

Tab 2		CS/SB 346 by CJ, Bradley (CO-INTRODUCERS) Brandes, Perry, Diaz, Gruters, Bracy, Rouson, Berman, Taddeo, Stewart; (Compare to CS/H 00259) Criminal Justice				
776730	PCS	S	RCS	AP, ACJ		01/20 10:16 AM
442030	A	S	WD	AP, Bradley	Delete L.56 - 92:	01/16 09:24 AM
765794	A	S	RCS	AP, Bradley	Delete L.199 - 205:	01/20 10:16 AM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

APPROPRIATIONS
Senator Bradley, Chair
Senator Simpson, Vice Chair

MEETING DATE: Thursday, January 16, 2020
TIME: 10:00 a.m.—12:00 noon
PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Bradley, Chair; Senator Simpson, Vice Chair; Senators Bean, Benacquisto, Book, Brandes, Braynon, Flores, Gainer, Gibson, Hutson, Lee, Mayfield, Montford, Passidomo, Powell, Rouson, Simmons, Stargel, Stewart, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	Presentation on Governor's Fiscal Year 2020-2021 Budget Recommendations		Not Considered

A proposed committee substitute for the following bill (CS/SB 346) is available:

2	CS/SB 346 Criminal Justice / Bradley (Compare H 259, H 339, H 1445, S 468)	Criminal Justice; Prohibiting the imprisonment for longer than a certain time for persons who possess, purchase, or possess with the intent to purchase less than a specified amount of a controlled substance; authorizing a court to impose a sentence other than a mandatory minimum term of imprisonment and mandatory fine for a person convicted of trafficking if the court makes certain findings on the record; requiring that a custodial interrogation conducted at a place of detention in connection with certain offenses be electronically recorded in its entirety; revising the circumstances under which a wrongfully incarcerated person is eligible for compensation, etc. CJ 11/12/2019 Fav/CS ACJ 12/11/2019 Fav/CS AP 01/16/2020 Fav/CS	Fav/CS Yeas 19 Nays 0
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With subcommittee recommendation – Criminal and Civil Justice

Other Related Meeting Documents

GOVERNOR RON DESANTIS

A BOLDER, BRIGHTER, BETTER FUTURE

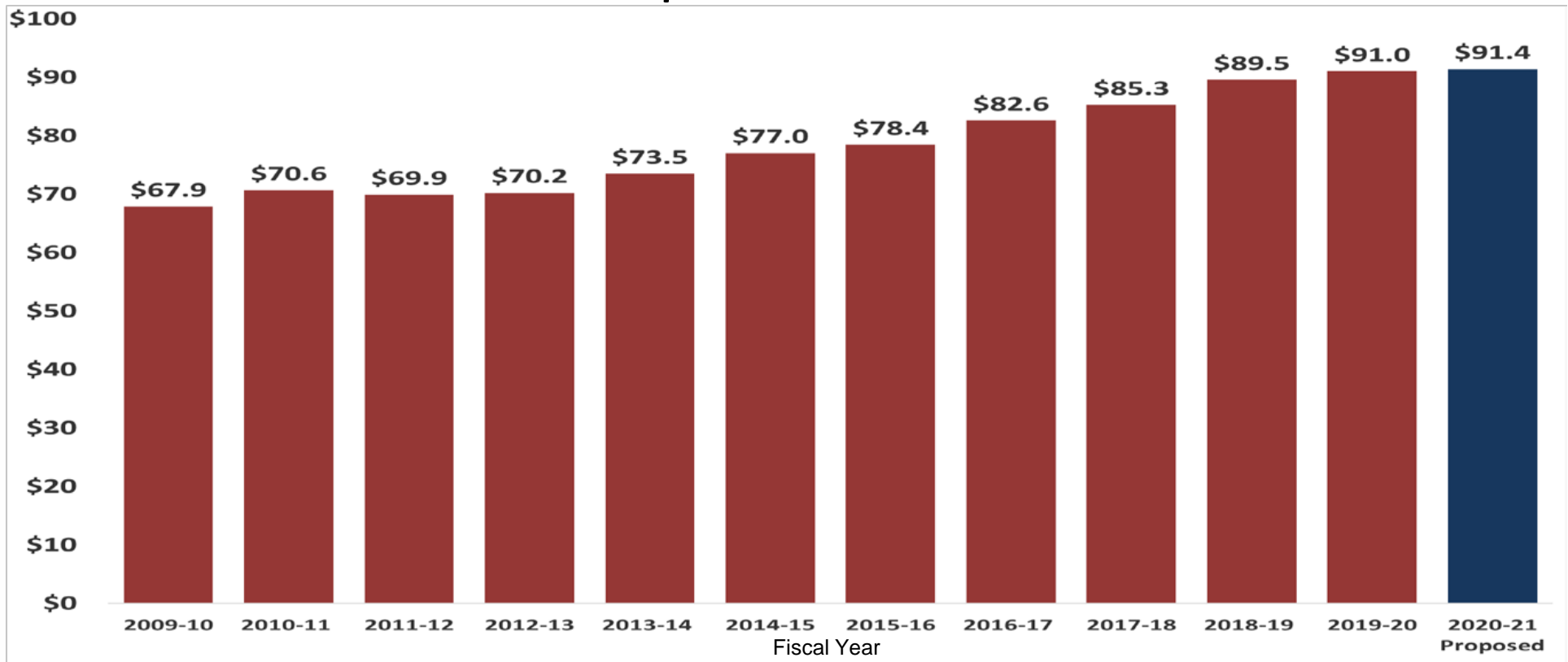


2020-2021 BUDGET & POLICY RECOMMENDATIONS

Governor's Recommended Budget

Total Budget - Fiscal Year 2020-21

\$ in Billions



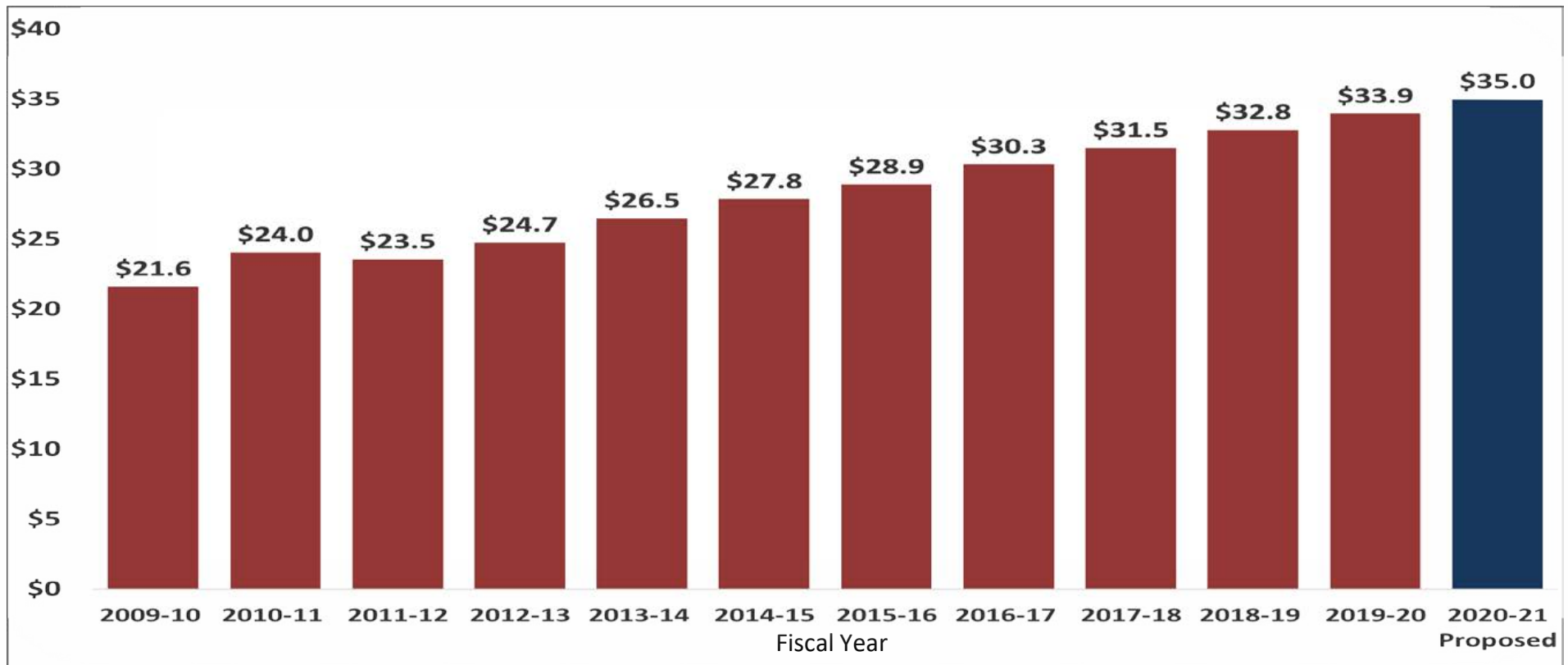
The proposed FY 2021 appropriations totaling \$91.4 billion are \$0.41 billion or 0.5% above FY 2020.



Governor's Recommended Budget

General Revenue - Fiscal Year 2020-21

\$ in Billions



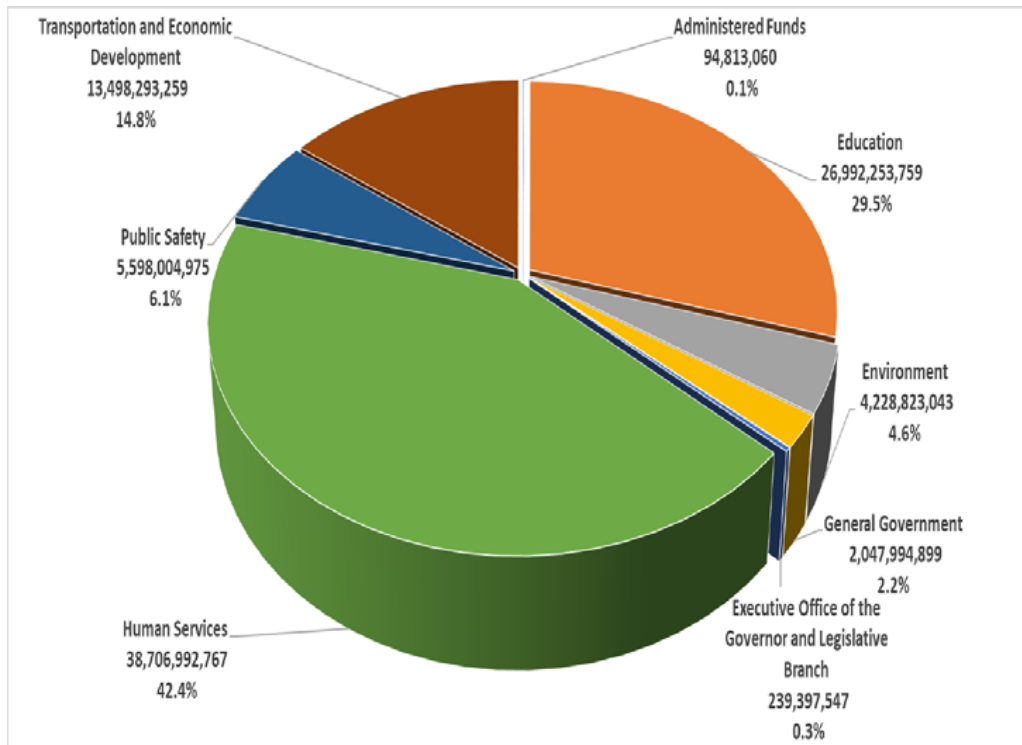
The proposed FY 2021 General Revenue appropriations totaling \$35.0 billion are \$1.0 billion or 3.0% above FY 2020.

3

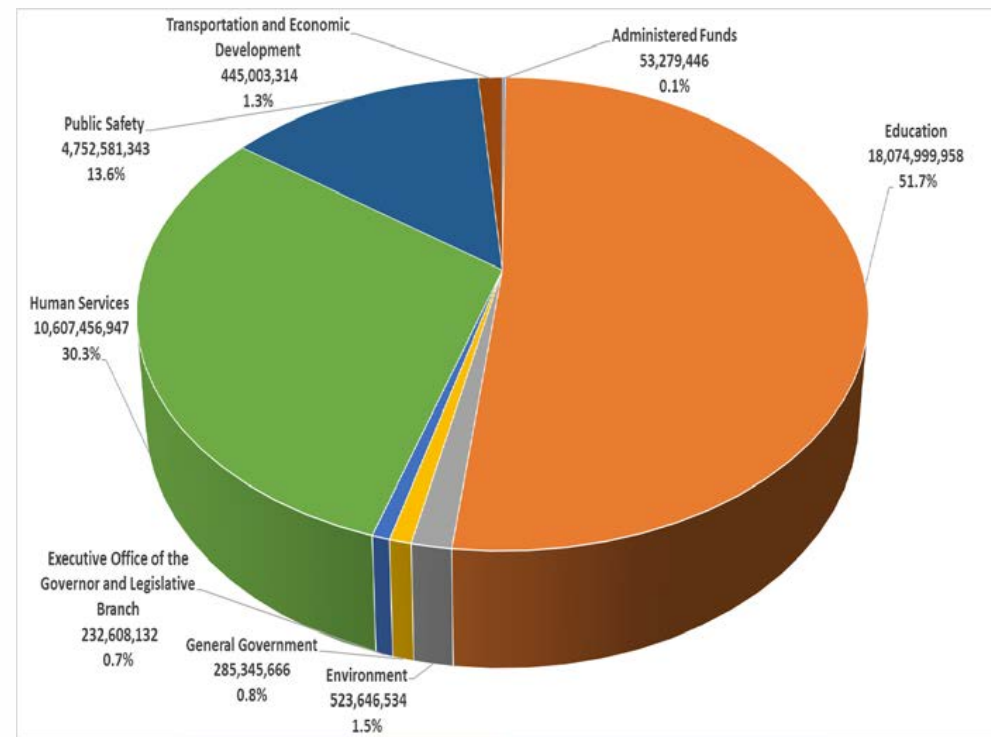


Governor's Recommended Budget Fiscal Year 2020-21

Total Budget
\$91.4 Billion



General Revenue
\$35.0 Billion



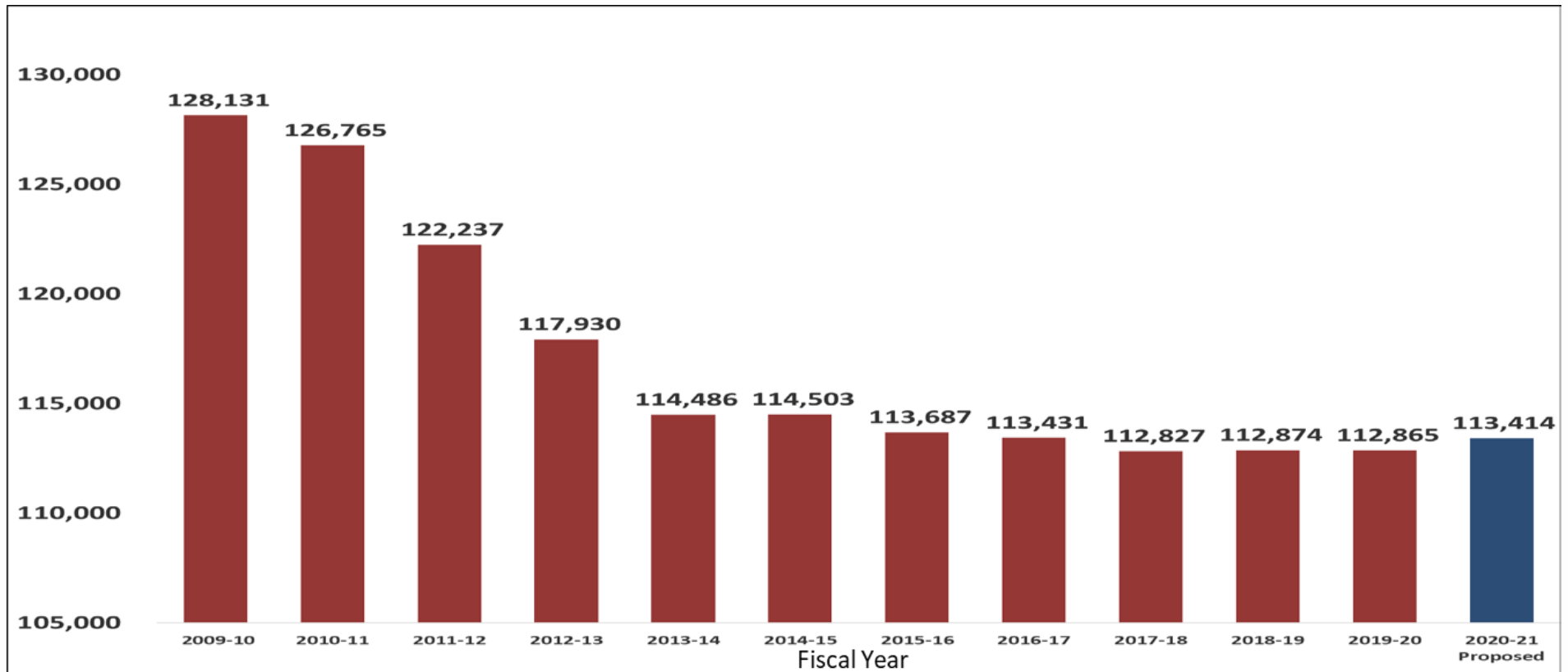
Health and Human Services represents the largest portion of the total budget and Education represents the largest portion of the General Revenue budget.



Governor's Recommended Budget

Number of Positions

Fiscal Year 2020-21

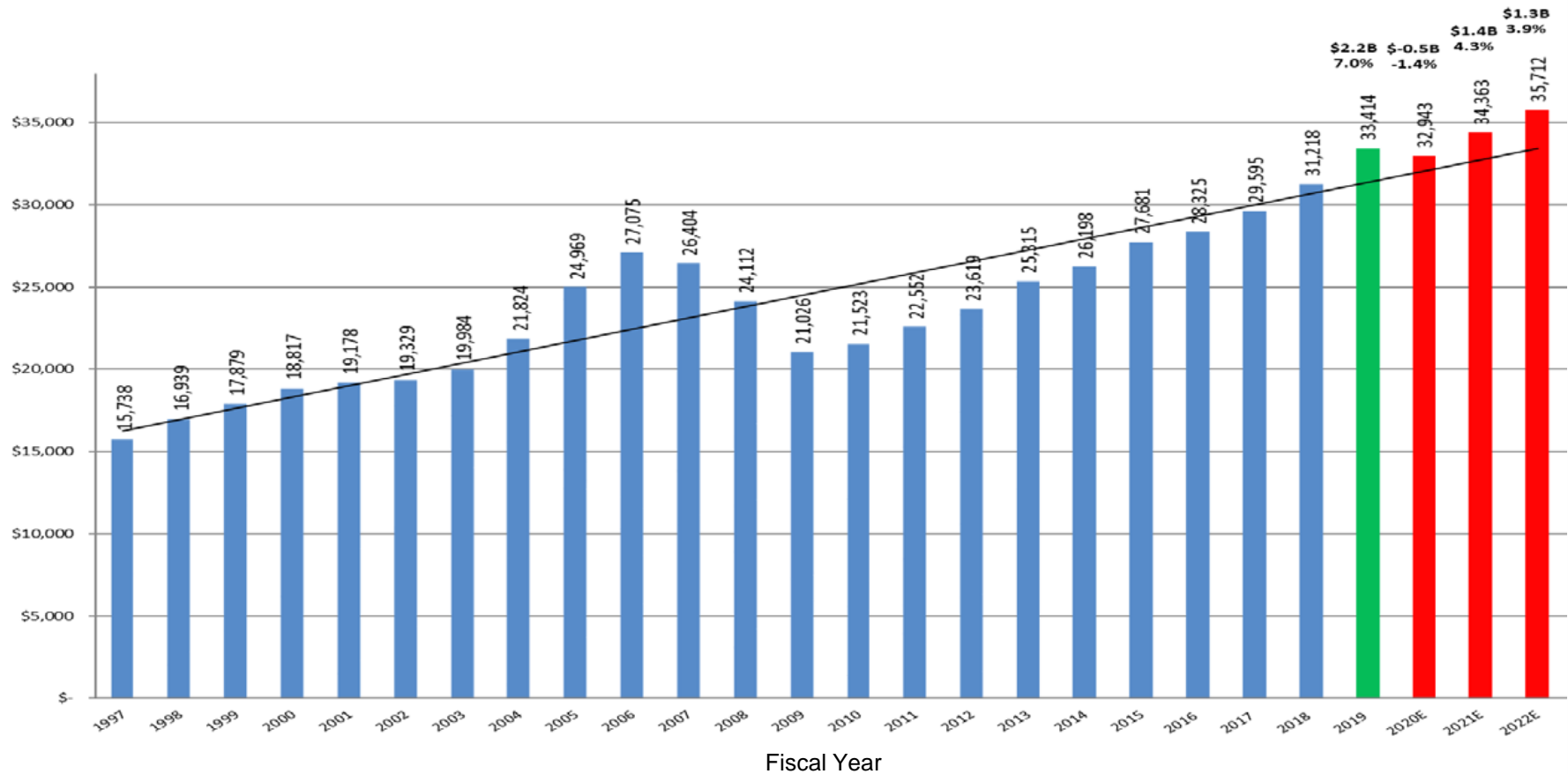


The proposed FY 2021 authorized positions totaling 113,414 are 549 or 0.5% above FY 2020.



Governor's Recommended Budget

August 2019 General Revenue Estimate



General Revenue funds available for FY 2020-21 increased by \$1.4 billion or 4.3% from the previous year.



General Revenue

Fiscal Year 2020-21

#	(\$ in millions)	Recurring	Non-Recurring	Total
1	<i>Balance Forward From FY 2018-19</i>		1,576.5	1,576.5
2	<i>Estimated Revenues - August 14, 2019</i>	35,093.3	(607.6)	34,485.7
3	<i>Total Revenue Estimate</i>	35,093.3	968.9	36,062.2
4	<i>Base Budget</i>	32,914.0	0.0	32,914.0
5	<i>Available Revenues (after Funding Base Budget)</i>	2,179.3	968.9	3,148.2
6	<i>Less Adjustments:</i>			
7	Current Year Adjustments		99.1	99.1
8	Sales Tax Holidays		(50.0)	(50.0)
9	Net Hurricane Expenditures & Reimbursements		291.5	291.5
10	Trust Fund Sweeps		75.4	75.4
11	Transfer to Budget Stabilization Funds		(100.0)	(100.0)
12	Education Adjust Recurring & Nonrecurring	(180.6)	180.6	0.0
13	<i>Total Revenue Available after Adjustments</i>	1,998.7	1,465.5	3,464.2
14	<i>Appropriations Over Base Budget</i>			
15	Education	565.5	(21.3)	544.2
16	Environment	280.5	90.0	370.5
17	Transportation & Economic Development	12.6	356.5	369.1
18	Health and Human Services	384.8	83.6	468.4
19	Public Safety	177.7	56.6	234.3
20	General Government	(4.3)	46.6	42.3
21	Statewide Issues	32.2	0.0	32.2
22	<i>Total Appropriations Over Base Budget</i>	1,449.0	612.0	2,061.0
23	<i>General Revenue Balance</i>	549.8	853.5	1,403.3

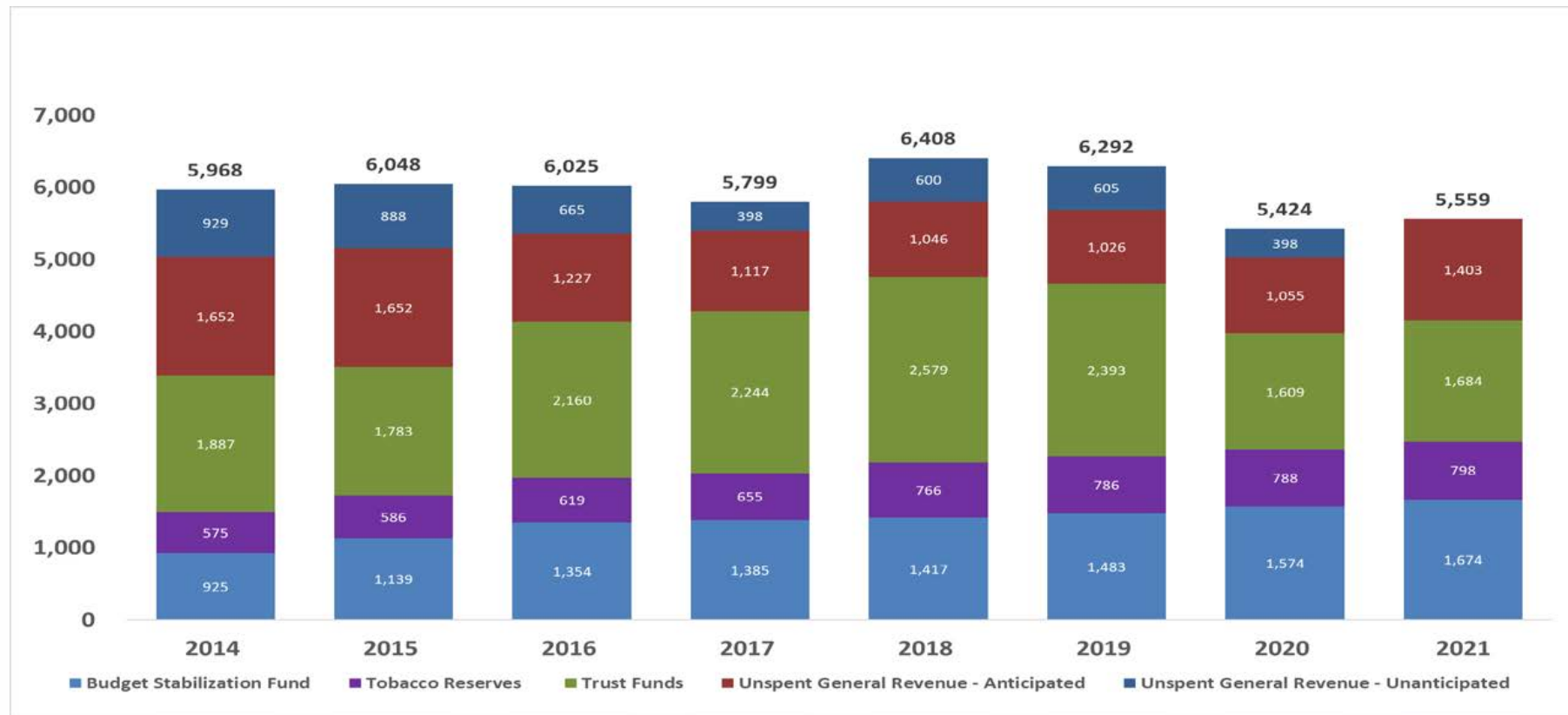
The proposed FY 2021 General Revenue outlook anticipates \$1.4 billion for reserves.



Actual and Anticipated Reserves

Fiscal Year 2020-21

\$ in Millions



The proposed FY 2021 reserves are \$5.56 billion or 6% of the total proposed budget of \$91.4 billion.



Proposed Reductions

Fiscal Year 2020-21

#	Reduction	Positions	General Revenue	Trust Fund	Total
1	Administrative and Operational Efficiencies	(141)	(3,957,103)	(20,316,866)	(24,273,969)
2	Elimination of Earmarks		(84,737,598)	(100,000)	(84,837,598)
3	Elimination of Best and Brightest Teacher and Principal Program		(284,500,000)	0	(284,500,000)
4	Debt Service Reduction		0	(54,616,108)	(54,616,108)
5	Workload Adjustments		(6,022,094)	0	(6,022,094)
6	Contract and Lease Savings		(229,468)	(19,365,962)	(19,595,430)
7	Subtotal	(141)	(379,446,263)	(94,398,936)	(473,845,199)
8	Unfunded Budget		0	(6,691,044)	(6,691,044)
	Grand Total	(141)	(379,446,263)	(101,089,980)	(480,536,243)

The proposed FY 2021 reductions are \$480.5 million, including \$379.4 million in General Revenue reductions.



Tax Relief

Fiscal Year 2020-21

Measure	Amount
8-Day Back to School Sales Tax Holiday on clothing up to \$60, school supplies up to \$15, and computers up to \$1,000	\$(56.1) million
10-Day Disaster Preparedness Sales Tax Holiday on items needed during disasters including generators up to \$750	\$(8.6) million
Property Tax Reduction for Education Required Local Effort	\$(247.3) million
Total Tax Relief	\$(312.0) million



Building a High Quality Education System

Increase of \$1 Billion in the FEFP

Florida Education Finance Program (FEFP)	Amount \$22.9 Billion
K-12 Public Schools – State Funding Increase	\$792.3 million
K-12 Public Schools – Local Funding Increase	\$245 million
K-12 Public Schools – Per-Student Funding Increase	\$302.46 to \$7,979
K-12 Public Schools – Base Student Allocation Increase	\$50 per student
FEFP – Teacher Compensation – Raising the Minimum Salary to \$47,500	\$602 million
FEFP – Teacher and Principal Bonuses	\$300 million
FEFP – Safe Schools Allocation Increase	\$1.4 million to \$181.4 million
FEFP – Mental Health Allocation Increase	\$25 million to \$100 million



Building a High Quality Education System

Major Issues Funded	Amount
Gardiner Scholarships	\$24.9 million to \$172.8 million
Promoting Computer Science	\$10 million
Pathways to Career Opportunities Grant	\$10 million
Student Success Incentive Funds – Includes the Following Four Initiatives	Total Funding of \$45 million
<i>Work Florida Student Success– School Districts</i>	<i>\$5 million</i>
<i>Work Florida Student Success– Colleges</i>	<i>\$10 million</i>
<i>2 + 2 Student Success - Colleges</i>	<i>\$20 million</i>
<i>Dual Enrollment - Colleges</i>	<i>\$10 million</i>
Last Mile College Completion	\$1.5 million
Performance Funding:	
K-12 Workforce Programs	\$6.5 million
College Workforce Programs	\$14 million
State Universities	\$50 million to \$660 million



Building a High Quality Education System

Education Capital Outlay	Amount
Education Infrastructure – Total	\$502.5 million
Safe School Hardening Grants for K-12 Schools	\$75 million
Public School Maintenance	\$50 million
Charter School Maintenance	\$173.9 million
Special Facility Construction	\$41.3 million
State College Maintenance	\$37.2 million
State University Maintenance	\$49.3 million



Protecting Water Resources

Governor DeSantis called for a \$2.5 billion investment in Everglades Restoration and protection of water resources over four years

Budget Includes More Than \$625 Million Recurring for the Protection of Florida's Water Resources

Major Issues Funded	Amount
Everglades Restoration	\$322 million
Targeted Water Quality Improvements	\$200 million
Alternative Water Supply Grant Program	\$40 million
Springs Restoration	\$50 million
Innovative Solutions to Algae	\$10 million
Water Quality Enhancement & Accountability	\$11 million
FWC Center for Red Tide Research	\$2 million



Environment

Protecting Resources

Major Issues Funded	Amount
Florida Forever	\$100 million
State Park Enhancements	\$54 million
Beach Projects	\$50 million
Coral Reef Protection	\$9 million
Cleanup of Contaminated Sites	\$150 million
Citrus Protection and Research	\$20 million
Increased Python Removal Efforts	\$1 million

The Governor's recommended budget fully complies with Amendment 1 by including over \$1 billion for land and water programs funded from documentary stamp tax revenues.

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Transportation and Economic Development

Major Issues Funded	Amount
State Match for Federally Declared Disasters (Total \$1.6 billion)	\$195 million
Hurricane Michael Recovery Grant Program	\$25 million
Florida Job Growth Grant Fund	\$50 million
VISIT Florida	\$50 million
State Transportation Work Program	\$8.8 billion
Election Oversight Activities	\$6.6 million
Affordable Housing Programs	\$387 million



Health and Human Services

Major Issues Funded	Amount
Child Welfare	\$97.6 million
Opioid Epidemic	\$54.9 million
Supporting Individuals on the Home and Community Based Services Waitlist	\$56.6 million
Guardianship Services	\$6.5 million
Operations of Two New State Veteran Nursing Homes	\$18.3 million



Public Safety

Major Issues Funded	Amount
Staff Retention for Correctional Employees	\$89.7 million
Safer Correctional Facilities	\$6.7 million
Reentry Programming at Corrections	\$9.3 million
Special Risk for Juvenile Detention Officers	\$6.2 million
Residential Services for At-Risk Youth	\$4.8 million
Florida's Law Enforcement Crime Databases	\$14.5 million
Law Enforcement Threat Assessment Strategy	\$8.3 million



Office of Policy and Budget

**Chris Spencer
Policy Director**

**Chris.Spencer@laspbs.state.fl.us
850-717-9550**



THE FLORIDA SENATE

APPEARANCE RECORD

1/16/2020

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

Meeting Date

Bill Number (if applicable)

Topic Governor's Budget Recommendations

Amendment Barcode (if applicable)

Name Chris Spencer

Job Title Director of Policy

Address 400 S. Monroe Street

Phone _____

Street

Tallahassee

FL

State

32399

Zip

Email _____

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Governor DeSantis

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

JAN 16 2020

Meeting Date

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

Bill Number (if applicable)

Topic FISCAL YEAR

Amendment Barcode (if applicable)

Name SEX AND BUDS CLAY COUNTY FL HOTELS

Job Title OWNER

Address 2904-2910 HWY 27

Phone 904.415.3221

Street

MIDDLEBURGH

FL. 32068

City

State

Zip

Email SEXBUDS1@GMAIL.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SEX TOYS OF CLAY COUNTY FL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: PCS/CS/SB 346 (776730)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Criminal Justice Committee; and Senators Bradley, Brandes, Perry, and others

SUBJECT: Criminal Justice

DATE: January 15, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson/Cellon	Jones	CJ	Fav/CS
2.	Dale	Jameson	ACJ	Recommend: Fav/CS
3.	Dale	Kynoch	AP	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 346 provides that a person who possesses, purchases, or possesses with the intent to purchase less than two grams of a controlled substance, other than fentanyl and related analogs, derivatives, and mixtures, may not be imprisoned for a term longer than 12 months.

The bill also authorizes a court to depart from the mandatory minimum term of imprisonment and the mandatory fine for a drug trafficking offense that does not carry a 25-year mandatory minimum term, if the court finds certain circumstances (specified in the bill) exist.

The bill also requires a custodial interrogation relating to a covered offense (specified in the bill) that is conducted at a place of detention be electronically recorded in its entirety. If the custodial interrogation at the place of detention is not electronically recorded by the law enforcement officer, he or she must prepare a written report explaining the reason for not recording it. The bill provides exceptions to the general recording requirement. The bill further provides:

- If a custodial interrogation is not recorded and no exception applies, a court must consider “the circumstances of an interrogation” in its analysis of whether to admit into evidence a statement made at the interrogation;
- If the court decides to admit a statement made during a custodial interrogation that was not electronically recorded, the defendant may require the court to give a cautionary jury instruction regarding the officer’s failure to comply with the recording requirement;

- If a law enforcement agency “has enforced rules” adopted pursuant to the bill which are reasonably designed to comply with the bill’s requirements, the agency is not subject to civil liability for damages arising from a violation of the bill’s requirements; and
- Requirements relating to electronic recording of a custodial interrogation do not create a cause of action against a law enforcement officer.

The bill also eliminates ineligibility for compensation for wrongfully incarcerated persons who had a violent felony or more than one nonviolent felony before their wrongful conviction and incarceration. However, the bill does not change ineligibility status for persons who: commit a violent felony or multiple nonviolent felonies during their wrongful incarceration; are serving a concurrent prison sentence; or have served the incarcerative part of their sentence and commit a violent felony or multiple nonviolent felonies resulting in revocation of parole or community supervision.

The bill also extends the time for a person who was wrongfully incarcerated to file a petition with the court for a determination of eligibility for compensation. The person will have two years rather than the current 90 days to file the petition. Further, persons who missed the 90-day deadline or who had claims dismissed because of this deadline may file the petition with the court within two years from the bill’s effective date.

The Legislature’s Office of Economic and Demographic Research preliminarily estimates that the bill has a “negative significant” prison bed impact (a decrease of more than 25 prison beds).

Under the bill, more persons are potentially eligible for compensation for wrongful incarceration. Currently, a person who is entitled to compensation based on wrongful incarceration would be paid at the rate of \$50,000 per year of wrongful incarceration up to a limit of \$2 million. Payment is made from an annuity or annuities purchased by the Chief Financial Officer for the benefit of the wrongfully incarcerated person. The Victims of Wrongful Incarceration Compensation Act is funded through a continuing appropriation pursuant to section 961.07, Florida Statutes. The fiscal impact of this provision is indeterminate.

The drug purchase and possession provision of the bill may have an indeterminate county jail bed impact, and the bill’s requirements relating to electronically recording custodial interrogations may have an indeterminate fiscal impact on law enforcement agencies.

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

II. Present Situation:

Florida’s Controlled Substance Schedules

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

Purchase or Possession of a Controlled Substance

Section 893.13, F.S., in part, punishes unlawful purchase and possession of a controlled substance.² The penalty for violating s. 893.13, F.S., depends on the unlawful act committed and the substance involved and, in some instances, the quantity of the substance involved and the location in which the unlawful act occurred.

Purchase or possession with intent to purchase a controlled substance is generally punishable as a first degree misdemeanor,³ third degree felony,⁴ or second degree felony,⁵ depending upon the schedule of the controlled substance purchased or possessed with intent to purchase.⁶ However, purchase or possession with intent to purchase more than 10 grams of certain Schedule I controlled substances is a first degree felony.⁷

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

² Section 893.13(1)(a),(c)-(f) and (h), (2)(a) and (b), and (6)(a)-(d), F.S.

³ 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 A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

⁵ A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

⁶ Section 893.13(2)(a), F.S.

⁷ Section 893.13(2)(b), 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.

“Simple possession” of a controlled substance has been described as “possession of less than a trafficking amount without intent to sell, manufacture or deliver[.]”⁸ Generally, simple possession of a controlled substance is a third degree felony.⁹ However, simple possession of 20 grams or less of cannabis is a first degree misdemeanor,¹⁰ simple possession of a Schedule V controlled substance is a second degree misdemeanor,¹¹ and simple possession of more than 10 grams of certain Schedule I controlled substances is a first degree felony.¹²

Possession with intent to sell, manufacture, or deliver a controlled substance is generally punishable as a first degree misdemeanor, third degree felony, or second degree felony, depending upon the schedule of the controlled substance possessed.¹³ However, punishment is enhanced when the possession occurs within 1,000 feet of certain locations or facilities.¹⁴ For example, possession with intent to sell cannabis is generally a third degree felony¹⁵ but a second degree felony when the possession occurs within 1,000 feet of the real property of a K-12 school.¹⁶

Drug Trafficking

Drug trafficking, which is punished in s. 893.135, F.S., consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state (importation), or knowingly being in actual or constructive possession of, certain Schedule I or Schedule II controlled substances in a statutorily-specified quantity. The statute only applies to a limited number of such controlled substances, and the controlled substances involved in the trafficking must meet a specified weight or quantity threshold.

Most drug trafficking offenses are first degree felonies and are subject to a mandatory minimum term of imprisonment and a mandatory fine,¹⁷ which is determined by the weight or quantity of the substance.¹⁸ For example, trafficking in 28 grams or more, but less than 200 grams, of cocaine, a first degree felony, is punishable by a 3-year mandatory minimum term of imprisonment and a mandatory fine of \$50,000.¹⁹ Trafficking in 200 grams or more, but less than 400 grams, of cocaine, a first degree felony, is punishable by a 7-year mandatory minimum term of imprisonment and a mandatory fine of \$100,000.²⁰

⁸ *Tyler v. State*, 107 So.3d 547, 549 (Fla. 1st DCA 2013), *rev. den.*, 130 So.3d 1278 (Fla. 2013).

⁹ Section 893.13(6)(a), F.S.

¹⁰ Section 893.13(6)(b), F.S.

¹¹ 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.

¹² Section 893.13(6)(c), F.S.

¹³ Section 893.13(1)(a), F.S.

¹⁴ Section 893.13(1)(c)-(f) and (h), F.S.

¹⁵ Section 893.13(1)(a)2., F.S.

¹⁶ Section 893.13(1)(c)2., F.S.

¹⁷ Section 893.135, F.S., provides for mandatory fines that are greater than the maximum \$10,000 fine prescribed in s. 775.083, F.S., for a first degree felony. However, s. 775.083, F.S., which relates to fines, authorizes any higher amount if specifically authorized by statute.

¹⁸ *See* s. 893.135, F.S.

¹⁹ Section 893.135(1)(b)1.a., F.S.

²⁰ Section 893.135(1)(b)1.b., F.S.

Criminal Punishment Code

The Criminal Punishment Code²¹ (Code) is Florida's primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (levels 1-10).²² 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 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.²³ Absent mitigation,²⁴ 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.²⁵

Mandatory Minimum Sentences

Mandatory minimum terms of imprisonment limit judicial discretion in Code sentencing: "If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence. If the lowest permissible sentence exceeds the mandatory sentence, the requirements of the Criminal Punishment Code and any mandatory minimum penalties apply."²⁶ As previously noted, the sentencing range under the Code is generally the scored lowest permissible sentence up to and including the statutory maximum penalty. However, if there is a mandatory minimum sentence that is longer than the scored lowest permissible sentence, the sentencing range is narrowed to the mandatory minimum sentence up to and including the statutory maximum penalty.

With few exceptions (e.g., youthful offender sentencing²⁷ or a reduced or suspended sentence for substantial assistance rendered²⁸), courts must impose the mandatory minimum term of imprisonment applicable to the drug trafficking offense committed.²⁹

²¹ 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.

²² Offenses are ranked either in the offense severity level ranking chart in s. 921.0022, F.S., or by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

²³ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

²⁴ The court may "mitigate" or "depart downward" from the scored lowest permissible sentence, if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

²⁵ 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.

²⁶ Fla. R. Crim. P. 3.704(d)(26).

²⁷ Section 958.04, F.S. See *Gallimore v. State*, 100 So.3d 1264, 1266-1267 (Fla. 4th DCA 2012).

²⁸ Section 893.135(4) and 921.186, F.S. See *State v. Agerton*, 523 So.2d 1241, 1243 (Fla. 5th DCA 1988), *rev. den.*, 531 So.2d 1352 (Fla. 1988), and *McFadden v. State*, 177 So.3d 562, 566-567 (Fla. 2015). The court cannot *sua sponte* reduce or suspend the sentence because the decision to suspend or reduce a sentence is based upon a motion from the state attorney. The court is not mandated to reduce or suspend a sentence upon a showing of substantial assistance.

²⁹ Mandatory minimum terms under s. 893.135, F.S., do not apply to attempted drug trafficking. *Suarez v. State*, 635 So.2d 154, 155 (Fla. 2d DCA 1994).

State Prison Sentence

Under the Code, any sentence to state prison must exceed one year.³⁰ Notwithstanding s. 948.03, F.S. (terms and conditions of probation), only those persons who are convicted and sentenced in circuit court to a cumulative sentence of incarceration for one year or more, whether the sentence is imposed in the same or separate circuits, may be received by the Department of Corrections into the state correctional system.³¹

Custodial Interrogation

Constitutional Protections and Court Decisions Interpreting and Applying Those Protections

The Fifth Amendment of the United States Constitution states that “[n]o person . . . shall be compelled in any criminal case to be a witness against himself.”³² Similarly, the Florida Constitution extends the same protection.³³

Custodial Interrogation Legal Requirements

Whether a person is in custody and under interrogation is the threshold question that determines the need for a law enforcement officer to advise the person of his or her *Miranda* rights.³⁴ In *Traylor v. State*, the Florida Supreme Court found that “to ensure the voluntariness of confessions, the Self-Incrimination Clause of Article I, Section 9, Florida Constitution, requires that prior to custodial interrogation in Florida suspects must be told that they have a right to remain silent, that anything they say will be used against them in court....”³⁵

The test to determine if a person is in custody for the purposes of his or her *Miranda* rights is whether “a reasonable person placed in the same position would believe that his or her freedom of action was curtailed to a degree associated with actual arrest.”³⁶

An interrogation occurs “when a person is subjected to express questions, or other words or actions, by a state agent that a reasonable person would conclude are designed to lead to an incriminating response.”³⁷

Waiver of the Right to Remain Silent

A person subjected to a custodial interrogation is entitled to the protections of *Miranda*.³⁸ The warning must include the right to remain silent as well as the explanation that anything a person

³⁰ Section 921.0024(2), F.S.

³¹ Section 944.17(3)(a), F.S.

³² U.S. Const. amend. V.

³³ “No person shall be . . . compelled in any criminal matter to be a witness against himself.” FLA. CONST. article I, s. 9.

³⁴ In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Court established procedural safeguards to ensure the voluntariness of statements rendered during custodial interrogation.

³⁵ 596 So.2d 957, 965-966 (Fla. 1992).

³⁶ *Id.* at 966 n. 16.

³⁷ *Id.* at 966 n. 17.

³⁸ See *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

says can be used against them in court. The warning includes both parts because it is important for a person to be aware of his or her right and the consequences of waving such a right.³⁹

Admissibility of a Defendant's Statement as Evidence

The admissibility of a defendant's statement is a mixed question of fact and law decided by the court during a pretrial hearing or during the trial outside the presence of the jury.⁴⁰ For a defendant's statement to become evidence in a criminal case, the judge must first determine whether the statement was freely and voluntarily given to a law enforcement officer during the custodial interrogation of the defendant. The court looks to the totality of the circumstances of the statement to determine if it was voluntarily given.⁴¹

The court can consider testimony from the defendant and any law enforcement officers involved, their reports, and any additional evidence such as audio or video recordings of the custodial interrogation.

As previously discussed, the courts use a "reasonable person" standard in making the determination of whether the defendant was in custody at the time he or she made a statement.⁴² The court considers, given the totality of the circumstances, whether a reasonable person in the defendant's position would have believed he or she was free to terminate the encounter with law enforcement and, therefore, was not in custody.⁴³ Among the circumstances or factors the courts have considered are:

- The manner in which the police summon the suspect for questioning;
- The purpose, place, and manner of the interrogation;
- The extent to which the suspect is confronted with evidence of his or her guilt; and
- Whether the suspect is informed that he or she is free to leave the place of questioning.⁴⁴

The court will also determine whether the defendant was made aware of his or her *Miranda* rights and whether he or she knowingly, voluntarily, and intelligently elected to waive those rights and give a statement.⁴⁵

Even if the court deems the statement admissible and the jury hears the evidence, defense counsel will be able to cross-examine any witnesses who testify and have knowledge of the circumstances surrounding the defendant's statement. Additionally, counsel may argue to the jury in closing argument that the statement was coerced in some way by a law enforcement officer.

³⁹ *Sliney v. State*, 699 So.2d 662, 669 (Fla. 1997), *cert. den.*, 522 U.S. 1129 (1998).

⁴⁰ *Nickels v. State*, 90 Fla. 659, 668 (Fla. 1925).

⁴¹ *Supra* n. 39 at 667.

⁴² *Supra* n. 36.

⁴³ *Voorhees v. State*, 699 So.2d 602, 608 (Fla. 1997).

⁴⁴ *Ramirez v. State*, 739 So.2d 568, 574 (Fla. 1999).

⁴⁵ *Supra* n. 36 at 668.

Interrogation Recording in Florida

Currently, 26 states and the District of Columbia record custodial interrogations statewide.⁴⁶ These states have statutes, court rules, or court cases that require law enforcement to make the recordings or allow the court to consider the failure to record a statement in determining the admissibility of a statement.⁴⁷ Although Florida is not one of these states, 58 Florida law enforcement agencies have been identified as recording custodial interrogations, voluntarily, at least to some extent.⁴⁸

Wrongful Incarceration Compensation Eligibility

The Victims of Wrongful Incarceration Compensation Act (the Act) has been in effect since July 1, 2008.⁴⁹ The Act provides a process whereby a person may petition the original sentencing court for an order finding the petitioner to be a wrongfully incarcerated person who is eligible for compensation from the state.

The Department of Legal Affairs administers the eligible person's application process and verifies the validity of the claim.⁵⁰ The Chief Financial Officer arranges for payment of the claim by securing an annuity or annuities payable to the claimant over at least 10 years, calculated at a rate of \$50,000 for each year of wrongful incarceration up to a total of \$2 million.⁵¹ To date, four persons have been compensated under the Act for a total of \$4,276,901.⁵²

⁴⁶ *Compendium: Electronic Recording of Custodial Interrogations*, Thomas P. Sullivan, January 2019, National Association of Criminal Defense Lawyers, p. 7, available at <https://www.nacdl.org/getattachment/581455af-11b2-4632-b584-ab2213d0a2c2/custodial-interrogations-compendium-january-2019-.pdf> (last visited November 5, 2019).

⁴⁷ See *Stephan v. State*, 711 P.2d 1156 (AK 1985); Ark. R. Crim. P. 4.7 (2012); Cal. Pen. Code s. 859.5 and Cal. Wel. & Inst. Code s. 626.8 (2013); CO. Rev. Stat. 16-3-601 (2016); CT Gen. Stat. s. 54-1o (2011); D.C. Code ss. 5-116.01 and 5-116.03 (2006); Hawaii was verified by the four departments that govern law enforcement in the state; 705 IL Comp. Stat. Ann. 405/5-401.5; 725 ICOSA 5/103-2.1 (2003, 2005, 2013); Ind. R. Evid. 617 (2009); Kan. Stat. s. 22-4620 (2017); 25 ME Rev. Stat. Ann. s. 2803-B(1)(K) (2007); MD Code Ann., Crim. Proc. ss. 2-402 and 2-403 (2008); MI Comp. Laws ss. 763.7 – 763.11 (2012); *State v. Scales*, 518 N.W.2d 587 (MN 1994); MO Rev. Stat. ss. 590.700 and 700.1 (2009 and 2015); MT Code Ann. ss. 46-4-406 – 46-4-410 (2009); NE Rev. Stat. Ann. ss. 29-4501 – 29-4508 (2008); NJ Court Rules, R. 3:17 (2005); NM Stat. Ann. s. 29-1-16 (2006); NC Gen. Stat. s. 15A-211 (2007, 2011); N.Y. Crim. Proc. Law s. 60.45 (McKinney 2018); OR Rev. Stat. s. 133.400 (2010); RI PAC, Accreditation Standards Manual, s. 8.10 (2013); Tex. Crim. Proc. Code ss. 2.32 and 38.22; Tex. Fam. Code s. 51.095; Utah R. Evid. Rule 616 (2015); 13 V.S.A. s. 5585 (2014); *State v. Jerrell*, 699 N.W.2d 110 (WI 2005); and WI Stat. ss. 968.073 and 972.115 (2005). See also *supra* n. 46 at p. 8.

⁴⁸ *Supra* n. 46 at pp. 40-41.

⁴⁹ Chapter 961, F.S. (ch. 2008-39, L.O.F.). To date, four persons have been compensated under the Act. E-mail and documentation received from the Office of the Attorney General, October 16, 2019 (on file with the Senate Committee on Criminal Justice).

⁵⁰ Section 961.05, F.S.

⁵¹ Additionally, the wrongfully incarcerated person is entitled to: waiver of tuition and fees for up to 120 hours of instruction at any career center established under s. 1001.44, F.S., any state college as defined in s. 1000.21(3), F.S., or any state university as defined in s. 1000.21(6), F.S., if the wrongfully incarcerated person meets certain requirements; the amount of any fine, penalty, or court costs imposed and paid by the wrongfully incarcerated person; the amount of any reasonable attorney's fees and expenses incurred and paid by the wrongfully incarcerated person in connection with all criminal proceedings and appeals regarding the wrongful conviction; and notwithstanding any provision to the contrary in s. 943.0583, F.S., or s. 943.0585, F.S., and immediate administrative expunction of the person's criminal record resulting from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. Section 961.06, F.S.

⁵² E-mail and documentation received from the Office of the Attorney General, October 16, 2019 (on file with the Senate Committee on Criminal Justice).

In cases where sufficient evidence of actual innocence exists, a person is nonetheless *ineligible* for compensation if:

- *Before* the person's wrongful conviction and incarceration the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication *any single violent felony*, or *more than one nonviolent felony*, or a crime or crimes committed in another jurisdiction the elements of which would constitute a felony in this state, or a crime committed against the United States which is designated a felony, excluding any delinquency disposition;
- *During* the person's wrongful incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, *any violent felony offense* or *more than one nonviolent felony*; or
- *During* the person's wrongful incarceration, the person was also serving a *concurrent sentence for another felony* for which the person was not wrongfully convicted.⁵³

A person could be wrongfully incarcerated for a crime and then placed on parole or community supervision for that crime after the incarcerative part of the sentence is served.⁵⁴ Section 961.06(2), F.S., addresses this situation in terms of eligibility for compensation for the period of wrongful incarceration. Under this provision, if a person commits a misdemeanor, no more than one nonviolent felony, or some technical violation of his or her supervision that results in the revocation of parole or community supervision, the person is still eligible for compensation. If, however, any single violent felony law violation or multiple nonviolent felony law violations result in revocation, the person is ineligible for compensation.⁵⁵

The term "violent felony" is defined in s. 961.02(6), F.S., by cross-referencing felonies listed in s. 775.084(1)(c)1. or s. 948.06(8)(c), F.S. The combined list of those violent felony offenses includes attempts to commit the crimes as well as offenses committed in other jurisdictions if the elements of the crimes are substantially similar. The violent felonies referenced in s. 961.02(6), F.S., are:

- Kidnapping;
- False imprisonment of a child;
- Luring or enticing a child;
- Murder;
- Manslaughter;
- Aggravated manslaughter of a child;
- Aggravated manslaughter of an elderly person or disabled adult;
- Robbery;
- Carjacking;
- Home invasion robbery;
- Sexual Battery;
- Aggravated battery;

⁵³ Section 961.04, F.S.

⁵⁴ Persons are not eligible for parole in Florida unless they were sentenced prior to the effective date of the sentencing guidelines, which was October 1, 1983, and only then if they meet the statutory criteria. Chapter 82-171, L.O.F., and s. 947.16, F.S. The term "community supervision" as used in s. 961.06(2), F.S., could include control release, conditional medical release, or conditional release under the authority of the Florida Commission on Offender Review (ch. 947, F.S.), or community control or probation under the supervision of the Department of Corrections (ch. 948, F.S.).

⁵⁵ Section 961.06(2), F.S.

- Armed burglary and other burglary offenses that are first or second degree felonies;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Arson;
- Aggravated assault;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Treason;
- Aggravated stalking;
- Aircraft piracy;
- Abuse of a dead human body;
- Poisoning food or water;
- Lewd or lascivious battery, molestation, conduct, exhibition, or exhibition on computer;
- Lewd or lascivious offense upon or in the presence of an elderly or disabled person;
- Sexual performance by a child;
- Computer pornography;
- Transmission of child pornography; and
- Selling or buying of minors.

III. Effect of Proposed Changes:

The bill reduces the punishment for possessing, purchasing, or possessing with the intent to purchase less than two grams of most controlled substances; authorizes a court to depart from most mandatory minimum terms of imprisonment and mandatory fines, if the court finds that specified circumstances exist; requires electronic recording of a custodial interrogation at a place of detention in connection with certain offenses; and revises the circumstances under which a wrongfully incarcerated person is eligible for compensation for wrongful incarceration. A detailed discussion of the bill is provided below.

Purchase or Possession of a Controlled Substance (Section 1)

Section 1 of the bill amends s. 893.13, F.S., which punishes various unlawful acts involving controlled substances, to provide that, notwithstanding any provision of s. 893.13, F.S., chapter 921, which includes the Criminal Punishment Code and the Offense Severity Ranking Chart, or any other law, a person who possesses, purchases, or possesses with the intent to purchase less than two grams of a controlled substance, other than fentanyl and related analogs, derivatives, and mixtures,⁵⁶ may not be imprisoned for a term longer than 12 months. This provision appears to preclude a state prison sentence, which must exceed one year.⁵⁷

⁵⁶ The bill references s. 893.135(1)(c)4.a.(I)-(VII), F.S., which lists the following substances and mixtures that are applicable to “trafficking in fentanyl”: alfentanil; carfentanil; fentanyl; sufentanil; a fentanyl derivative; a controlled substance analog of any of these substances; and a mixture containing any of these substances.

⁵⁷ See ss. 921.0024(2) and 944.17(3)(a), F.S.

Drug Trafficking Mandatory Minimum Terms of Imprisonment and Mandatory Fines (Sections 2 and 6)

Section 2 of the bill amends s. 893.135, F.S., which punishes drug trafficking, to provide that, notwithstanding any provision of this section, a court may impose a sentence for a violation of this section other than the mandatory term of imprisonment and the mandatory fine, if the court finds on the record that specified circumstances exist. However, this departure provision does not apply to a drug trafficking offense that carries a mandatory minimum term of imprisonment of 25 years.

The specified circumstances the court must find on the record include the following:

- The defendant has no prior conviction for a forcible felony as defined in s. 776.08, F.S.⁵⁸
- The defendant did not use violence or credible threats of violence, or possess a firearm or other dangerous weapon, or induce another participant to use violence or credible threats of violence, in connection with the offense.
- The offense did not result in the death of or serious bodily injury to any person.
- The defendant was not an organizer, leader, manager, or supervisor of others in the offense and was not engaged in a continuing criminal enterprise as defined in s. 893.20, F.S.⁵⁹
- At the time of the sentencing hearing or earlier, the defendant has truthfully provided to the state all information and evidence that he or she possesses concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan.
- The defendant has not previously benefited from the application of this departure provision.

Section 6 of the bill amends s. 893.03, F.S., to correct a cross-reference to s. 893.135, F.S.

Custodial Interrogation (Section 3)

The bill creates s. 900.06, F.S., which creates a statutory requirement, and exceptions to that requirement, that a law enforcement officer conducting a custodial interrogation must electronically record the interrogation in its entirety.

The bill provides the following definitions for terms used in the bill:

- “Custodial interrogation” means questioning or other conduct by a law enforcement officer which is reasonably likely to elicit an incriminating response from an individual and which occurs under circumstances in which a reasonable individual in the same circumstances would consider himself or herself to be in the custody of a law enforcement agency;
- “Electronic recording” means an audio recording or an audio and video recording that accurately records a custodial interrogation;
- “Covered offense” means any of the following criminal offenses:

⁵⁸ Section 776.08, F.S., defines a “forcible felony” as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

⁵⁹ Section 893.20(1), F.S., provides that any person who commits three or more felonies under ch. 893, F.S., in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management and who obtains substantial assets or resources from these acts is guilty of engaging in a continuing criminal enterprise.

- Arson.
- Sexual battery.
- Robbery.
- Kidnapping.
- Aggravated child abuse.
- Aggravated abuse of an elderly person or disabled adult.
- Aggravated assault with a deadly weapon.
- Murder.
- Manslaughter.
- Aggravated manslaughter of an elderly person or disabled adult.
- Aggravated manslaughter of a child.
- The unlawful throwing, placing, or discharging of a destructive device or bomb.
- Armed burglary.
- Aggravated battery.
- Aggravated stalking.
- Home-invasion robbery.
- Carjacking.
- “Place of detention” means a police station, sheriff’s office, correctional facility, prisoner holding facility, county detention facility, or other governmental facility where an individual may be held in connection with a criminal charge that has been or may be filed against the individual; and
- “Statement” means a communication that is oral, written, electronic, nonverbal, or in sign language.

The bill requires a custodial interrogation relating to a covered offense that is conducted at a place of detention be electronically recorded in its entirety. The recording must include:

- The giving of a required warning;
- The advisement of rights; and
- The waiver of rights by the individual being questioned.

If a custodial interrogation at a place of detention is not recorded by the law enforcement officer, he or she must prepare a written report explaining the reason for the noncompliance.

If a law enforcement officer conducts a custodial interrogation at a place other than a place of detention, the officer must prepare a written report as soon as practicable. The report must explain the circumstances of the interrogation in that place, and summarize the custodial interrogation process and the individual’s statements.

The general recording requirement does not apply under the following circumstances:

- If there is an unforeseen equipment malfunction that prevents recording the custodial interrogation in its entirety;
- If a suspect refuses to participate in a custodial interrogation if his or her statements are electronically recorded;
- Due to an equipment operator error that prevents the recording of the custodial interrogation in its entirety;

- If the statement is made spontaneously and not in response to a custodial interrogation question;
- If a statement is made during the processing of the arrest of a suspect;
- If the custodial interrogation occurs when the law enforcement officer participating in the interrogation does not have any knowledge of facts and circumstances that would lead an officer to reasonably believe that the individual being interrogated may have committed a covered offense;
- If the law enforcement officer conducting the custodial interrogation reasonably believes that electronic recording would jeopardize the safety of the officer, individual being interrogated, or others; or
- If the custodial interrogation is conducted outside of the state.

Unless a court finds that one or more of the enumerated exceptions applies, the court must consider the officer's failure to record all or part of the custodial interrogation as a factor in determining the admissibility of a defendant's statement made during the interrogation. If the court decides to admit the statement, the defendant may request and the court must give a cautionary jury instruction regarding the officer's failure to comply with the recording requirement.

Finally, if a law enforcement agency has enforced rules that are adopted pursuant to the bill and that are reasonably designed to comply with the bill's requirements, the agency is not subject to civil liability for damages arising from a violation of the bill's requirements. The bill does not create a cause of action against a law enforcement officer.

Wrongful Incarceration Compensation Eligibility (Sections 4, 5, 7, and 8)

Section 4 of the bill extends the time for a person who was wrongfully incarcerated to file the petition with the court for a determination of eligibility for compensation. The person will have two years rather than the current 90 days to file the petition. Further, persons who missed the 90-day deadline or who had claims dismissed because of this deadline may file the petition with the court within two years from the bill's effective date.

Section 5 of the bill amends s. 961.04, F.S., which relates to eligibility for compensation for wrongful incarceration, to eliminate ineligibility for compensation for wrongfully incarcerated persons who had a violent felony or more than one nonviolent felony before their wrongful conviction and incarceration. However, the bill does not change ineligibility status for persons who: commit a violent felony or multiple nonviolent felonies during their wrongful incarceration; are serving a concurrent prison sentence; or have served the incarcerative part of their sentence and commit a violent felony or multiple nonviolent felonies resulting in revocation of parole or community supervision.⁶⁰

Sections 7 and 8 of the bill reenact, respectively, ss. 961.02 and 961.03, F.S., which relate to eligibility for compensation of wrongfully incarcerated persons.

⁶⁰ See s. 961.06(2), F.S.

Effective Date (Section 9)

Section 9 of the bill provides that the bill takes effect July 1, 2020.

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

Section 1 of the bill provides that a person who purchases or possesses less than two grams of a controlled substance, other than fentanyl, may not be imprisoned for a term longer than 12 months. This section may have an indeterminate but positive county jail bed impact, if a state prison sanction is precluded. Further, Section 3 of the bill relating to electronic recording of custodial interrogations may result in indeterminate local fund expenditures for equipment, maintenance, and operation. However, these provisions relate to the defense, prosecution, or punishment of criminal offenses, and criminal laws are exempt from the requirements of Art. VII, s. 18(d) of the Florida Constitution, relating to unfunded mandates.

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:

It is possible that more persons will be eligible for compensation under the provisions of the bill. A person who is entitled to compensation under the Victims of Wrongful Incarceration Compensation Act will be paid at the rate of \$50,000 per year of wrongful incarceration up to a limit of \$2 million.⁶¹ Payment is made from an annuity or annuities

⁶¹ Section 961.06(1), F.S.

purchased by the Chief Financial Officer for the benefit of the wrongfully incarcerated person.⁶²

C. Government Sector Impact:

Local Government Impact

The drug purchase and possession provision of the bill may have an indeterminate jail bed impact if defendants who might be sentenced to prison under current law are instead sentenced to jail under the provisions of the bill. The requirements of the bill relating to electronic recording of custodial interrogation may have an indeterminate fiscal impact on local law enforcement agencies if agencies determine that expenditures to purchase recording equipment, retain recorded statements, and store electronic recordings are necessary to comply with the requirements of the bill relating to electronically recording custodial interrogations.

State Government Impact

Prison Bed Impact

The Criminal Justice Impact Conference, which provides the financial, official estimate of the prison bed impact, if any, of legislation has not yet reviewed the bill. However, the Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill has a "negative significant" prison bed impact (a decrease of more than 25 prison beds).⁶³ Regarding specific sections of the bill in which impact is noted, the EDR's preliminary estimate is that Section 1 of the bill, which reduces the punishment for purchasing or possessing less than two grams of a controlled substance excluding fentanyl, has a "negative significant" prison bed impact.⁶⁴ Section 2 of the bill, which authorizes a court to depart from most mandatory minimum terms of imprisonment and mandatory fines, if the court finds that specified circumstances exist, has a "negative indeterminate" prison bed impact (an unquantifiable decrease in prison beds).⁶⁵

Compensation for Wrongful Incarceration

More persons are potentially eligible for compensation for wrongful incarceration under provisions of the bill. A person who is entitled to compensation based on wrongful incarceration would be paid at the rate of \$50,000 per year of wrongful incarceration up to a limit of \$2 million. Payment is made from an annuity or annuities purchased by the Chief Financial Officer for the benefit of the wrongfully incarcerated person. The Victims of Wrongful Incarceration Compensation Act is funded through a continuing appropriation pursuant to s. 961.07, F.S.

Although statutory limits on compensation under the Act are clear, the fiscal impact of the bill is unquantifiable. The possibility that a person would be compensated for

⁶² Section 961.06(4), F.S.

⁶³ The EDR's preliminary estimate of SB 346 is on file with the Senate Committee on Criminal Justice.

⁶⁴ *Id.*

⁶⁵ *Id.*

wrongful incarceration is based upon variables that cannot be known, such as the number of wrongful incarcerations that currently exist or might exist in the future. Four successful claims since the Act became effective total \$4,276,901.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 893.03, 893.13, 893.135, and 961.04.

This bill creates section 900.06 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 961.02 and 961.03.

IX. Additional Information:

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

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on December 11, 2019:

The Committee Substitute clarifies that the downward departure to mandatory minimums contemplated by the bill takes precedence over ch. 921, F.S., which includes the Criminal Punishment Code and the Offense Severity Ranking Chart.

CS by Criminal Justice on November 12, 2019:

The Committee Substitute:

- Changes the subject of the bill from “controlled substances” to “criminal justice.”
- Provides that a person who possesses, purchases, or possesses with the intent to purchase less than two grams of a controlled substance, other than fentanyl and related analogs, derivatives, and mixtures, may not be imprisoned for a term longer than 12 months.
- Provides that a person who has been found to have been wrongfully incarcerated will have two years to file a petition with the court for a determination of eligibility for compensation rather than the current 90 days to file a petition.
- Provides that persons who missed the 90 day deadline or who had claims dismissed because of this deadline may file the petition with the court within two years from the bill’s effective date.

B. Amendments:

None.

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



442030

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/16/2020	.	
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	.	

The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 56 - 92
and insert:
purchases, or possesses with the intent to purchase under any of
the following circumstances may not be imprisoned for a term
longer than 12 months:
(a) Less than 2 grams of a controlled substance, other than
fentanyl or any substance or mixture described in s.
893.135(1)(c)4.a.(I)-(VII).



442030

(b) Twenty-five or fewer tablets, capsules, pills, transdermal patches, units of sublingual gelatin, or other visually distinctive forms, with a clear manufacturer marking on each unit, of a commercial drug product approved by the United States Food and Drug Administration and manufactured and distributed by a pharmaceutical company lawfully doing business in the United States.

Section 2. Present subsections (6) and (7) of section 893.135, Florida Statutes, are redesignated as subsections (7) and (8), respectively, and a new subsection (6) is added to that section, to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(6) Notwithstanding any provision of this section, a court may impose a sentence for a violation of this section other than the mandatory minimum term of imprisonment and mandatory fine if the court finds on the record that all of the following circumstances exist:

(a) The defendant has no prior conviction for a forcible felony as defined in s. 776.08.

(b) The defendant did not use violence or credible threats of violence, or possess a firearm or other dangerous weapon, or induce another participant to use violence or credible threats of violence, in connection with the offense.

(c) The offense did not result in the death of or serious bodily injury to any person.

(d) The defendant was not an organizer, leader, manager, or supervisor of others in the offense and was not engaged in a continuing criminal enterprise as defined in s. 893.20.



442030

(e) At the time of the sentencing hearing or earlier, the defendant has truthfully provided to the state all information and evidence that he or she possesses concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan.

(f) The defendant has not previously benefited from the application of this subsection.

A court may not apply this subsection to an offense under this section which carries a mandatory minimum term of imprisonment of 25 years, unless the offense is a violation of sub-subparagraph (1)(c)1.c., sub-subparagraph (1)(c)2.d., or sub-subparagraph (1)(c)3.d.

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:

Delete lines 6 - 11
and insert:
specified amount of a controlled substance or a
specified number of units or fewer of a commercial
drug product approved by the federal government and
manufactured and distributed by a pharmaceutical
company; providing exceptions; amending s. 893.135,
F.S.; authorizing a court to impose a sentence other
than a mandatory minimum term of imprisonment and
mandatory fine for a person convicted of trafficking
if the court makes certain findings on the record;
providing applicability; creating s. 900.06,



765794

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/20/2020	.	
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	.	

The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment

Delete lines 199 - 205
and insert:
against the person are dismissed or the person is retried and found not guilty, if the person's conviction was and sentence is vacated on or after July 1, 2008. A person may file a petition with the court within 2 years after July 1, 2020, if the person had a claim dismissed or did not file a claim because the date when the criminal charges against the person were dismissed or



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11 the person was acquitted upon retrial occurred more than 90 days
12 after the date when the order vacating the conviction or
13 sentence became final, and the state of the law before July 1,
14 2020, would have barred the claim or made the claim appear to be
15 futile.



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Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Criminal and Civil Justice)

A bill to be entitled

An act relating to criminal justice; amending s. 893.13, F.S.; prohibiting the imprisonment for longer than a certain time for persons who possess, purchase, or possess with the intent to purchase less than a specified amount of a controlled substance; providing exceptions; amending s. 893.135, F.S.; authorizing a court to impose a sentence other than a mandatory minimum term of imprisonment and mandatory fine for a person convicted of trafficking if the court makes certain findings on the record; creating s. 900.06, F.S.; defining terms and specifying covered offenses; requiring that a custodial interrogation conducted at a place of detention in connection with certain offenses be electronically recorded in its entirety; requiring law enforcement officers who do not comply with the electronic recording requirement or who conduct custodial interrogations at a location other than a place of detention to prepare a specified report; providing exceptions to the electronic recording requirement; requiring a court to consider a law enforcement officer's failure to comply with the electronic recording requirement in determining the admissibility of a statement, unless an exception applies; requiring a court, upon the request of a defendant, to give certain cautionary instructions to a jury under certain circumstances; providing immunity



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from civil liability to law enforcement agencies that enforce certain rules; providing that a cause of action is not created against a law enforcement officer; amending s. 961.03, F.S.; revising the circumstances under which a wrongfully incarcerated person must file a petition with the court to determine eligibility for compensation; authorizing certain persons to petition the court to determine eligibility for compensation within a specified timeframe; amending s. 961.04, F.S.; revising the circumstances under which a wrongfully incarcerated person is eligible for compensation; amending s. 893.03, F.S.; conforming a cross-reference; reenacting ss. 961.02(4) and 961.03(1)(a), (2), (3), and (4), F.S., all relating to eligibility for compensation for wrongfully incarcerated persons; providing an effective date.

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

Section 1. Present subsection (10) of section 893.13, Florida Statutes, is redesignated as subsection (11), and a new subsection (10) is added to that section, to read:

893.13 Prohibited acts; penalties.—

(10) Notwithstanding chapter 921, any provision of this section, or any other law relating to the punishment for possessing, purchasing, or possessing with the intent to purchase a controlled substance, a person who possesses, purchases, or possesses with the intent to purchase less than 2



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grams of a controlled substance, other than fentanyl or any substance or mixture described in s. 893.135(1)(c)4.a.(I)-(VII), may not be imprisoned for a term longer than 12 months.

Section 2. Present subsections (6) and (7) of section 893.135, Florida Statutes, are redesignated as subsections (7) and (8), respectively, and a new subsection (6) is added to that section, to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(6) Notwithstanding any provision of this section, a court may impose a sentence for a violation of this section other than the mandatory minimum term of imprisonment and mandatory fine if the court finds on the record that all of the following circumstances exist:

(a) The defendant has no prior conviction for a forcible felony as defined in s. 776.08.

(b) The defendant did not use violence or credible threats of violence, or possess a firearm or other dangerous weapon, or induce another participant to use violence or credible threats of violence, in connection with the offense.

(c) The offense did not result in the death of or serious bodily injury to any person.

(d) The defendant was not an organizer, leader, manager, or supervisor of others in the offense and was not engaged in a continuing criminal enterprise as defined in s. 893.20.

(e) At the time of the sentencing hearing or earlier, the defendant has truthfully provided to the state all information and evidence that he or she possesses concerning the offense or offenses that were part of the same course of conduct or of a



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common scheme or plan.

(f) The defendant has not previously benefited from the application of this subsection.

A court may not apply this subsection to an offense under this section which carries a mandatory minimum term of imprisonment of 25 years.

Section 3. Section 900.06, Florida Statutes, is created to read:

900.06 Recording of custodial interrogations for certain offenses.—

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

(a) "Custodial interrogation" means questioning or other conduct by a law enforcement officer which is reasonably likely to elicit an incriminating response from an individual and which occurs under circumstances in which a reasonable individual in the same circumstances would consider himself or herself to be in the custody of a law enforcement agency.

(b) "Electronic recording" means an audio recording or an audio and video recording that accurately records a custodial interrogation.

(c) "Covered offense" includes:

1. Arson.

2. Sexual battery.

3. Robbery.

4. Kidnapping.

5. Aggravated child abuse.

6. Aggravated abuse of an elderly person or disabled adult.

7. Aggravated assault with a deadly weapon.



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- 115 8. Murder.
- 116 9. Manslaughter.
- 117 10. Aggravated manslaughter of an elderly person or
- 118 disabled adult.
- 119 11. Aggravated manslaughter of a child.
- 120 12. The unlawful throwing, placing, or discharging of a
- 121 destructive device or bomb.
- 122 13. Armed burglary.
- 123 14. Aggravated battery.
- 124 15. Aggravated stalking.
- 125 16. Home-invasion robbery.
- 126 17. Carjacking.
- 127 (d) "Place of detention" means a police station, sheriff's
- 128 office, correctional facility, prisoner holding facility, county
- 129 detention facility, or other governmental facility where an
- 130 individual may be held in connection with a criminal charge that
- 131 has been or may be filed against the individual.
- 132 (e) "Statement" means a communication that is oral,
- 133 written, electronic, nonverbal, or in sign language.
- 134 (2)(a) A custodial interrogation at a place of detention,
- 135 including the giving of a required warning, the advisement of
- 136 the rights of the individual being questioned, and the waiver of
- 137 any rights by the individual, must be electronically recorded in
- 138 its entirety if the interrogation is related to a covered
- 139 offense.
- 140 (b) If a law enforcement officer conducts a custodial
- 141 interrogation at a place of detention without electronically
- 142 recording the interrogation, the officer must prepare a written
- 143 report explaining why he or she did not record the



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- 144 interrogation.
- 145 (c) As soon as practicable, a law enforcement officer who
- 146 conducts a custodial interrogation at a location other than a
- 147 place of detention shall prepare a written report explaining the
- 148 circumstances of the interrogation and summarizing the custodial
- 149 interrogation process and the individual's statements.
- 150 (d) Paragraph (a) does not apply:
- 151 1. If an unforeseen equipment malfunction prevents
- 152 recording the custodial interrogation in its entirety;
- 153 2. If a suspect refuses to participate in a custodial
- 154 interrogation if his or her statements are to be electronically
- 155 recorded;
- 156 3. If an equipment operator error prevents recording the
- 157 custodial interrogation in its entirety;
- 158 4. If the statement is made spontaneously and not in
- 159 response to a custodial interrogation question;
- 160 5. If the statement is made during the processing of the
- 161 arrest of a suspect;
- 162 6. If the custodial interrogation occurs when the law
- 163 enforcement officer participating in the interrogation does not
- 164 have any knowledge of facts and circumstances that would lead an
- 165 officer to reasonably believe that the individual being
- 166 interrogated may have committed a covered offense;
- 167 7. If the law enforcement officer conducting the custodial
- 168 interrogation reasonably believes that making an electronic
- 169 recording would jeopardize the safety of the officer, the
- 170 individual being interrogated, or others; or
- 171 8. If the custodial interrogation is conducted outside of
- 172 this state.



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173 (3) Unless a court finds that one or more of the
174 circumstances specified in paragraph (2)(d) apply, the court
175 must consider the circumstances of an interrogation conducted by
176 a law enforcement officer in which he or she did not
177 electronically record all or part of a custodial interrogation
178 in determining whether a statement made during the interrogation
179 is admissible. If the court admits into evidence a statement
180 made during a custodial interrogation that was not
181 electronically recorded as required under paragraph (2)(a), the
182 court must, upon request of the defendant, give cautionary
183 instructions to the jury regarding the law enforcement officer's
184 failure to comply with that requirement.

185 (4) A law enforcement agency in this state which has
186 enforced rules adopted pursuant to this section which are
187 reasonably designed to ensure compliance with the requirements
188 of this section is not subject to civil liability for damages
189 arising from a violation of this section. This section does not
190 create a cause of action against a law enforcement officer.

191 Section 4. Paragraph (b) of subsection (1) of section
192 961.03, Florida Statutes, is amended to read:

193 961.03 Determination of status as a wrongfully incarcerated
194 person; determination of eligibility for compensation.—

195 (1)

196 (b) The person must file the petition with the court:

197 1. Within 2 years ~~90 days~~ after the order vacating a
198 conviction and sentence becomes final and the criminal charges
199 against the person are dismissed if the person's conviction and
200 sentence is vacated, or the person is retried and found not
201 guilty, on or after July 1, 2008. If a person had a claim



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202 dismissed or did not file a claim because of the former 90-day
203 petition filing period under this subparagraph, he or she may
204 file a petition with the court within 2 years after July 1,
205 2020.

206 2. By July 1, 2010, if the person's conviction and sentence
207 was vacated by an order that became final before ~~prior to~~ July
208 1, 2008.

209 Section 5. Section 961.04, Florida Statutes, is amended to
210 read:

211 961.04 Eligibility for compensation for wrongful
212 incarceration.—A wrongfully incarcerated person is not eligible
213 for compensation under the act if any of the following apply:

214 ~~(1) Before the person's wrongful conviction and~~
215 ~~incarceration, the person was convicted of, or pled guilty or~~
216 ~~nolo contendere to, regardless of adjudication, any violent~~
217 ~~felony, or a crime committed in another jurisdiction the~~
218 ~~elements of which would constitute a violent felony in this~~
219 ~~state, or a crime committed against the United States which is~~
220 ~~designated a violent felony, excluding any delinquency~~
221 ~~disposition;~~

222 ~~(2) Before the person's wrongful conviction and~~
223 ~~incarceration, the person was convicted of, or pled guilty or~~
224 ~~nolo contendere to, regardless of adjudication, more than one~~
225 ~~felony that is not a violent felony, or more than one crime~~
226 ~~committed in another jurisdiction, the elements of which would~~
227 ~~constitute a felony in this state, or more than one crime~~
228 ~~committed against the United States which is designated a~~
229 ~~felony, excluding any delinquency disposition;~~

230 (1)(3) During the person's wrongful incarceration, the



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231 person was convicted of, or pled guilty or nolo contendere to,
232 regardless of adjudication, any violent felony.

233 ~~(2)(4)~~ During the person's wrongful incarceration, the
234 person was convicted of, or pled guilty or nolo contendere to,
235 regardless of adjudication, more than one felony that is not a
236 violent felony.

237 ~~(3)(5)~~ During the person's wrongful incarceration, the
238 person was also serving a concurrent sentence for another felony
239 for which the person was not wrongfully convicted.

240 Section 6. Paragraph (c) of subsection (3) of section
241 893.03, Florida Statutes, is amended to read:

242 893.03 Standards and schedules.—The substances enumerated
243 in this section are controlled by this chapter. The controlled
244 substances listed or to be listed in Schedules I, II, III, IV,
245 and V are included by whatever official, common, usual,
246 chemical, trade name, or class designated. The provisions of
247 this section shall not be construed to include within any of the
248 schedules contained in this section any excluded drugs listed
249 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded
250 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical
251 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted
252 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt
253 Anabolic Steroid Products."

254 (3) SCHEDULE III.—A substance in Schedule III has a
255 potential for abuse less than the substances contained in
256 Schedules I and II and has a currently accepted medical use in
257 treatment in the United States, and abuse of the substance may
258 lead to moderate or low physical dependence or high
259 psychological dependence or, in the case of anabolic steroids,



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260 may lead to physical damage. The following substances are
261 controlled in Schedule III:

262 (c) Unless specifically excepted or unless listed in
263 another schedule, any material, compound, mixture, or
264 preparation containing limited quantities of any of the
265 following controlled substances or any salts thereof:

266 1. Not more than 1.8 grams of codeine per 100 milliliters
267 or not more than 90 milligrams per dosage unit, with an equal or
268 greater quantity of an isoquinoline alkaloid of opium.

269 2. Not more than 1.8 grams of codeine per 100 milliliters
270 or not more than 90 milligrams per dosage unit, with recognized
271 therapeutic amounts of one or more active ingredients which are
272 not controlled substances.

273 3. Not more than 300 milligrams of hydrocodone per 100
274 milliliters or not more than 15 milligrams per dosage unit, with
275 a fourfold or greater quantity of an isoquinoline alkaloid of
276 opium.

277 4. Not more than 300 milligrams of hydrocodone per 100
278 milliliters or not more than 15 milligrams per dosage unit, with
279 recognized therapeutic amounts of one or more active ingredients
280 that are not controlled substances.

281 5. Not more than 1.8 grams of dihydrocodeine per 100
282 milliliters or not more than 90 milligrams per dosage unit, with
283 recognized therapeutic amounts of one or more active ingredients
284 which are not controlled substances.

285 6. Not more than 300 milligrams of ethylmorphine per 100
286 milliliters or not more than 15 milligrams per dosage unit, with
287 one or more active, nonnarcotic ingredients in recognized
288 therapeutic amounts.



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289 7. Not more than 50 milligrams of morphine per 100
290 milliliters or per 100 grams, with recognized therapeutic
291 amounts of one or more active ingredients which are not
292 controlled substances.

293

294 For purposes of charging a person with a violation of s. 893.135
295 involving any controlled substance described in subparagraph 3.
296 or subparagraph 4., the controlled substance is a Schedule III
297 controlled substance pursuant to this paragraph but the weight
298 of the controlled substance per milliliters or per dosage unit
299 is not relevant to the charging of a violation of s. 893.135.
300 The weight of the controlled substance shall be determined
301 pursuant to s. 893.135(7) ~~s. 893.135(6)~~.

302 Section 7. For the purpose of incorporating the amendment
303 made by this act to section 961.04, Florida Statutes, in a
304 reference thereto, subsection (4) of section 961.02, Florida
305 Statutes, is reenacted to read:

306 961.02 Definitions.—As used in ss. 961.01-961.07, the term:

307 (4) "Eligible for compensation" means that a person meets
308 the definition of the term "wrongfully incarcerated person" and
309 is not disqualified from seeking compensation under the criteria
310 prescribed in s. 961.04.

311 Section 8. For the purpose of incorporating the amendments
312 made by this act to section 961.04, Florida Statutes, in
313 references thereto, paragraph (a) of subsection (1) and
314 subsections (2), (3), and (4) of section 961.03, Florida
315 Statutes, are reenacted to read:

316 961.03 Determination of status as a wrongfully incarcerated
317 person; determination of eligibility for compensation.—



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318 (1) (a) In order to meet the definition of a "wrongfully
319 incarcerated person" and "eligible for compensation," upon entry
320 of an order, based upon exonerating evidence, vacating a
321 conviction and sentence, a person must set forth the claim of
322 wrongful incarceration under oath and with particularity by
323 filing a petition with the original sentencing court, with a
324 copy of the petition and proper notice to the prosecuting
325 authority in the underlying felony for which the person was
326 incarcerated. At a minimum, the petition must:

327 1. State that verifiable and substantial evidence of actual
328 innocence exists and state with particularity the nature and
329 significance of the verifiable and substantial evidence of
330 actual innocence; and

331 2. State that the person is not disqualified, under the
332 provisions of s. 961.04, from seeking compensation under this
333 act.

334 (2) The prosecuting authority must respond to the petition
335 within 30 days. The prosecuting authority may respond:

336 (a) By certifying to the court that, based upon the
337 petition and verifiable and substantial evidence of actual
338 innocence, no further criminal proceedings in the case at bar
339 can or will be initiated by the prosecuting authority, that no
340 questions of fact remain as to the petitioner's wrongful
341 incarceration, and that the petitioner is not ineligible from
342 seeking compensation under the provisions of s. 961.04; or

343 (b) By contesting the nature, significance, or effect of
344 the evidence of actual innocence, the facts related to the
345 petitioner's alleged wrongful incarceration, or whether the
346 petitioner is ineligible from seeking compensation under the



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provisions of s. 961.04.

(3) If the prosecuting authority responds as set forth in paragraph (2)(a), the original sentencing court, based upon the evidence of actual innocence, the prosecuting authority's certification, and upon the court's finding that the petitioner has presented clear and convincing evidence that the petitioner committed neither the act nor the offense that served as the basis for the conviction and incarceration, and that the petitioner did not aid, abet, or act as an accomplice to a person who committed the act or offense, shall certify to the department that the petitioner is a wrongfully incarcerated person as defined by this act. Based upon the prosecuting authority's certification, the court shall also certify to the department that the petitioner is eligible for compensation under the provisions of s. 961.04.

(4)(a) If the prosecuting authority responds as set forth in paragraph (2)(b), the original sentencing court shall make a determination from the pleadings and supporting documentation whether, by a preponderance of the evidence, the petitioner is ineligible for compensation under the provisions of s. 961.04, regardless of his or her claim of wrongful incarceration. If the court finds the petitioner ineligible under the provisions of s. 961.04, it shall dismiss the petition.

(b) If the prosecuting authority responds as set forth in paragraph (2)(b), and the court determines that the petitioner is eligible under the provisions of s. 961.04, but the prosecuting authority contests the nature, significance or effect of the evidence of actual innocence, or the facts related to the petitioner's alleged wrongful incarceration, the court



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shall set forth its findings and transfer the petition by electronic means through the division's website to the division for findings of fact and a recommended determination of whether the petitioner has established that he or she is a wrongfully incarcerated person who is eligible for compensation under this act.

Section 9. This act shall take effect July 1, 2020.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 346

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Criminal Justice Committee; and Senators Bradley, Brandes, Perry, and others

SUBJECT: Criminal Justice

DATE: January 20, 2020

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 346 provides that a person who possesses, purchases, or possesses with the intent to purchase less than two grams of a controlled substance, other than fentanyl and related analogs, derivatives, and mixtures, may not be imprisoned for a term longer than 12 months.

The bill also authorizes a court to depart from the mandatory minimum term of imprisonment and the mandatory fine for a drug trafficking offense that does not carry a 25-year mandatory minimum term, if the court finds certain circumstances (specified in the bill) exist.

The bill also requires a custodial interrogation relating to a covered offense (specified in the bill) that is conducted at a place of detention be electronically recorded in its entirety. If the custodial interrogation at the place of detention is not electronically recorded by the law enforcement officer, he or she must prepare a written report explaining the reason for not recording it. The bill provides exceptions to the general recording requirement. The bill further provides:

- If a custodial interrogation is not recorded and no exception applies, a court must consider “the circumstances of an interrogation” in its analysis of whether to admit into evidence a statement made at the interrogation;
- If the court decides to admit a statement made during a custodial interrogation that was not electronically recorded, the defendant may require the court to give a cautionary jury instruction regarding the officer’s failure to comply with the recording requirement;

- If a law enforcement agency “has enforced rules” adopted pursuant to the bill which are reasonably designed to comply with the bill’s requirements, the agency is not subject to civil liability for damages arising from a violation of the bill’s requirements; and
- Requirements relating to electronic recording of a custodial interrogation do not create a cause of action against a law enforcement officer.

The bill also eliminates ineligibility for compensation for wrongfully incarcerated persons who had a violent felony or more than one nonviolent felony before their wrongful conviction and incarceration. However, the bill does not change ineligibility status for persons who: commit a violent felony or multiple nonviolent felonies during their wrongful incarceration; are serving a concurrent prison sentence; or have served the incarcerative part of their sentence and commit a violent felony or multiple nonviolent felonies resulting in revocation of parole or community supervision.

The bill also extends the time for a person who was wrongfully incarcerated to file a petition with the court for a determination of eligibility for compensation. Rather than the current 90 days to file the petition, the person will have two years from the time the order vacating a conviction and sentence becomes final and the criminal charges against the person are dismissed or the person is retried and found not guilty. Further, persons who missed the 90-day deadline or who had claims dismissed because the date when the criminal charges against the person were dismissed or the person was acquitted upon retrial occurred more than 90 days after the date when the order vacating the conviction became final, and the state of the law at the time would have barred the claim or made the claim appear to be futile may file the petition with the court within two years from the bill’s effective date.

The Legislature’s Office of Economic and Demographic Research preliminarily estimates that the bill has a “negative significant” prison bed impact (a decrease of more than 25 prison beds).

Under the bill, more persons are potentially eligible for compensation for wrongful incarceration. Currently, a person who is entitled to compensation based on wrongful incarceration would be paid at the rate of \$50,000 per year of wrongful incarceration up to a limit of \$2 million. Payment is made from an annuity or annuities purchased by the Chief Financial Officer for the benefit of the wrongfully incarcerated person. The Victims of Wrongful Incarceration Compensation Act is funded through a continuing appropriation pursuant to section 961.07, Florida Statutes. The fiscal impact of this provision is indeterminate.

The drug purchase and possession provision of the bill may have an indeterminate county jail bed impact, and the bill’s requirements relating to electronically recording custodial interrogations may have an indeterminate fiscal impact on law enforcement agencies.

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

II. Present Situation:

Florida's Controlled Substance Schedules

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

Purchase or Possession of a Controlled Substance

Section 893.13, F.S., in part, punishes unlawful purchase and possession of a controlled substance.² The penalty for violating s. 893.13, F.S., depends on the unlawful act committed and the substance involved and, in some instances, the quantity of the substance involved and the location in which the unlawful act occurred.

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

² Section 893.13(1)(a),(c)-(f) and (h), (2)(a) and (b), and (6)(a)-(d), F.S.

Purchase or possession with intent to purchase a controlled substance is generally punishable as a first degree misdemeanor,³ third degree felony,⁴ or second degree felony,⁵ depending upon the schedule of the controlled substance purchased or possessed with intent to purchase.⁶ However, purchase or possession with intent to purchase more than 10 grams of certain Schedule I controlled substances is a first degree felony.⁷

“Simple possession” of a controlled substance has been described as “possession of less than a trafficking amount without intent to sell, manufacture or deliver[.]”⁸ Generally, simple possession of a controlled substance is a third degree felony.⁹ However, simple possession of 20 grams or less of cannabis is a first degree misdemeanor,¹⁰ simple possession of a Schedule V controlled substance is a second degree misdemeanor,¹¹ and simple possession of more than 10 grams of certain Schedule I controlled substances is a first degree felony.¹²

Possession with intent to sell, manufacture, or deliver a controlled substance is generally punishable as a first degree misdemeanor, third degree felony, or second degree felony, depending upon the schedule of the controlled substance possessed.¹³ However, punishment is enhanced when the possession occurs within 1,000 feet of certain locations or facilities.¹⁴ For example, possession with intent to sell cannabis is generally a third degree felony¹⁵ but a second degree felony when the possession occurs within 1,000 feet of the real property of a K-12 school.¹⁶

Drug Trafficking

Drug trafficking, which is punished in s. 893.135, F.S., consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state (importation), or knowingly being in actual or constructive possession of, certain Schedule I or Schedule II controlled substances in a statutorily-specified quantity. The statute only applies to a limited number of such controlled substances, and the controlled substances involved in the trafficking must meet a specified weight or quantity threshold.

³ 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 A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

⁵ A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

⁶ Section 893.13(2)(a), F.S.

⁷ Section 893.13(2)(b), 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.

⁸ *Tyler v. State*, 107 So.3d 547, 549 (Fla. 1st DCA 2013), *rev. den.*, 130 So.3d 1278 (Fla. 2013).

⁹ Section 893.13(6)(a), F.S.

¹⁰ Section 893.13(6)(b), F.S.

¹¹ 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.

¹² Section 893.13(6)(c), F.S.

¹³ Section 893.13(1)(a), F.S.

¹⁴ Section 893.13(1)(c)-(f) and (h), F.S.

¹⁵ Section 893.13(1)(a)2., F.S.

¹⁶ Section 893.13(1)(c)2., F.S.

Most drug trafficking offenses are first degree felonies and are subject to a mandatory minimum term of imprisonment and a mandatory fine,¹⁷ which is determined by the weight or quantity of the substance.¹⁸ For example, trafficking in 28 grams or more, but less than 200 grams, of cocaine, a first degree felony, is punishable by a 3-year mandatory minimum term of imprisonment and a mandatory fine of \$50,000.¹⁹ Trafficking in 200 grams or more, but less than 400 grams, of cocaine, a first degree felony, is punishable by a 7-year mandatory minimum term of imprisonment and a mandatory fine of \$100,000.²⁰

Criminal Punishment Code

The Criminal Punishment Code²¹ (Code) is Florida's primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (levels 1-10).²² 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 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.²³ Absent mitigation,²⁴ 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.²⁵

Mandatory Minimum Sentences

Mandatory minimum terms of imprisonment limit judicial discretion in Code sentencing: "If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence. If the lowest permissible sentence exceeds the mandatory sentence, the requirements of the Criminal Punishment Code and any mandatory minimum penalties apply."²⁶ As previously noted, the sentencing range under the Code is generally the scored lowest permissible sentence up to and including the statutory maximum penalty.

¹⁷ Section 893.135, F.S., provides for mandatory fines that are greater than the maximum \$10,000 fine prescribed in s. 775.083, F.S., for a first degree felony. However, s. 775.083, F.S., which relates to fines, authorizes any higher amount if specifically authorized by statute.

¹⁸ See s. 893.135, F.S.

¹⁹ Section 893.135(1)(b)1.a., F.S.

²⁰ Section 893.135(1)(b)1.b., F.S.

²¹ 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.

²² Offenses are ranked either in the offense severity level ranking chart in s. 921.0022, F.S., or by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

²³ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

²⁴ The court may "mitigate" or "depart downward" from the scored lowest permissible sentence, if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

²⁵ 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.

²⁶ Fla. R. Crim. P. 3.704(d)(26).

However, if there is a mandatory minimum sentence that is longer than the scored lowest permissible sentence, the sentencing range is narrowed to the mandatory minimum sentence up to and including the statutory maximum penalty.

With few exceptions (e.g., youthful offender sentencing²⁷ or a reduced or suspended sentence for substantial assistance rendered²⁸), courts must impose the mandatory minimum term of imprisonment applicable to the drug trafficking offense committed.²⁹

State Prison Sentence

Under the Code, any sentence to state prison must exceed one year.³⁰ Notwithstanding s. 948.03, F.S. (terms and conditions of probation), only those persons who are convicted and sentenced in circuit court to a cumulative sentence of incarceration for one year or more, whether the sentence is imposed in the same or separate circuits, may be received by the Department of Corrections into the state correctional system.³¹

Custodial Interrogation

Constitutional Protections and Court Decisions Interpreting and Applying Those Protections

The Fifth Amendment of the United States Constitution states that “[n]o person . . . shall be compelled in any criminal case to be a witness against himself.”³² Similarly, the Florida Constitution extends the same protection.³³

Custodial Interrogation Legal Requirements

Whether a person is in custody and under interrogation is the threshold question that determines the need for a law enforcement officer to advise the person of his or her *Miranda* rights.³⁴ In *Traylor v. State*, the Florida Supreme Court found that “to ensure the voluntariness of confessions, the Self-Incrimination Clause of Article I, Section 9, Florida Constitution, requires that prior to custodial interrogation in Florida suspects must be told that they have a right to remain silent, that anything they say will be used against them in court....”³⁵

²⁷ Section 958.04, F.S. See *Gallimore v. State*, 100 So.3d 1264, 1266-1267 (Fla. 4th DCA 2012).

²⁸ Section 893.135(4) and 921.186, F.S. See *State v. Agerton*, 523 So.2d 1241, 1243 (Fla. 5th DCA 1988), *rev. den.*, 531 So.2d 1352 (Fla. 1988), and *McFadden v. State*, 177 So.3d 562, 566-567 (Fla. 2015). The court cannot *sua sponte* reduce or suspend the sentence because the decision to suspend or reduce a sentence is based upon a motion from the state attorney. The court is not mandated to reduce or suspend a sentence upon a showing of substantial assistance.

²⁹ Mandatory minimum terms under s. 893.135, F.S., do not apply to attempted drug trafficking. *Suarez v. State*, 635 So.2d 154, 155 (Fla. 2d DCA 1994).

³⁰ Section 921.0024(2), F.S.

³¹ Section 944.17(3)(a), F.S.

³² U.S. Const. amend. V.

³³ “No person shall be . . . compelled in any criminal matter to be a witness against himself.” FLA. CONST. article I, s. 9.

³⁴ In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Court established procedural safeguards to ensure the voluntariness of statements rendered during custodial interrogation.

³⁵ 596 So.2d 957, 965-966 (Fla. 1992).

The test to determine if a person is in custody for the purposes of his or her *Miranda* rights is whether “a reasonable person placed in the same position would believe that his or her freedom of action was curtailed to a degree associated with actual arrest.”³⁶

An interrogation occurs “when a person is subjected to express questions, or other words or actions, by a state agent that a reasonable person would conclude are designed to lead to an incriminating response.”³⁷

Waiver of the Right to Remain Silent

A person subjected to a custodial interrogation is entitled to the protections of *Miranda*.³⁸ The warning must include the right to remain silent as well as the explanation that anything a person says can be used against them in court. The warning includes both parts because it is important for a person to be aware of his or her right and the consequences of waving such a right.³⁹

Admissibility of a Defendant’s Statement as Evidence

The admissibility of a defendant’s statement is a mixed question of fact and law decided by the court during a pretrial hearing or during the trial outside the presence of the jury.⁴⁰ For a defendant’s statement to become evidence in a criminal case, the judge must first determine whether the statement was freely and voluntarily given to a law enforcement officer during the custodial interrogation of the defendant. The court looks to the totality of the circumstances of the statement to determine if it was voluntarily given.⁴¹

The court can consider testimony from the defendant and any law enforcement officers involved, their reports, and any additional evidence such as audio or video recordings of the custodial interrogation.

As previously discussed, the courts use a “reasonable person” standard in making the determination of whether the defendant was in custody at the time he or she made a statement.⁴² The court considers, given the totality of the circumstances, whether a reasonable person in the defendant’s position would have believed he or she was free to terminate the encounter with law enforcement and, therefore, was not in custody.⁴³ Among the circumstances or factors the courts have considered are:

- The manner in which the police summon the suspect for questioning;
- The purpose, place, and manner of the interrogation;
- The extent to which the suspect is confronted with evidence of his or her guilt; and
- Whether the suspect is informed that he or she is free to leave the place of questioning.⁴⁴

³⁶ *Id.* at 966 n. 16.

³⁷ *Id.* at 966 n. 17.

³⁸ *See Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

³⁹ *Sliney v. State*, 699 So.2d 662, 669 (Fla. 1997), *cert. den.*, 522 U.S. 1129 (1998).

⁴⁰ *Nickels v. State*, 90 Fla. 659, 668 (Fla. 1925).

⁴¹ *Supra* n. 39 at 667.

⁴² *Supra* n. 36.

⁴³ *Voorhees v. State*, 699 So.2d 602, 608 (Fla. 1997).

⁴⁴ *Ramirez v. State*, 739 So.2d 568, 574 (Fla. 1999).

The court will also determine whether the defendant was made aware of his or her *Miranda* rights and whether he or she knowingly, voluntarily, and intelligently elected to waive those rights and give a statement.⁴⁵

Even if the court deems the statement admissible and the jury hears the evidence, defense counsel will be able to cross-examine any witnesses who testify and have knowledge of the circumstances surrounding the defendant's statement. Additionally, counsel may argue to the jury in closing argument that the statement was coerced in some way by a law enforcement officer.

Interrogation Recording in Florida

Currently, 26 states and the District of Columbia record custodial interrogations statewide.⁴⁶ These states have statutes, court rules, or court cases that require law enforcement to make the recordings or allow the court to consider the failure to record a statement in determining the admissibility of a statement.⁴⁷ Although Florida is not one of these states, 58 Florida law enforcement agencies have been identified as recording custodial interrogations, voluntarily, at least to some extent.⁴⁸

Wrongful Incarceration Compensation Eligibility

The Victims of Wrongful Incarceration Compensation Act (the Act) has been in effect since July 1, 2008.⁴⁹ The Act provides a process whereby a person may petition the original sentencing court for an order finding the petitioner to be a wrongfully incarcerated person who is eligible for compensation from the state.

The Department of Legal Affairs administers the eligible person's application process and verifies the validity of the claim.⁵⁰ The Chief Financial Officer arranges for payment of the claim by securing an annuity or annuities payable to the claimant over at least 10 years, calculated at a

⁴⁵ *Supra* n. 36 at 668.

⁴⁶ *Compendium: Electronic Recording of Custodial Interrogations*, Thomas P. Sullivan, January 2019, National Association of Criminal Defense Lawyers, p. 7, available at <https://www.nacdl.org/getattachment/581455af-11b2-4632-b584-ab2213d0a2c2/custodial-interrogations-compendium-january-2019-.pdf> (last visited November 5, 2019).

⁴⁷ See *Stephan v. State*, 711 P.2d 1156 (AK 1985); Ark. R. Crim. P. 4.7 (2012); Cal. Pen. Code s. 859.5 and Cal. Wel. & Inst. Code s. 626.8 (2013); CO. Rev. Stat. 16-3-601 (2016); CT Gen. Stat. s. 54-1o (2011); D.C. Code ss. 5-116.01 and 5-116.03 (2006); Hawaii was verified by the four departments that govern law enforcement in the state; 705 IL Comp. Stat. Ann. 405/5-401.5; 725 ICSA 5/103-2.1 (2003, 2005, 2013); Ind. R. Evid. 617 (2009); Kan. Stat. s. 22-4620 (2017); 25 ME Rev. Stat. Ann. s. 2803-B(1)(K) (2007); MD Code Ann., Crim. Proc. ss. 2-402 and 2-403 (2008); MI Comp. Laws ss. 763.7 – 763.11 (2012); *State v. Scales*, 518 N.W.2d 587 (MN 1994); MO Rev. Stat. ss. 590.700 and 700.1 (2009 and 2015); MT Code Ann. ss. 46-4-406 – 46-4-410 (2009); NE Rev. Stat. Ann. ss. 29-4501 – 29-4508 (2008); NJ Court Rules, R. 3:17 (2005); NM Stat. Ann. s. 29-1-16 (2006); NC Gen. Stat. s. 15A-211 (2007, 2011); N.Y. Crim. Proc. Law s. 60.45 (McKinney 2018); OR Rev. Stat. s. 133.400 (2010); RI PAC, Accreditation Standards Manual, s. 8.10 (2013); Tex. Crim. Proc. Code ss. 2.32 and 38.22; Tex. Fam. Code s. 51.095; Utah R. Evid. Rule 616 (2015); 13 V.S.A. s. 5585 (2014); *State v. Jerrell*, 699 N.W.2d 110 (WI 2005); and WI Stat. ss. 968.073 and 972.115 (2005). See also *supra* n. 46 at p. 8.

⁴⁸ *Supra* n. 46 at pp. 40-41.

⁴⁹ Chapter 961, F.S. (ch. 2008-39, L.O.F.). To date, four persons have been compensated under the Act. E-mail and documentation received from the Office of the Attorney General, October 16, 2019 (on file with the Senate Committee on Criminal Justice).

⁵⁰ Section 961.05, F.S.

rate of \$50,000 for each year of wrongful incarceration up to a total of \$2 million.⁵¹ To date, four persons have been compensated under the Act for a total of \$4,276,901.⁵²

In cases where sufficient evidence of actual innocence exists, a person is nonetheless *ineligible* for compensation if:

- *Before* the person's wrongful conviction and incarceration the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication *any single violent felony*, or *more than one nonviolent felony*, or a crime or crimes committed in another jurisdiction the elements of which would constitute a felony in this state, or a crime committed against the United States which is designated a felony, excluding any delinquency disposition;
- *During* the person's wrongful incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, *any violent felony offense* or *more than one nonviolent felony*; or
- *During* the person's wrongful incarceration, the person was also serving a *concurrent sentence for another felony* for which the person was not wrongfully convicted.⁵³

A person could be wrongfully incarcerated for a crime and then placed on parole or community supervision for that crime after the incarcerative part of the sentence is served.⁵⁴ Section 961.06(2), F.S., addresses this situation in terms of eligibility for compensation for the period of wrongful incarceration. Under this provision, if a person commits a misdemeanor, no more than one nonviolent felony, or some technical violation of his or her supervision that results in the revocation of parole or community supervision, the person is still eligible for compensation. If, however, any single violent felony law violation or multiple nonviolent felony law violations result in revocation, the person is ineligible for compensation.⁵⁵

The term "violent felony" is defined in s. 961.02(6), F.S., by cross-referencing felonies listed in s. 775.084(1)(c)1. or s. 948.06(8)(c), F.S. The combined list of those violent felony offenses includes attempts to commit the crimes as well as offenses committed in other jurisdictions if the elements of the crimes are substantially similar. The violent felonies referenced in s. 961.02(6), F.S., are:

- Kidnapping;

⁵¹ Additionally, the wrongfully incarcerated person is entitled to: waiver of tuition and fees for up to 120 hours of instruction at any career center established under s. 1001.44, F.S., any state college as defined in s. 1000.21(3), F.S., or any state university as defined in s. 1000.21(6), F.S., if the wrongfully incarcerated person meets certain requirements; the amount of any fine, penalty, or court costs imposed and paid by the wrongfully incarcerated person; the amount of any reasonable attorney's fees and expenses incurred and paid by the wrongfully incarcerated person in connection with all criminal proceedings and appeals regarding the wrongful conviction; and notwithstanding any provision to the contrary in s. 943.0583, F.S., or s. 943.0585, F.S., and immediate administrative expunction of the person's criminal record resulting from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. Section 961.06, F.S.

⁵² E-mail and documentation received from the Office of the Attorney General, October 16, 2019 (on file with the Senate Committee on Criminal Justice).

⁵³ Section 961.04, F.S.

⁵⁴ Persons are not eligible for parole in Florida unless they were sentenced prior to the effective date of the sentencing guidelines, which was October 1, 1983, and only then if they meet the statutory criteria. Chapter 82-171, L.O.F., and s. 947.16, F.S. The term "community supervision" as used in s. 961.06(2), F.S., could include control release, conditional medical release, or conditional release under the authority of the Florida Commission on Offender Review (ch. 947, F.S.), or community control or probation under the supervision of the Department of Corrections (ch. 948, F.S.).

⁵⁵ Section 961.06(2), F.S.

- False imprisonment of a child;
- Luring or enticing a child;
- Murder;
- Manslaughter;
- Aggravated manslaughter of a child;
- Aggravated manslaughter of an elderly person or disabled adult;
- Robbery;
- Carjacking;
- Home invasion robbery;
- Sexual Battery;
- Aggravated battery;
- Armed burglary and other burglary offenses that are first or second degree felonies;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Arson;
- Aggravated assault;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Treason;
- Aggravated stalking;
- Aircraft piracy;
- Abuse of a dead human body;
- Poisoning food or water;
- Lewd or lascivious battery, molestation, conduct, exhibition, or exhibition on computer;
- Lewd or lascivious offense upon or in the presence of an elderly or disabled person;
- Sexual performance by a child;
- Computer pornography;
- Transmission of child pornography; and
- Selling or buying of minors.

III. Effect of Proposed Changes:

The bill reduces the punishment for possessing, purchasing, or possessing with the intent to purchase less than two grams of most controlled substances; authorizes a court to depart from most mandatory minimum terms of imprisonment and mandatory fines, if the court finds that specified circumstances exist; requires electronic recording of a custodial interrogation at a place of detention in connection with certain offenses; and revises the circumstances under which a wrongfully incarcerated person is eligible for compensation for wrongful incarceration. A detailed discussion of the bill is provided below.

Purchase or Possession of a Controlled Substance (Section 1)

Section 1 of the bill amends s. 893.13, F.S., which punishes various unlawful acts involving controlled substances, to provide that, notwithstanding any provision of s. 893.13, F.S., chapter 921, which includes the Criminal Punishment Code and the Offense Severity Ranking Chart, or any other law, a person who possesses, purchases, or possesses with the intent to purchase less than two grams of a controlled substance, other than fentanyl and related analogs, derivatives,

and mixtures,⁵⁶ may not be imprisoned for a term longer than 12 months. This provision appears to preclude a state prison sentence, which must exceed one year.⁵⁷

Drug Trafficking Mandatory Minimum Terms of Imprisonment and Mandatory Fines (Sections 2 and 6)

Section 2 of the bill amends s. 893.135, F.S., which punishes drug trafficking, to provide that, notwithstanding any provision of this section, a court may impose a sentence for a violation of this section other than the mandatory term of imprisonment and the mandatory fine, if the court finds on the record that specified circumstances exist. However, this departure provision does not apply to a drug trafficking offense that carries a mandatory minimum term of imprisonment of 25 years.

The specified circumstances the court must find on the record include the following:

- The defendant has no prior conviction for a forcible felony as defined in s. 776.08, F.S.⁵⁸
- The defendant did not use violence or credible threats of violence, or possess a firearm or other dangerous weapon, or induce another participant to use violence or credible threats of violence, in connection with the offense.
- The offense did not result in the death of or serious bodily injury to any person.
- The defendant was not an organizer, leader, manager, or supervisor of others in the offense and was not engaged in a continuing criminal enterprise as defined in s. 893.20, F.S.⁵⁹
- At the time of the sentencing hearing or earlier, the defendant has truthfully provided to the state all information and evidence that he or she possesses concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan.
- The defendant has not previously benefited from the application of this departure provision.

Section 6 of the bill amends s. 893.03, F.S., to correct a cross-reference to s. 893.135, F.S.

Custodial Interrogation (Section 3)

The bill creates s. 900.06, F.S., which creates a statutory requirement, and exceptions to that requirement, that a law enforcement officer conducting a custodial interrogation must electronically record the interrogation in its entirety.

The bill provides the following definitions for terms used in the bill:

⁵⁶ The bill references s. 893.135(1)(c)4.a.(I)-(VII), F.S., which lists the following substances and mixtures that are applicable to “trafficking in fentanyl”: alfentanil; carfentanil; fentanyl; sufentanil; a fentanyl derivative; a controlled substance analog of any of these substances; and a mixture containing any of these substances.

⁵⁷ See ss. 921.0024(2) and 944.17(3)(a), F.S.

⁵⁸ Section 776.08, F.S., defines a “forcible felony” as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

⁵⁹ Section 893.20(1), F.S., provides that any person who commits three or more felonies under ch. 893, F.S., in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management and who obtains substantial assets or resources from these acts is guilty of engaging in a continuing criminal enterprise.

- “Custodial interrogation” means questioning or other conduct by a law enforcement officer which is reasonably likely to elicit an incriminating response from an individual and which occurs under circumstances in which a reasonable individual in the same circumstances would consider himself or herself to be in the custody of a law enforcement agency;
- “Electronic recording” means an audio recording or an audio and video recording that accurately records a custodial interrogation;
- “Covered offense” means any of the following criminal offenses:
 - Arson.
 - Sexual battery.
 - Robbery.
 - Kidnapping.
 - Aggravated child abuse.
 - Aggravated abuse of an elderly person or disabled adult.
 - Aggravated assault with a deadly weapon.
 - Murder.
 - Manslaughter.
 - Aggravated manslaughter of an elderly person or disabled adult.
 - Aggravated manslaughter of a child.
 - The unlawful throwing, placing, or discharging of a destructive device or bomb.
 - Armed burglary.
 - Aggravated battery.
 - Aggravated stalking.
 - Home-invasion robbery.
 - Carjacking.
- “Place of detention” means a police station, sheriff’s office, correctional facility, prisoner holding facility, county detention facility, or other governmental facility where an individual may be held in connection with a criminal charge that has been or may be filed against the individual; and
- “Statement” means a communication that is oral, written, electronic, nonverbal, or in sign language.

The bill requires a custodial interrogation relating to a covered offense that is conducted at a place of detention be electronically recorded in its entirety. The recording must include:

- The giving of a required warning;
- The advisement of rights; and
- The waiver of rights by the individual being questioned.

If a custodial interrogation at a place of detention is not recorded by the law enforcement officer, he or she must prepare a written report explaining the reason for the noncompliance.

If a law enforcement officer conducts a custodial interrogation at a place other than a place of detention, the officer must prepare a written report as soon as practicable. The report must explain the circumstances of the interrogation in that place, and summarize the custodial interrogation process and the individual’s statements.

The general recording requirement does not apply under the following circumstances:

- If there is an unforeseen equipment malfunction that prevents recording the custodial interrogation in its entirety;
- If a suspect refuses to participate in a custodial interrogation if his or her statements are electronically recorded;
- Due to an equipment operator error that prevents the recording of the custodial interrogation in its entirety;
- If the statement is made spontaneously and not in response to a custodial interrogation question;
- If a statement is made during the processing of the arrest of a suspect;
- If the custodial interrogation occurs when the law enforcement officer participating in the interrogation does not have any knowledge of facts and circumstances that would lead an officer to reasonably believe that the individual being interrogated may have committed a covered offense;
- If the law enforcement officer conducting the custodial interrogation reasonably believes that electronic recording would jeopardize the safety of the officer, individual being interrogated, or others; or
- If the custodial interrogation is conducted outside of the state.

Unless a court finds that one or more of the enumerated exceptions applies, the court must consider the officer's failure to record all or part of the custodial interrogation as a factor in determining the admissibility of a defendant's statement made during the interrogation. If the court decides to admit the statement, the defendant may request and the court must give a cautionary jury instruction regarding the officer's failure to comply with the recording requirement.

Finally, if a law enforcement agency has enforced rules that are adopted pursuant to the bill and that are reasonably designed to comply with the bill's requirements, the agency is not subject to civil liability for damages arising from a violation of the bill's requirements. The bill does not create a cause of action against a law enforcement officer.

Wrongful Incarceration Compensation Eligibility (Sections 4, 5, 7, and 8)

Section 4 of the bill extends the time for a person who was wrongfully incarcerated to file the petition with the court for a determination of eligibility for compensation. The person will have two years from the time the order vacating a conviction and sentence becomes final and the criminal charges against the person are dismissed or the person is retried and found not guilty rather than the current 90 days to file the petition. Further, persons who missed the 90-day deadline or who had claims dismissed because the date when the criminal charges against the person were dismissed or the person was acquitted upon retrial occurred more than 90 days after the date when the order vacating the conviction became final, and the state of the law at the time would have barred the claim or made the claim appear to be futile may file the petition with the court within two years from the bill's effective date.

Section 5 of the bill amends s. 961.04, F.S., which relates to eligibility for compensation for wrongful incarceration, to eliminate ineligibility for compensation for wrongfully incarcerated persons who had a violent felony or more than one nonviolent felony before their wrongful conviction and incarceration. However, the bill does not change ineligibility status for persons

who: commit a violent felony or multiple nonviolent felonies during their wrongful incarceration; are serving a concurrent prison sentence; or have served the incarcerative part of their sentence and commit a violent felony or multiple nonviolent felonies resulting in revocation of parole or community supervision.⁶⁰

Sections 7 and 8 of the bill reenact, respectively, ss. 961.02 and 961.03, F.S., which relate to eligibility for compensation of wrongfully incarcerated persons.

Effective Date (Section 9)

Section 9 of the bill provides that the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 1 of the bill provides that a person who purchases or possesses less than two grams of a controlled substance, other than fentanyl, may not be imprisoned for a term longer than 12 months. This section may have an indeterminate but positive county jail bed impact, if a state prison sanction is precluded. Further, Section 3 of the bill relating to electronic recording of custodial interrogations may result in indeterminate local fund expenditures for equipment, maintenance, and operation. However, these provisions relate to the defense, prosecution, or punishment of criminal offenses, and criminal laws are exempt from the requirements of Art. VII, s. 18(d) of the Florida Constitution, relating to unfunded mandates.

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.

⁶⁰ See s. 961.06(2), F.S.

B. Private Sector Impact:

It is possible that more persons will be eligible for compensation under the provisions of the bill. A person who is entitled to compensation under the Victims of Wrongful Incarceration Compensation Act will be paid at the rate of \$50,000 per year of wrongful incarceration up to a limit of \$2 million.⁶¹ Payment is made from an annuity or annuities purchased by the Chief Financial Officer for the benefit of the wrongfully incarcerated person.⁶²

C. Government Sector Impact:**Local Government Impact**

The drug purchase and possession provision of the bill may have an indeterminate jail bed impact if defendants who might be sentenced to prison under current law are instead sentenced to jail under the provisions of the bill. The requirements of the bill relating to electronic recording of custodial interrogation may have an indeterminate fiscal impact on local law enforcement agencies if agencies determine that expenditures to purchase recording equipment, retain recorded statements, and store electronic recordings are necessary to comply with the requirements of the bill relating to electronically recording custodial interrogations.

State Government Impact***Prison Bed Impact***

The Criminal Justice Impact Conference, which provides the financial, official estimate of the prison bed impact, if any, of legislation has not yet reviewed the bill. However, the Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill has a "negative significant" prison bed impact (a decrease of more than 25 prison beds).⁶³ Regarding specific sections of the bill in which impact is noted, the EDR's preliminary estimate is that Section 1 of the bill, which reduces the punishment for purchasing or possessing less than two grams of a controlled substance excluding fentanyl, has a "negative significant" prison bed impact.⁶⁴ Section 2 of the bill, which authorizes a court to depart from most mandatory minimum terms of imprisonment and mandatory fines, if the court finds that specified circumstances exist, has a "negative indeterminate" prison bed impact (an unquantifiable decrease in prison beds).⁶⁵

Compensation for Wrongful Incarceration

More persons are potentially eligible for compensation for wrongful incarceration under provisions of the bill. A person who is entitled to compensation based on wrongful incarceration would be paid at the rate of \$50,000 per year of wrongful incarceration up to a limit of \$2 million. Payment is made from an annuity or annuities purchased by the

⁶¹ Section 961.06(1), F.S.

⁶² Section 961.06(4), F.S.

⁶³ The EDR's preliminary estimate of SB 346 is on file with the Senate Committee on Criminal Justice.

⁶⁴ *Id.*

⁶⁵ *Id.*

Chief Financial Officer for the benefit of the wrongfully incarcerated person. The Victims of Wrongful Incarceration Compensation Act is funded through a continuing appropriation pursuant to s. 961.07, F.S.

Although statutory limits on compensation under the Act are clear, the fiscal impact of the bill is unquantifiable. The possibility that a person would be compensated for wrongful incarceration is based upon variables that cannot be known, such as the number of wrongful incarcerations that currently exist or might exist in the future. Four successful claims since the Act became effective total \$4,276,901.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 893.03, 893.13, 893.135, and 961.04.

This bill creates section 900.06 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 961.02 and 961.03.

IX. Additional Information:

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

CS/CS by Appropriations on January 16, 2020:

The committee substitute:

- Clarifies that the downward departure to mandatory minimums contemplated by the bill takes precedence over ch. 921, F.S., which includes the Criminal Punishment Code and the Offense Severity Ranking Chart.
- Extends the deadline for filing a petition seeking compensation for wrongful incarceration to from 90 days to 2 years for persons whose conviction and sentence becomes final and the criminal charges against the person are dismissed or the person is retried and found not guilty.
- Also persons who had claims dismissed because the date when the criminal charges against the person were dismissed or the person was acquitted upon retrial occurred more than 90 days after the date when the order vacating the conviction became final, and the state of the law at the time would have barred the claim or made the claim appear to be futile may file the petition with the court within two years from the bill's effective date.

CS by Criminal Justice on November 12, 2019:

The committee substitute:

- Changes the subject of the bill from “controlled substances” to “criminal justice.”
- Provides that a person who possesses, purchases, or possesses with the intent to purchase less than two grams of a controlled substance, other than fentanyl and related analogs, derivatives, and mixtures, may not be imprisoned for a term longer than 12 months.
- Provides that a person who has been found to have been wrongfully incarcerated will have two years to file a petition with the court for a determination of eligibility for compensation rather than the current 90 days to file a petition.
- Provides that persons who missed the 90 day deadline or who had claims dismissed because of this deadline may file the petition with the court within two years from the bill’s effective date.

B. Amendments:

None.

By the Committee on Criminal Justice; and Senators Bradley, Brandes, Perry, Diaz, Gruters, Bracy, and Rouson

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1 A bill to be entitled
 2 An act relating to criminal justice; amending s.
 3 893.13, F.S.; prohibiting the imprisonment for longer
 4 than a certain time for persons who possess, purchase,
 5 or possess with the intent to purchase less than a
 6 specified amount of a controlled substance; providing
 7 exceptions; amending s. 893.135, F.S.; authorizing a
 8 court to impose a sentence other than a mandatory
 9 minimum term of imprisonment and mandatory fine for a
 10 person convicted of trafficking if the court makes
 11 certain findings on the record; creating s. 900.06,
 12 F.S.; defining terms and specifying covered offenses;
 13 requiring that a custodial interrogation conducted at
 14 a place of detention in connection with certain
 15 offenses be electronically recorded in its entirety;
 16 requiring law enforcement officers who do not comply
 17 with the electronic recording requirement or who
 18 conduct custodial interrogations at a location other
 19 than a place of detention to prepare a specified
 20 report; providing exceptions to the electronic
 21 recording requirement; requiring a court to consider a
 22 law enforcement officer's failure to comply with the
 23 electronic recording requirement in determining the
 24 admissibility of a statement, unless an exception
 25 applies; requiring a court, upon the request of a
 26 defendant, to give certain cautionary instructions to
 27 a jury under certain circumstances; providing immunity
 28 from civil liability to law enforcement agencies that
 29 enforce certain rules; providing that a cause of

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30 action is not created against a law enforcement
 31 officer; amending s. 961.03, F.S.; revising the
 32 circumstances under which a wrongfully incarcerated
 33 person must file a petition with the court to
 34 determine eligibility for compensation; authorizing
 35 certain persons to petition the court to determine
 36 eligibility for compensation within a specified
 37 timeframe; amending s. 961.04, F.S.; revising the
 38 circumstances under which a wrongfully incarcerated
 39 person is eligible for compensation; amending s.
 40 893.03, F.S.; conforming a cross-reference; reenacting
 41 ss. 961.02(4) and 961.03(1)(a), (2), (3), and (4),
 42 F.S., all relating to eligibility for compensation for
 43 wrongfully incarcerated persons; providing an
 44 effective date.

45
 46 Be It Enacted by the Legislature of the State of Florida:

47
 48 Section 1. Present subsection (10) of section 893.13,
 49 Florida Statutes, is redesignated as subsection (11), and a new
 50 subsection (10) is added to that section, to read:

51 893.13 Prohibited acts; penalties.—
 52 (10) Notwithstanding any provision of this section or any
 53 other law relating to the punishment for possessing, purchasing,
 54 or possessing with the intent to purchase a controlled
 55 substance, a person who possesses, purchases, or possesses with
 56 the intent to purchase less than 2 grams of a controlled
 57 substance, other than fentanyl or any substance or mixture
 58 described in s. 893.135(1)(c)4.a.(I)-(VII), may not be

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imprisoned for a term longer than 12 months.

Section 2. Present subsections (6) and (7) of section 893.135, Florida Statutes, are redesignated as subsections (7) and (8), respectively, and a new subsection (6) is added to that section, to read:

893.135 Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.—

(6) Notwithstanding any provision of this section, a court may impose a sentence for a violation of this section other than the mandatory minimum term of imprisonment and mandatory fine if the court finds on the record that all of the following circumstances exist:

(a) The defendant has no prior conviction for a forcible felony as defined in s. 776.08.

(b) The defendant did not use violence or credible threats of violence, or possess a firearm or other dangerous weapon, or induce another participant to use violence or credible threats of violence, in connection with the offense.

(c) The offense did not result in the death of or serious bodily injury to any person.

(d) The defendant was not an organizer, leader, manager, or supervisor of others in the offense and was not engaged in a continuing criminal enterprise as defined in s. 893.20.

(e) At the time of the sentencing hearing or earlier, the defendant has truthfully provided to the state all information and evidence that he or she possesses concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan.

(f) The defendant has not previously benefited from the

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application of this subsection.

A court may not apply this subsection to an offense under this section which carries a mandatory minimum term of imprisonment of 25 years.

Section 3. Section 900.06, Florida Statutes, is created to read:

900.06 Recording of custodial interrogations for certain offenses.—

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

(a) "Custodial interrogation" means questioning or other conduct by a law enforcement officer which is reasonably likely to elicit an incriminating response from an individual and which occurs under circumstances in which a reasonable individual in the same circumstances would consider himself or herself to be in the custody of a law enforcement agency.

(b) "Electronic recording" means an audio recording or an audio and video recording that accurately records a custodial interrogation.

(c) "Covered offense" includes:

1. Arson.

2. Sexual battery.

3. Robbery.

4. Kidnapping.

5. Aggravated child abuse.

6. Aggravated abuse of an elderly person or disabled adult.

7. Aggravated assault with a deadly weapon.

8. Murder.

9. Manslaughter.

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117 10. Aggravated manslaughter of an elderly person or
 118 disabled adult.

119 11. Aggravated manslaughter of a child.

120 12. The unlawful throwing, placing, or discharging of a
 121 destructive device or bomb.

122 13. Armed burglary.

123 14. Aggravated battery.

124 15. Aggravated stalking.

125 16. Home-invasion robbery.

126 17. Carjacking.

127 (d) "Place of detention" means a police station, sheriff's
 128 office, correctional facility, prisoner holding facility, county
 129 detention facility, or other governmental facility where an
 130 individual may be held in connection with a criminal charge that
 131 has been or may be filed against the individual.

132 (e) "Statement" means a communication that is oral,
 133 written, electronic, nonverbal, or in sign language.

134 (2) (a) A custodial interrogation at a place of detention,
 135 including the giving of a required warning, the advisement of
 136 the rights of the individual being questioned, and the waiver of
 137 any rights by the individual, must be electronically recorded in
 138 its entirety if the interrogation is related to a covered
 139 offense.

140 (b) If a law enforcement officer conducts a custodial
 141 interrogation at a place of detention without electronically
 142 recording the interrogation, the officer must prepare a written
 143 report explaining why he or she did not record the
 144 interrogation.

145 (c) As soon as practicable, a law enforcement officer who

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146 conducts a custodial interrogation at a location other than a
 147 place of detention shall prepare a written report explaining the
 148 circumstances of the interrogation and summarizing the custodial
 149 interrogation process and the individual's statements.

150 (d) Paragraph (a) does not apply:

151 1. If an unforeseen equipment malfunction prevents
 152 recording the custodial interrogation in its entirety;

153 2. If a suspect refuses to participate in a custodial
 154 interrogation if his or her statements are to be electronically
 155 recorded;

156 3. If an equipment operator error prevents recording the
 157 custodial interrogation in its entirety;

158 4. If the statement is made spontaneously and not in
 159 response to a custodial interrogation question;

160 5. If the statement is made during the processing of the
 161 arrest of a suspect;

162 6. If the custodial interrogation occurs when the law
 163 enforcement officer participating in the interrogation does not
 164 have any knowledge of facts and circumstances that would lead an
 165 officer to reasonably believe that the individual being
 166 interrogated may have committed a covered offense;

167 7. If the law enforcement officer conducting the custodial
 168 interrogation reasonably believes that making an electronic
 169 recording would jeopardize the safety of the officer, the
 170 individual being interrogated, or others; or

171 8. If the custodial interrogation is conducted outside of
 172 this state.

173 (3) Unless a court finds that one or more of the
 174 circumstances specified in paragraph (2) (d) apply, the court

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175 must consider the circumstances of an interrogation conducted by
 176 a law enforcement officer in which he or she did not
 177 electronically record all or part of a custodial interrogation
 178 in determining whether a statement made during the interrogation
 179 is admissible. If the court admits into evidence a statement
 180 made during a custodial interrogation that was not
 181 electronically recorded as required under paragraph (2) (a), the
 182 court must, upon request of the defendant, give cautionary
 183 instructions to the jury regarding the law enforcement officer's
 184 failure to comply with that requirement.

185 (4) A law enforcement agency in this state which has
 186 enforced rules adopted pursuant to this section which are
 187 reasonably designed to ensure compliance with the requirements
 188 of this section is not subject to civil liability for damages
 189 arising from a violation of this section. This section does not
 190 create a cause of action against a law enforcement officer.

191 Section 4. Paragraph (b) of subsection (1) of section
 192 961.03, Florida Statutes, is amended to read:

193 961.03 Determination of status as a wrongfully incarcerated
 194 person; determination of eligibility for compensation.—

195 (1)

196 (b) The person must file the petition with the court:

197 1. Within 2 years ~~90 days~~ after the order vacating a
 198 conviction and sentence becomes final and the criminal charges
 199 against the person are dismissed if the person's conviction and
 200 sentence is vacated, or the person is retried and found not
 201 guilty, on or after July 1, 2008. If a person had a claim
 202 dismissed or did not file a claim because of the former 90-day
 203 petition filing period under this subparagraph, he or she may

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204 file a petition with the court within 2 years after July 1,
 205 2020.

206 2. By July 1, 2010, if the person's conviction and sentence
 207 was vacated by an order that became final before ~~prior to~~ July
 208 1, 2008.

209 Section 5. Section 961.04, Florida Statutes, is amended to
 210 read:

211 961.04 Eligibility for compensation for wrongful
 212 incarceration.—A wrongfully incarcerated person is not eligible
 213 for compensation under the act if any of the following apply:

214 ~~(1) Before the person's wrongful conviction and~~
 215 ~~incarceration, the person was convicted of, or pled guilty or~~
 216 ~~nolo contendere to, regardless of adjudication, any violent~~
 217 ~~felony, or a crime committed in another jurisdiction the~~
 218 ~~elements of which would constitute a violent felony in this~~
 219 ~~state, or a crime committed against the United States which is~~
 220 ~~designated a violent felony, excluding any delinquency~~
 221 ~~disposition;~~

222 ~~(2) Before the person's wrongful conviction and~~
 223 ~~incarceration, the person was convicted of, or pled guilty or~~
 224 ~~nolo contendere to, regardless of adjudication, more than one~~
 225 ~~felony that is not a violent felony, or more than one crime~~
 226 ~~committed in another jurisdiction, the elements of which would~~
 227 ~~constitute a felony in this state, or more than one crime~~
 228 ~~committed against the United States which is designated a~~
 229 ~~felony, excluding any delinquency disposition;~~

230 (1)(3) During the person's wrongful incarceration, the
 231 person was convicted of, or pled guilty or nolo contendere to,
 232 regardless of adjudication, any violent felony.

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(2)~~(4)~~ During the person's wrongful incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, more than one felony that is not a violent felony. ~~or~~

~~(3)~~~~(5)~~ During the person's wrongful incarceration, the person was also serving a concurrent sentence for another felony for which the person was not wrongfully convicted.

Section 6. Paragraph (c) of subsection (3) of section 893.03, Florida Statutes, is amended to read:

893.03 Standards and schedules.—The substances enumerated in this section are controlled by this chapter. The controlled substances listed or to be listed in Schedules I, II, III, IV, and V are included by whatever official, common, usual, chemical, trade name, or class designated. The provisions of this section shall not be construed to include within any of the schedules contained in this section any excluded drugs listed within the purview of 21 C.F.R. s. 1308.22, styled "Excluded Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt Anabolic Steroid Products."

(3) SCHEDULE III.—A substance in Schedule III has a potential for abuse less than the substances contained in Schedules I and II and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to moderate or low physical dependence or high psychological dependence or, in the case of anabolic steroids, may lead to physical damage. The following substances are controlled in Schedule III:

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(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following controlled substances or any salts thereof:

1. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

2. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

3. Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

4. Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients that are not controlled substances.

5. Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

7. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with recognized therapeutic

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amounts of one or more active ingredients which are not controlled substances.

For purposes of charging a person with a violation of s. 893.135 involving any controlled substance described in subparagraph 3. or subparagraph 4., the controlled substance is a Schedule III controlled substance pursuant to this paragraph but the weight of the controlled substance per milliliters or per dosage unit is not relevant to the charging of a violation of s. 893.135. The weight of the controlled substance shall be determined pursuant to s. 893.135(7) ~~s. 893.135(6)~~.

Section 7. For the purpose of incorporating the amendment made by this act to section 961.04, Florida Statutes, in a reference thereto, subsection (4) of section 961.02, Florida Statutes, is reenacted to read:

961.02 Definitions.—As used in ss. 961.01-961.07, the term:

(4) "Eligible for compensation" means that a person meets the definition of the term "wrongfully incarcerated person" and is not disqualified from seeking compensation under the criteria prescribed in s. 961.04.

Section 8. For the purpose of incorporating the amendments made by this act to section 961.04, Florida Statutes, in references thereto, paragraph (a) of subsection (1) and subsections (2), (3), and (4) of section 961.03, Florida Statutes, are reenacted to read:

961.03 Determination of status as a wrongfully incarcerated person; determination of eligibility for compensation.—

(1)(a) In order to meet the definition of a "wrongfully incarcerated person" and "eligible for compensation," upon entry

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of an order, based upon exonerating evidence, vacating a conviction and sentence, a person must set forth the claim of wrongful incarceration under oath and with particularity by filing a petition with the original sentencing court, with a copy of the petition and proper notice to the prosecuting authority in the underlying felony for which the person was incarcerated. At a minimum, the petition must:

1. State that verifiable and substantial evidence of actual innocence exists and state with particularity the nature and significance of the verifiable and substantial evidence of actual innocence; and

2. State that the person is not disqualified, under the provisions of s. 961.04, from seeking compensation under this act.

(2) The prosecuting authority must respond to the petition within 30 days. The prosecuting authority may respond:

(a) By certifying to the court that, based upon the petition and verifiable and substantial evidence of actual innocence, no further criminal proceedings in the case at bar can or will be initiated by the prosecuting authority, that no questions of fact remain as to the petitioner's wrongful incarceration, and that the petitioner is not ineligible from seeking compensation under the provisions of s. 961.04; or

(b) By contesting the nature, significance, or effect of the evidence of actual innocence, the facts related to the petitioner's alleged wrongful incarceration, or whether the petitioner is ineligible from seeking compensation under the provisions of s. 961.04.

(3) If the prosecuting authority responds as set forth in

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paragraph (2) (a), the original sentencing court, based upon the evidence of actual innocence, the prosecuting authority's certification, and upon the court's finding that the petitioner has presented clear and convincing evidence that the petitioner committed neither the act nor the offense that served as the basis for the conviction and incarceration, and that the petitioner did not aid, abet, or act as an accomplice to a person who committed the act or offense, shall certify to the department that the petitioner is a wrongfully incarcerated person as defined by this act. Based upon the prosecuting authority's certification, the court shall also certify to the department that the petitioner is eligible for compensation under the provisions of s. 961.04.

(4) (a) If the prosecuting authority responds as set forth in paragraph (2) (b), the original sentencing court shall make a determination from the pleadings and supporting documentation whether, by a preponderance of the evidence, the petitioner is ineligible for compensation under the provisions of s. 961.04, regardless of his or her claim of wrongful incarceration. If the court finds the petitioner ineligible under the provisions of s. 961.04, it shall dismiss the petition.

(b) If the prosecuting authority responds as set forth in paragraph (2) (b), and the court determines that the petitioner is eligible under the provisions of s. 961.04, but the prosecuting authority contests the nature, significance or effect of the evidence of actual innocence, or the facts related to the petitioner's alleged wrongful incarceration, the court shall set forth its findings and transfer the petition by electronic means through the division's website to the division

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for findings of fact and a recommended determination of whether the petitioner has established that he or she is a wrongfully incarcerated person who is eligible for compensation under this act.

Section 9. This act shall take effect July 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-16-20

Meeting Date

346

Bill Number (if applicable)

765794

Amendment Barcode (if applicable)

Topic Sentencing

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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.

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S-001 (10/14/14)

THE FLORIDA SENATE
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1/14/20
Meeting Date

Bill Number (if applicable)

765744

Amendment Barcode (if applicable)

Topic CRIMINAL JUSTICE

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

Representing IN POLICE PROJECT FLORIDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

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1/16/2020

Meeting Date

346

Bill Number (if applicable)

Topic CRIMINAL JUSTICE

Amendment Barcode (if applicable)

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Speaking: ☐ For ☒ Against ☐ Information

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

Representing 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.

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S-001 (10/14/14)

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1-16-2020
Meeting Date

SB 346
Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

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

Representing Americans for Prosperity

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

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1/16/20

Meeting Date

SB 346

Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Libre Initiative

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

APPEARANCE RECORD

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11/16/20
Meeting Date

0346
Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing 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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THE FLORIDA SENATE
APPEARANCE RECORD

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1-16-20

Meeting Date

346

Bill Number (if applicable)

Topic Sentencing ReForm

Amendment Barcode (if applicable)

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Rights Restoration Coalition

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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1/16/2020
Meeting Date

346
Bill Number (if applicable)

Topic Sentencing Reform

Amendment Barcode (if applicable)

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Rights Restoration Coalition

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

1/16/20

Meeting Date

346

Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

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Address 1727 Highland Place

Phone 509 8022

TX
City

TX
State

32308
Zip

Email greg@waypointstrat.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing R Street 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

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

1/16/20

Meeting Date

SB 346

Bill Number (if applicable)

Topic Judicial Discretion/Mandatory Minimums

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legislative Director & Senior Policy Counsel

Address 4343 West Flagler St.

Phone 786-363-4436

Street

Miami

FL

33134

City

State

Zip

Email kgross@aclufl.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Civil Liberties Union of Florida

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)

1/16/20

Meeting Date

SB 346

Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Phil Archer

Job Title State Attorney

Address 2725 Judge Fran Jamieson Way

Phone (321) 637-5575

Street

Viera

FL

32940

City

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FPAA - Fla. Prosecuting Attorney's Assoc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

S-001 (10/14/14)

10:00 - 4121K

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/15/20
Meeting Date

346
Bill Number (if applicable)

Topic CRIM JUST.

Amendment Barcode (if applicable)

Name Sal Nuzzo

Job Title Vice President of Policy

Address 100 N Duval Street

Phone 850-322-9941

Street

Tallahassee

FL

32301

Email snuzzo@jamesmadison.org

City

State

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

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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)

1/15/20
Meeting Date

346
Bill Number (if applicable)

Topic CS

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title State Director

Address 605 Middlebrook Cir.
Street

Phone 954 557 0016

TLH FL 32312
City State Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Right on Crime

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

1/16/2020

Meeting Date

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

346

Bill Number (if applicable)

Topic Sentencing Reform

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Phone (850) 681-0024

City Tallahassee State FL Zip 32301

Email jorge@flapartners.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FACDL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

1-16-20

Meeting Date

346

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title Fla. Director

Address PO Box 142933

Phone 352.682.2542

Street

Gainesville

FL

32614

City

State

Zip

Email gnewburn@famm.org

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

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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)

1/16/2020

Meeting Date

3416

Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Ida V. Eskaman

Job Title Public Policy

Address 126 N. Mills Ave

Phone

Street

Orlando

FL

3284

Email

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against

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

Representing New Florida Majority & Organize Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/16/20
Meeting Date

346

Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 201 W Park Av
Street

Phone _____

Tallahassee
City

FL
State

32301
Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

1/16/2020

Meeting Date

~~376~~ 346

Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Sheriff Rick Wells

Job Title Sheriff

Address 600 301 Blvd. W., #202

Phone (941) 747-3011

Street

Bradenton

FL

34205

Email _____

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

JAN 16-2020
Meeting Date

346
SB ~~123~~
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name SEX AND BODS CLAY COUNTY FL. HOTELS

Job Title OWNER

Address 2904-2910 HWY 21

Phone _____

Street

MIDDLEBURY

FL.

32068

City

State

Zip

Email SEX BODS 10/1/2014
cin

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SEX TOYS AT CLAY COUNTY FL.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Community Affairs, Chair
Appropriations
Appropriations Subcommittee on Health and
Human Services
Appropriations Subcommittee on Education
Criminal Justice
Rules

SENATOR ANITERE FLORES

Deputy Majority Leader
39th District

January 14th, 2020

The Honorable Robert Bradley
Chair of Committee on Appropriations
201 The Capitol
404 South Monroe Street
Tallahassee, FL 32399-1100

RS

Dear Chair Bradley:

I will not be able to attend the committee meeting on January 16th, 2020. I respectfully request to be excused from the Committee on Appropriations on January 16th, 2020.

Please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Anitere Flores".

Anitere Flores

CC: Lauren Jones, Staff Director, Committee on Criminal

REPLY TO:

- ☐ 11401 SW 40th Street, Suite 465 Miami, FL 33175 (305)-222-4117
- ☐ 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5039

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Transportation,
Tourism, and Economic Development, *Chair*
Appropriations
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Commerce and Tourism
Infrastructure and Security
Innovation, Industry, and Technology
Judiciary
Rules

SENATOR TRAVIS HUTSON

7th District

January 16, 2020

The Honorable Rob Bradley
404 S. Monroe Street
Tallahassee, FL 32399-1100

23

Dear Chair Bradley,

I am writing to request to be excused from the Appropriations meeting on January 16th, 2020 at 10:00am due to illness. Thank you for your consideration of this request.

Respectfully,

Travis J. Hutson

REPLY TO:

- ☐ 4875 Palm Coast Parkway, NW, Suite 5, Palm Coast, Florida 32137 (386) 446-7610 FAX: (888) 263-3475
- ☐ 314 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5007

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

CourtSmart Tag Report

Room: KN 412

Case No.:

Type:

Caption: Senate Appropriations Committee

Judge:

Started: 1/16/2020 10:03:55 AM

Ends: 1/16/2020 11:46:17 AM

Length: 01:42:23

10:04:02 AM Sen. Bradley (Chair)
10:06:16 AM S 346
10:06:27 AM Sen. Benacquisto (Chair)
10:06:41 AM PCS 776730
10:06:49 AM Sen. Bradley
10:14:10 AM Sen. Benacquisto
10:14:18 AM Sen. Lee
10:15:34 AM Sen. Bradley
10:18:45 AM Sen. Lee
10:19:36 AM Sen. Bradley
10:20:07 AM Sen. Lee
10:20:28 AM Sen. Bradley
10:21:14 AM Sen. Lee
10:21:46 AM Sen. Bradley
10:23:09 AM Sen. Benacquisto
10:23:12 AM Sen. Rouson
10:24:24 AM Sen. Bradley
10:25:33 AM Sen. Gibson
10:26:36 AM Sen. Bradley
10:28:37 AM Sen. Thurston
10:31:35 AM Sen. Bradley
10:34:03 AM Sen. Thurston
10:34:38 AM Sen. Bradley
10:34:51 AM Sen. Montford
10:35:38 AM Sen. Bradley
10:36:45 AM Am. 765794
10:37:02 AM Sen. Bradley
10:37:08 AM Sen. Benacquisto
10:37:20 AM Sen. Rouson
10:37:34 AM Sen. Bradley
10:37:37 AM Sen. Rouson
10:38:09 AM Sen. Bradley
10:38:33 AM Greg Newburn, Florida Director, Families Against Mandatory Minimums (waives in support)
10:38:35 AM Adina Thompson, Intake Coordinator, Innocence Project Florida (waives in support)
10:38:54 AM S 346 (cont.)
10:39:03 AM Gary Hester, Government Affairs, Florida Police Chiefs Association
10:44:59 AM Sen. Book
10:45:24 AM G. Hester
10:46:49 AM Sen. Brandes
10:46:59 AM G. Hester
10:47:02 AM Sen. Brandes
10:47:11 AM G. Hester
10:47:28 AM Sen. Brandes
10:47:40 AM G. Hester
10:47:56 AM Starla Brown, Deputy State Director, Americans for Prosperity (waives in support)
10:48:03 AM Diego Echeverri, Legislative Liaison, The Libre Initiative (waives in support)
10:48:06 AM Kristina Wiggins, Executive Director, Florida Public Defender Association (waives in support)
10:48:11 AM Rodney Stathom, Legislative Affairs, Florida Rights Restoration Coalition (waives in support)
10:48:16 AM Lace Wissinger, Policy Fellow, Florida Rights Restoration Coalition (waives in support)
10:48:22 AM Greg Black, Lobbyist, R Street Institute (waives in support)
10:48:26 AM Kara Gross, Legislative Director and Senior Policy Counsel, American Civil Liberties Union of Florida (waives in support)

10:48:39 AM Phil Archer, State Attorney, Florida Prosecuting Attorneys Association
10:50:56 AM Sen. Benacquisto
10:51:01 AM P. Archer
10:52:57 AM Sen. Benacquisto
10:53:11 AM P. Archer
10:54:47 AM Sen. Simmons
10:56:16 AM P. Archer
10:56:40 AM Sen. Simmons
10:58:30 AM P. Archer
10:59:26 AM Sen. Simmons
10:59:40 AM P. Archer
11:00:04 AM Sen. Thurston
11:00:19 AM P. Archer
11:00:27 AM Sen. Thurston
11:00:37 AM P. Archer
11:00:51 AM Sen. Thurston
11:01:20 AM P. Archer
11:01:31 AM Sen. Thurston
11:02:01 AM P. Archer
11:03:00 AM Sen. Thurston
11:03:46 AM P. Archer
11:03:52 AM Sen. Benacquisto
11:03:55 AM Sal Nuzzo, Vice President of Policy, The James Madison Institute
11:05:34 AM Chelsea Murphy, State Director, Right on Crime
11:06:44 AM Jorge Chamizo, Attorney, Florida Association of Criminal Defense Lawyers (waives in support)
11:06:54 AM G. Newburn
11:10:36 AM Sen. Benacquisto
11:10:40 AM G. Newburn
11:11:00 AM Ida Eskamani, Public Policy, New Florida Majority and Organize Florida (waives in support)
11:11:06 AM Ingrid Delgado, Associate for Social Concerns and Respect Life, Florida Conference of Catholic Bishops
(waives in support)
11:11:10 AM Sheriff Rick Wells, Florida Sheriffs Association
11:14:16 AM Sen. Brandes
11:14:53 AM R. Wells
11:14:56 AM Sen. Brandes
11:15:02 AM James Otto, Owner, Sex and Buds Clay County Florida Hotels
11:16:37 AM Sen. Brandes
11:17:24 AM J. Otto
11:17:35 AM Sen. Brandes
11:17:38 AM Sen. Benacquisto
11:17:41 AM Sen. Braynon
11:20:58 AM Sen. Powell
11:23:52 AM Sen. Benacquisto
11:23:56 AM Sen. Gibson
11:27:55 AM Sen. Benacquisto
11:27:59 AM Sen. Rouson
11:28:58 AM Sen. Benacquisto
11:29:01 AM Sen. Stewart
11:29:35 AM Sen. Benacquisto
11:29:37 AM Sen. Brandes
11:32:51 AM Sen. Simmons
11:36:15 AM Sen. Benacquisto
11:36:17 AM Sen. Lee
11:39:21 AM Sen. Benacquisto
11:41:13 AM Sen. Bradley
11:44:22 AM Sen. Benacquisto
11:45:15 AM Sen. Bradley (Chair)
11:46:09 AM Sen. Benacquisto