other States

Other states have already implemented laws that both protect the identity of a person who provides a tip to a crime stoppers organization and provide that the communication of the tip and any documents created as a result of the tip are privileged. Those states are:

- Arkansas;²¹
- Colorado;²²

¹⁰ Section 16.555(5)(b), F.S.

¹¹ Florida Association of Crime Stoppers, *Funding*, available at <https://www.facsflorida.org/who-we-are/62-2/> (last visited April 1, 2019).

¹² Section 16.555(5)(b), F.S.

¹³ Fla. Admin. Code. R. 2A-9.006(7)(d) (2018).

¹⁴ Chapter 90, F.S.

¹⁵ US Legal, *Privileged Communications Law and Legal Definition*, available at <https://definitions.uslegal.com/p/privileged-communications/> (last visited April 1, 2019).

¹⁶ Will Kenton, Investopedia, *Privileged Communication*, (February 21, 2018), available at <https://www.investopedia.com/terms/p/privileged-communication.asp> (last visited April 1, 2019).

¹⁷ Section 90.502, F.S.

¹⁸ Section 90.504, F.S.

¹⁹ Section 90.503, F.S.

²⁰ Section 90.507, F.S.

²¹ Section 16-90-1005, A.C.A. (1995).

²² Section 16-15.7-104, C.R.S.A. (1994).

- Connecticut;²³
- Kentucky;²⁴
- Louisiana;²⁵
- Michigan;²⁶
- Mississippi;²⁷
- New Mexico;²⁸
- Oklahoma;²⁹ and
- Texas.³⁰

Furthermore, six states have created criminal penalties for the prohibited disclosure of such protected information. However, the criminal penalty is generally a misdemeanor, rather than a felony.³¹

III. Effect of Proposed Changes:

The bill establishes that communication between a person and a crime stoppers organization is *privileged* within the Code.

Privileged Communication with a Crime Stoppers Organization

The bill defines the following terms:

- “Crime stoppers organization” means a private not-for-profit organization that collects and expends donations for rewards to persons who report to the organization information concerning criminal activity and forwards that information to appropriate law enforcement agencies.
- “Privileged communication” means the act of providing information to a crime stoppers organization for the purpose of reporting alleged criminal activity.
- “Protected information” includes the identity of a person who engages in privileged communication with a crime stoppers program and any records, recordings, oral or written statements, papers, documents, or other tangible things provided to or collected by a crime stoppers organization, a law enforcement crime stoppers coordinator or his or her staff, or a law enforcement agency in connection with such privileged communication.

²³ Section 29-1d., C.G.S.A. (1984).

²⁴ Section 431.580, KRS. (1992).

²⁵ Section 15:477.1, L.A.R.S. (1985).

²⁶ Section 600.2157b, M.C.L.A. (2006).

²⁷ Section 45-39-7, Miss. Code Ann. (1996).

²⁸ Section 29-12A-4, N.M.S.A. (1978).

²⁹ Section 2510.1, Okl.St.Ann. (2002).

³⁰ Sections 414.008 and 414.009, V.T.C.A. (1987).

³¹ The six states that assign criminal penalties are Arkansas, Colorado, Kentucky, Mississippi, New Mexico, and Texas. *See* s. 16-90-1006, A.C.A., s. 16-15.7-104, C.R.S.A., s. 431.585, KRS., s. 45-39-9, Miss. Code Ann., s. 29-12A-5, N.M.S.A., and s. 414.009, V.T.C.A. The exception to the offense being classified as a misdemeanor is in Texas where the offense is a felony if the person divulged the information for the purposes of obtaining a monetary benefit.

The bill provides that a person who engages in privileged communication with a crime stoppers organization, a law enforcement crime stoppers coordinator or his or her staff, or a member of a crime stoppers organization's board of directors may not be required:

- To disclose, by testimony or other means, a privileged communication or protected information unless such failure to disclose would infringe on the accused person's constitutional rights;³²
- To produce, under subpoena, any records, documentary evidence, opinions, or decisions relating to such privileged communication or protected information:
 - In connection with a criminal case, criminal proceeding, or any administrative hearing; or
 - By way of any discovery procedure.

The bill permits a person charged with a criminal offense to petition the court for inspection in camera³³ of the protected information. The petition must allege that the protected information meets the following criteria:

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

Upon a determination that the above criteria is met, the court may order the production and disclosure of all or any part of the protected information while, to the fullest extent possible, protecting the identity of the persons who engaged in privileged communication.

The bill provides that a person who discloses any information related to privileged communication or protected information commits a third degree felony,³⁴ unless the disclosure is made pursuant to a court order. However, the following people cannot face penalty for disclosure of such communication or information:

- The person who provides the privileged communication;
- A law enforcement officer acting within the scope of his or her official duties; or
- An employee of a law enforcement agency or the DLA when acting within the scope of his or her official duties.

³² In *Thomas v. State*, the issue before the court was whether a crime stopper statute that prohibited the disclosure of privileged communication in *all circumstances* was unconstitutional because the statute infringed on the appellant's fundamental right to a fair trial. The court found that while the state's interest in law enforcement is sufficient to justify crime stoppers programs and the confidentiality provisions of the statute, the fact that the statute operated to totally bar a defendant's access to information that may be material was problematic. The court concluded that the denial of access to information which would have a reasonable probability of affecting the outcome of a defendant's trial abridges a defendant's due process rights and undermines the court's duty to vindicate Sixth Amendment rights. *See* 837 S.W. 2d 106, 113. (Tex. Crim. App. 1992).

³³ "In camera" refers to a hearing or discussions with the judge in the privacy of his chambers or when spectators and jurors have been excluded from the courtroom. *See* US Legal, *In Camera Law and Legal Definition*, available at <https://definitions.uslegal.com/i/in-camera/> (last visited April 1, 2019).

³⁴ A third degree felony is punishable by a term of imprisonment not exceeding 5 years, a fine of \$5,000, or both. Sections 775.082 and 775.083, F.S.

Crime Stoppers Trust Fund

The bill also establishes additional authorized uses of a grant awarded to a county from the Fund. Specifically, a county may use such funds to pay rewards for tips that result in any of the following:

- An arrest;
- Recovery of stolen property;
- Recovery of illegal narcotics;
- Recovery of the body of a homicide victim;
- Recovery of a human trafficking victim or a missing person connected to criminal activity;
- Recovery of an illegal firearm or an illegal weapon on a K-12 school campus;
- Prevention of a terrorist act; or
- Solving and closing a homicide or other violent felony offense that remains unsolved for one year or more after being reported to a law enforcement agency and that has no viable and unexplored investigatory leads.

Current law permits a county to apply for a grant from the funds collected in the judicial circuit in which the county is located. The bill provides that the DLA and the Association may reallocate up to 50 percent of any unused funds that were returned to the Fund following the initial distribution to the judicial circuit in which they were collected. Such unused funds may be distributed to other judicial circuits for the subsequent grant year to fund Crime Stoppers initiatives or other Association programs.

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The First Amendment of the United States Constitution prohibits the government from creating laws that restrict a citizen's ability to communicate nonprotected opinions or

information with other people.³⁵ The bill makes it a crime for a person to disclose any protected information made in connection to the privileged communication. To the extent that this prohibition restricts a person's right to communicate nonprotected speech, the bill may implicate the First Amendment.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill creates a new felony offense related to a person disclosing any information related to privileged communication or protected information pertaining to a tip provided to a crime stoppers organization. Although the Criminal Justice Estimating Conference has not forecasted the prison bed impact of this bill, to the extent that this provision results in offenders being convicted for this felony offense, the bill may result in a positive indeterminate prison bed impact (i.e. an unquantifiable increase in prison beds).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 16.555 of the Florida Statutes.

This bill creates section 90.595 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

³⁵ U.S. Const. amend. I.

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

By Senator Gruters

23-00646C-19

20191766__

1 A bill to be entitled
2 An act relating to crime stoppers programs; creating
3 s. 90.595, F.S.; providing definitions; prohibiting a
4 person who engages in privileged communication, a law
5 enforcement crime stoppers coordinator or his or her
6 staff, or a member of a crime stoppers organization's
7 board of directors from being required to disclose
8 privileged communications or produce protected
9 information; providing an exception; authorizing a
10 person charged with a criminal offense to petition the
11 court to inspect the protected information under
12 certain circumstances; authorizing a court to disclose
13 all or a portion of the protected information;
14 providing criminal penalties; providing exceptions;
15 amending s. 16.555, F.S.; specifying permissible uses
16 for funds awarded to counties from the Crime Stoppers
17 Trust Fund; authorizing certain unencumbered funds to
18 be reallocated to other judicial circuits after the
19 initial disbursement of funds; providing an effective
20 date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Section 90.595, Florida Statutes, is created to
25 read:

26 90.595 Privileged communication with and the provision of
27 protected information to crime stoppers organizations.-

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

29 (a) "Crime stoppers organization" means a private not-for-

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20191766__

30 profit organization that collects and expends donations for
31 rewards to persons who report to the organization information
32 concerning criminal activity and forwards that information to
33 appropriate law enforcement agencies.

34 (b) "Privileged communication" means the act of providing
35 information to a crime stoppers organization for the purpose of
36 reporting alleged criminal activity.

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

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

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

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

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

58 2. By way of any discovery procedure.

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

- 63 1. Provides evidence favorable to the defendant.
64 2. Is specifically related to the determination of the
65 innocence or guilt of the petitioner.
66 3. Is such that, if it is not disclosed, will cause a
67 deprivation of a constitutional right of the petitioner.

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

74 (4) (a) Except as provided in paragraph (b), a person who
75 discloses any information related to privileged communication or
76 protected information commits a felony of the third degree,
77 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

78 (b) This subsection does not apply to:
79 1. The person who provides the privileged communication; or
80 2. A law enforcement officer or an employee of a law
81 enforcement agency or the Department of Legal Affairs when
82 acting within the scope of his or her official duties.

83 Section 2. Paragraphs (e) and (f) are added to subsection
84 (5) of section 16.555, Florida Statutes, to read:

85 16.555 Crime Stoppers Trust Fund; rulemaking.—

86 (5)

87 (e) A county that is awarded a grant under this section may

23-00646C-19

20191766__

88 use such funds to pay rewards for tips that result in any of the
89 following:

90 1. An arrest.

91 2. Recovery of stolen property.

92 3. Recovery of illegal narcotics.

93 4. Recovery of the body of a homicide victim.

94 5. Recovery of a human trafficking victim or a missing
95 person connected to criminal activity.

96 6. Recovery of an illegal firearm or an illegal weapon on a
97 K-12 school campus.

98 7. Prevention of a terrorist act.

99 8. Solving and closing a homicide or other violent felony
100 offense that remains unsolved for 1 year or more after being
101 reported to a law enforcement agency and that has no viable and
102 unexplored investigatory leads.

103 (f) After the initial distribution of funds to the judicial
104 circuit in which they were collected as required under paragraph
105 (b), up to 50 percent of any unencumbered funds returned to the
106 Crime Stoppers Trust Fund from a previous grant year may be
107 reallocated for the subsequent grant year to other judicial
108 circuits to fund special Crime Stoppers initiatives or other
109 Florida Association of Crime Stoppers member programs, as
110 cooperatively determined and prioritized by the department and
111 the Florida Association of Crime Stoppers.

112 Section 3. This act shall take effect July 1, 2019.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Commerce and Tourism, *Chair*
Finance and Tax, *Vice Chair*
Appropriations Subcommittee on Criminal
and Civil Justice
Banking and Insurance

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR JOE GRUTERS

23rd District

March 25, 2019

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

Dear Chair Brandes:

I am writing to request that Senate Bill 1766, Crime Stoppers Programs, be placed on the agenda of the next Appropriations Subcommittee on Criminal and Civil Justice meeting.

Should you have any questions regarding this bill, please do not hesitate to reach out to me. Thank you for your time and consideration.

Warm regards,

Joe Gruters

cc: PK Jameson, Staff Director
Lisa Roberts, Committee Administrative Assistant

SENATE APPROPRIATIONS
RECEIVED
19 MAR 25 AM 11:50
SENT TO PROGRAM
STAFF DIR. _____
STAFF _____

REPLY TO:

- 381 Interstate Boulevard, Sarasota, Florida 34240 (941) 378-6309
- 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/4/19

Meeting Date

1766

Bill Number (if applicable)

Topic Crime Stoppers Programs

Amendment Barcode (if applicable)

Name Chief Gary Hester

Job Title Government Affairs

Address 2636 Mitcham Drive

Phone 850-219-3631

Street

Tallahassee

FL

32308

Email ghester@fpca.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

4.4.19

Meeting Date

1766

*Bill Number (if applicable)*Topic Crime Stoppers Program*Amendment Barcode (if applicable)*Name Barney Bishop IIIJob Title President & CEOAddress 2215 Thomasville RoadPhone 850.510.9922*Street*TallahasseeFL32308Email barney@barneybishop.com*City**State**Zip*Speaking: For Against InformationWaive Speaking: In Support Against
*(The Chair will read this information into the record.)*Representing Florida Smart Justice AllianceAppearing at request of Chair: Yes NoLobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

04/04/19

SB 1776

*Meeting Date**Bill Number (if applicable)*Topic Death Benefits for First Responders*Amendment Barcode (if applicable)*Name Captain Matt ButlerJob Title CaptainAddress 2500 W. Colonial Dr.Phone 407-254-7000*Street*OrlandoFL32805Email matt.butler@ocfl.net*City**State**Zip*Speaking: For Against InformationWaive Speaking: In Support Against
(The Chair will read this information into the record.)Representing Orange County Sheriff's OfficeAppearing at request of Chair: Yes NoLobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

CourtSmart Tag Report

Room: LL 37

Case No.:

Type:

Caption: Senate Appropriations Subcommittee on Criminal and Civil Justice

Judge:

Started: 4/4/2019 10:03:04 AM

Ends: 4/4/2019 10:48:05 AM

Length: 00:45:02

10:03:10 AM Call to Order Sen. Brandes (Chair)
10:03:21 AM Roll Call
10:03:36 AM Quorum Present
10:03:56 AM TAB 4 - SB 1068
10:04:02 AM Sen. Bean
10:04:54 AM AM. 620832
10:05:06 AM Sen. Rouson
10:05:19 AM Steve Winn, ED, Florida Osteopathic Medical Association (waive in support)
10:05:30 AM SB 1068 con't.
10:05:34 AM Sen. Rouson
10:06:44 AM Sen. Bean
10:07:30 AM Sen. Brandes
10:07:36 AM Chief Gary Hester, Government Affairs, Florida Police Chiefs Association (waive in support)
10:07:41 AM Barney Bishop, President & CEO, Florida Smart Justice Alliance (waive in support)
10:07:43 AM Steve Winn, ED, Florida Osteopathic Medical Association (waive in support)
10:07:55 AM Sen. Harrell
10:08:32 AM Sen. Brandes
10:08:36 AM Roll call SB 1068
10:08:59 AM SB 1068 voted favorable
10:09:17 AM Tab 1 - Senate Confirmation Hearing
10:09:31 AM Mark Inch, Secretary, Florida Department of Corrections
10:13:08 AM Sen. Brandes
10:13:11 AM Sen. Rouson
10:16:31 AM Sen. Rouson
10:16:57 AM M. Inch
10:19:57 AM Sen. Bracy (Chair)
10:20:04 AM Sen. Harrell
10:21:08 AM M. Inch
10:23:48 AM Sen. Harrell
10:24:36 AM M. Inch
10:26:07 AM Sen. Bracy
10:26:51 AM M. Inch
10:29:50 AM Sen. Bracy
10:30:29 AM M. Inch
10:32:57 AM Sen. Bracy
10:33:04 AM Barney Bishop, President & CEO, Florida Smart Justice Alliance (waive in support)
10:33:17 AM Sen. Harrell moves to confirm
10:33:24 AM Sen. Harrell
10:34:17 AM Sen. Rouson
10:36:46 AM Sen. Brandes
10:37:27 AM Sen. Brandes Move to confirm
10:37:31 AM Sen Bracy
10:37:38 AM Roll call - Senate confirmation
10:37:58 AM Senate confirmation favorable
10:38:04 AM Sen. Brandes (Chair)
10:38:24 AM SB 1658 Temporarily Postponed
10:38:33 AM TAB 2 - SB 828
10:38:36 AM Sen. Rader
10:39:32 AM Sen. Brandes
10:39:35 AM Barney Bishop, President & CEO, Florida Smart Justice Alliance (waive in support)
10:39:40 AM David Ericks, Consultant, Federation of Public Employees
10:40:19 AM Anthony Marciano, Sergrant, Broward Dentention Deputies (waive in support)

10:40:23 AM Phil Cerulli, Deputy, Broward Dention Deputies (waive in support)
10:40:28 AM Sen. Brandes
10:40:36 AM Roll Call SB 828
10:41:01 AM SB 828 voted favorable
10:41:09 AM Tab 3 - CS/SB 1030
10:41:18 AM Sen. Bracy
10:41:31 AM Sen. Harrell
10:41:51 AM Sen. Bracy
10:42:26 AM Barney Bishop, President & CEO, Florida Smart Justice Alliance (waive in support)
10:42:30 AM Mark Fontaine, Director, Florida Alcohol and Drug Abuse Association (waive in support)
10:42:37 AM Nancy Daniels, Legislative Consultant, Florida Public Defender Association (waive in support)
10:42:42 AM Carlos Martinez, Public Defender, 11th Judicial Court, Florida Public Defender Association (waive in support)
10:42:50 AM Sen. Harrell
10:43:30 AM Sen. Bracy
10:44:05 AM Roll Call SB 1030
10:44:22 AM SB 1030 Voted Favorable
10:44:26 AM SB 7082
10:44:47 AM Sen. Perry
10:45:21 AM Doug Russell, Lobbyist (waive in support)
10:45:24 AM Barney Bishop III, President & CEO, Florida Smart Justice Alliance (waive in support)
10:45:26 AM Daniel Olsen, Director of Governemnt Relations, Office of the Attorney General (waive in support)
10:45:33 AM Sen. Perry
10:45:37 AM Roll Call SB 7082
10:46:04 AM SB 7082 voted favorable
10:46:06 AM Tab 7- SB 1766
10:46:12 AM Sen. Gruters
10:46:50 AM Cheif Gary Hester, Government Affairs, Florida Police Cheifs Association (waive in support)
10:46:51 AM Barney Bishop, President & CEO, Florida Smart Justice Alliance (waive in support)
10:46:55 AM Captain Matt Butler, Orange County Sheriff's Office (waive in support)
10:47:07 AM Roll Call SB 1766
10:47:26 AM SB 1766 voted favorable
10:47:37 AM Sen. Harrell moves to adjourn