<table>
<thead>
<tr>
<th>Tab 1</th>
<th>CS/SB 554 by CJ, Brandes (CO-INTRODUCERS) Perry; Sentencing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tab 2</td>
<td>CS/SB 700 by CJ, Perry (CO-INTRODUCERS) Pizzo, Braynon, Harrell, Gruters, Brandes, Bracy; (Similar to H 00615) Juvenile Diversion Program Expunction</td>
</tr>
<tr>
<td>Tab 3</td>
<td>CS/SB 846 by CJ, Simmons; (Identical to CS/H 00461) Costs of Prosecution and Investigation</td>
</tr>
<tr>
<td>Tab 4</td>
<td>SB 1002 by Rodriguez; (Identical to CS/H 00103) Subpoenas</td>
</tr>
</tbody>
</table>
## COMMITTEE MEETING EXPANDED AGENDA

**APPROPRIATIONS SUBCOMMITTEE ON CRIMINAL AND CIVIL JUSTICE**  
Senator Brandes, Chair  
Senator Bracy, Vice Chair

### MEETING DATE:
Tuesday, January 28, 2020

### TIME:
8:30—10:30 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 BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION
--- | --- | ---
1 | **CS/SB 554**  
Criminal Justice / Brandes | Sentencing; Revising the mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified, etc. | Favorable
  
CJ 12/10/2019 Fav/CS  
ACJ 01/28/2020 Favorable | Yeas 6 Nays 0

2 | **CS/SB 700**  
Criminal Justice / Perry  
(Similar H 615, Compare H 1173, Linked S 1292) | Juvenile Diversion Program Expunction; Deleting a requirement that limits diversion program expunction to programs for misdemeanor offenses, etc. | Favorable
  
CJ 01/14/2020 Fav/CS  
ACJ 01/28/2020 Favorable | Yeas 6 Nays 0

3 | **CS/SB 846**  
Criminal Justice / Simmons  
(Identical CS/H 461) | Costs of Prosecution and Investigation; Prohibiting the inclusion in negotiated plea agreements of costs for the state attorney which are greater than the minimum required, etc. | Temporarily Postponed
  
CJ 01/14/2020 Fav/CS  
ACJ 01/28/2020 Temporarily Postponed | AP

4 | **SB 1002**  
Rodriguez  
(Identical CS/H 103) | Subpoenas; Revising the definition of "properly served"; authorizing an applicant to petition a court to compel compliance with a subpoena; authorizing a court to address noncompliance as indirect criminal contempt and impose a daily fine for a specified amount of time, etc. | Favorable
  
JU 01/15/2020 Favorable  
ACJ 01/28/2020 Favorable | Yeas 6 Nays 0
### Review and Discussion of Fiscal Year 2020-2021 Budget Issues Relating to:
- Department of Corrections
- Department of Juvenile Justice
- Department of Law Enforcement
- Department of Legal Affairs/Attorney General
- Florida Commission on Offender Review
- State Courts
- Public Defenders
- State Attorneys
- Regional Conflict Counsels
- Statewide Guardian ad Litem
- Capital Collateral Regional Counsels
- Justice Administrative Commissions

**Presented**

Other Related Meeting Documents
I. Summary:

CS/SB 554 creates two new circumstances for mitigating (reducing) a sentence under the Criminal Punishment Code:
- For defendants sentenced on or after October 1, 2020, the defendant requires specialized treatment for substance abuse or addiction, a mental disorder, or a physical disability.
- The defendant’s offense is a nonviolent felony, total sentence points are 60 points or fewer, and the defendant is sentenced for the offense on or after October 1, 2020.

The new mitigating circumstance relating to specialized treatment for substance abuse or addiction, a mental disorder, or a physical disability is substituted for two current mitigating circumstances:
- The defendant’s offense is a nonviolent felony, the defendant’s total sentence points are 60 points or fewer, and the defendant is amenable to and qualified to participate in a post-adjudicatory treatment-based drug court program.
- The defendant requires specialized treatment for a mental disorder unrelated to substance abuse or addiction or for a physical disability.

The bill also removes language that restricts mitigation based upon substance abuse or addiction, including intoxication at the time of the offense.
The Legislature’s 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.

The effective date of the bill is October 1, 2020.

II. Present Situation:

Criminal Punishment Code

In 1997, the Legislature enacted the Criminal Punishment Code\(^1\) (Code) as “Florida’s primary sentencing policy.”\(^2\) Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).\(^3\) Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses.\(^4\) Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.

Absent mitigation (see discussion, supra), the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.\(^5\) However, if the offender’s offense has a mandatory minimum term that is greater than the scored lowest permissible sentence, the mandatory minimum term supersedes the lowest permissible sentence scored.\(^6\) Further, some offenders may qualify for prison diversion under various sections of the Florida Statutes.\(^7\)

Sentence Mitigating Circumstances

As previously noted, the permissible sentencing range under the Code is generally the scored lowest permissible sentence up to and including the maximum penalty provided under s. 775.082, F.S. However, the court may “depart downward” from the scored lowest permissible

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\(^1\) 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.


\(^3\) 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.

\(^4\) Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

\(^5\) 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.

\(^6\) Fla. R. Crim. P. 3.704(d)(26).

\(^7\) See e.g., s. 775.082(10), F.S. (prison diversion for an offender whose offense is a nonviolent third degree felony and whose total sentence points are 22 points or fewer); s. 921.00241, F.S. (diversion into a Department of Corrections’ prison diversion program for certain nonviolent third degree felony offenders); and s. 948.01, F.S. (diversion into a postadjudicatory treatment-based drug court program for certain nonviolent felony offenders).
sentence if the court finds there is a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.8

Relevant to the bill, 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.”9

With the enactment of the Code, this mitigating circumstance was modified.10 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.”11 The Code also specified that the defendant’s “substance abuse or addiction, including intoxication, at the time of the offense” was not a mitigating factor and did “not, under any circumstance, justify a downward departure from the permissible sentencing range.”12

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.”13 The only subsequent change to this mitigating circumstance occurred in 2011 when the Legislature increased total sentence points from 52 points to 60 points.14 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.15

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8 Section 921.0026(4)(d), F.S., specifies that mitigating circumstances include, but are not limited to, the mitigating circumstances specified in that section.
9 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.
10 Chapter 97-194, s. 8, L.O.F.
12 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).
14 Section 921.0026(2)(m) and (3), 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.
15 Chapter 2011-33, s. 2, L.O.F.
16 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 or for a physical disability. Section 921.0026(2)(d), F.S.
III. Effect of Proposed Changes:

The bill amends s. 921.0026, F.S., relating to circumstances for mitigating (reducing) a Code sentence, to create two new circumstances for mitigating (reducing) a sentence under the Criminal Punishment Code:

- For defendants sentenced on or after October 1, 2020, the defendant requires specialized treatment for substance abuse or addiction, a mental disorder, or a physical disability.
- The defendant’s offense is a nonviolent felony, total sentence points are 60 points or fewer, and the defendant is sentenced for the offense on or after October 1, 2020.

The new mitigating circumstance relating to specialized treatment for substance abuse or addiction, a mental disorder, or a physical disability is substituted for two current mitigating circumstances:

- The defendant’s offense is a nonviolent felony, the defendant’s total sentence points are 60 points or fewer, and the defendant is amenable to and qualified to participate in a post-adjudicatory treatment-based drug court program.
- The defendant requires specialized treatment for a mental disorder unrelated to substance abuse or addiction or for a physical disability.

The bill also removes language that restricts mitigation based upon substance abuse or addiction, including intoxication at the time of the offense.

The bill also reenacts ss. 775.08435, 921.002, and 921.00265, F.S, all relating to mitigating circumstances, to incorporate amendments made to s. 921.0026, F.S.

The effective date of the bill is October 1, 2020.

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 Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation has not yet reviewed the bill. The Legislature’s Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a “negative significant” prison bed impact (a decrease of more than 25 prison beds). The EDR provided the following information regarding its estimate:

… [S]pecialized treatment for substance abuse and addiction as a mitigating factor can apply to an expanded pool of offenders while having committed a nonviolent felony with total sentence points that are 60 or fewer can be used as a mitigating circumstance as well. These changes would permit a larger number of downward departures for inmates eligible under these criteria.

Per the DOC, on June 30th, 2019, roughly 60% of the inmate population had a substance abuse problem. It is not known how many of these people fit the criteria for mitigating circumstances. With FY 18-19 data unavailable, FY 17-18 data show that there were 92,033 (adj.) offenders sentenced for nonviolent offenses with 60 or fewer sentence points, and 12,163 (adj.) were sentenced to prison (mean sentence length=25.1 m, incarceration rate: 13.2% adj.-13.2% unadj.). While it is not known how many of these also had drug abuse problems, the inclusion of drug offenses in the nonviolent category likely creates significant overlap, and perhaps a higher percentage [for] those with substance abuse problems than the general population. Furthermore, although it is not known how often judges will use these new opportunities for mitigating circumstances, nor is it known who is eligible within the population receiving prison that had not received a downward departure for other mitigating circumstances, this pool is very large, so this bill would be expected to have a significant impact on both prison sentences and the length of prison sentences.17

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

IX. **Additional Information:**

A. **Committee Substitute – Statement of Changes:**

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

CS by Criminal Justice on December 10, 2019:

The committee substitute substitutes the word “defendants” for the word “offenders.”

B. **Amendments:**

None.
A bill to be entitled

An act relating to sentencing; amending s. 921.0026, F.S.; revising the mitigating circumstances under which a departure from the lowest permissible sentence is reasonably justified; conforming a provision to changes made by the act; reenacting ss. 775.08435(1)(b), (c), and (d), 921.002(3), and 921.00265(1), F.S., all relating to mitigating circumstances, to incorporate the amendment made to s. 921.0026, F.S., in references thereto; providing an effective date.

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

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

921.0026 Mitigating circumstances.—This section applies to any felony offense, except any capital felony, committed on or after October 1, 1998.

(1) A downward departure from the lowest permissible sentence, as calculated according to the total sentence points pursuant to s. 921.0024, is prohibited unless there are circumstances or factors that reasonably justify the downward departure. Mitigating factors to be considered include, but are not limited to, those listed in subsection (2). The imposition of a sentence below the lowest permissible sentence is subject to appellate review under chapter 924, but the extent of downward departure is not subject to appellate review.

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

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

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

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

(d) For defendants sentenced on or after October 1, 2020, the defendant requires specialized treatment for substance abuse or addiction, a mental disorder, or a physical disability. 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.

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

(f) The victim was an initiator, willing participant, aggressor, or provocateur of the incident.

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

(h) Before the identity of the defendant was determined, the victim was substantially compensated.

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

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

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

(l) The defendant is to be sentenced as a youthful offender.

(m) The defendant’s offense is a nonviolent felony, the defendant’s Criminal Punishment Code scoresheet total sentence points under s. 921.0024 are 60 points or fewer, and the defendant is sentenced for the offense on or after October 1, 2020 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. For purposes of this paragraph, the term “nonviolent felony” has the same meaning as provided in s. 948.08(6).

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

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

Section 2. For the purpose of incorporating the amendment made by this act to section 921.0026, Florida Statutes, in references thereto, paragraphs (b), (c), and (d) of subsection (1) of section 775.08435, Florida Statutes, are reenacted to read:

775.08435 Prohibition on withholding adjudication in felony cases.—

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

(b) A second degree felony offense unless:
   1. The state attorney requests in writing that adjudication be withheld; or
   2. The court makes written findings that the withholding of adjudication is reasonably justified based on circumstances or factors in accordance with those set forth in s. 921.0026.

Notwithstanding any provision of this section, no adjudication of guilt shall be withheld for a second degree felony offense if the defendant has a prior withholding of adjudication for a felony that did not arise from the same transaction as the current felony offense.

(c) A third degree felony that is a crime of domestic violence as defined in s. 741.28, unless:
   1. The state attorney requests in writing that adjudication be withheld; or
   2. The court makes written findings that the withholding of adjudication is reasonably justified based on circumstances or factors in accordance with s. 921.0026.

(d) A third degree felony offense if the defendant has a prior withholding of adjudication for a felony offense that did not arise from the same transaction as the current felony offense unless:
   1. The state attorney requests in writing that adjudication be withheld; or
   2. The court makes written findings that the withholding of adjudication is reasonably justified based on circumstances or factors in accordance with those set forth in s. 921.0026.
Notwithstanding any provision of this section, no adjudication of guilt shall be withheld for a third degree felony offense if the defendant has two or more prior withholdings of adjudication for a felony that did not arise from the same transaction as the current felony offense.

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

921.002 The Criminal Punishment Code.—The Criminal Punishment Code shall apply to all felony offenses, except capital felonies, committed on or after October 1, 1998.

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

Section 4. For the purpose of incorporating the amendment made by this act to section 921.0026, Florida Statutes, in a reference thereto, subsection (1) of section 921.00265, Florida Statutes, is reenacted to read:
921.00265 Recommended sentences; departure sentences; mandatory minimum sentences.—This section applies to any felony offense, except any capital felony, committed on or after October 1, 1998.

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

Section 5. This act shall take effect October 1, 2020.
THE FLORIDA SENATE

APPEARANCE RECORD

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

1/28/20

Meeting Date

Topic Sentencing

Name Hon. Stacy Scott

Job Title 8th Circuit Public Defender

Address 151 SW 2nd Avenue

Phone 352-338-7370

Email scotts@PDO8.org

State FL

Zip 32601

Speaking: Yes ☑ No ☐

Representing Florida Public Defender Association

Appearing at request of Chair: Yes ☑ No ☐

Lobbyist registered with Legislature: Yes ☑ No ☐

Waive Speaking: Yes ☑ No ☐

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

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)

Meeting Date 1/28/20

Bill Number (if applicable) 0554

Amendment Barcode (if applicable)

Topic Senate

Name Sal Nuzzo

Job Title Vice President of Policy

Address 100 N Duval Street

Phone 850-322-9941

Email snuzzo@jamesmadison.org

Tallahassee FL 32301 Zip

Speaking: □ For □ Against □ Information

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

Representing The James Madison Institute

Appearing at request of Chair: □ Yes □ No

Lobbyist registered with Legislature: □ Yes □ No

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

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

S-001 (10/14/14)
The Florida Senate

Appearance Record

Meeting Date: 1/28/20

Bill Number: SB 554

Amendment Barcode: (if applicable)

Topic: Sentencing

Name: Chunshin Wu

Job Title: Exec Director

Address: 1300 N Adams St.

Phone: 321-223-4232

City: TLH

State: FL

Zip: 32303

Email: 

Speaking: ☑ For ☐ Against ☐ Information

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

Representing: Florida Juvenile Justice Assoc.

Appearing at request of Chair: ☑ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: 1-28-20

Bill Number (if applicable): 554

Amendment Barcode (if applicable):

Topic: CT

Name: GREG NEWBURN

Job Title: NAT. DIRECTOR

Address:

Street

City

State

Zip

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

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

Representing: FAMM

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)

Meeting Date: 1/28/2020

Bill Number (if applicable): 554
Amendment Barcode (if applicable):

Topic: Sentencing
Name: Ida V. Eskamani
Job Title: Public Policy
Address: 120 N Mills
Orlando, FL 32801
Phone: 407-376-4801
Email: ida.eskamani@gmail.com

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

Representing: Organize Florida + New Florida Majority

 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)
I. Summary:

CS/SB 700 amends section 943.0582, Florida Statutes, to permit juvenile diversion expunction for any offense, including felony offenses. This expands the current law, which only permits juvenile diversion expunction for a misdemeanor offense.

Additionally, this bill amends section 985.126, Florida Statutes, to permit a juvenile who completes a diversion program for any offense, including a felony or subsequent offense, to lawfully deny or fail to acknowledge his or her participation in the program. This expands the current law, which only permits a juvenile who completes diversion for a first-time misdemeanor offense to lawfully deny or fail to acknowledge his or her participation in the program.

This bill may have a negative fiscal impact on the Florida Department of Law Enforcement (FDLE). See Section V. Fiscal Impact Statement.

This bill is effective on the same date that SB 1292 or similar legislation takes effect.
II. Present Situation:

Juvenile Criminal History Records

In contrast to adult criminal history records,\textsuperscript{1} which are generally accessible to the public, Florida law treats juvenile offender records that are in the jurisdiction of juvenile courts differently, making such records confidential and exempt from public disclosure.\textsuperscript{2}

Such records that are confidential and exempt information may be disclosed only to:

- Authorized personnel of the court;
- The Department of Juvenile Justice (DJJ) and its designees;
- The Department of Corrections;
- The Florida Commission on Offender Review;
- Law enforcement agents;
- School superintendents and their designees;
- Any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile; and
- Others entitled under ch. 985, F.S., to receive that information, or upon order of the court.\textsuperscript{3}

However, the following exceptions apply:

- The name, photograph, address, and crime or arrest report of a juvenile is not considered confidential and exempt if the juvenile has been:
  - Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
  - Charged with a violation of law which, if committed by an adult, would be a felony;
  - Found to have committed an offense which, if committed by an adult, would be a felony; or
  - Transferred to adult court pursuant to part X of ch. 985, F.S.;
- A law enforcement agency may release a copy of the juvenile offense report to the victim of the offense;\textsuperscript{4}
- A law enforcement agency must notify the superintendent of schools that a juvenile is alleged to have committed a delinquent act when a juvenile of any age is taken into custody for an offense that would have been a felony if committed by an adult, or a crime of violence;\textsuperscript{5}

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\textsuperscript{1} “Criminal history record” means any nonjudicial record maintained by a criminal justice agency containing criminal history information. Section 943.045(6), F.S.

\textsuperscript{2} Section 985.04(1)(a), F.S. Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.

\textsuperscript{3} Section 985.04(1)(b), F.S.

\textsuperscript{4} Information gained by the victim pursuant to ch. 985, F.S., including the next of kin of a homicide victim, regarding any case handled in juvenile court, must not be revealed to any outside party, except as is reasonably necessary in pursuit of legal remedies. Section 985.04(3), F.S.

\textsuperscript{5} When a juvenile of any age is formally charged by a state attorney with a felony or a delinquent act that would be a felony if committed by an adult, the state attorney must notify the superintendent of the juvenile’s school that the juvenile has been charged with such felony or delinquent act. The information obtained by the superintendent of schools must be released within 48 hours after receipt to appropriate school personnel, including the principal of the school of the juvenile and the director of transportation. The principal must immediately notify the juvenile’s classroom teachers, the juvenile’s assigned bus driver, and any other school personnel whose duties include direct supervision of the juvenile. Section 985.04(4)(b), F.S.
• Records maintained by the DJJ, including copies of records maintained by the court, which pertain to a juvenile found to have committed a delinquent act which, if committed by an adult, would be a crime specified in s. 435.04, F.S., may not be destroyed for 25 years after the juvenile’s final referral to the DJJ, except in cases of the death of the juvenile; and
• Records in the custody of the DJJ may be inspected only upon order of the Secretary or his or her authorized agent by persons who have sufficient reason and upon such conditions for their use and disposition as the secretary or his or her authorized agent deems proper.\(^6\)

In these instances, the criminal history information\(^7\) of a juvenile will be available to:
• A criminal justice agency for criminal justice purposes on a priority basis and free of charge;
• The person to whom the record relates, or his or her attorney;
• The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or
• An agency or entity specified in ss. 943.0585(4) or 943.059(4), F.S., for the purposes specified therein, and to any person within such agency or entity who has direct responsibility for employment, access authorization, or licensure decisions.\(^8\)

Records pertaining to juveniles committed to or supervised by the DJJ are retained until a juvenile reaches the age of 24 years or 26 years in the case of a serious or habitual delinquent child, and the destruction of such records are governed by ch. 943, F.S.\(^9\)

**Juvenile Diversion Program Expunction**

The exceptions to accessibility of a criminal history record do not apply if the record has been sealed\(^10\) or expunged.\(^11\) The expunction of a criminal history record is the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody of the record.\(^12\) The following are authorized expungement processes for the criminal history record of a juvenile:
• Juvenile diversion;\(^13\)
• Automatic juvenile;\(^14\) and

---

\(^6\) Section 985.04, F.S.
\(^7\) “Criminal history information” means information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. The term does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system. Section 943.045(5), F.S.
\(^8\) Section 943.053(3)(c)1.a.-d., F.S.
\(^9\) Section 943.045(19), F.S.
\(^10\) “Sealing of a criminal history record” means the preservation of a record under such circumstances that it is secure and inaccessible to any person not having a legal right of access to the record or the information contained and preserved therein. Section 943.045(19), F.S.
\(^11\) Section 943.053(3)(b), F.S.
\(^12\) Criminal history records in the custody of the FDLE must be retained in all cases for purposes of evaluating subsequent requests by the subject of the record for sealing or expungement, or for purposes of recreating the record in the event an order to expunge is vacated by a court of competent jurisdiction. Section 943.045(16), F.S.
\(^13\) Section 943.0582, F.S.
\(^14\) Section 943.0515, F.S.
• Early juvenile.\textsuperscript{15}

Diversion refers to a program that is designed to keep a juvenile from entering the juvenile justice system through the legal process.\textsuperscript{16} The term diversion has been broadly used over the years, but typically refers to the placement of an individual on a track that is less restrictive and affords more opportunities for rehabilitation and restoration. Whether it is a prearrest or postarrest diversion program, the goal of the program is to maximize the opportunity for success and minimize the likelihood of recidivism.\textsuperscript{17}

There are certain enumerated diversion programs eligible for diversion expunction under s. 943.0582, F.S. The following programs are eligible:
• Civil citation or similar pre-arrest diversion (s. 985.12, F.S.).
• Pre-arrest or post-arrest diversion programs (s. 985.125, F.S.).
• Neighborhood restorative justice programs (s. 985.155, F.S.).
• Community arbitration programs (s. 985.16, F.S.).
• Another program to which a referral is made by the state attorney (s. 985.15, F.S.).

The decision to refer a juvenile to a diversion program is at the discretion of either the law enforcement officer that confronted the juvenile at the time of the incident or the state attorney that has been referred the case. While participation in a diversion program may be restricted to misdemeanor offenses, there are some programs that enable a juvenile who has committed a felony to participate. In FY 2018-19, 4,965 juveniles were referred to post arrest diversion programs for felony offenses.\textsuperscript{18}

After completing an eligible diversion program, a juvenile seeking to have his or her nonjudicial arrest record expunged must:
• Submit an application for diversion expunction to the FDLE.
• Submit, with the application, an official written statement from the state attorney for the county in which the arrest occurred certifying that:
  o He or she has completed the diversion program;
  o The arrest was for a misdemeanor; and
  o He or she has not otherwise been charged by the state attorney with or have been found to have committed, any criminal offense or comparable ordinance violation.
• Have not, before the application for expunction, been charged by the state attorney with, or found to have committed, any criminal offense or comparable ordinance violation.\textsuperscript{19}

\textsuperscript{15} Section 943.0515(1)(b)2., F.S.
\textsuperscript{19} Section 943.0582(3), F.S.
If the juvenile meets such criteria and submits the appropriate documentation, the FDLE must expunge the nonjudicial arrest record of the juvenile.\textsuperscript{20}

A criminal history record that is expunged under this section is only available to criminal justice agencies for the purpose of determining eligibility for diversion programs, a criminal investigation, or making a prosecutorial decision. Records that are eligible for expunction under this section must be sealed.\textsuperscript{21} A juvenile who successfully completes a diversion program for a first time misdemeanor offense may lawfully deny or fail to acknowledge his or her participation in the program and the expunction of the nonjudicial arrest record, unless the inquiry is made by a criminal justice agency\textsuperscript{22} for one of the purposes stated above.\textsuperscript{23}

A juvenile who receives an expunction under this section is not prevented from petitioning for the expunction or sealing of a later criminal history record for human trafficking victim expunction,\textsuperscript{24} court ordered expunction,\textsuperscript{25} or court ordered sealing,\textsuperscript{26} if the juvenile is otherwise eligible for relief under those sections.\textsuperscript{27}

III. Effect of Proposed Changes:

This bill amends s. 943.0582, F.S., to permit juvenile diversion expunction for any offense, including \textit{felony offenses}. This expands the current law, which only permits juvenile diversion expunction for a misdemeanor offense.

Additionally, this bill amends s. 985.126, F.S., to permit a juvenile who completes a diversion program for any offense, including a \textit{felony or subsequent offense}, to lawfully deny or fail to acknowledge his or her participation in the program. This expands the current law, which only permits a juvenile who completes diversion for a \textit{first-time misdemeanor offense} to lawfully deny or fail to acknowledge his or her participation in the program.

This bill is effective on the same date that SB 1292 or similar legislation takes effect.

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 FDLE may see an increase in applications for diversion expunction from juveniles who have completed diversion for a felony offense. The FDLE reports that there are currently 21,773 minors with 53,294 juvenile felony arrest charges with or without disposition that may qualify for juvenile diversion expunction. The FDLE estimates it needs $24,050 to make programmatic changes to its technology systems. Therefore, this bill may have a negative indeterminate fiscal impact on the FDLE.

VI. Technical Deficiencies:
   None.

VII. Related Issues:
   None.

VIII. Statutes Affected:
   This bill substantially amends the following sections of the Florida Statutes: 943.0582 and 985.126.

IX. Additional Information:

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

CS by Criminal Justice on January 14, 2020:
The committee substitute ensures that this bill will take effect at the same time that linked bill SB 1292 takes effect.

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 Senators Perry, Pizzo, Braynon, Harrell, and Gruters

An act relating to juvenile diversion program expunction; amending s. 943.0582, F.S.; deleting a requirement that limits diversion program expunction to programs for misdemeanor offenses; amending s. 985.126, F.S.; conforming a provision to changes made by the act; providing a contingent effective date.

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

Section 1. Subsection (1) and paragraph (b) of subsection (3) of section 943.0582, Florida Statutes, are amended to read:
943.0582 Diversion program expunction.—
(1) Notwithstanding any law dealing generally with the preservation and destruction of public records, the department shall adopt rules to provide for the expunction of a nonjudicial record of the arrest of a minor who has successfully completed a diversion program for a misdemeanor offense.
(3) The department shall expunge the nonjudicial arrest record of a minor who has successfully completed a diversion program if that minor:
(b) Submits to the department, with the application, an official written statement from the state attorney for the county in which the arrest occurred certifying that he or she has successfully completed that county’s diversion program, that his or her participation in the program was based on an arrest for a misdemeanor, and that he or she has not otherwise been charged by the state attorney with, or found to have committed, any criminal offense or comparable ordinance violation.

CODING: Words struck are deletions; words underlined are additions.
Section 2. Subsection (5) of section 985.126, Florida Statutes, is amended to read:

985.126 Diversion programs; data collection; denial of participation or expunged record.—

(5) A minor who successfully completes a diversion program for a first-time misdemeanor offense may lawfully deny or fail to acknowledge his or her participation in the program and an expunction of a nonjudicial arrest record under s. 943.0582, unless the inquiry is made by a criminal justice agency, as defined in s. 943.045, for a purpose described in s. 943.0582(2)(b)1.

Section 3. This act shall take effect on the same date that SB 1292 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.
THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date 1/28/20

Bill Number (if applicable) 700

Amendment Barcode (if applicable)

Topic Juvenile Diversion Program Expunction

Name Hon. Stacy Scott

Job Title 8th Circuit Public Defender

Address 151 SW 2nd Avenue

Phone 352-338-7370

Gainesville FL 32601

Email scotts@PDO8.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.

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)

Meeting Date: 1/28/2020

Bill Number (if applicable): 700

Amendment Barcode (if applicable):

Topic: Juvenile Diversion Program Examination

Name: Candice Brower

Job Title: Regional Counsel

Address: 227 N. Bronough St., Tallahassee, FL

Phone: 352-488-0293

Email:

Speaking: □ For □ Against □ Information

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

Representing: Office of Criminal Conflict & Civil Reg. Counsel

Appearing at request of Chair: □ Yes □ No

Lobbyist registered with Legislature: □ Yes □ No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: 1/28/2020

700

Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Juvenile Diversion Program Expunction

Name: Daphne Sainvil

Job Title: Legislative Policy Advisor

Address: 100 S. Andrews Ave. 8th Floor

Ft. Lauderdale, FL 33301

Phone: 954-253-7320

Email: dseainvil@broward.org

Speaking: ☑️ For ☐ Against ☐ Information

Waive Speaking: ☑️ In Support ☐ Against

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

Representing: Broward County Bd. of County Cmrs.

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)

Meeting Date 1-28-20

Bill Number (if applicable) 0700

Amendment Barcode (if applicable)

Topic EXPENSE

Name Sal Nuzzo

Job Title Vice President of Policy

Address 100 N Duval Street

Street Tallahassee

City FL 32301 Zip

Phone 850-322-9941

Email snuzzo@jamesmadison.org

Speaking: [ ] For [ ] Against [ ] Information

Representing The James Madison Institute

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

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

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

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

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

APPEARANCE RECORD

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

Meeting Date

Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic: Juv. Del. Program Expung

Name: Chelsea Murphy

Job Title: Florida State Director

Address: 605 Middlebrooks Circle

Tallahassee, FL 32312

Phone: 954-557-0016

Email: cmurphy@rightoncrime.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

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

Representing: Right on Crime

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

This form is part of the public record for this meeting.
THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date: 1/29/20

Bill Number (if applicable): SB 700

Amendment Barcode (if applicable):

Topic: Juvenile Diversion Program Expenditure

Name: Christian Minor

Job Title: Executive Director

Address: 1801 N Adams St.

Phone: (321) 223-4232

Email: cmminor@fjja.org

City: Tallahassee

State: FL

Zip: 32303

Speaking: [] For  [V] Against  [] Information

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

Representing: Florida Juvenile Justice Association

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

Lobbyist registered with Legislature:  [V] 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)
I. Summary:

CS/SB 846 amends section 938.27, Florida Statutes, to prohibit the state attorney and defense counsel from presenting a negotiated plea agreement for the court’s consideration which contains amounts greater than the current statutory minimum of $50 (assessed in misdemeanor or criminal traffic cases) or $100 (felony cases) costs for the state attorney.

The bill also reenacts section 985.032(2), Florida Statutes, related to costs of prosecution in juvenile delinquency cases to incorporate changes made by this bill.

This bill may have a negative indeterminate fiscal impact on some state attorney’s offices if the state attorney is unable to make a sufficient showing to the court that higher costs were incurred in investigating or prosecuting the case.

The bill takes effect July 1, 2020.

II. Present Situation:

Plea Agreements

The Florida Rules of Criminal Procedure recognize that most criminal cases are disposed of by pleas arrived at by negotiations between the prosecutor and defense counsel.\(^1\) In fact, Rule 3.171

\(^1\) Rule 3.171, Fla.R.Crim.P., Committee Notes, 1972 Amendment.
states that the prosecuting attorney and the defense attorney, or the defendant when representing himself or herself, are encouraged to discuss and to agree on pleas that may be entered by a defendant. A plea agreement is essentially a contract between the State and the defendant and may include details such as that charges are being dropped by the State in exchange for the plea, that a certain sentence will be recommended to the court, and that fines, fees, and costs will be made part of the recommended sentence. The court has the ultimate responsibility for determining the proper sentence in a case and can accept or reject the plea agreement.

**Costs of Prosecution/Investigation and Costs for the State Attorney**

A person who is convicted of a criminal offense, including in violation of probation cases and violation of community control cases, is statutorily liable for the payment of costs for the state attorney and costs of prosecution. Costs of prosecution includes investigative costs incurred by law enforcement agencies, by fire departments for arson investigations, and by investigations of the Department of Financial Services or the Office of Financial Regulation of the Financial Services Commission, if requested by such agencies.

However, even if the defendant agrees to pay these statutory costs as part of a plea agreement it does not alleviate the court’s obligation to impose the costs as the statutory procedures require. For example, s. 938.27(1), F.S., requires a law enforcement agency or other listed agency to request the payment of investigative costs and provide supporting documentation.

Section 938.27(8), F.S., provides that costs for the state attorney must be set in all cases at no less than $50 per case for a misdemeanor or criminal traffic offense and no less than $100 per case for a felony offense. The costs are also assessable in a proceeding in which the underlying offense is a violation of probation or community control. The court may set a higher amount upon a showing of sufficient proof of higher costs incurred.

Costs recovered on behalf of the state attorney must be deposited into the State Attorneys Revenue Trust Fund to be used during the fiscal year in which the funds are collected, or in any subsequent fiscal year, for actual expenses incurred in investigating and prosecuting criminal

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2 Rule 3.171(a), Fla.R.Crim.P.
3 *Churchill v. State*, 219 So.3d 14, 18 (Fla. 2017) (citing *Garcia v. State*, 722 So.2d 905, 907 (Fla. 3d DCA 1998)).
4 Rule 3.171(a), Fla.R.Crim.P.
5 Section 938.27(1), (8), F.S. For purposes of this section, “convicted” means a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld. Additionally, s. 985.032, F.S., provides that a juvenile who has been adjudicated delinquent or has had adjudication of delinquency withheld must have costs of prosecution assessed as provided in s. 938.27, F.S.
6 Section 938.27(1), F.S. Costs of prosecution, as defined in s. 938.27, F.S., does not include “state attorney’s fees.” *Weeks v. State*, 659 So.2d 695 (Fla. 4th DCA 1995), rev. den., 666 So. 2d 145 (Fla. 1995); *Mickler v. State*, 682 So.2d 607 (Fla. 2d DCA, 1996). Note that when the Office of the State Attorney incurs purely investigative costs in a particular case, those costs may be ordered to be paid by the defendant, as costs of prosecution, if requested.
8 Any dispute as to the proper amount or type of costs shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of costs incurred is on the state attorney. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant is on the defendant. The burden of demonstrating such other matters as the court deems appropriate is upon the party designated by the court as justice requires. Section 938.27(4), F.S.
9 Section 938.27(8), F.S.
cases, which may include the salaries of permanent employees, or for any other purpose authorized by the Legislature.\textsuperscript{10}

III. **Effect of Proposed Changes:**

The bill amends s. 938.27, F.S., by creating a new subsection (2) and renumbering other subsections in that section of law. The new subsection (2) retains part of the language from the current subsection (8) which:

- Requires costs for the state attorney be set at no less than $50 per case for a misdemeanor or criminal traffic offense;
- Requires costs for the state attorney be set at no less than $100 per case for a felony offense;
- Requires that the court set such minimum costs in proceedings in which the underlying offense is a violation of probation or community control; and
- Provides that the court may set such costs at a higher amount if sufficient proof shows that higher costs were incurred by the state attorney.

The bill amends the new subsection (2) of s. 938.27, F.S., to prohibit the state attorney and the defense counsel from presenting a negotiated plea agreement to the court containing costs for the state attorney in amounts greater than the current minimum. These costs are $50 in misdemeanor or criminal traffic cases and $100 in felony cases. This provision would likely discourage, or eliminate altogether, using costs in excess of the minimum for the state attorney as a bargaining chip by either party during plea negotiations.

The bill creates a new subsection (9) of s. 938.27, F.S., which contains the remainder of the existing language in current subsection (8). This language provides that the costs recovered on behalf of the state attorney must be deposited into the State Attorneys Revenue Trust Fund and designates how the funds may be spent.

Current subsections (2) through (8) of s. 938.27, F.S., are redesignated by the bill as subsections (3) through (9).

Section 985.032(2), F.S., which provides for the assessment of costs of prosecution in juvenile delinquency cases is reenacted to incorporate the amendment to s. 938.27, F.S.

The bill takes effect July 1, 2020.

IV. **Constitutional Issues:**

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

None.

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

None.

\textsuperscript{10} Id.
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:
      This bill may have a negative indeterminate fiscal impact on some state attorney’s offices if the state attorney is unable to make a sufficient showing to the court that higher costs were incurred in investigating or prosecuting the case.

VI. Technical Deficiencies:
   None.

VII. Related Issues:
   None.

VIII. Statutes Affected:
   This bill substantially amends section 938.27 of the Florida Statutes.
   The bill reenacts section 985.032 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 January 14, 2020:
      The committee substitute removes the phrase “that amount” from the bill and replaces it
with a more specific reference to the statutory minimum costs for the state attorney as set forth in s. 938.27(8), F.S.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
A bill to be entitled
An act relating to costs of prosecution and
investigation; amending s. 938.27, F.S.; prohibiting
the inclusion in negotiated plea agreements of costs
for the state attorney which are greater than the
minimum required; reenacting s. 985.032(2), F.S.,
relating to assessing costs of prosecution to a
juvenile, to incorporate the amendment made to s.
938.27, F.S., in a reference thereto; providing an
effective date.

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

Section 1. Present subsections (2) through (8) of section
938.27, Florida Statutes, are redesignated as subsections (3)
through (9), respectively, a new subsection (2) is added to that
section, and present subsection (8) of that section is amended,
to read:

938.27 Judgment for costs of prosecution and
investigation.—

(2) Costs for the state attorney must be set in all cases
at no less than $50 per case when a misdemeanor or criminal
traffic offense is charged and no less than $100 per case when a
felony offense is charged, including a proceeding in which the
underlying offense is a violation of probation or community
control. The court may set a higher amount upon a showing of
sufficient proof of higher costs incurred; however, any amount
exceeding the statutory minimum misdemeanor, criminal traffic,
or felony costs may not be included as part of a negotiated plea
agreement submitted to the court for consideration.

(9)(8) Costs for the state attorney must be set in all cases at no less than $50 per case when a misdemeanor or criminal traffic offense is charged and no less than $100 per case when a felony offense is charged, including a proceeding in which the underlying offense is a violation of probation or community control. The court may set a higher amount upon a showing of sufficient proof of higher costs incurred. Costs recovered on behalf of the state attorney under this section must be deposited into the State Attorneys Revenue Trust Fund to be used during the fiscal year in which the funds are collected, or in any subsequent fiscal year, for actual expenses incurred in investigating and prosecuting criminal cases, which may include the salaries of permanent employees, or for any other purpose authorized by the Legislature.

Section 2. For the purpose of incorporating the amendment made by this act to section 938.27, Florida Statutes, in a reference thereto, subsection (2) of section 985.032, Florida Statutes, is reenacted to read:

985.032 Legal representation for delinquency cases.—

(2) A juvenile who has been adjudicated delinquent or has adjudication of delinquency withheld shall be assessed costs of prosecution as provided in s. 938.27.

Section 3. This act shall take effect July 1, 2020.
I. Summary:

SB 1002 expands the methods by which a law enforcement officer may effect service of an investigative subpoena, court order, or search warrant on an out-of-state corporation that provides electronic communication services or remote computing services. As expanded, service of the documents may be had on the corporation’s registered agent under the laws of the state in which service will be effected. The bill also states that out-of-state corporations doing business in Florida through the Internet may be served at any location where the corporation regularly accepts service.

The bill also specifies the means to enforce a subpoena on an in-state or out-of-state corporation that provides electronic communication services or remote computing services. If a corporation fails to comply with a properly-served subpoena, the bill allows a court, upon petition from the authority seeking the subpoena, to hold the non-complying corporation in indirect criminal contempt, and subject the entity to fines.

The bill does not direct the deposit of the fine in any particular manner. As such, when a clerk of the circuit court collects the fine, it would be deposited into the clerk’s local Fine and Forfeiture Fund, as directed by section 142.01(g), Florida Statutes. The revenue impact and any increased workload to the clerks of court is unknown as the data needed to quantifiably predict the results of failure to accept service of process and the resultant court actions is unavailable.

The bill takes effect on July 1, 2020.
II. Present Situation:

A subpoena is a written order to compel an individual to give testimony on a particular subject, often before a court, but sometimes in other proceedings.\(^1\) A subpoena duces tecum is a type of subpoena that requires the witness to produce a document or documents pertinent to a proceeding.\(^2\) Section 27.04, F.S., “allows the state attorney to issue subpoenas duces tecum for records as part of an ongoing investigation.”\(^3\) The state does not need to establish the relevance and materiality of the information sought through an investigative subpoena,\(^4\) but the subject matter of the investigation must be confined to violations of criminal law.\(^5\)

Section 92.605(2), F.S., describes subpoenas, court orders, and warrants issued in compliance with the Electronic Communications and Privacy Act.\(^6\) The federal act and its Florida counterpart, s. 934.23, F.S., authorize a law enforcement officer, state attorney, or judge to subpoena the records of an out-of-state corporation that provides electronic communication services or remote computing services to the public.

Upon service of a subpoena, court order, or warrant issued in compliance with s. 92.605, F.S. (and by extension with the Electronic Communications and Privacy Act), a corporation must comply within 20 days after receipt of the subpoena. However, if the recipient cannot comply within that time period, it must notify the law enforcement officer who sought the subpoena within the 20-day time period that the records cannot be provided and comply as soon as possible.\(^7\) An “out-of-state corporation,” i.e., any corporation qualified to do business in Florida under s. 607.1501, F.S.\(^8\) is “properly served,” by subpoena or otherwise, when service is effected on that corporation’s registered agent.\(^9\)

Section 92.605, F.S., does not expressly provide a law enforcement officer with a remedy when an out-of-state corporation fails to comply with a subpoena issued under that section.

III. Effect of Proposed Changes:

The bill expands the avenues for service on an out-state corporation, allowing a law enforcement officer to effect service on an out-of-state corporation through its registered agent in Florida or pursuant to the laws of the state where process is to be served. The bill also states that service on an out-of-state corporation doing business in Florida “through the Internet” may also be made at any location where the corporation routinely accepts service.

\(^1\) *Subpoena*, Legal Information Institute (available at [https://www.law.cornell.edu/wex/subpoena](https://www.law.cornell.edu/wex/subpoena)).
\(^2\) *Subpoena duces tecum*, Legal Information Institute, (available at [https://www.law.cornell.edu/wex/subpoena_duces_tecum](https://www.law.cornell.edu/wex/subpoena_duces_tecum)).
\(^3\) *State v. Investigation*, 802 So. 2d 1141, 1144 (Fla. 2d DCA 2001).
\(^4\) Id.
\(^6\) 18 U.S.C. § 2701 et seq.
\(^7\) Section 92.605(2)(b), F.S. If the entity seeking the subpoena shows and the court finds that failure to produce the requested records would produce an “adverse result,” i.e., physical harm, flight from prosecution, destruction of evidence, intimidation of witnesses, or jeopardy to the investigation, the court may order the records be produced earlier than 20 days.
\(^8\) Section 92.605(c), (1)(a), F.S. The court may also extend the time to comply with a subpoena if doing so will not cause an adverse result.
\(^9\) Section 92.605(1)(e), F.S.
\(^\text{S}^2\) Section 92.605(1)(h), F.S. Per s. 607.0505, F.S., a foreign corporation doing business in Florida must have a registered agent, and per s. 607.1507, F.S., such agent must be located in or authorized to transact business in Florida.
If a corporation that provides electronic communication services or remote computing services fails to comply with a properly served subpoena the applicant seeking the subpoena may petition a court to compel compliance. The court may compel compliance by holding the entity in indirect criminal contempt\(^{10}\) and may punish the entity by a fine of not less than $100 and not more than $1,000 per day for a maximum of 60 days.

The bill does not define what activities constitute “transacting business in this state through the Internet.” Section 607.1501(2), F.S., provides a non-exhaustive list of activities that do not constitute “transacting business,” a list which includes “transacting business through interstate commerce.” If intended, it may be useful to clarify s. 92.605(2), F.S., to state that transacting business through interstate commerce through the Internet subjects a company to the new service procedures in s. 92.605(1)(h).

The bill takes effect on July 1, 2020.

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.

\(^{10}\) Section 38.22, F.S., authorizes every court to “punish contempts against it whether such contempts be direct, indirect, or constructive.” As a common law crime, contempt may be punished “by fine or imprisonment, but the fine shall not exceed $500, nor the imprisonment 12 months,” Section 775.02, F.S.
B. Private Sector Impact:

The bill authorizes the imposition of fines and may cause subpoenaed corporations to incur costs to comply with the subpoenas.

C. Government Sector Impact:

The bill authorizes the imposition of a fine but does not direct the fine in any particular manner. As such, when the clerk of the circuit court collects the fine, it would be deposited into the clerk’s local Fine and Forfeiture Fund, as directed by s. 142.01(g), F.S. The revenue impact and any increased workload is unknown as the data needed to quantifiably predict the results of failure to accept service of process and the resultant court actions is unavailable.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 92.605, 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.
A bill to be entitled
An act relating to subpoenas; amending s. 92.605, F.S.; revising the definition of "properly served"; authorizing an applicant to petition a court to compel compliance with a subpoena; authorizing a court to address noncompliance as indirect criminal contempt and impose a daily fine for a specified amount of time; providing an effective date.

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

Section 1. Paragraph (h) of subsection (1) of section 92.605, Florida Statutes, is amended, and subsection (10) is added to that section, to read:

92.605 Production of certain records by Florida businesses and out-of-state corporations.—

(1) For the purposes of this section, the term:

(h) "Properly served" means delivery by hand or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service, or facsimile to a person or entity properly registered to do business in any state. In order for an out-of-state corporation to be properly served, the service described in this paragraph must be effected on the corporation’s registered agent in this state or as authorized under the laws of the state where process is to be served. Service on an out-of-state corporation doing business in this state through the Internet may also be made at any location where the corporation routinely accepts service.

(10) If a Florida business or an out-of-state corporation
refuses to comply with a properly served subpoena or does not comply with the requirements of subsection (2) or subsection (3), the applicant who sought the subpoena may petition a court of competent jurisdiction to compel compliance. The court may address the matter as indirect criminal contempt and may punish a business or corporation by a fine of not less than $100 and not more than $1,000 per day for a maximum of 60 days.

Section 2. This act shall take effect July 1, 2020.
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<th>Issue Title</th>
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<th>FTE</th>
<th>Rate</th>
<th>Rec GR</th>
<th>NR GR</th>
<th>Total GR</th>
<th>Trust Funds</th>
<th>All Funds</th>
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## Proposed Budget

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CourtSmart Tag Report

Room: LL 37  Case No.:  Type: 
Caption: Senate Appropriations Subcommittee on Criminal and Civil Justice  Judge:

Started: 1/28/2020 8:39:09 AM  Length: 00:50:06
Ends: 1/28/2020 9:29:14 AM

8:39:18 AM  Sen. Brandes (Chair)
8:40:00 AM  S 846 is Temporarily Postponed
8:40:11 AM  S 1002
8:40:14 AM  Sen. Rodriguez
8:41:24 AM  Sen. Rouson (Chair)
8:41:41 AM  S 554
8:41:50 AM  Sen. Brandes
8:43:03 AM  Stacy Scott, Public Defender, Florida Public Defender Association (waives in support)
8:43:16 AM  Sal Nuzzo, Vice President of Policy, The James Madison Institute (waives in support)
8:43:31 AM  Christian Minor, Executive Director, Florida Juvenile Justice Association (waives in support)
8:43:40 AM  Greg Newburn, National Director, FAMM (waives in support)
8:43:57 AM  Ida Eskamani, Public Policy, Organize Florida and New Florida Majority (waives in support)
8:44:13 AM  Chelsea Murphy, Florida State Director, Right on Crime (waives in support)
8:44:19 AM  Sen. Brandes
8:46:38 AM  S 700
8:46:50 AM  Sen. Brandes
8:47:24 AM  Sen. Harrell
8:48:04 AM  Sen. Brandes
8:48:19 AM  Sen. Harrell
8:49:02 AM  Sen. Brandes
8:49:06 AM  Abram Dale, Analyst, Appropriations Subcommittee on Criminal and Civil Justice
8:49:11 AM  Sen. Brandes
8:49:30 AM  Stacy Scott, Public Defender, Florida Public Defender Association
8:50:23 AM  S. Scott (waives in support)
8:50:36 AM  Daphnee Sainvil, Legislative Policy Advisor, Broward County Board of County Commissioners (waives in support)
8:50:53 AM  Sal Nuzzo, Vice President of Policy, The James Madison Institute (waives in support)
8:51:02 AM  Christian Minor, Executive Director, Florida Juvenile Justice Association (waives in support)
8:51:13 AM  Chelsea Murphy, Florida State Director, Right on Crime (waives in support)
8:51:26 AM  Sen. Harrell
8:52:34 AM  Sen. Rouson
8:53:17 AM  Sen. Brandes
8:53:48 AM  Sen. Brandes (Chair)
8:53:57 AM  Tab 5 - Review and Discussion of Fiscal Year 2020-2021 Budget Issues
8:54:22 AM  PK Jameson, Staff Director, Appropriations Subcommittee on Criminal and Civil Justice
8:58:00 AM  Sen. Harrell
8:58:09 AM  Sen. Brandes
8:58:12 AM  Sen. Harrell
8:58:25 AM  Sen. Brandes
8:58:47 AM  Sen. Harrell
8:58:52 AM  Sen. Brandes
8:59:01 AM  Sen. Rouson
8:59:11 AM  Sen. Brandes
9:00:08 AM  Sen. Rouson
9:00:15 AM  Sen. Brandes
9:03:38 AM  Sen. Harrell
9:04:26 AM  Sen. Brandes
9:04:58 AM  Sen. Harrell
9:05:28 AM  Sen. Brandes
9:05:44 AM  PK Jameson
9:06:24 AM  Sen. Rouson
9:06:43 AM Sen. Brandes
9:07:23 AM Sen. Rouson
9:07:29 AM Sen. Brandes
9:07:42 AM PK Jameson
9:09:55 AM Sen. Brandes
9:10:22 AM Sen. Bracy
9:10:31 AM PK Jameson
9:10:38 AM Sen. Rouson
9:11:33 AM Sen. Brandes
9:11:36 AM PK Jameson
9:13:03 AM Sen. Brandes
9:13:08 AM PK Jameson
9:15:10 AM Sen. Harrell
9:15:15 AM Sen. Brandes
9:15:56 AM Sen. Harrell
9:16:17 AM Sen. Brandes
9:16:47 AM Sen. Harrell
9:17:04 AM Sen. Brandes
9:17:12 AM PK Jameson
9:18:53 AM Sen. Harrell
9:19:07 AM PK Jameson
9:19:31 AM Sen. Gainer
9:19:35 AM PK Jameson
9:21:09 AM Sen. Harrell
9:21:28 AM PK Jameson
9:23:35 AM Sen. Harrell
9:23:56 AM Abram Dale, Analyst, Appropriations Subcommittee on Criminal and Civil Justice
9:24:28 AM Sen. Harrell
9:24:31 AM A. Dale
9:24:44 AM Sen. Harrell
9:24:50 AM PK Jameson
9:25:43 AM Sen. Bracy
9:25:50 AM PK Jameson
9:27:43 AM PK Jameson
9:28:40 AM Sen. Taddeo
9:29:07 AM Sen. Bracy