

SB 170 by Joyner; (Identical to H 4021) Administration of County and Municipal Delinquency Programs and Facilities

SB 190 by Braynon; (Similar to CS/H 1215) False Personation

332122	A	S	RCS	CJ, Smith	Delete L.42 - 56:	03/24 07:14 PM
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CS/SB 540 by EP, Simmons (CO-INTRODUCERS) Soto, Abruzzo; (Compare to H 0449) Sharks

SB 550 by Hukill; (Similar to H 0427) Traveling Across County Lines to Commit a Felony Offense

SB 562 by Gibson; (Identical to H 0529) Sexual Predators and Offenders

SB 598 by Bean; (Similar to CS/CS/H 0173) Juvenile Justice Education Programs

643760	D	S	RCS	CJ, Bradley	Delete everything after	03/24 07:14 PM
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CS/SB 746 by HP, Sobel; (Similar to H 0959) Health Care Clinic Act

238866	A	S	RCS	CJ, Smith	Delete L.176 - 189:	03/24 07:14 PM
382502	A	S	L WD	CJ, Smith	After L.170:	03/24 07:14 PM

SB 768 by Braynon; (Similar to CS/CS/H 0989) Human Trafficking

236686	A	S	RCS	CJ, Smith	Delete L.188 - 208.	03/24 07:14 PM
349736	A	S	WD	CJ, Smith	Delete L.251:	03/24 07:14 PM

SB 812 by Detert; (Compare to CS/CS/H 1013) Court-ordered Expunction of Criminal History Records

908198	D	S	RCS	CJ, Dean	Delete everything after	03/25 12:36 PM
954948	A	S	WD	CJ, Dean	Delete L.115 - 127:	03/21 02:59 PM

CS/SB 912 by JU, Dean; (Similar to H 1177) Service of Process

179956	A	S		CJ, Dean	Delete L.35 - 72:	03/19 05:01 PM
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SB 920 by Dean; (Compare to CS/CS/H 0659) Protection of Crime Victims

863916	D	S	WD	CJ, Dean	Delete everything after	03/20 01:21 PM
503996	AA	S	WD	CJ, Dean	Delete L.5 - 67:	03/20 01:21 PM

SB 1006 by Hays; (Similar to CS/CS/H 0413) Consumer Collection Practices

929696	A	S	RCS	CJ, Altman	Delete L.264:	03/24 07:14 PM
461132	A	S	RCS	CJ, Altman	Delete L.279:	03/24 07:14 PM

CS/SB 1030 by HP, Bradley, Bean, Brandes (CO-INTRODUCERS) Galvano, Sobel, Soto, Gardiner, Stargel, Simpson; (Compare to H 0859) Low-THC Marijuana and Cannabis

SB 1234 by Bullard; (Similar to CS/H 0041) Florida Law Enforcement Officers' Hall of Fame

SB 1322 by Evers; (Similar to H 1323) Law Enforcement and Corrections Officers

SB 1406 by Abruzzo; (Similar to CS/H 1211) Care for Retired Law Enforcement Dogs

791320	D	S	RCS	CJ, Altman	Delete everything after	03/24 07:14 PM
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Evers, Chair
Senator Smith, Vice Chair

MEETING DATE: Monday, March 24, 2014

TIME: 4:00 —6:00 p.m.

PLACE: *Mallory Horne Committee Room, 37 Senate Office Building*

MEMBERS: Senator Evers, Chair; Senator Smith, Vice Chair; Senators Altman, Bradley, Dean, Gibson, and Simmons

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 170 Joyner (Identical H 4021)	Administration of County and Municipal Delinquency Programs and Facilities; Deleting compliance criteria for county delinquency programs and facilities, etc. CJ 03/24/2014 Favorable CF CA	Favorable Yeas 6 Nays 0
2	SB 190 Braynon (Similar H 1215)	False Personation; Prohibiting a person from falsely personating a firefighter; prohibiting operation or ownership of a motor vehicle falsely marked with the intent to mislead or cause another person to believe that such vehicle is authorized by a fire department for use by the person operating it; providing an exception, etc. CJ 03/17/2014 Not Considered CJ 03/24/2014 Fav/CS ACJ AP	Fav/CS Yeas 6 Nays 0
3	CS/SB 540 Environmental Preservation and Conservation / Simmons (Compare H 449)	Sharks; Providing penalties for possession of separated shark fins on state waters; conforming a cross-reference, etc. EP 03/06/2014 Fav/CS CJ 03/24/2014 Favorable RC	Favorable Yeas 6 Nays 0
4	SB 550 Hukill (Similar H 427)	Traveling Across County Lines to Commit a Felony Offense; Defining the terms "county of residence" and "felony offense" for the purpose of the crime of traveling across county lines with the intent to commit a felony offense; providing a criminal penalty; adding the crime of traveling across county lines with the intent to commit a felony offense to the factors a court must consider in determining whether to release a defendant on bail, etc. CJ 03/17/2014 Not Considered CJ 03/24/2014 Favorable CA ACJ AP	Favorable Yeas 5 Nays 1

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Monday, March 24, 2014, 4:00 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	SB 562 Gibson (Identical H 529, Compare S 1416)	Sexual Predators and Offenders; Prohibiting a person from knowingly authorizing or allowing a sexual predator or sexual offender to operate a motor vehicle owned or under the dominion or control of that person, except for certain purposes; providing a criminal penalty; providing that provisions relating to disposition of traffic infractions, is not available to a person who is charged with the offense of knowingly authorizing or allowing a sexual predator or sexual offender to operate a motor vehicle owned or under the dominion or control of that person, etc. CJ 03/24/2014 Favorable TR AP	Favorable Yeas 6 Nays 0
6	SB 598 Bean (Similar CS/CS/H 173)	Juvenile Justice Education Programs; Revising requirements for the multiagency career education plan for students in juvenile justice education programs; requiring the Department of Juvenile Justice to provide cost and effectiveness information for education programs and program activities to the Legislature and to the public; expanding access to certain student records held by a district school system to all instructional personnel in juvenile justice education programs, etc. ED 03/11/2014 Favorable CJ 03/24/2014 Fav/CS AED AP	Fav/CS Yeas 6 Nays 0
7	CS/SB 746 Health Policy / Sobel (Similar H 959)	Health Care Clinic Act; Redefining the term "clinic"; clarifying that a clinic that employs a physician whose license is suspended or revoked is subject to administrative and criminal penalties, etc. HP 03/11/2014 Fav/CS CJ 03/24/2014 Fav/CS CA AP	Fav/CS Yeas 6 Nays 0
8	SB 768 Braynon (Similar CS/CS/H 989, Compare H 1071)	Human Trafficking; Redefining the term "sexual abuse of a child" to include human trafficking; authorizing a defendant who has been charged with specified human trafficking offenses to apply for an order of disclosure of confidential and exempt information; prohibiting a public employee or officer from disclosing specified information about a victim of specified human trafficking offenses; providing an exception to ineligibility for victim assistance awards to specified victims of human trafficking, etc. CJ 03/24/2014 Fav/CS JU AP	Fav/CS Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Monday, March 24, 2014, 4:00 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	SB 812 Detert (Compare CS/CS/H 1013)	Court-ordered Expunction of Criminal History Records; Revising the information that must be provided in the written statement from the state attorney or statewide prosecutor in order for a person to be eligible for a criminal history record expunction; requiring a person or entity that publishes, displays, or disseminates information regarding an arrest that has been expunged to remove such information under certain circumstances, etc. CJ 03/24/2014 Fav/CS JU RC	Fav/CS Yeas 6 Nays 0
10	CS/SB 912 Judiciary / Dean (Similar H 1177, Compare H 627, S 620)	Service of Process; Providing that certain individuals authorized to serve process do not commit the offense of trespass on property other than a structure or conveyance and are not subject to civil liability under certain circumstances; allowing the posting of a criminal witness subpoena under specified circumstances; providing that the offense of trespass on property other than a structure or conveyance is not applicable to certain persons who are authorized to serve process under certain circumstances, etc. JU 03/11/2014 Fav/CS CJ 03/24/2014 Not Considered RC	Not Considered
11	SB 920 Dean (Compare CS/CS/H 659)	Protection of Crime Victims; Requiring a licensed private investigator and private investigative agency to determine if an individual being investigated is a petitioner requesting notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence or is a participant in the Address Confidentiality Program for Victims of Domestic Violence within the Office of the Attorney General; providing that a person commits a misdemeanor of the first degree if he or she violates a final injunction for protection against stalking or cyberstalking by having in his or her care, custody, possession, or control any firearm or ammunition, etc. CJ 03/17/2014 Not Considered CJ 03/24/2014 Favorable JU AP	Favorable Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Monday, March 24, 2014, 4:00 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	SB 1006 Hays (Similar CS/CS/H 413, Compare CS/CS/H 415, Link CS/S 1002)	Consumer Collection Practices; Removing provisions relating to the revocation or suspension of a professional license which allow the Office of Financial Regulation to reject an applicant for registration; authorizing the office to conduct examinations and investigations; requiring registrants to report, within a specified time period, a conviction of, or plea of nolo contendere to, a crime or an administrative enforcement action, etc. BI 03/05/2014 Favorable CJ 03/24/2014 Fav/CS AP	Fav/CS Yeas 6 Nays 0
13	CS/SB 1030 Health Policy / Bradley / Bean / Brandes (Compare H 859, S 962)	Low-THC Marijuana and Cannabis; Authorizing specified physicians to order low-THC marijuana for use by specified patients; requiring the department to create a compassionate use registry; requiring the department to authorize a specified number of dispensing organizations; revising the definition of the term "cannabis" for purposes of the Florida Comprehensive Drug Abuse Prevention and Control Act and as applicable to certain criminal offenses proscribing the sale, manufacture, delivery, possession, or purchase of cannabis, to which penalties apply, etc. HP 03/11/2014 Fav/CS CJ 03/24/2014 Favorable AP	Favorable Yeas 5 Nays 1
14	SB 1234 Bullard (Similar CS/H 41)	Florida Law Enforcement Officers' Hall of Fame; Establishing the Florida Law Enforcement Officers' Hall of Fame; providing for administration of the hall of fame by the Department of Law Enforcement; directing the Department of Management Services to designate a location; establishing procedures for selection, nomination, and induction of members, etc. CJ 03/24/2014 Favorable GO AP	Favorable Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Monday, March 24, 2014, 4:00 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	SB 1322 Evers (Similar H 1323)	Law Enforcement and Corrections Officers; Specifying the exclusivity of procedures governing the investigation of law enforcement officers and correctional officers; authorizing an interrogated officer's representative or legal counsel to obtain a recording of an interrogation session upon request; requiring that an officer subject to disciplinary action or the officer's representative or legal counsel have an opportunity to address findings in a final investigative report before imposition of discipline; specifying the length of application of investigative procedures of a law enforcement agency or correctional agency, etc. CJ 03/24/2014 Not Considered GO CA	Not Considered
16	SB 1406 Abruzzo (Similar CS/H 1211)	Care for Retired Law Enforcement Dogs; Citing this act as the "Care for Retired Law Enforcement Dogs Program Act"; creating the Care for Retired Law Enforcement Dogs Program within the Department of Law Enforcement; requiring the department to contract with a not-for-profit corporation meeting specified criteria to administer the program; providing specific procedures for disbursement of funds for the veterinary care of eligible retired law enforcement dogs; providing for the carryforward of unexpended appropriations for use in the program up to certain limits, etc. CJ 03/17/2014 Not Considered CJ 03/24/2014 Fav/CS AP	Fav/CS Yeas 6 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 170

INTRODUCER: Senator Joyner

SUBJECT: Administration of County and Municipal Delinquency Programs and Facilities

DATE: March 21, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.			CF	
3.			CA	

I. Summary:

SB 170 requires a county or municipal government operating a juvenile detention facility to be certified by the Department of Juvenile Justice (DJJ) that it is in compliance with the department's rules prescribing the standards and requirements for operating a secure juvenile detention facility under s. 985.688, F.S. It will no longer be authorized under the bill for such entities to operate a juvenile detention facility by complying with the Florida Model Jail Standards and being inspected annually.

II. Present Situation:

A county or municipal government is authorized under s. 985.688, F.S., to establish and operate a juvenile detention facility if it is operated in compliance with this section.¹ Prior to July 1, 2011, subsection (9) of this section required such facility to be certified by the DJJ to be in compliance with the department's rules prescribing the standards and requirements for operating a secure juvenile detention facility.² The rules for certification of locally operated detention facilities were required to be consistent with the rules for certification of secure juvenile detention facilities operated by the department. Additionally, quarterly inspections and evaluations were required under the statute.³

During the 2011 Legislative Session, the Legislature passed a bill authorizing counties to establish and operate a secure juvenile detention facility for preadjudicated youth with no oversight by the DJJ.⁴ Instead, the legislation required counties to do the following to be in compliance with the statute:

¹ Section 985.688(9), F.S.

² Fla. Admin. Code R. 63G-2 (2006).

³ Section 985.688(9)(a) and (b), F.S.

⁴ Chapter 2011-53, Laws of Florida. (Senate Bill 2112 originated as a committee bill by Budget, SPB 7124.)

- Provide for the full cost of preadjudication detention for juveniles;
- Authorize the county sheriff, any other county jail operator, or contracted provider to provide preadjudication detention care for juveniles;
- Ensure that the county sheriff or other county jail operator is accredited by the Florida Corrections Accreditation Commission or American Correctional Association;
- Ensure that the facility is inspected annually and meets the Florida Model Jail Standards; and
- Ensure that the county sheriff or other county jail operator follows the federal regulations requiring sight and sound separation of juveniles from adult inmates.⁵

The bill also provided that a county or county sheriff that is in compliance with the new subsection is not subject to any additional training, procedures, or inspections required under ch. 985, F.S.⁶

There are three counties currently operating their own secure juvenile detention facilities. Marion County uses the DJJ standards. Polk and Seminole Counties use the Florida Model Jail Standards.⁷

III. Effect of Proposed Changes:

The bill requires a county or municipal government operating a juvenile detention facility to be certified by the DJJ that it is in compliance with the department's rules prescribing the standards and requirements for operating a secure juvenile detention facility under s. 985.688, F.S. It requires quarterly inspections and evaluation for compliance with the department's standards in order to continue operating a facility.

No longer will it be authorized under the bill for such entities to operate a juvenile detention facility by complying with the Florida Model Jail Standards and being inspected annually. (The bill essentially changes the law to how it existed prior to July 1, 2011, before the Florida Model Jail Standards became the measurement for compliance.)

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁵ *Id.* These provisions were codified in s. 985.688(11)(a) and (c), F.S.

⁶ *Id.* This provision was codified in s. 985.688(11)(d), F.S.

⁷ Department of Juvenile Justice, *2014 Legislative Session Bill Analysis for Senate Bill 170*, September 26, 2013 (on file with the Senate Committee on Criminal Justice).

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the DJJ, this bill does not result in any fiscal impact to the department.⁸

It may, however, have an impact upon those counties operating their own juvenile detention facility because they will have to pay a monitoring fee equal to 0.5 percent of the direct operating costs of the program.⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 985.688 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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

⁸*Id.*

⁹ See s. 985.688(9)(b), F.S.

By Senator Joyner

19-00015-14

2014170__

1 A bill to be entitled
 2 An act relating to the administration of county and
 3 municipal delinquency programs and facilities;
 4 amending s. 985.688, F.S.; deleting compliance
 5 criteria for county delinquency programs and
 6 facilities; providing an effective date.
 7
 8 Be It Enacted by the Legislature of the State of Florida:
 9
 10 Section 1. Subsection (11) of section 985.688, Florida
 11 Statutes, is amended to read:
 12 985.688 Administering county and municipal delinquency
 13 programs and facilities.—
 14 ~~(11)(a) Notwithstanding the provisions of this section, a~~
 15 ~~county is in compliance with this section if:~~
 16 1. ~~The county provides the full cost for preadjudication~~
 17 ~~detention for juveniles;~~
 18 2. ~~The county authorizes the county sheriff, any other~~
 19 ~~county jail operator, or a contracted provider located inside or~~
 20 ~~outside the county to provide preadjudication detention care for~~
 21 ~~juveniles;~~
 22 3. ~~The county sheriff or other county jail operator is~~
 23 ~~accredited by the Florida Corrections Accreditation Commission~~
 24 ~~or American Correctional Association; and~~
 25 4. ~~The facility is inspected annually and meets the Florida~~
 26 ~~Model Jail Standards.~~
 27 ~~(b) A county or county sheriff may form regional detention~~
 28 ~~facilities through an interlocal agreement in order to meet the~~
 29 ~~requirements of this section.~~

Page 1 of 2

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

19-00015-14

2014170__

30 ~~(c) Each county sheriff or other county jail operator must~~
 31 ~~follow the federal regulations that require sight and sound~~
 32 ~~separation of juvenile inmates from adult inmates.~~
 33 ~~(d) A county or county sheriff that complies with this~~
 34 ~~subsection is not subject to any additional training,~~
 35 ~~procedures, or inspections required by this chapter.~~
 36 Section 2. This act shall take effect July 1, 2014.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ARTHENIA L. JOYNER

19th District

COMMITTEES:
Appropriations Subcommittee on Criminal and
Civil Justice, *Vice Chair*
Appropriations
Appropriations Subcommittee on General
Government
Ethics and Elections
Health Policy
Judiciary
Transportation

SELECT COMMITTEE:
Select Committee on Indian River Lagoon
and Lake Okeechobee Basin

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

September 25, 2013

Senator Greg Evers, Chair
Senate Committee on Criminal Justice
510 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Mr. Chair:

This is to request that Senate Bill 170, Administration of County and Municipal Delinquency Facilities, be placed on the agenda for the Committee on Criminal Justice. Your consideration of this request is greatly appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arthenia L. Joyner".

Arthenia L. Joyner
State Senator, District 19

ALJ/rr

REPLY TO:

- ☐ 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
- ☐ 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/24/14
Meeting Date

Topic Juvenile Pre-trial

Bill Number 170
(if applicable)

Name Nancy Daniels

Amendment Barcode _____
(if applicable)

Job Title Public Defender, 2nd Circuit

Address Leon County Courthouse, 301 S Monroe St.
Tallahassee FL 32301
City State Zip

Phone 850 606-1010

E-mail nancy.daniels@
flpd2.com

Speaking: ☒ For ☐ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-24-14
Meeting Date

Topic Admin. of County & Municipal Del. Programs

Bill Number 170
(if applicable)

Name Rick Branch

Amendment Barcode _____
(if applicable)

Job Title Minister of Music

Address 5995 Adelyn Rd.
Pensacola FL 32504
City State Zip

Phone 850-324-9874

E-mail rbranch@cox.net

Speaking: ☒ For ☐ Against ☐ Information

Representing First United Methodist Church, Pensacola and Escambia Youth Justice 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.

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 190

INTRODUCER: Criminal Justice Committee and Senator Braynon

SUBJECT: False Personation

DATE: March 25, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 190 provides that it is a third degree felony to falsely personate a firefighter. It is a second degree felony to falsely personate a firefighter during the course of the commission of a felony. It is a first degree felony to falsely personate a firefighter during the course of the commission of a felony if the commission of that felony results in the death or personal injury of another human being.

The false impersonation statute currently includes impersonating a “watchman.” The bill defines “watchman” as a security officer licensed under ch. 493, F.S. (private security officers).

The bill provides that it is a first degree misdemeanor to own or operate a motor vehicle marked or identified with various indicia indicating the vehicle is used by a fire department (e.g., marked with the words “fire department”) “with the intent to mislead or cause another person to believe” that the vehicle is an official vehicle of the fire department and is authorized to be used by the department, unless a specified exception applies.

II. Present Situation:

False Personation of Law Enforcement Officers and Other Specified Officers/Positions (s. 843.08, F.S.)

Section 843.08, F.S., punishes false personation of a law enforcement officer or other specified person. A person commits this false personation offense if he or she falsely assumes or pretends to be any of the following officers/persons and takes upon himself or herself to act as such or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such officer/person:

- Sheriff.
- Officer of the Florida Highway Patrol.
- Officer of the Fish and Wildlife Conservation Commission.
- Officer of the Department of Transportation.
- Officer of the Department of Financial Services.
- Officer of the Department of Corrections.
- Correctional probation officer.
- Deputy sheriff.
- State attorney or assistant state attorney.
- Statewide prosecutor or assistant statewide prosecutor.
- State attorney investigator.
- Coroner.
- Police officer.
- Lottery special agent or lottery investigator.
- Beverage enforcement agent.
- Watchman.
- Any member of the Parole Commission and any administrative aide or supervisor employed by the commission.
- Any personnel or representative of the Florida Department of Law Enforcement (FDLE).
- A federal law enforcement officer as defined in s. 901.1505, F.S.

It is a third degree felony to commit this offense.¹ However, a person who falsely personates any such officer/position during the course of the commission of a felony commits a second degree felony² or, if the commission of the felony results in the death or personal injury of another human being, a first degree felony.³

¹ A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or prison and a fine. Sections 775.082 and 775.083, F.S. However, if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.

² A second degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or prison and a fine. Sections 775.082 and 775.083, F.S.

³ A first degree felony is generally punishable by up to 30 years in state prison, a fine of up to \$10,000, or prison and a fine. Sections 775.082 and 775.083, F.S.

Unlawful Marking of a Motor Vehicle (s. 843.085, F.S.)

Section 843.085(2), F.S., provides that it is unlawful for a person to own or operate a motor vehicle if:

- The vehicle is marked or identified in any manner or combination by the word or words “police,” “patrolman,” “sheriff,” “deputy,” “trooper,” “highway patrol,” “commission officer,” “Wildlife Officer,” “Marine Patrol Officer,” “marshal,” “constable,” or “bailiff,” or by any lettering, marking, or insignia, or colorable imitation thereof, including, but not limited to, stars, badges, or shields;
- The wording is officially used to identify the vehicle as a federal, state, county, or municipal law enforcement vehicle or a vehicle used by a criminal justice agency as defined in s. 943.045, F.S.;
- The use of the wording on the vehicle could deceive a reasonable person into believing that the vehicle is authorized by any of these agencies for use by the person operating the motor vehicle; and
- A specified exception does not apply.

Exceptions include:

- The vehicle is owned or operated by the “appropriate agency” and its use is authorized by the agency;
- The fire department authorizes the use of the vehicle; or
- The person is appointed by the Governor pursuant to ch. 354, F.S. (special officers for carriers).

This offense is punishable as a first degree misdemeanor.⁴ Section 843.085, F.S., is cumulative to any law now in force in the state.

In *Sult v. State*,⁵ the Florida Supreme Court held that s. 843.085, F.S. (2001), is unconstitutionally overbroad and vague, and also violates a person’s right to substantive due process. The Court only discusses subsection (1) of this statute but the intent language the Court found objectionable also appears in subsections (2) and (3) of the statute.

III. Effect of Proposed Changes:

The bill amends s. 843.08, F.S., to provide that it is a third degree felony to falsely personate a firefighter.⁶ It is a second degree felony to falsely personate a firefighter during the course of the commission of a felony. It is a first degree felony to falsely personate a firefighter during the course of the commission of a felony if the commission of that felony results in the death or personal injury of another human being.

⁴ A first degree misdemeanor is punishable by up to 1 year incarceration in county jail, a fine of up to \$1,000, or jail and a fine. Sections 775.082 and 775.083, F.S.

⁵ 906 So.2d 1013 (Fla. 2005).

⁶ The bill does not define “firefighter” by reference to any specific definition of the term in the Florida Statutes. However, most of the descriptive terms for officers/persons listed in the statute are not defined by reference to a statutory definition (e.g., “police officer”). Statutory definitions of “firefighter” vary. See e.g., ss. 112.81(1), 633.102(9), and 784.07(1)(b), F.S.

The false impersonation statute currently includes impersonating a “watchman.” The bill defines “watchman” as a security officer licensed under ch. 493, F.S. (private security officers).

The bill also amends s. 843.085, F.S., to provide that it is a first degree misdemeanor to own or operate a motor vehicle marked or identified with various indicia indicating the vehicle is used by a fire department (e.g., marked with the words “fire department”) “with the intent to mislead or cause another person to believe” that the vehicle is an official vehicle of the fire department and is authorized to be used by the department, unless a specified exception applies.

Exceptions include:

- The vehicle is owned or operated by the “appropriate agency” and its use is authorized by the agency;
- The fire department authorizes the use of the vehicle; or
- The person is appointed by the Governor pursuant to ch. 354, F.S. (special officers for carriers).⁷

The inclusion of specific intent language appears to be intended to address the case of *Sult v. State*, *supra*, and, if constitutionally sufficient, would make s. 843.085(2), F.S., enforceable for unlawfully owning or operating a motor vehicle marked or identified with various indicia indicating the vehicle is used by a fire department. This change will also apply to the current offense covered by this paragraph: unlawfully owning or operating a motor vehicle marked or identified with various indicia indicating the vehicle is used by a law enforcement agency.

The bill also amends s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to make technical, corrective change to descriptive language regarding the current ranking of false personation under s. 843.08, F.S. It does not change the current ranking of the offense.

The effective date of the bill is July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁷ The bill also amends s. 843.085, F.S., to specify that the statute does not prohibit a fraternal, benevolent, or labor organization or association, or their subsidiaries or chapters, from using the words “fire department,” in any manner or in any combination, if those words appear in the official name of the organization or association.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the 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 preliminarily estimates the bill will have an insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 843.08, 843.085, and 921.0022.

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

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

CS by Criminal Justice on March 24, 2014:

The false impersonation statute currently includes impersonating a “watchman.” The bill defines “watchman” as a security officer licensed under ch. 493, F.S. (private security officers).

B. Amendments:

None.



332122

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/24/2014	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Smith) recommended the following:

Senate Amendment (with title amendment)

Delete lines 42 - 56
and insert:
s. 775.082, s. 775.083, or s. 775.084. As used in this section,
the term "watchman" means a security officer licensed under
chapter 493.

Section 2. Subsections (2) and (4) of section 843.085,
Florida Statutes, are amended to read:

843.085 Unlawful use of police badges or other indicia of



332122

authority.—It is unlawful for any person:

(2) To own or operate a motor vehicle marked or identified in any manner or combination by the word or words "police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "commission officer," "Wildlife Officer," "Marine Patrol Officer," "marshal," "constable," ~~or~~ "bailiff," or "fire department," or by any lettering, marking, or insignia, or colorable imitation thereof, including, but not limited to, stars, badges, or shields, officially used to identify the vehicle as a federal, state, county, or municipal law enforcement vehicle or a vehicle used by a criminal justice

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

And the title is amended as follows:

Delete line 4

and insert:

personating a firefighter; defining the term
"watchman"; amending s. 843.085, F.S.;

By Senator Braynon

36-00118-14

2014190__

1 A bill to be entitled
 2 An act relating to false personation; amending s.
 3 843.08, F.S.; prohibiting a person from falsely
 4 personating a firefighter; amending s. 843.085, F.S.;
 5 prohibiting operation or ownership of a motor vehicle
 6 falsely marked with the intent to mislead or cause
 7 another person to believe that such vehicle is
 8 authorized by a fire department for use by the person
 9 operating it; providing an exception; amending s.
 10 921.0022, F.S.; conforming provisions to changes made
 11 by the act; providing an effective date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Section 843.08, Florida Statutes, is amended to
 16 read:
 17 843.08 False personation ~~Falsely personating officer, etc.-~~
 18 A person who falsely assumes or pretends to be a firefighter,
 19 sheriff, officer of the Florida Highway Patrol, officer of the
 20 Fish and Wildlife Conservation Commission, officer of the
 21 Department of Transportation, officer of the Department of
 22 Financial Services, officer of the Department of Corrections,
 23 correctional probation officer, deputy sheriff, state attorney
 24 or assistant state attorney, statewide prosecutor or assistant
 25 statewide prosecutor, state attorney investigator, coroner,
 26 police officer, lottery special agent or lottery investigator,
 27 beverage enforcement agent, or watchman, or any member of the
 28 Parole Commission and any administrative aide or supervisor
 29 employed by the commission, or any personnel or representative

Page 1 of 9

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36-00118-14

2014190__

30 of the Department of Law Enforcement, or a federal law
 31 enforcement officer as defined in s. 901.1505, and takes upon
 32 himself or herself to act as such, or to require any other
 33 person to aid or assist him or her in a matter pertaining to the
 34 duty of any such officer, commits a felony of the third degree,
 35 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 36 However, a person who falsely personates any such officer during
 37 the course of the commission of a felony commits a felony of the
 38 second degree, punishable as provided in s. 775.082, s. 775.083,
 39 or s. 775.084. If the commission of the felony results in the
 40 death or personal injury of another human being, the person
 41 commits a felony of the first degree, punishable as provided in
 42 s. 775.082, s. 775.083, or s. 775.084.
 43 Section 2. Subsections (2) and (4) of section 843.085,
 44 Florida Statutes, are amended to read:
 45 843.085 Unlawful use of police badges or other indicia of
 46 authority.—It is unlawful for any person:
 47 (2) To own or operate a motor vehicle marked or identified
 48 in any manner or combination by the word or words "police,"
 49 "patrolman," "sheriff," "deputy," "trooper," "highway patrol,"
 50 "commission officer," "Wildlife Officer," "Marine Patrol
 51 Officer," "marshal," "constable," ~~or~~ "bailiff," or "fire
 52 department," or by any lettering, marking, or insignia, or
 53 colorable imitation thereof, including, but not limited to,
 54 stars, badges, or shields, officially used to identify the
 55 vehicle as a federal, state, county, or municipal law
 56 enforcement vehicle, ~~or~~ a vehicle used by a criminal justice
 57 agency as ~~now or hereafter~~ defined in s. 943.045, or a vehicle
 58 used by a fire department with the intent to mislead or cause

Page 2 of 9

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36-00118-14

2014190__

another person to believe that such vehicle is an official vehicle of that agency and is authorized to be used by that agency ~~which could deceive a reasonable person into believing that such vehicle is authorized by any of the agencies described above for use by the person operating the motor vehicle,~~ unless such vehicle is owned or operated by the appropriate agency and its use is authorized by such agency, ~~or~~ the local law enforcement agency or fire department authorizes the use of such vehicle, ~~or unless~~ the person is appointed by the Governor pursuant to chapter 354.

(4) ~~Nothing in~~ This section does not ~~shall~~ prohibit a fraternal, benevolent, or labor organization or association, or their chapters or subsidiaries, from using the following words, in any manner or in any combination, if those words appear in the official name of the organization or association: "police," "patrolman," "sheriff," "deputy," "trooper," "highway patrol," "commission officer," "Wildlife Officer," "Marine Patrol Officer," "marshal," "constable," ~~or~~ "bailiff," ~~or~~ "fire department."

Section 3. Paragraph (b) of subsection (3) of section 921.0022, Florida Statutes, is amended to read

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(b) LEVEL 2

Florida Statute	Felony Degree	Description
-----------------	---------------	-------------

36-00118-14

2014190__

379.2431

3rd

(1) (e) 3.

Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.

379.2431

3rd

(1) (e) 4.

Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.

403.413(6) (c)

3rd

Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.

517.07(2)

3rd

Failure to furnish a prospectus meeting requirements.

590.28(1)

3rd

Intentional burning of lands.

784.05(3)

3rd

Storing or leaving a loaded firearm within reach of minor who uses

36-00118-14

2014190__

it to inflict injury or death.

91

787.04(1)

3rd

In violation of court order, take, entice, etc., minor beyond state limits.

92

806.13(1)(b)3.

3rd

Criminal mischief; damage \$1,000 or more to public communication or any other public service.

93

810.061(2)

3rd

Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.

94

810.09(2)(e)

3rd

Trespassing on posted commercial horticulture property.

95

812.014(2)(c)1.

3rd

Grand theft, 3rd degree; \$300 or more but less than \$5,000.

96

812.014(2)(d)

3rd

Grand theft, 3rd degree; \$100 or more but less

Page 5 of 9

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36-00118-14

2014190__

than \$300, taken from unenclosed curtilage of dwelling.

97

812.015(7)

3rd

Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.

98

817.234(1)(a)2.

3rd

False statement in support of insurance claim.

99

817.481(3)(a)

3rd

Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.

100

817.52(3)

3rd

Failure to redeliver hired vehicle.

101

817.54

3rd

With intent to defraud, obtain mortgage note, etc., by false representation.

102

817.60(5)

3rd

Dealing in credit cards

Page 6 of 9

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	36-00118-14		2014190__
			of another.
103	817.60 (6) (a)	3rd	Forgery; purchase goods, services with false card.
104	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
105	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
106	831.01	3rd	Forgery.
107	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
108	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
109	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
110			

Page 7 of 9

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	36-00118-14		2014190__
	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
111	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
112	832.05 (3) (a)	3rd	Cashing or depositing item with intent to defraud.
113	843.08	3rd	<u>False personation</u> Falsely impersonating an officer.
114	893.13 (2) (a) 2.	3rd	Purchase of any s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) drugs other than cannabis.
115	893.147 (2)	3rd	Manufacture or delivery of drug paraphernalia.
116			

Page 8 of 9

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36-00118-14

2014190__

117

Section 4. This act shall take effect July 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/24/14

Meeting Date

Topic _____

Bill Number SB 0190
(if applicable)

Name DOUG WATLER

Amendment Barcode _____
(if applicable)

Job Title Fire fighter

Address 345 W MADISON ST
Street

Phone _____

TALLAHASSEE FL
City State Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing FLORIDA PROFESSIONAL Firefighters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 540

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Simmons and others

SUBJECT: Sharks

DATE: March 21, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Uchino</u>	<u>EP</u>	Fav/CS
2.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 540 provides enhanced penalties for the possession of separated shark fins on Florida waters by a commercial harvester. Penalties range from a second degree misdemeanor for a first violation to a third degree felony for repeat violations, with associated license revocations, civil penalties, and jail terms.

II. Present Situation:

Shark finning is the practice of removing and retaining shark fins at sea while the remainder of the living shark is discarded and left to die in the ocean. A landed shark is a harvested shark that has been brought to shore.

Sharks are managed in Florida waters by the Fish and Wildlife Commission (FWC).¹ The practice of finning in state waters was prohibited in 1992.² Removing fins from sharks harvested in state and federal waters once a shark has been landed is allowed. Commercial and recreational fishermen fishing in state waters are limited to one shark per person, per day, and may not exceed two sharks per vessel, per day, when two or more persons are onboard.³

¹ See Rule 68B-44, F.A.C.

² See Rule 68B-44.004, F.A.C.

³ Rule 68B-44.003, F.A.C.

Shark Finning in State and Federal Waters

Violations of shark finning rules are Level Two offenses.⁴ Penalties are as follows:

- A person who commits a Level Two violation, but who has not been convicted of a Level Two or higher violation within the past three years, commits a second degree misdemeanor, punishable by up to 60 days in jail and up to a \$500 fine.
- A person who commits a Level Two violation within three years after a previous conviction for a Level Two or higher violation commits a first degree misdemeanor, punishable by a minimum mandatory fine of \$250, not to exceed \$1,000, and up to one year in jail.
- A person who commits a Level Two violation within five years after two previous convictions for a Level Two or higher violation commits a first degree misdemeanor, punishable by a mandatory fine of \$500, up to \$1,000, up to one year in jail, and suspension of any recreational license or permit for one year.
- A person who commits a Level Two violation within 10 years after three previous convictions for a Level Two or higher violation commits a first degree misdemeanor, punishable by a mandatory fine of \$750, up to \$1,000, up to one year in jail, and suspension of any recreational license or permit for three years.⁵

Federal law prohibits the practice of finning in federal waters.⁶ A shark must be landed with all of its fins attached,⁷ and the total weight of any fins from landed sharks must be five percent or less of the total weight of the landed shark carcasses.⁸ A person who violates these laws may be subject to a civil penalty of up to \$100,000 for each violation, as determined by the U.S. Secretary of Commerce.⁹

State and Federal Regulations

Florida imposes gear restrictions that limit fishermen to harvesting sharks by hook and line only. The state prohibits the harvest, possession, landing, purchase, sale, or exchange of 25 shark species in state waters, and further prohibits the landing and sale of those species if harvested from state waters.¹⁰

Commercial shark fishermen operating in state and federal waters are required to hold a federal shark permit. The permits are not “open access.” The permit must be transferred from someone who currently holds a permit and chooses to sell that permit and leave the fishery. No new permits are being issued.¹¹ There are currently a total of 219 permits issued for the Atlantic and Gulf of Mexico fisheries, and Florida residents hold 129 of them. New Jersey and North Carolina residents hold the next highest number with 22 and 18 permits, respectively.¹²

⁴ See s. 379.401(2)(a), F.S.

⁵ See ss. 379.401(2), 775.082, and 775.083, F.S.

⁶ 16 U.S.C. s. 1857(1)(P) (2014).

⁷ 16 U.S.C. s. 1857(1)(P)(iv) (2014).

⁸ 16 U.S.C. s. 1857(1) (2014).

⁹ 16 U.S.C. s. 1858 (2014).

¹⁰ FWC, *Shark Regulations*, <http://myfwc.com/fishing/saltwater/recreational/sharks/> (last visited Mar. 19, 2014).

¹¹ 50 C.F.R. s. 635.4 (2013).

¹² FWC, *Senate Bill 540 Agency Analysis* (Feb. 2014) (on file with the Senate Committee on Environmental Preservation and Conservation and the Senate Committee on Criminal Justice).

The National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA Fisheries) manages commercial shark fishing with a series of quotas that apply throughout U.S. Atlantic and Gulf waters. Florida's commercial fishermen are subject to those quotas. Shark quotas are assigned by species groups and some quotas are linked to others. For example, if a quota for one species group is reached, all the species groups linked to that one will also close. Quotas are also adjusted from year to year to account for any quotas that were exceeded in the previous year. There are separate quotas for sharks harvested in Gulf and Atlantic waters.¹³ Current quotas are available from the NOAA Highly Migratory Species Division.¹⁴

Shark Fishery Statistics

Given the limited commercial bag limits for sharks in state waters, Florida's shark fishery operates almost exclusively in federal waters.¹⁵

From 2010 to 2012, total shark landings in Florida declined from 998,015 to 851,919 pounds. The weight of fins sold rose slightly from 2010 to 2011 (from 28,662 pounds to 28,926 pounds), then fell to 18,422 pounds in 2012.¹⁶

Total shark landings in the Atlantic and the Gulf of Mexico have risen from 2010 to 2012 from 2,276,702 pounds in 2010 to 2,427,182 pounds in 2012. Meanwhile, the weight of fins sold separately from the meat following landings in the Atlantic Ocean or the Gulf of Mexico has dropped each year over that same time period from 65,970 pounds in 2010 to 56,063 pounds in 2012.¹⁷

The average price of shark meat paid to Florida fishermen from 2010 to 2012 was about \$0.46 per pound. In contrast, from 2010 to 2012, the average price for shark fins ranged from \$18.76 to \$21.37 per pound.¹⁸

Sale of harvested sharks to Florida's wholesale dealers and fish houses over the last three years resulted in an estimated annual income to Florida's commercial shark fishermen ranging from \$393,556 to \$466,063, with additional estimated values of \$345,563 to \$618,279 generated by fishermen from the sale of shark fins during that same time period.¹⁹

From 2010 to 2012, 16 wholesale fish dealers sold shark fins in Florida, with seven dealers accounting for 91.8 percent of the fins that were sold. During the same time period, 97

¹³ *Id.* at 3.

¹⁴ NOAA Fisheries, *Atlantic Highly Migratory Species: Sharks: Landings Updates* (Feb. 20, 2014), http://www.nmfs.noaa.gov/sfa/hms/hmsdocument_files/sharks.htm (Updated reports are available by clicking the "Landings Updates" tab near the top of the webpage) (last visited Mar. 19, 2014). NOAA Fisheries publishes reported shark landings on a monthly basis. The landings reports list updated total landings for the year and yearly quotas for various shark species in Atlantic and Gulf waters.

¹⁵ FWC, *Senate Bill 540 Agency Analysis* (Feb. 2014) (on file with the Senate Committee on Environmental Preservation and Conservation and the Senate Committee on Criminal Justice).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

commercial fishermen sold shark fins harvested from state and federal waters. Of those fishermen, 24 harvesters accounted for 90.2 percent of the fins.²⁰

According to the NOAA Fisheries trade database and the United Nations Food and Agriculture Organization, the United States as a whole accounts for less than one percent of the world's shark fin imports and exports.²¹

III. Effect of Proposed Changes:

Section 1 amends s. 379.407, F.S., providing enhanced penalties for commercial fishermen who are in possession of separated shark fins on Florida waters. Possession of separated shark fins on Florida waters is classified as a major violation.

Commercial fishermen found to be in violation of this ban on possession of separated shark fins on Florida waters are subject to the following penalties:

- **First violation** – Second degree misdemeanor and the possibility of license suspension for up to 30 days.²²
- **Second violation** – First degree misdemeanor and the possibility of license suspension for up to 90 days.²³
- **Third violation** – First degree misdemeanor with a six-month mandatory minimum prison term.²⁴ The violator may be assessed a civil penalty of up to \$2,500 and the possibility of license suspension for up to six months.
- **Third violation within one year of second violation** – Third degree felony with a one-year mandatory minimum prison term.²⁵ The violator is also assessed a civil penalty of \$5,000 and all license privileges are permanently revoked.
- **Fourth or subsequent violation** – Third degree felony with a one-year mandatory minimum prison term.²⁶ The violator is assessed a civil penalty of \$5,000 and all license privileges are permanently revoked.

Section 2 amends s. 379.401, F.S., making conforming changes.

²⁰ *Id.*

²¹ *Id.*

²² Currently, this act would be a Level Two violation, punishable by up to 60 days in county jail. Under the bill this act could be punished by up to 90 days in county jail, the maximum penalty for a second degree misdemeanor. Section 775.082, F.S.

²³ Currently, this act would be a Level Two violation, punishable as a first degree misdemeanor but only if the offender had a prior Level Two or higher conviction that occurred within 3 years of the commission of the current Level Two violation. This bill dispenses with the 3-year time window.

²⁴ Currently, this act would be a Level Two violation, punishable as a first degree misdemeanor but only if the offender had two prior Level Two or higher convictions that occurred within 5 years of the commission of the current Level Two violation. This bill dispenses with the 5-year time window. Further, the bill provides for a 6-month mandatory minimum term, which is not available under current law.

²⁵ Current law does not provide for either a third degree felony or a 1-year mandatory minimum term. Section 921.0024(2), F.S., provides that any sentence to state prison must exceed 1 year. Therefore, if the court only imposes the 1-year mandatory minimum term, this term would be served in county jail. A third degree felony is punishable by to 5 years in state prison, a fine of up to \$5,000, or prison and a fine. Sections 775.082 and 775.083, F.S. However, if the third degree felony is a non-forcible felony (excluding ch. 810, F.S.) and total sentence points are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that a nonstate prison sanction could present a danger to the public.

Id.

²⁶ *Id.*

Section 3 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A commercial fisherman convicted of possessing separated shark fins while on Florida waters will be subject to increased penalties.

C. Government Sector Impact:

Because the bill increases monetary penalties for possession of separated shark fins on Florida waters, and those funds are deposited into the Marine Resources Conservation Trust Fund, there could be a small increase in the amount of money deposited into the trust fund. The FWC Division of Law Enforcement has issued eight citations for shark finning and seven citations for failing to land a shark in whole condition, which may or may not have included finning, since January 2009, so the effect will likely be minimal.²⁷

Mandatory minimum terms provided by the bill could have an indeterminate impact on county jails.

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation has not yet reviewed the bill. However, a preliminary estimate by the Legislature's Office of Economic and Demographic Research is that the bill will have an insignificant prison bed impact.

²⁷ *Supra* note 15, at 2.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Legislation prohibiting the possession, sale, and distribution of shark fins was passed by several states in recent years. Hawaii was the first state to pass such a ban in 2010. Washington, Oregon, Illinois, and California have implemented similar laws. New York's ban is scheduled to go into effect July 1, 2014. Maryland and Delaware also passed laws prohibiting the sale of shark fins (with the exception of spiny dogfish and smoothhound in Delaware), but allow fishermen to possess them for personal use. Other states have considered, but not passed, similar legislation.²⁸ California's shark fin ban has been challenged in court. The lawsuit contends the ban would have a negative effect on business interests, and that it is unconstitutional because it has a disproportionate effect on Chinese-Americans.²⁹

VIII. Statutes Affected:

This bill substantially amends section 379.407 and conforms a cross reference in section 379.401 of the Florida Statutes.

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

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

CS by Environmental Preservation and Conservation on March 6, 2014:

The committee substitute removes provisions creating s. 379.2427, F.S., which made it illegal to possess, sell, offer for sale, trade, purchase, offer to purchase, ship for the purpose of sale, barter, exchange or otherwise distribute shark fins, with limited exceptions. The CS also deletes penalties associated with violations of those prohibited activities.

The CS amends s. 379.407, F.S., adding enhanced penalties for commercial fishermen who are convicted of possessing separated shark fins on Florida waters. The penalties range from a second degree misdemeanor for a first violation to a third degree felony for repeat violations, with associated license revocations, civil penalties, and jail terms. Lastly, the CS contains conforming changes.

B. Amendments:

None.

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

²⁸ *Id.*

²⁹ See *Chinatown Neighborhood Ass'n v. Brown*, 2013 WL 60910, (N.D.Cal. 2013). See also *Chinatown Neighborhood Ass'n v. Brown*, 539 Fed.Appx. 761, (2013) (denying injunctive relief).

By the Committee on Environmental Preservation and Conservation;
and Senators Simmons, Soto, and Abruzzo

592-02203A-14

2014540c1

A bill to be entitled

An act relating to sharks; amending s. 379.407, F.S.;
providing penalties for possession of separated shark
fins on state waters; amending s. 379.401, F.S.;
conforming a cross-reference; providing an effective
date.

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

Section 1. Present subsections (5) through (8) of section
379.407, Florida Statutes, are renumbered as subsections (6)
through (9), respectively, and a new subsection (5) is added to
that section, to read:

379.407 Administration; rules, publications, records;
penalties; injunctions.—

(5) PENALTIES FOR POSSESSION OF SEPARATED SHARK FINS ON THE
WATER.—

(a) It shall be unlawful for a commercial harvester to
possess separated shark fins while on the waters of this state.
It is a major violation under this section for a commercial
harvester to be in possession of shark fins on state waters that
are not attached to a shark carcass.

(b) A commercial harvester who violates this subsection
shall be punished as follows:

1. A first violation is a misdemeanor of the second degree,
punishable as provided in s. 775.082 or s. 775.083, and such
person is subject to a suspension of all license privileges

Page 1 of 4

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

592-02203A-14

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under this chapter for 30 days.

2. A second violation is a misdemeanor of the first degree,
punishable as provided in s. 775.082 or s. 775.083, and such
person is subject to a suspension of all license privileges
under this chapter for 90 days.

3. A third violation is a misdemeanor of the first degree,
punishable as provided in s. 775.082 or s. 775.083, with a
mandatory minimum term of imprisonment of 6 months, and such
person may also be assessed a civil penalty of up to \$2,500 and
is subject to a suspension of all license privileges under this
chapter for 6 months.

4. A third violation within 1 year after a second violation
is a felony of the third degree, punishable as provided in s.
775.082, s. 775.083, or s. 775.084, with a mandatory minimum
term of imprisonment of 1 year, and such person shall be
assessed a civil penalty of \$5,000, and all license privileges
under this chapter shall be permanently revoked.

5. A fourth or subsequent violation is a felony of the
third degree, punishable as provided in s. 775.082, s. 775.083,
or s. 775.084, with a mandatory minimum term of imprisonment of
1 year, and such person shall be assessed a civil penalty of
\$5,000, and all license privileges under this chapter shall be
permanently revoked.

Section 2. Paragraph (a) of subsection (2) of section
379.401, Florida Statutes, is amended to read:

379.401 Penalties and violations; civil penalties for
noncriminal infractions; criminal penalties; suspension and
forfeiture of licenses and permits.—

(2) (a) LEVEL TWO VIOLATIONS.—A person commits a Level Two

Page 2 of 4

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

592-02203A-14

2014540c1

violation if he or she violates any of the following provisions:

1. Rules or orders of the commission relating to seasons or time periods for the taking of wildlife, freshwater fish, or saltwater fish.

2. Rules or orders of the commission establishing bag, possession, or size limits or restricting methods of taking wildlife, freshwater fish, or saltwater fish.

3. Rules or orders of the commission prohibiting access or otherwise relating to access to wildlife management areas or other areas managed by the commission.

4. Rules or orders of the commission relating to the feeding of wildlife, freshwater fish, or saltwater fish.

5. Rules or orders of the commission relating to landing requirements for freshwater fish or saltwater fish.

6. Rules or orders of the commission relating to restricted hunting areas, critical wildlife areas, or bird sanctuaries.

7. Rules or orders of the commission relating to tagging requirements for wildlife and fur-bearing animals.

8. Rules or orders of the commission relating to the use of dogs for the taking of wildlife.

9. Rules or orders of the commission which are not otherwise classified.

10. Rules or orders of the commission prohibiting the unlawful use of finfish traps.

11. All prohibitions in this chapter which are not otherwise classified.

12. Section 379.33, prohibiting the violation of or noncompliance with commission rules.

13. Section 379.407(7) ~~Section 379.407(6)~~, prohibiting the

592-02203A-14

2014540c1

sale, purchase, harvest, or attempted harvest of any saltwater product with intent to sell.

14. Section 379.2421, prohibiting the obstruction of waterways with net gear.

15. Section 379.413, prohibiting the unlawful taking of bonefish.

16. Section 379.365(2)(a) and (b), prohibiting the possession or use of stone crab traps without trap tags and theft of trap contents or gear.

17. Section 379.366(4)(b), prohibiting the theft of blue crab trap contents or trap gear.

18. Section 379.3671(2)(c), prohibiting the possession or use of spiny lobster traps without trap tags or certificates and theft of trap contents or trap gear.

19. Section 379.357, prohibiting the possession of tarpon without purchasing a tarpon tag.

20. Rules or orders of the commission prohibiting the feeding or enticement of alligators or crocodiles.

21. Section 379.105, prohibiting the intentional harassment of hunters, fishers, or trappers.

Section 3. This act shall take effect July 1, 2014.



The Florida Senate

Committee Agenda Request

To: Senator Greg Evers, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: March 7, 2014



I respectfully request that **Senate Bill 540**, relating to Sharks, be placed on the:

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

A handwritten signature in black ink, which appears to read "David Simmons", is written over a horizontal line.

Senator David Simmons
Florida Senate, District 10

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/24/11
Meeting Date

Topic SHARKS

Bill Number SB 540
(if applicable)

Name JERRY SANSON

Amendment Barcode _____
(if applicable)

Job Title _____

Address PO Box 200

Phone 324 777 8130

Street

Cocos Fl. 32920
City State Zip

E-mail FISHAWK@AFL.COM

Speaking: ☒ For ☐ Against ☐ Information

Representing ORGANIZED FISHERMEN of 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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/24/11

Meeting Date

Topic Sharkfins

Bill Number SB 540
(if applicable)

Name FRED DICKINSON

Amendment Barcode _____
(if applicable)

Job Title Pooler McKinley

Address 106 S College
Street

Phone _____

Tallahassee FL 32301
City State Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Guy Harvey Ocean Foundation

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-24-14

Meeting Date

Topic Shark Finning

Bill Number CS/SB 540
(if applicable)

Name Bob Harris

Amendment Barcode _____
(if applicable)

Job Title _____

Address 2618 Centennial Place

Phone 272-0720

Tallahassee FL 32308
City State Zip

E-mail bharris@lawfla.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Diving Equipment & Marketing 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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/24/14

Meeting Date

Topic Sharks

Bill Number SB 540
(if applicable)

Name David Shepp

Amendment Barcode _____
(if applicable)

Job Title Consultant

Address P.O. Box 3739
Street

Phone 863 581-4250

Lakeland FL 33802
City State Zip

E-mail dave@fsg-llc.net

Speaking: ☒ For ☐ Against ☐ Information

Representing Mote Marine Laboratory

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 550

INTRODUCER: Senator Hukill

SUBJECT: Traveling Across County Lines to Commit a Felony Offense

DATE: March 14, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	Favorable
2.			CA	
3.			ACJ	
4.			AP	

I. Summary:

SB 550 creates s. 843.22, F.S., which makes it a third degree felony for a person who resides in Florida to travel any distance and cross a Florida county boundary with the intent to commit a felony offense in a Florida county that is not their residence.

II. Present Situation:

According to Martin County Sheriff William Snyder, there has been a recent phenomenon in Martin County, and most Florida counties, where traveling burglars dubbed “the pillowcase burglars” break into houses near the interstate, stuff the most valuable items into pillowcases and immediately flee to another county. According to Snyder, traditional methods of law enforcement such as using local pawn shop databases, confidential informants, normal proactive police patrols, or targeted patrols based on time in place of burglary are less effective because of the burglars’ speedy departure from the county of the burglary.¹

Bail Determinations

Pretrial release is an alternative to incarceration that allows arrested defendants to be released from jail while they await disposition of their criminal charges.² Generally, pretrial release is granted by releasing a defendant on their own recognizance, by requiring the defendant to post bail, and/or by requiring the defendant to participate in a pretrial release program.³

¹¹ *Sheriff Enlists Legislative Help To Crack Down On Growing Problem: ‘Pillowcase Burglars,’* Sascha Cordner, December 8, 2013.

² Report No. 10-08, “*Pretrial Release Programs’ Compliance with New Reporting Requirements is Mixed,*” Office of Program Policy Analysis & Government Accountability, January 2010 (on file with Criminal Justice Committee).

³ *Id.*

Bail requires an accused to pay a set sum of money to the sheriff to secure his or her release. If a defendant released on bail fails to appear before the court at the appointed place and time, the bail is forfeited. The purpose of a bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger.⁴ Courts must consider certain things when determining whether to release a defendant on bail, and what bail should be (e.g., the nature and circumstances of the offense charged, the weight of the evidence against the defendant, the defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition, etc.).⁵

III. Effect of Proposed Changes:

The bill creates s. 843.22, F.S., which makes it a third degree felony for a person who resides in Florida to travel any distance and across a Florida county boundary with the intent to commit a felony offense in a Florida county that is not their residence.

The bill defines "county of residence" as the county within Florida which a person resides. Evidence of a person's county includes but is not limited to:

- The address on a person's driver license or state identification card;
- Records of real property or mobile home ownership;
- Records of a lease agreement for residential property;
- The county in which a person's motor vehicle is registered;
- The county in which a person is enrolled in an educational institution; and
- The county in which a person is employed.

The bill defines "felony offense" as an attempt, solicitation, or conspiracy to commit: battery; stalking; kidnapping; sexual battery; lewdness; prostitution; arson; burglary; theft; robbery; carjacking; home-invasion robbery; trafficking in a controlled substance; and racketeering.

The bill amends s. 903.046(1), F.S., to prohibit those charged with traveling across county lines with the intent to commit a felony from being released on bail until first appearance to ensure the full participation of the prosecutor and the protection of the public.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁴ Section 903.046, F.S.

⁵ *Id.*

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on January 30, 2014, and determined the bill will have an insignificant negative impact on state prison beds because the bill creates a new third degree felony offense. The bill may also have a negative jail bed impact because it prohibits persons charged under s. 843.22, F.S., from being released on bail until first appearance. However, since first appearance must occur within 24 hours of arrest, the impact on local jails will likely be insignificant.

According to the Department of Corrections (DOC), there will be a \$3,400 fiscal impact on the agency's technology systems due to the need for a new offense code and additional changes to existing codes and tables. DOC estimates 40 hours of work at \$85.00 an hour.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DOC states that depending on the offender's total Criminal Punishment Code sentencing points, the additional third degree felonies could result in multiple or longer sentences for supervision offenders and/or an increase in the inmate population.

VIII. Statutes Affected:

This bill substantially amends section 903.046 of the Florida Statutes.

This bill creates section 843.22 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Hukill

8-00792-14

2014550__

A bill to be entitled

An act relating to traveling across county lines to commit a felony offense; creating s. 843.22, F.S.; defining the terms "county of residence" and "felony offense" for the purpose of the crime of traveling across county lines with the intent to commit a felony offense; providing a criminal penalty; amending s. 903.046, F.S.; adding the crime of traveling across county lines with the intent to commit a felony offense to the factors a court must consider in determining whether to release a defendant on bail; providing an effective date.

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

Section 1. Section 843.22, Florida Statutes, is created to read:

843.22 Traveling across county lines with intent to commit a felony offense.—

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

(a) "County of residence" means the county within this state in which a person resides. Evidence of a person's county of residence includes, but is not limited to:

1. The address on a person's driver license or state identification card;

2. Records of real property or mobile home ownership;

3. Records of a lease agreement for residential property;

4. The county in which a person's motor vehicle is registered;

8-00792-14

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5. The county in which a person is enrolled in an educational institution; and

6. The county in which a person is employed.

(b) "Felony offense" means any of the following felony offenses, including an attempt, solicitation, or conspiracy to commit such offense:

1. Battery as provided in chapter 784.

2. Stalking as provided in s. 784.048.

3. Kidnapping as defined in s. 787.01.

4. Sexual battery as defined in s. 794.011.

5. Lewdness as defined in s. 796.07.

6. Prostitution as defined in s. 796.07.

7. Arson as provided in s. 806.01.

8. Burglary as defined in s. 810.02.

9. Theft as provided in s. 812.014.

10. Robbery as defined in s. 812.13.

11. Carjacking as defined in s. 812.133.

12. Home-invasion robbery as defined in s. 812.135.

13. Trafficking in a controlled substance as provided in s. 893.135.

14. Racketeering as provided in chapter 895.

(2) A person who travels any distance with the intent to commit a felony offense in a county in this state other than the person's county of residence commits an additional felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Paragraph (1) of subsection (2) of section 903.046, Florida Statutes, is amended to read:

903.046 Purpose of and criteria for bail determination.—

8-00792-14

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59 (2) When determining whether to release a defendant on bail
60 or other conditions, and what that bail or those conditions may
61 be, the court shall consider:

62 (1) Whether the crime charged is a violation of s. 843.22
63 or chapter 874 or alleged to be subject to enhanced punishment
64 under chapter 874. If any such violation is charged against a
65 defendant or if the defendant is charged with a crime that is
66 alleged to be subject to such enhancement, he or she is ~~shall~~
67 not be eligible for release on bail or surety bond until the
68 first appearance on the case in order to ensure the full
69 participation of the prosecutor and the protection of the
70 public.

71 Section 3. This act shall take effect October 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/24/14
Meeting Date

Topic Traveling Across County Lines

Bill Number SB 550
(if applicable)

Name William Snyder

Amendment Barcode _____
(if applicable)

Job Title Sheriff

Address 200 SE Monterey Rd.
Street
Stuart, FL 34997
City State Zip

Phone (772) 220-7024

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/24/14

Meeting Date

Topic Traveling Across County Lines to Commit a Felony

Bill Number 550
(if applicable)

Name Keri Rayburn Silver

Amendment Barcode _____
(if applicable)

Job Title _____

Address Po Box 1565
Street

Phone 850-524-2394

Tallahassee FL 32302
City State Zip

E-mail Keri@rayburnconsultants.com

Speaking: ☒ For ☐ Against ☐ Information

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.

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S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 562

INTRODUCER: Senator Gibson

SUBJECT: Sexual Predators and Offenders

DATE: March 21, 2014

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Sumner	Cannon	CJ	Favorable
2. _____	_____	TR	_____
3. _____	_____	AP	_____

I. Summary:

SB 562 prohibits a person from knowingly authorizing or allowing a sexual predator or sexual offender to operate a motor vehicle owned or under the dominion or control of that person, except for the sole purpose of driving to and from work, public service, or treatment. It provides for penalties.

The bill redefines “total confinement” as it relates to civil commitment procedures for care and treatment of offenders in physically secured facilities that are being operated or contractually operated for a county. It creates s. 921.2312, F.S., to require “risk assessment reports” for crimes committed on or after October 1, 2014, for defendants who have been found guilty or entered a plea of nolo contendere for any offense that requires registration as either a sexual offender or sexual predator. It requires that the case be referred to a qualified practitioner to assess the defendant by considering the statutory components of the sexual offender’s status, along with the basis for that opinion, as to the offender’s risk of committing another sexual offense.

The bill requires that as a condition of supervision for offenders committing certain offenses on or after October 1, 2014, a mandatory curfew from 7 p.m. to 7 a.m.

II. Present Situation:

Sexual Predator and Sexual Offender

The distinction between a sexual predator and a sexual offender is based on the offense of conviction, the date the offense occurred or when sanctions were completed, and whether the person has previously been convicted of a sexual offense. Sexual predator status can only be conferred for offenses committed on or after October 1, 1993. Sexual offender status applies only if the person was released from the sanction for the designated offense on or after October 1, 1997. The list of designated offenses is not identical for sexual offenders and sexual predators,

but commission of any of the following offenses would require registration as either a sexual offender or a sexual predator:

- Kidnapping, false imprisonment, or luring or enticing a child where the victim is a minor and the defendant is not the victim's parent (ss. 787.01, 787.02, and 787.025(2)(c), F.S.).
- Sexual battery under ch. 794.011, F.S. (except false accusation of another under s. 794.011(10), F.S.).
- Sexual activity by a person who is 24 years old or older with a minor who is 16 or 17 years old (s. 794.05, F.S.).
- Procuring a person under the age of 18 for prostitution (s. 796.03, F.S.).
- Selling or buying of minors into sex trafficking or prostitution (s. 796.035, F.S.).
- Lewd or lascivious offenses upon or in the presence of a person under the age of 16 (s. 800.04, F.S.).
- Lewd or lascivious offenses upon an elderly or disabled person (s. 825.1025, F.S.).
- Enticing, promoting, or possessing images of sexual performance by a child (s. 827.071, F.S.).
- Distribution of obscene materials to a minor (s. 847.0133, F.S.).
- Computer pornography (s. 847.0135, F.S.) (except traveling to meet a minor under s. 847.0135(4), F.S.).
- Transmission of child pornography by electronic device (s. 847.0137, F.S.).
- Transmission of material harmful to minors to a minor by electronic device (s. 847.0138, F.S.).
- Selling or buying of minors for child pornography (s. 847.0145, F.S.).
- Sexual misconduct by a Department of Juvenile Justice (DJJ) employee with a juvenile offender (s. 985.701(1), F.S.).
- Violating a similar law of another jurisdiction.

A sexual predator or sexual offender is required to comply with a number of statutory requirements.¹ During initial registration, a sexual predator or sexual offender who is not in the custody of the Department of Corrections (DOC), the DJJ, or a local jail is required to provide certain information including “the permanent, temporary or transient residence, within the state or out of the state, including a rural route address and a post office box” to the sheriff’s department within 48 hours of sentencing or of establishing a residence. The sheriff’s office provides this information to the Florida Department of Law Enforcement (FDLE) for inclusion in the statewide database.² The offender or predator must also register at a driver’s license office within 48 hours of the initial registration at the sheriff’s department.³

Both sexual predators and sexual offenders must report any change of permanent, temporary, or transient residence within the state to the driver’s license office within 48 hours. If a new permanent, temporary, or transient residence is not established, the sheriff’s office must be given the address for the residence or other location that will be occupied until a new residence is established.

¹ The specific offender reporting requirements and law enforcement reporting and notification requirements are found in ss. 775.21, 943.0435, 944.606, 944.607, 985.48, and 985.4815, F.S.

² Section 943.0435(2)(a), F.S.

³ Section 943.0435(3), F.S.

Temporary residence is defined as:

a place where the person abides, lodges, or resides for a period of five or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.

Transient residence is defined as:

a place or county where a person lives, remains, or is located for a period of five or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.

The county sheriff or municipal police chief must notify child care centers and schools within a one-mile radius of the sexual predator's permanent or temporary residence within 48 hours of the notification by the predator. In addition, the sheriff or police chief is required to notify the community of the presence of the predator in an appropriate manner, which is often by posting on the sheriff's website. Both notices must include the predator's address, including the name of the municipality or county.

The DOC and DJJ are required to provide FDLE with information including the offender's intended residence address, if known, six months prior to release from custody or commitment. The agencies must also provide FDLE with the current or intended permanent or temporary address, if known, during the time of incarceration or residential commitment.

Section 947.1405, F.S., the conditional release statute, requires that certain inmates who are released prior to completion of the full term of their sentence of incarceration be maintained under close supervision during the duration of the term. Sexual predators and inmates who have committed certain sexual crimes are among those who are subject to conditional release supervision. The Parole Commission sets the length and terms of supervision and the conditional releasee is supervised by DOC correctional probation officers. Statutorily-mandated conditions include a prohibition against certain sexual offenders whose victim was under 18 years old from having contact with children unless approved by the commission. The commission also imposes a special condition that prohibits these offenders from loitering within 1,000 feet of a school, day care center, park, playground, designated public school bus stop, restaurant with attached playground, amusement park, business establishment whose primary clients are children, or other place where children regularly congregate, and from working at or living within 1,000 feet of such places.

Community Supervision

Probation is a form of community supervision that requires specified contacts with probation officers, compliance with standard statutory terms and conditions, and compliance with any specific terms and conditions required by the sentencing court. Community control is a form of

intensive community supervision, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Probationers and community controllees who have committed certain sexual offenses are prohibited from residing within 1,000 feet of schools, day care centers, playgrounds, parks, or other places where children regularly congregate. There are also local city and county ordinances that impose additional residency restrictions, including wider exclusion zones and additional areas of exclusion. Such offenders who have victims under the age of 18 also have conditions restricting unsupervised contact with minors and restrictions from working or volunteering at any place where children regularly congregate, including but not limited to schools, day care centers, parks, playgrounds, pet stores, libraries, zoos, theme parks, and malls. The employment condition restricts supervised sex offenders from working or volunteering at these places, but does not currently limit them from visiting for any other purpose.

Section 948.30(1)(a), F.S., provides a curfew from 10 p.m. to 6 a.m. as a standard sex offender condition of supervision for certain offenders with specific sex offenses.

Section 948.30(1)(e), F.S., restricts sex offenders who are on conditional release or in community supervision from having contact with children if their victim was less than 18 years old. Section 794.065, F.S., prohibits certain sex offenders who are not under supervision from residing within 1,000 feet of a school, child care center, park, or playground. Also, s. 775.21(10)(c), F.S., prohibits certain designated sexual predators who are not under supervision from working or volunteering at any business, school, child care center, park, playground, or other place where children regularly congregate.

Section 948.30(2)(a), F.S., requires that a court-ordered treatment program for a probationer or community controllee who committed a specified sexual offense must include participation in at least annual polygraph examinations. The examination must be conducted by a polygrapher trained specifically in the use of the polygraph for the monitoring of sex offenders, if available, and must be paid for by the sex offender. The results of the polygraph examination cannot be used as evidence in court to prove a violation of community supervision.

Section 948.31, F.S., provides that the court must require a diagnosis and evaluation to determine the need of certain probationers or community controllees for treatment. If the court determines that such a need is established by the diagnosis and evaluation process, it must require outpatient counseling as a term or condition of community supervision for any person who was found or pled guilty to sexual battery, a lewd or lascivious offense, exploitation of a child, or prostitution. The statute specifies that this counseling can be obtained from a community health center, a recognized social service agency providing mental health services, a private mental health professional, or through other professional counseling.

III. Effect of Proposed Changes:

The bill prohibits a person from knowingly authorizing or allowing a sexual predator or sexual offender to operate a motor vehicle owned or under the dominion or control of that person, except for the sole purpose of driving to and from work, public service, or treatment.

The bill provides that a person who violates this provision commits a second degree misdemeanor. It provides that a person's driver's license will be suspended for one year if he or she knowingly authorizes or allows a motor vehicle, either owned by them or within their dominion or control, to be used by a sexual predator or sexual offender to commit a felony. The bill also provides that provisions relating to the disposition of traffic infractions, are not available to a person who is charged with the offense of knowingly authorizing or allowing a sexual predator or sexual offender to operate a motor vehicle owned or under the dominion or control of that person.

The bill redefines "total confinement" as it relates to civil commitment procedures for care and treatment of offenders in physically secured facilities that are being operated or contractually operated for a county. This will allow jails to be included in providing required information to DCF to review for offenders meeting criteria for civil commitment.

The bill creates s. 921.2312, F.S., to provide for "risk assessment reports" for crimes committed on or after October 1, 2014. It requires that a case be referred to a qualified practitioner when a defendant has been found guilty in a circuit court or has entered a plea of nolo contendere or guilty for an offense that would require registration as either a sexual offender or sexual predator. It requires that the qualified practitioner assess the defendant by considering the components specified in s. 948.30(1)(e)1., F.S., and submit a written report to the circuit court at a specified time before sentencing. The report must include the qualified practitioner's opinion, along with the basis for that opinion, as to the offender's risk of committing another sexual offense.

The bill amends s. 948.30, F.S., to require, as a condition of supervision for offenders committing certain offenses⁴ on or after October 1, 2014, a mandatory curfew from 7 p.m. to 7 a.m. It provides that the court may designate alternate hours if the offender's employment or public service precludes the specified time and the alternative is recommended by the DOC. It provides that the court may also limit the offender's whereabouts by requiring the offender to be at home if the offender is not at work, performing public service, or in treatment. If the court determines that imposing a curfew would endanger the victim, the court may consider alternative sanctions.

The bill makes conforming changes to s. 948.31, F.S.

The bill has an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁴ This section would apply to a probationer or community controllee whose crime was committed on or after October 1, 2014, who is placed on probation or community control for a violation of ch. 794, s. 800.04(4),(5), or (6), s. 827.071, or s. 847.0145, F.S., relating to unlawful sexual activity involving a victim 15 years of age or younger and was 18 years of age or older at the time of the offense; is required to registered as a sexual predator or sexual offender; or has previously been convicted of committing sex crimes relating to unlawful sexual activity involving a victim 15 years of age or younger and was 18 years of age or older at the time of the offense.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Persons who knowingly allow a registered sexual predator or sexual offender to unlawfully operate a motor vehicle are subject to fines and penalties.

C. Government Sector Impact:

According to the Department of Highway Safety and Motor Vehicles, there will be an impact on technology support to implement the changes required by this bill of approximate \$8,800 for 220 hours of labor at \$40.00 an hour.

According to the Office of the State Courts Administrator, the creation of the new misdemeanor crime will impact judicial workload to the extent additional cases are filed. In addition, the requirement of a risk assessment report for certain sex offenders will add to judicial workload as the judge will have to do a separate sentencing hearing from the plea hearing or trial.

VI. Technical Deficiencies:

The redefining of “total confinement” to include referrals to DCF under the Civil Commitment Act from county jails cannot be accomplished. Only an “agency with jurisdiction” can refer an inmate and county jails are not currently within the statutory definition of “agency with jurisdiction.”

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 318.17, 394.912, 948.30, and 948.31.

This bill creates the following sections of the Florida Statutes: 316.87 and 921.2312.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Gibson

9-00500A-14

2014562__

1 A bill to be entitled
 2 An act relating to sexual predators and offenders;
 3 creating s. 316.87, F.S.; prohibiting a person from
 4 knowingly authorizing or allowing a sexual predator or
 5 sexual offender to operate a motor vehicle owned or
 6 under the dominion or control of that person, except
 7 for certain purposes; providing a criminal penalty;
 8 requiring an additional penalty if the motor vehicle
 9 is used in the commission of a felony; amending s.
 10 318.17, F.S.; providing that ch. 318, F.S., relating
 11 to disposition of traffic infractions, is not
 12 available to a person who is charged with the offense
 13 of knowingly authorizing or allowing a sexual predator
 14 or sexual offender to operate a motor vehicle owned or
 15 under the dominion or control of that person; amending
 16 s. 394.912, F.S.; redefining the term "total
 17 confinement" as it relates to part V of ch. 394, F.S.,
 18 to apply civil commitment procedures for care and
 19 treatment of offenders in physically secured
 20 facilities that are being operated or contractually
 21 operated for a county; creating s. 921.2312, F.S.;
 22 requiring the circuit court to have a qualified
 23 practitioner conduct a risk assessment before
 24 sentencing for a defendant who has been found guilty
 25 of or has entered a plea of nolo contendere or guilty
 26 to specified sex offenses; providing reporting
 27 requirements for the risk assessment; amending s.
 28 948.30, F.S.; requiring the court to order curfew as a
 29 condition of probation or community control for

Page 1 of 6

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

9-00500A-14

2014562__

30 offenders who commit certain sex offenses; amending s.
 31 948.31, F.S.; directing the court to require a
 32 probationer or community controllee to undergo sexual
 33 offender treatment that is provided by a qualified
 34 practitioner under certain circumstances as a term or
 35 condition of probation or community control; providing
 36 an effective date.

37
 38 Be It Enacted by the Legislature of the State of Florida:

39
 40 Section 1. Section 316.87, Florida Statutes, is created to
 41 read:

42 316.87 Unlawfully authorizing or allowing the operation of
 43 a motor vehicle.—

44 (1) A person may not knowingly authorize or allow a motor
 45 vehicle owned by him or her or under his or her dominion or
 46 control to be operated on a highway or public street by an
 47 individual who is required to register as a sexual predator
 48 under s. 775.21 or as a sexual offender under s. 943.0435, s.
 49 944.606, or s. 944.607, except for the sole purpose of the
 50 sexual predator's or sexual offender's driving to and from work,
 51 public service, or treatment. A person who violates this
 52 subsection commits a misdemeanor of the second degree,
 53 punishable as provided in s. 775.082 or s. 775.083.

54 (2) If a person violates subsection (1) and the motor
 55 vehicle is used to commit a felony enumerated in s. 775.21(4) or
 56 s. 943.0435(1) or a violation of s. 782.04, the driver license
 57 of the person who violates subsection (1) shall be suspended for
 58 1 year.

Page 2 of 6

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

9-00500A-14

2014562

Section 2. Section 318.17, Florida Statutes, is amended to read:

318.17 Offenses excepted.—No provision of this chapter is available to a person who is charged with any of the following offenses:

(1) Fleeing or attempting to elude a police officer, in violation of s. 316.1935.~~+~~

(2) Leaving the scene of a crash, in violation of ss. 316.027 and 316.061.~~+~~

(3) Driving, or being in actual physical control of, any vehicle while under the influence of alcoholic beverages, any chemical substance set forth in s. 877.111, or any substance controlled under chapter 893, in violation of s. 316.193, or driving with an unlawful blood-alcohol level.~~+~~

(4) Reckless driving, in violation of s. 316.192.~~+~~

(5) Making false crash reports, in violation of s. 316.067.~~+~~

(6) Willfully failing or refusing to comply with any lawful order or direction of any police officer or member of the fire department, in violation of s. 316.072(3).~~+~~

(7) Obstructing an officer, in violation of s. 316.545(1).~~+~~

~~or~~ (8) Unlawfully authorizing or allowing the operation of a motor vehicle by a sexual predator or sexual offender, in violation of s. 316.87.

(9)~~(8)~~ Any other offense in chapter 316 which is classified as a criminal violation.

Section 3. Subsection (11) of section 394.912, Florida Statutes, is amended to read:

9-00500A-14

2014562

394.912 Definitions.—As used in this part, the term:

(11) "Total confinement" means that the person is currently being held in any physically secure facility being operated or contractually operated for a county, the Department of Corrections, the Department of Juvenile Justice, or the Department of Children and Family Services. A person shall also be deemed to be in total confinement for applicability of provisions under this part if the person is serving an incarcerative sentence under the custody of a county, the Department of Corrections or the Department of Juvenile Justice and is being held in any other secure facility for any reason.

Section 4. Section 921.2312, Florida Statutes, is created to read:

921.2312 Risk assessment reports.—For crimes committed on or after October 1, 2014, a circuit court of the state, when the defendant in a criminal case has been found guilty or has entered a plea of nolo contendere or guilty for an offense that is listed in s. 943.0435(1)(a)1.a.(I), shall refer the case to a qualified practitioner as defined in s. 948.001. The qualified practitioner shall assess the defendant by considering the components specified in s. 948.30(1)(e)1.a.-i. and submit a written report to the circuit court at a specified time before sentencing. The report must include the qualified practitioner's opinion, along with the basis for that opinion, as to the offender's risk of committing another sexual offense.

Section 5. Subsection (5) is added to section 948.30, Florida Statutes, to read:

948.30 Additional terms and conditions of probation or community control for certain sex offenses.—Conditions imposed

9-00500A-14

2014562

pursuant to this section do not require oral pronouncement at the time of sentencing and shall be considered standard conditions of probation or community control for offenders specified in this section.

(5) The court must order, in addition to any other provision of this section, a mandatory curfew from 7 p.m. to 7 a.m. as a condition of the probation or community control supervision. The court may designate alternate hours if the offender's employment or public service precludes this specified time and the alternative is recommended by the Department of Corrections. The court may also limit the offender's whereabouts by requiring the offender to be at home if the offender is not at work, performing public service, or in treatment. If the court determines that imposing a curfew would endanger the victim, the court may consider alternative sanctions. This subsection applies to a probationer or community controllee whose crime was committed on or after October 1, 2014, who:

(a) Is placed on probation or community control for a violation of chapter 794, s. 800.04(4), (5), or (6), s. 827.071, or s. 847.0145 relating to unlawful sexual activity involving a victim 15 years of age or younger and was 18 years of age or older at the time of the offense;

(b) Is required to register as a sexual predator pursuant to s. 775.21;

(c) Is required to register as a sexual offender pursuant to s. 943.0435, s. 944.606, or s. 944.607; or

(d) Has previously been convicted of a violation of chapter 794, s. 800.04(4), (5), or (6), s. 827.071, or s. 847.0145 relating to unlawful sexual activity involving a victim 15 years

9-00500A-14

2014562

of age or younger and was 18 years of age or older at the time of the offense.

Section 6. Section 948.31, Florida Statutes, is amended to read:

948.31 Evaluation and treatment of sexual predators and offenders on probation or community control.—The court shall require an evaluation by a qualified practitioner to determine the need for sexual offender treatment for ~~of~~ a probationer or community controllee who is required to register as a sexual predator under s. 775.21 or a sexual offender under s. 943.0435, s. 944.606, or s. 944.607 ~~for treatment~~. If the court determines that a need ~~therefor~~ is established by the evaluation process, the court shall require the probationer or community controllee to undergo sexual offender treatment that is provided by a qualified practitioner as defined in s. 948.001 as a term or condition of probation or community control ~~for any person who is required to register as a sexual predator under s. 775.21 or sexual offender under s. 943.0435, s. 944.606, or s. 944.607.~~ ~~Such treatment shall be required to be obtained from a qualified practitioner as defined in s. 948.001.~~ Treatment may not be administered by a qualified practitioner who has been convicted or adjudicated delinquent of committing, or attempting, soliciting, or conspiring to commit, any offense that is listed in s. 943.0435(1)(a)1.a.(I). The court shall impose a restriction against contact with minors if sexual offender treatment is recommended. The evaluation and recommendations for treatment of the probationer or community controllee shall be provided to the court for review.

Section 7. This act shall take effect July 1, 2014.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Military and Veterans Affairs, Space, and
Domestic Security, *Vice Chair*
Appropriations Subcommittee on Health
and Human Services
Appropriations Subcommittee on
Transportation, Tourism, and Economic
Development
Communications, Energy, and Public Utilities
Criminal Justice
Regulated Industries

SELECT COMMITTEE:
Select Committee on Patient Protection
and Affordable Care Act

SENATOR AUDREY GIBSON
9th District

January 13, 2014

Senator Greg Evers, Chair
Committee on Criminal Justice
510 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

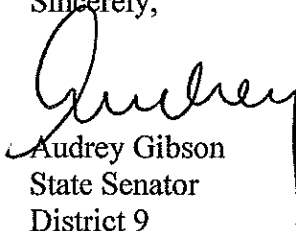
Chair Evers:

I respectfully request that SB 562, relating to sexual predators and offenders, be placed on the next committee agenda.

SB 562, addresses the importance of a risk assessment and establishes new curfew times. The measure also addresses driving restrictions for sexual predators or sexual offenders.

Thank you for your time and consideration.

Sincerely,


Audrey Gibson
State Senator
District 9

*2
Compliments to all
other SO bills!*

REPLY TO:

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

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 598

INTRODUCER: Criminal Justice Committee and Senator Bean

SUBJECT: Juvenile Justice Education Programs

DATE: March 25, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McLaughlin	Klebacha	ED	Favorable
2.	Dugger	Cannon	CJ	Fav/CS
3.			AED	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 598 makes changes to the provisions of law governing the accountability, deliverance, and review of juvenile justice education programs that provide educational services to students within the Department of Juvenile Justice (DJJ).

The bill revises the accountability of juvenile justice education programs by:

- Implementing an accountability system to meet client needs;
- Requiring the Department of Education (DOE), in partnership with the DJJ, to develop a comprehensive accountability and school improvement process;
- Requiring the DOE in collaboration with the DJJ to monitor and report on the educational performance of students in commitment, day treatment, prevention, and detention programs;
- Requiring the DOE, in consultation with the DJJ, district school boards, and providers, to adopt rules for objective and measurable student performance measures and program performance ratings for the delivery of educational services by prevention, day treatment, and residential programs; and
- Requiring the DOE, in partnership with the DJJ, district school boards, and providers to:
 - Develop and implement requirements for contracts and cooperative agreements regarding the delivery of appropriate education services to students in DJJ programs.
 - Maintain standardized procedures for securing student records.

The bill revises provisions related to juvenile justice programs by:

- Requiring school districts and juvenile justice education providers, in collaboration with others, to develop a transition plan during a student's stay in a program;
- Requiring the State Board of Education to adopt rules for academic assessment for students in detention centers;
- Requiring the DOE and the DJJ to provide oversight and guidance on how to implement effective educational transition planning and services;
- Requiring prevention and day treatment programs to provide career readiness and exploration opportunities, as well as truancy and dropout prevention intervention services;
- Requiring residential juvenile justice education programs with a contracted minimum length of stay of nine months to provide career education courses that lead to pre-apprentice certifications, industry certifications, occupational completion points, or work-related certifications;
- Allowing residential juvenile justice programs with a contract length of stay of less than nine months, to provide career education courses that lead to pre-apprentice certifications, industry certifications, occupational completion points, or work-related certifications; and
- Requiring the multiagency plan for career education to eliminate barriers to education and address virtual education.

The bill does not create any additional fiscal impacts.

The bill takes effect on July 1, 2014.

II. Present Situation:

The Department of Juvenile Justice (DJJ)

The Department of Juvenile Justice's mission is to increase public safety by reducing juvenile delinquency through effective prevention, intervention, and treatment services that strengthen families and turn around the lives of troubled youth.¹ The DJJ oversees at-risk and adjudicated youth in four service areas: prevention and victim services, probation and community intervention services, residential services, and detention services.² During the 2011-12 school year, juvenile justice education programs served 32,864 students.³

Prevention and Victim Services

Prevention and Victim Services offers voluntary youth crime prevention programs throughout the state of Florida. The mission is to increase public safety by reducing juvenile delinquency through effective prevention, intervention, and treatment services that strengthen families and turn around the lives of troubled youth.⁴

¹ Florida Department of Juvenile Justice, available at <http://www.djj.state.fl.us/about-us/mission> (last visited Mar. 6, 2014).

² Office of Program Policy Analysis and Government Accountability, Government Program Summaries – Department of Juvenile Justice, available at <http://www.djj.state.fl.us/Services> (last visited Mar. 6, 2014).

³ Florida Department of Juvenile Justice, Comprehensive Accountability Report 2011-2012, available at <http://www.djj.state.fl.us/research/reports/car> (last visited Mar. 6, 2014).

⁴ Florida Department of Juvenile Justice, Prevention & Victim Services, available at <http://www.djj.state.fl.us/services/prevention> (last visited Mar. 6, 2014).

Probation and Community Intervention Services (Non-residential)

Non-residential services provide intervention and case management services to youth on diversion, probation, and post commitment supervision. These youth remain at home and participate at least five days per week in a day treatment program.⁵

Residential Services

Residential services ensure graduated sanctions for serious, violent, and chronic offenders; address special mental health and substance abuse needs of offenders; and enhance their education in residential commitment programs. Juveniles who are adjudicated by the court can be committed to residential programs classified as low, moderate, high, or maximum risk.⁶

Detention Services

Detention is the custody status for youth who are held pursuant to a court order; or following arrest for a violation of the law. A youth may be detained only when specific statutory criteria, outlined in s. 985.215, F.S., are met. Criteria for detention include current offenses, prior history, legal status, and any aggravating or mitigating factors.⁷

Multiagency Plan for Career Education

Current law requires the DJJ and the DOE, in consultation with the statewide Workforce Development Youth Council, school districts, providers, and others, to develop a multiagency plan (Plan) for vocational education in commitment facilities.⁸

The Plan must include:

- Provisions for maximizing appropriate state and federal funding sources, responsibilities of both departments and all other appropriate entities, and detailed implementation schedules;⁹
- A definition of vocational programming that is appropriate based upon the age and assessed educational abilities and goals of the youth to be served and the typical length of stay, and custody characteristics at the commitment program to which each youth is assigned;¹⁰ and
- A definition of vocational programming that includes the classifications of commitment facilities that will offer vocational programming by one of the following types:
 - Type A - Programs that teach personal accountability skills and behavior that is appropriate for youth in all age groups and ability levels and that lead to work habits that help maintain employment and living standards;
 - Type B - Programs that include Type A program content and an orientation to the broad scope of career choices, based upon personal abilities, aptitudes, and interest; and

⁵ Florida Department of Juvenile Justice, available at <http://www.djj.state.fl.us/Residential/restrictiveness.html> (last visited Mar. 6, 2014).

⁶ Office of Program Policy Analysis and Government Accountability, Government Program Summaries – Department of Juvenile Justice Residential Services, available at <http://www.oppaga.state.fl.us/profiles/1001> (last visited Mar. 6, 2014).

⁷ Florida Department of Juvenile Justice, available at <http://www.djj.state.fl.us/services/detention> (last visited Mar. 6, 2014).

⁸ Section 985.622(1), F.S.

⁹ Section 985.622(1)(a) and (c), F.S.

¹⁰ Section 985.622(2), F.S.

- Type C - Programs that include Type A program content and the vocational competencies or the prerequisites needed for entry into a specific occupation.¹¹

In October 2010, the Office of Program Policy Analysis and Government Accountability (OPPAGA) issued a report stating that the plan had several shortcomings. According to the OPPAGA, the plan lacked goals and implementation strategies for increasing the percentage of youth receiving occupation-specific job training. Also, the plan did not address the barriers that juvenile justice students face in attaining a general educational development (GED) diploma.¹² The OPPAGA found that many juvenile justice programs emphasized academic instruction rather than GED preparation and job training. The OPPAGA recommended that the Legislature amend s. 985.622, F.S., to address the shortcomings found in the plan.

Educational Services in DJJ Programs

Current law sets forth how educational services must be provided in DJJ programs and establishes the educational expectations for DJJ youth in such programs.¹³

The DOE is the lead agency for juvenile justice education programs, curriculum, support services, and resources; however, district school boards are responsible for actually providing educational services to youth in juvenile justice programs.¹⁴ Educational services consist of basic academic, career, or exceptional curricula that support treatment goals and reentry, and that may lead to the completion of a high school diploma or its equivalent.¹⁵

These services can be provided by the district school board itself or by a private provider through a contract with the district school board.¹⁶ However, school districts remain responsible for the quality of education provided in residential and day treatment juvenile justice facilities regardless of whether the school district provides those services directly or through a contractor.¹⁷

Annually, the DJJ and the DOE must develop a cooperative agreement and plan for juvenile justice education service enhancement, which must be submitted to the Secretary of the DJJ and the Commissioner of Education.¹⁸

Each district school board must negotiate a cooperative agreement with the DJJ regarding the delivery of educational programming to DJJ youth. These agreements must include provisions that address certain issues, such as:

- Curriculum and delivery of instruction;

¹¹ Section 985.622(3), F.S.

¹² Office of Program Policy Analysis and Government Accountability, *Juvenile Justice Students Face Barriers to High School Graduation and Job Training*, Report No. 10-55, 9 (2010), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1055rpt.pdf> (last visited Mar. 6, 2014).

¹³ Section 1003.52, F.S.

¹⁴ Sections 1003.52(1), (3), and (4), F.S.

¹⁵ Section 1003.52(5), F.S.

¹⁶ Section 1003.52(11), F.S.

¹⁷ Office of Program Policy Analysis and Government Accountability, *Youth Entering the State's Juvenile Justice Programs Have Substantial Educational Deficits; Available Data Is Insufficient to Assess Learning Gains of Students*, Report No. 10-07 (2010), available at <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=10-07> (last visited Mar. 6, 2014).

¹⁸ Section 1003.52 (1), F.S.

- Classroom management procedures and attendance policies;
- Procedures for provision of qualified instructional personnel;
- Improving skills in teaching and working with juvenile delinquents;
- Transition plans for students moving into and out of juvenile facilities; and
- Strategies for correcting any deficiencies found through the quality assurance process.¹⁹

The DOE and the DJJ must each designate a coordinator to resolve issues not addressed by the district school boards and to provide each department's participation in:

- Training, collaborating, and coordinating with the DJJ, district school boards, educational contract providers, and juvenile justice providers, whether state-operated or contracted;
- Collecting and reporting information on the academic performance of students in juvenile justice programs;
- Developing academic and career protocols that provide guidance to district school boards and providers in educational programming; and
- Prescribing the roles of program personnel and school district or provider collaboration strategies.²⁰

Accountability and Reporting

The DOE and the DJJ, after consulting with the district school boards and local providers, must report annually to the Legislature on the progress toward developing effective educational programs for youth in the juvenile justice system. This report must include the results of the quality assessment reviews, including recommendations for system improvement.²¹ In its annual report to the Legislature, the DOE made several recommendations to address educational accountability and improvement such as:

- Continue to develop a juvenile justice education accountability system for programs and explore a process in which high-performing programs are recognized and low-performing programs receive assistance;
- Develop a customized school improvement plan template for programs;
- Continue to support improvement in transition services for youth in juvenile justice education through the maintenance of an accurate statewide transition contact list;
- Provide additional training and support to programs to improve their efforts with the Basic Achievement Skills Inventory administration, data reporting, and data interpretation;
- Continue to identify effective program practices and resources for students in need of academic remediation and credit recovery;
- Continue to identify academic curriculum, resources, and instructional practices related to high academic achievement for all students while incarcerated; and
- Continue to collaborate efforts among the DOE, the DJJ, school districts, and private providers to ensure appropriate and effective education for youth in juvenile justice programs.²²

¹⁹ Section 1003.52(13), F.S.

²⁰ Section 1003.52(1), F.S.

²¹ Section 1003.52(19), F.S.

²² Florida Department of Education, *Developing Effective Education in Department of Juvenile Justice and other Dropout Prevention Programs*, Annual Report 2009-2010, 13 (2011), http://www.fldoe.org/ese/pdf/jj_annual.pdf (last visited Mar. 6, 2014).

The OPPAGA issued another report in 2010 examining educational services provided to youth in DJJ residential and day treatment programs. The OPPAGA found that most students entering juvenile justice programs were older, academically behind their peers, and were likely to have had attendance problems at school. The OPPAGA found that the DOE had not collected sufficient information to assess the learning gains (or lack thereof) of students in juvenile justice programs. Only 48 of the 141 programs (34 percent) reported complete information for at least half of their students. For those programs that did report data, the nature of the assessment instrument made it difficult to determine whether students were making appropriate educational progress. The OPPAGA recommended that the Legislature amend s. 1003.52(3)(b), F.S., to require that the DOE make annual status reports to the Legislature on the learning gains of students in juvenile justice facilities and the steps it has taken to ensure the completeness and reliability of juvenile justice student performance data.²³

The DJJ is required to annually collect and report cost data for every program that is state-operated or contracted by the department. The DJJ is responsible for accurate cost accounting for state operated services including market equivalent rent and other shared cost. The cost of the educational program provided to a residential facility must be reported and included in the cost of the DJJ program. The cost-benefit analysis for each educational program will be developed and implemented in collaboration with the DOE, local providers, and local school districts. Cost data for the report must include data collected by the DOE for the purpose of preparing the annual report required pursuant to s. 1003.52(19), F.S., and relating to developing effective educational progress for juvenile delinquents.²⁴

The DOE, in consultation with the DJJ, district school boards, and providers must establish objective and measurable quality assurance standards for the educational components of residential and nonresidential juvenile justice facilities.²⁵ The quality assurance standards and indicators are revised annually for juvenile justice education programs, based on new statutory and regulatory requirements, best practices research, and input from school districts and educational providers.²⁶ These standards must rate the district school boards' performance both as a provider and contractor.²⁷

Transition Plan and Reentry Plan

Currently, an individual transition plan is developed for each student entering a DJJ commitment, day treatment, early delinquency intervention, or detention program.²⁸ The transition plan is based on the student's post-placement goals that are developed cooperatively with the student, his or her parents, school district and or contracted provider personnel, and the

²³ Office of Program Policy Analysis and Government Accountability, *Youth Entering the State's Juvenile Justice Program Have Substantial Educational Deficits; Available Data is Insufficient to Assess Learning Gains of Students*, Report No. 10-07, 8 (Jan. 2010), www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1007rpt.pdf (last visited Mar. 6, 2014).

²⁴ Section 985.632, F.S.

²⁵ Section 1003.52(15)(a), F.S.

²⁶ Florida Department of Education, *Developing Effective Education in Department of Juvenile Justice and other Dropout Prevention Programs*, Annual Report 2009-2010 (2011), www.fldoe.org/ese/pdf/jj_annual.pdf (last visited Mar. 6, 2014).

²⁷ Section 1003.52(15)(a), F.S.

²⁸ Section 1003.52(13)(i); Rule 6A-6.05281, F.A.C.

DJJ program staff. Re-entry counselors, probation officers, and personnel from the student's "home" school district are involved in the transition planning to the extent practicable. The transition plan also includes a student's academic record, including each course completed by the student according to procedures in the State Course Code Directory, career re-entry goals maintained by the school district, and recommended educational placement. An exit plan is also created for each student. A copy of the academic records, student assessment, individual academic plan, work and project samples, and the transition plan is included in the discharge packet when the student exits a DJJ facility.²⁹

Teachers in Juvenile Justice Programs

District school boards must recruit and train teachers who are interested, qualified, or experienced in educating students in juvenile justice programs. Students in juvenile justice programs must be provided a wide range of educational programs and opportunities including textbooks, technology, instructional support, and other resources available to students in public schools. Teachers assigned to educational programs in juvenile justice settings in which the district school board operates the educational program must be selected by the district school board in consultation with the director of the juvenile justice facility. Educational programs in juvenile justice facilities must have access to the substitute teacher pool utilized by the district school board.³⁰

Juvenile Justice Common Student Assessment

The DOE with the assistance of school districts, must select a common student assessment instrument and protocol for measuring student learning gains and student progression while a student is in a juvenile justice education program.³¹ The test is administered as a pre-test within 10 school days after a student enters a juvenile justice program and again as a post-test when a student who was in the program for at least 45 school days leaves the program.³² In February 2012, the DOE awarded WIN Learning a contract to administer the Florida Ready to Work assessment as the common assessment for reading and math in DJJ education programs.³³ According to the DOE, only students in residential and day treatment programs are administered the common assessment.³⁴

III. Effect of Proposed Changes:

Multiagency Plan for Career Education

The bill expands the requirement of the plan to address all educational programs, not just education programs in commitment facilities. The plan must:

- Include provisions for eliminating barriers to increasing occupation-specific job training and high school equivalency examination preparation opportunities; and

²⁹ Telephone conversation with staff, Department of Juvenile Justice (February 24, 2014).

³⁰ Section 1003.52(10), F.S.

³¹ Section 1003.52(3)(b), F.S.

³² Telephone conversation with staff, Florida Department of Education (February 14, 2014).

³³ Telephone conversation with staff, Florida Department of Education (February 15, 2014).

³⁴ Telephone conversation with staff, Florida Department of Education (February 14, 2014).

- Evaluate the effect that students' mobility between juvenile justice education programs and school districts has on the students' educational outcomes, and whether the continuity of the students' education can be better addressed through virtual education.

The bill also revises implementation dates for the DOE and the DJJ to align respective agency reporting documents to the revised plan for career education.

Educational Services in DJJ Programs

The bill revises the responsibilities of the DOE and the DJJ designated coordinators to include:

- Training, collaboration, and coordinating with local workforce boards and youth councils;
- Collecting information on the career education and transition performance of students in juvenile justice programs, and reporting the results; and
- Implementing a joint accountability, program performance, and school improvement system.

The bill also:

- Requires prevention and day treatment juvenile justice education programs, at a minimum, to provide career readiness and exploration opportunities as well as truancy and dropout prevention intervention services;
- Requires residential juvenile justice education programs with a contracted minimum length of stay of nine months to provide career education courses that lead to pre-apprentice certifications, industry certifications, occupational completion points, or work-related certifications; and
- Allows residential programs with contract lengths of stay of less than nine months to provide career education courses that lead to pre-apprentice certifications, industry certifications, occupational completion points, or work-related certifications.

The bill defines the educational component of programs with a duration of less than 40 days to include:

- Tutorial remediation activities;
- Career employability skills;
- Education counseling; and
- Transition services that prepare students for a return to school, the community, and their home setting based on the students' needs.

The bill requires educational programs to provide instruction based on each student's transition plan, assessed educational needs, and the educational programs available in the school district in which the student will return. Depending on the student's needs, educational programming may consist of remedial courses, academic courses required for grade advancement, career education courses, and high school equivalency examination preparation. Students may also be eligible for exceptional student education curricula and related services which support the transition goals and reentry, and which may lead to completion of the requirements for receipt of a high school diploma or its equivalent.

The bill requires that the DJJ and the DOE annual cooperative agreement and plan for juvenile justice education service enhancement include each agency's role regarding educational program accountability, technical assistance, training, and coordination of service.

Accountability and Reporting

The bill requires the DOE to establish and operate, either directly or indirectly through a contract, a mechanism to provide accountability measures that annually assess and evaluate all juvenile justice education programs using student performance data and program performance ratings by type of program.

The DOE, in partnership with the DJJ, must develop a comprehensive accountability and program improvement process. The accountability and program improvement process must be based on student performance measures by type of program and must rate education program performance. The accountability system must identify and recognize high-performing education programs.

The DOE, in partnership with the DJJ, must identify low-performing education programs. Low-performing education programs must receive an onsite program evaluation from the DJJ. Identification of education programs needing school improvement, technical assistance, or reassignment of the program must be based, in part, on the results of the program evaluation. Through a corrective action process, low-performing education programs must demonstrate improvement or the program must be reassigned to the district or another provider.

The DOE, in consultation with the DJJ, district school boards, and providers must establish by rule:

- Objective and measurable student performance measures to evaluate a student's educational progress while participating in a prevention, day treatment, or residential program. The student performance measures must be based on appropriate outcomes for all students in juvenile justice programs, taking into consideration the student's length of stay in the program. Performance measures must include outcomes that relate to student achievement of career education goals, acquisition of employability skills, receipt of a high school diploma, grade advancement, and learning gains;
- A performance rating system to be used by the DOE to evaluate the delivery of educational services within each of the juvenile justice education programs. The performance rating system must be primarily based upon data regarding student performance as described above; and
- The time frames, procedures, and resources to be used to improve a low-rated educational program or to terminate or reassign the program.

The bill requires that education program performance results, including the identification of high and low-performing programs and aggregated student performance results, be included in the DOE and the DJJ annual report on the progress toward developing effective educational programs.

The DOE, in collaboration with the DJJ, must monitor and report on the educational performance of students in commitment, day treatment, prevention, and detention programs. The report must include, at a minimum, the number and percentage of students:

- Returning to an alternative school, middle school, or high school upon release and the attendance rate of such students before and after participation in juvenile justice education programs;
- Receiving a standard high school diploma or high school equivalency diploma;
- Receiving industry certification;
- Receiving occupational completion points;
- Enrolling in a postsecondary educational institution;
- Completing a juvenile justice education program without reoffending;
- Reoffending within one year after completing a day treatment or residential commitment program; and
- Remaining employed one year after completion of a day treatment or residential commitment program.

The results of the educational performance report must be included in the program costs and effectiveness report.

Transition Plan and Reentry Plan

The bill requires a transition plan to include, at a minimum:

- Services and interventions that address the student's assessed educational needs and post-release education plans;
- Services to be provided during the program stay and services to be implemented upon release, including but not limited to, continuing education in secondary, career and technical programs, postsecondary education, or employment, based on the student's needs; and
- Specific monitoring responsibilities to determine whether the individualized transition plan is being implemented and the student is provided access to support services that will sustain the student's success, coordinated by individuals who are responsible for reintegration.

The DOE and the DJJ must provide oversight and guidance to school districts, education providers, and reentry personnel on how to implement effective educational transition planning and services. The bill also requires upon a student's return from a program, school districts to consider the individual needs and circumstances of the student and the transition plan recommendations when reenrolling a student in a public school. A local school district may not maintain a standardized policy for all students returning from a juvenile justice program, but place students based on their needs and their performance in the program.

The bill requires that representatives from the workforce, and the one-stop center where the student will return, participate as members of the local DJJ reentry team.

Teachers in Juvenile Justice Programs

Under the bill, the State Board of Education (SBE) rules for qualification of instructional staff must include career education instructors, standardized across the state, and be based on state

certification, local school district approval, and industry recognized credentials or industry training. The bill also requires the establishment of procedures for the use of noncertified instructional personnel who possess expert knowledge or experience in their fields of instruction. The bill also allows the Secretary of the DJJ or the director of a juvenile justice program to request that the performance of a teacher assigned by the district to a juvenile justice education program be reviewed by the district and that the teacher be reassigned based upon an evaluation conducted pursuant to s. 1012.34, F.S., for inappropriate behavior.

Public Educational Services – District School Boards

The bill clarifies the responsibilities of district school boards to include:

- Notifying students in juvenile justice education programs who reach the age of 16 years of the law regarding compulsory school attendance and make available the option of enrolling in a program to attain a high school diploma by taking the GED exam before release from the program;
- Responding to requests for student education records received from another district school board or a juvenile justice education program within five working days after receiving the request;
- Providing access to courses offered through Florida Virtual School, virtual instruction programs, and school district virtual courses. School districts and providers may enter into cooperative agreements for the provision of curriculum associated with school district virtual courses to enable providers to offer such courses;
- Prohibiting juvenile justice education programs from being charged full time equivalent (FTE) for virtual courses accessed through the school district which are for credit recovery or are offered to youth beyond the 300 minute daily requirement of instruction;
- Completing the assessment process; and
- Monitoring compliance with contracts for education programs for students in juvenile justice prevention, day treatment, residential, and detention programs.

The bill requires the DOE in partnership with the DJJ, district school boards, and providers to:

- Develop and implement requirements for contracts and cooperative agreements regarding the delivery of appropriate education services to students in DJJ programs; and
- Maintain standardized procedures for securing the student's records. The records must include, but not be limited to, the student's progress monitoring plan and transition plan.

The bill also requires the DOE to assist juvenile justice programs with becoming high school equivalency examination centers.

Juvenile Justice Common Student Assessment

The bill requires the State Board of Education to adopt rules requiring academic assessments for students in detention centers to be administered within five school days and the career assessment or career interest survey to be administered within 22 school days. Detention centers are not permitted to use the common assessment and must use an academic assessment for reading and mathematics that creates the foundation for developing the student's educational program. The bill also requires the SBE to adopt rules for assessment procedures for prevention programs.

The bill takes effect on July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the DJJ, no fiscal impact is anticipated as a result of this bill.³⁵ Similarly, the DOE reports that any cost resulting from implementing an accountability system for juvenile justice education programs will likely be absorbed within current resources.³⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 985.622, 985.632, 1001.31, 1003.51, 1003.52, and 1001.42.

³⁵ Department of Juvenile Justice, *2014 Legislative Session Bill Analysis for Senate Bill 598*, January 22, 2014 (on file with the Senate Committee on Criminal Justice).

³⁶ Department of Education, *2014 Legislative Session Bill Analysis for Senate Bill 598*, January 28, 2014 (on file with the Senate Committee on Criminal Justice).

IX. Additional Information:

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

CS by Criminal Justice on March 24, 2014:

- Deletes language requiring the DJJ and DOE to publish a report on costs and effectiveness of programs and program activities (same language is contained in other DJJ legislation, CS/CS/SB 700).
- Deletes language directing Statutory Revision to prepare a reviser's bill next year changing terminology relating to the "GED."
- Adds language allowing virtual education to be included as instructional programs.

- B. **Amendments:**

None.

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



643760

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/24/2014	.	
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	.	

The Committee on Criminal Justice (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 985.622, Florida Statutes, is amended to
read:

985.622 Multiagency plan for career ~~vocational~~ education.—

(1) The Department of Juvenile Justice and the Department
of Education shall, in consultation with the statewide Workforce
Development Youth Council, school districts, providers, and



643760

others, jointly develop a multiagency plan for career vocational education that establishes the curriculum, goals, and outcome measures for career vocational programs in juvenile justice education programs ~~commitment facilities~~. The plan must be reviewed annually, revised as appropriate, and include:

(a) Provisions for maximizing appropriate state and federal funding sources, including funds under the Workforce Investment Act and the Perkins Act.~~;~~

(b) Provisions for eliminating barriers to increasing occupation-specific job training and high school equivalency examination preparation opportunities.

~~(c) (b)~~ The responsibilities of both departments and all other appropriate entities.~~;~~ ~~and~~

~~(d) (c)~~ A detailed implementation schedule.

(2) The plan must define career vocational programming that is appropriate based upon:

(a) The age and assessed educational abilities and goals of the student youth to be served; and

(b) The typical length of stay and custody characteristics at the juvenile justice education ~~commitment~~ program to which each student youth is assigned.

(3) The plan must include a definition of career vocational programming that includes the following classifications of juvenile justice education programs ~~commitment facilities~~ that will offer career vocational programming by one of the following types:

(a) Type 1 A.—Programs that teach personal accountability skills and behaviors that are appropriate for students youth in all age groups and ability levels and that lead to work habits



643760

that help maintain employment and living standards.

(b) *Type 2 B.*—Programs that include Type 1 A program content and an orientation to the broad scope of career choices, based upon personal abilities, aptitudes, and interests. Exploring and gaining knowledge of occupation options and the level of effort required to achieve them are essential prerequisites to skill training.

(c) *Type 3 C.*—Programs that include Type 1 A program content and the career education ~~vocational~~ competencies or the prerequisites needed for entry into a specific occupation.

(4) The plan must also address strategies to facilitate involvement of business and industry in the design, delivery, and evaluation of career ~~vocational~~ programming in juvenile justice education ~~commitment facilities and conditional release~~ programs, including apprenticeship and work experience programs, mentoring and job shadowing, and other strategies that lead to postrelease employment. Incentives for business involvement, such as tax breaks, bonding, and liability limits should be investigated, implemented where appropriate, or recommended to the Legislature for consideration.

(5) The plan must also evaluate the effect of students' mobility between juvenile justice education programs and school districts on the students' educational outcomes and whether the continuity of the students' education can be better addressed through virtual education.

(6) ~~(5)~~ The Department of Juvenile Justice and the Department of Education shall each align its respective agency policies, practices, technical manuals, contracts, quality-assurance standards, performance-based-budgeting measures, and



643760

outcome measures with the plan in juvenile justice education programs ~~commitment facilities~~ by July 31, 2015 ~~2001~~. Each agency shall provide a report on the implementation of this section to the Governor, the President of the Senate, and the Speaker of the House of Representatives by August 31, 2015 ~~2001~~.

(7) ~~(6)~~ All provider contracts executed by the Department of Juvenile Justice or the school districts after January 1, 2015 ~~2002~~, must be aligned with the plan.

(8) ~~(7)~~ The planning and execution of quality assurance reviews conducted by the Department of Education or the Department of Juvenile Justice after August 1, 2015 ~~2002~~, must be aligned with the plan.

(9) ~~(8)~~ Outcome measures reported by the Department of Juvenile Justice and the Department of Education for students youth released on or after January 1, 2016 ~~2002~~, should include outcome measures that conform to the plan.

Section 2. Section 1001.31, Florida Statutes, is amended to read:

1001.31 Scope of district system.—A district school system shall include all public schools, classes, and courses of instruction and all services and activities directly related to education in that district which are under the direction of the district school officials. A district school system may also include alternative site schools for disruptive or violent students youth. Such schools for disruptive or violent students youth may be funded by each district or provided through cooperative programs administered by a consortium of school districts, private providers, state and local law enforcement agencies, and the Department of Juvenile Justice. Pursuant to



643760

cooperative agreement, a district school system shall provide instructional personnel at juvenile justice facilities ~~of 50 or more beds or slots~~ with access to the district school system database for the purpose of accessing student academic, immunization, and registration records for students assigned to the programs. Such access shall be in the same manner as provided to other schools in the district.

Section 3. Section 1003.51, Florida Statutes, is amended to read:

1003.51 Other public educational services.—

(1) The general control of other public educational services shall be vested in the State Board of Education except as provided in this section ~~herein~~. The State Board of Education shall, at the request of the Department of Children and Families ~~Family Services~~ and the Department of Juvenile Justice, advise as to standards and requirements relating to education to be met in all state schools or institutions under their control which provide educational programs. The Department of Education shall provide supervisory services for the educational programs of all such schools or institutions. The direct control of any of these services provided as part of the district program of education shall rest with the district school board. These services shall be supported out of state, district, federal, or other ~~lawful~~ funds, depending on the requirements of the services being supported.

(2) The State Board of Education shall adopt rules ~~and maintain an administrative rule~~ articulating expectations for effective education programs for students ~~youth~~ in Department of Juvenile Justice programs, including, but not limited to,



643760

education programs in juvenile justice prevention, day
treatment, residential, ~~commitment~~ and detention facilities. The
rule shall establish ~~articulate~~ policies and standards for
education programs for students ~~youth~~ in Department of Juvenile
Justice programs and shall include the following:

(a) The interagency collaborative process needed to ensure
effective programs with measurable results.

(b) The responsibilities of the Department of Education,
the Department of Juvenile Justice, Workforce Florida, Inc.,
district school boards, and providers of education services to
students ~~youth~~ in Department of Juvenile Justice programs.

(c) Academic expectations.

(d) Career and technical expectations.

(e) Education transition planning and services.

(f) ~~(d)~~ Service delivery options available to district
school boards, including direct service and contracting.

(g) ~~(e)~~ Assessment procedures, which:

1. For prevention, day treatment, and residential programs,
include appropriate academic and career assessments administered
at program entry and exit that are selected by the Department of
Education in partnership with representatives from the
Department of Juvenile Justice, district school boards, and
education providers. Assessments must be completed within the
first 10 school days after a student's entry into the program.

2. Provide for determination of the areas of academic need
and strategies for appropriate intervention and instruction for
each student in a detention facility within 5 school days after
the student's entry into the program and administer a research-
based assessment that will assist the student in determining his



643760

or her educational and career options and goals within 22 school days after the student's entry into the program ~~Require district school boards to be responsible for ensuring the completion of the assessment process.~~

~~3. Require assessments for students in detention who will move on to commitment facilities, to be designed to create the foundation for developing the student's education program in the assigned commitment facility.~~

~~4. Require assessments of students sent directly to commitment facilities to be completed within the first 10 school days of the student's commitment.~~

The results of these assessments, together with a portfolio depicting the student's academic and career accomplishments, shall be included in the discharge packet ~~package~~ assembled for each student ~~youth~~.

(h) ~~(f)~~ Recommended instructional programs, including, but not limited to: r

1. Secondary education.

2. High school equivalency examination preparation.

3. Postsecondary education.

4. Career training. ~~and~~

5. Job preparation.

6. Virtual education that:

a. Provides competency-based instruction that addresses the unique academic needs of the student through delivery by an entity accredited by AdvanceED or the Southern Association of Colleges and Schools.

b. Confers certifications and diplomas.



643760

185 c. Issues credit that articulates with and transcripts that
186 are recognized by secondary schools.

187 d. Allows the student to continue to access and progress
188 through the program once the student leaves the juvenile justice
189 system.

190 (i) ~~(g)~~ Funding requirements, which shall include the
191 requirement that at least 90 percent of the FEFP funds generated
192 by students in Department of Juvenile Justice programs or in an
193 education program for juveniles under s. 985.19 be spent on
194 instructional costs for those students. One hundred percent of
195 the formula-based categorical funds generated by students in
196 Department of Juvenile Justice programs must be spent on
197 appropriate categoricals such as instructional materials and
198 public school technology for those students.

199 (j) ~~(h)~~ Qualifications of instructional staff, procedures
200 for the selection of instructional staff, and procedures ~~for to~~
201 ensure consistent instruction and qualified staff year round.
202 Qualifications shall include those for career education
203 instructors, standardized across the state, and shall be based
204 on state certification, local school district approval, and
205 industry-recognized credentials or industry training. Procedures
206 for the use of noncertified instructional personnel who possess
207 expert knowledge or experience in their fields of instruction
208 shall be established.

209 (k) ~~(i)~~ Transition services, including the roles and
210 responsibilities of appropriate personnel in the juvenile
211 justice education program, the school district where the student
212 will reenter districts, provider organizations, and the
213 Department of Juvenile Justice.



643760

(1)~~(j)~~ Procedures and timeframe for transfer of education records when a student ~~youth~~ enters and leaves a Department of Juvenile Justice education program ~~facility~~.

(m)~~(k)~~ The requirement that each district school board maintain an academic transcript for each student enrolled in a juvenile justice education program ~~facility~~ that delineates each course completed by the student as provided by the State Course Code Directory.

(n)~~(l)~~ The requirement that each district school board make available and transmit a copy of a student's transcript in the discharge packet when the student exits a juvenile justice education program ~~facility~~.

(o)~~(m)~~ Contract requirements.

(p)~~(n)~~ Performance expectations for providers and district school boards, including student performance measures by type of program, education program performance ratings, school improvement, and corrective action plans for low-performing programs ~~the provision of a progress monitoring plan as required in s. 1008.25.~~

(q)~~(o)~~ The role and responsibility of the district school board in securing workforce development funds.

(r)~~(p)~~ A series of graduated sanctions for district school boards whose educational programs in Department of Juvenile Justice programs ~~facilities~~ are considered to be unsatisfactory and for instances in which district school boards fail to meet standards prescribed by law, rule, or State Board of Education policy. These sanctions shall include the option of requiring a district school board to contract with a provider or another district school board if the educational program at the



643760

Department of Juvenile Justice program is performing below
minimum standards ~~facility has failed a quality assurance review~~
and, after 6 months, is still performing below minimum
standards.

(s) Curriculum, guidance counseling, transition, and
education services expectations, including curriculum
flexibility for detention centers operated by the Department of
Juvenile Justice.

(t) ~~(q)~~ Other aspects of program operations.

(3) The Department of Education in partnership with the
Department of Juvenile Justice, the district school boards, and
providers shall:

(a) Develop and implement requirements for contracts and
cooperative agreements regarding ~~Maintain model contracts for~~
the delivery of appropriate education services to students ~~youth~~
in Department of Juvenile Justice programs ~~to be used for the~~
~~development of future contracts.~~ The minimum contract
requirements shall include, but are not limited to, payment
structure and amounts; access to district services; contract
management provisions; data reporting requirements, including
reporting of full-time equivalent student membership;
administration of federal programs such as Title I, exceptional
student education, and the Carl D. Perkins Career and Technical
Education Act of 2006; and ~~model contracts shall reflect the~~
policy and standards included in subsection (2). ~~The Department~~
~~of Education shall ensure that appropriate district school board~~
~~personnel are trained and held accountable for the management~~
~~and monitoring of contracts for education programs for youth in~~
~~juvenile justice residential and nonresidential facilities.~~



643760

(b) Develop and implement ~~Maintain model~~ procedures for transitioning students ~~youth~~ into and out of Department of Juvenile Justice education programs. These procedures shall reflect the policy and standards adopted pursuant to subsection (2).

(c) Maintain standardized required content of education records to be included as part of a student's ~~youth's~~ commitment record and procedures for securing the student's records. The education records ~~These requirements shall reflect the policy and standards adopted pursuant to subsection (2) and shall~~ include, but not be limited to, the following:

1. A copy of the student's individual educational plan.
2. A copy of the student's individualized progress monitoring plan.
3. A copy of the student's individualized transition plan.
- ~~4.2.~~ Data on student performance on assessments taken according to s. 1008.22.
- ~~5.3.~~ A copy of the student's permanent cumulative record.
- ~~6.4.~~ A copy of the student's academic transcript.
- ~~7.5.~~ A portfolio reflecting the student's ~~youth's~~ academic and career and technical accomplishments, when age appropriate, while in the Department of Juvenile Justice program.

(d) Establish ~~Maintain model procedures for securing the education record and~~ the roles and responsibilities of the juvenile probation officer and others involved in the withdrawal of the student from school and assignment to a juvenile justice education program ~~commitment or detention facility~~. ~~District school boards shall respond to requests for student education records received from another district school board or a~~



643760

~~juvenile justice facility within 5 working days after receiving the request.~~

~~(4) Each The Department of Education shall ensure that district school board shall: boards~~

~~(a) Notify students in juvenile justice education programs residential or nonresidential facilities who attain the age of 16 years of the provisions of law regarding compulsory school attendance and make available the option of enrolling in a program to attain a Florida high school diploma by taking the high school equivalency examination before General Educational Development test prior to release from the program facility. The Department of Education shall assist juvenile justice education programs with becoming high school equivalency examination centers District school boards or Florida College System institutions, or both, shall waive GED testing fees for youth in Department of Juvenile Justice residential programs and shall, upon request, designate schools operating for the purpose of providing educational services to youth in Department of Juvenile Justice programs as GED testing centers, subject to GED testing center requirements. The administrative fees for the General Educational Development test required by the Department of Education are the responsibility of district school boards and may be required of providers by contractual agreement.~~

~~(b) Respond to requests for student education records received from another district school board or a juvenile justice education program within 5 working days after receiving the request.~~

~~(c) Provide access to courses offered pursuant to ss. 1002.37, 1002.45, and 1003.498. School districts and providers~~



643760

may enter into cooperative agreements for the provision of curriculum associated with courses offered pursuant to s. 1003.498 to enable providers to offer such courses.

(d) Complete the assessment process required by subsection (2).

(e) Monitor compliance with contracts for education programs for students in juvenile justice prevention, day treatment, residential, and detention programs.

(5) The Department of Education shall establish and operate, either directly or indirectly through a contract, a mechanism to provide accountability measures that annually assesses and evaluates all juvenile justice education programs using student performance data and program performance ratings by type of program ~~quality assurance reviews of all juvenile justice education programs~~ and shall provide technical assistance and related research to district school boards and juvenile justice education providers ~~on how to establish, develop, and operate educational programs that exceed the minimum quality assurance standards.~~ The Department of Education, with input from the Department of Juvenile Justice, school districts, and education providers shall develop annual recommendations for system and school improvement.

Section 4. Section 1003.52, Florida Statutes, is amended to read:

1003.52 Educational services in Department of Juvenile Justice programs.—

~~(1) The Legislature finds that education is the single most important factor in the rehabilitation of adjudicated delinquent youth in the custody of Department of Juvenile Justice programs.~~



643760

~~It is the goal of the Legislature that youth in the juvenile justice system continue to be allowed the opportunity to obtain a high quality education.~~ The Department of Education shall serve as the lead agency for juvenile justice education programs, curriculum, support services, and resources. To this end, the Department of Education and the Department of Juvenile Justice shall each designate a Coordinator for Juvenile Justice Education Programs to serve as the point of contact for resolving issues not addressed by district school boards and to provide each department's participation in the following activities:

(a) Training, collaborating, and coordinating with ~~the Department of Juvenile Justice,~~ district school boards, local workforce boards and youth councils, educational contract providers, and juvenile justice providers, whether state operated or contracted.

(b) Collecting information on the academic, career education, and transition performance of students in juvenile justice programs and reporting on the results.

(c) Developing academic and career education protocols that provide guidance to district school boards and juvenile justice education providers in all aspects of education programming, including records transfer and transition.

(d) Implementing a joint accountability, program performance, and program improvement process ~~Prescribing the roles of program personnel and interdepartmental district school board or provider collaboration strategies.~~

Annually, a cooperative agreement and plan for juvenile justice



643760

education service enhancement shall be developed between the Department of Juvenile Justice and the Department of Education and submitted to the Secretary of Juvenile Justice and the Commissioner of Education by June 30. The plan shall include, at a minimum, each agency's role regarding educational program accountability, technical assistance, training, and coordination of services.

(2) Students participating in Department of Juvenile Justice programs pursuant to chapter 985 which are sponsored by a community-based agency or are operated or contracted for by the Department of Juvenile Justice shall receive education ~~educational~~ programs according to rules of the State Board of Education. These students shall be eligible for services afforded to students enrolled in programs pursuant to s. 1003.53 and all corresponding State Board of Education rules.

(3) The district school board of the county in which the juvenile justice education prevention, day treatment, residential, or detention program ~~residential or nonresidential care facility or juvenile assessment facility~~ is located shall provide or contract for appropriate educational assessments and an appropriate program of instruction and special education services.

(a) The district school board shall make provisions for each student to participate in basic, career education, and exceptional student programs as appropriate. Students served in Department of Juvenile Justice programs shall have access to the appropriate courses and instruction to prepare them for the high school equivalency examination ~~GED test~~. Students participating in high school equivalency examination ~~GED~~ preparation programs



643760

shall be funded at the basic program cost factor for Department of Juvenile Justice programs in the Florida Education Finance Program. Each program shall be conducted according to applicable law providing for the operation of public schools and rules of the State Board of Education. School districts shall provide the high school equivalency examination ~~GED~~ exit option for all juvenile justice programs.

(b) ~~By October 1, 2004,~~ The Department of Education, with the assistance of the school districts and juvenile justice education providers, shall select a common student assessment instrument and protocol for measuring student learning gains and student progression while a student is in a juvenile justice education program. The Department of Education and Department of Juvenile Justice shall jointly review the effectiveness of this assessment and implement changes as necessary ~~The assessment instrument and protocol must be implemented in all juvenile justice education programs in this state by January 1, 2005.~~

(4) Educational services shall be provided at times of the day most appropriate for the juvenile justice program. School programming in juvenile justice detention, prevention, day treatment, and residential ~~commitment, and rehabilitation~~ programs shall be made available by the local school district during the juvenile justice school year, as provided ~~defined~~ in s. 1003.01(11). In addition, students in juvenile justice education programs shall have access to courses offered pursuant to ss. 1002.37, 1002.45, and 1003.498 ~~Florida Virtual School courses~~. The Department of Education and the school districts shall adopt policies necessary to provide ~~ensure~~ such access.

(5) The educational program shall provide instruction based



643760

on each student's individualized transition plan, assessed educational needs, and the education programs available in the school district in which the student will return. Depending on the student's needs, educational programming may consist of remedial courses, ~~consist of appropriate basic~~ academic courses required for grade advancement, career education courses, high school equivalency examination preparation, or exceptional student education curricula and related services which support the transition ~~treatment~~ goals and reentry and which may lead to completion of the requirements for receipt of a high school diploma or its equivalent. Prevention and day treatment juvenile justice education programs, at a minimum, shall provide career readiness and exploration opportunities as well as truancy and dropout prevention intervention services. Residential juvenile justice education programs with a contracted minimum length of stay of 9 months shall provide career education courses that lead to preapprentice certifications, industry certifications, occupational completion points, or work-related certifications. Residential programs with contracted lengths of stay of less than 9 months may provide career education courses that lead to preapprentice certifications, industry certifications, occupational completion points, or work-related certifications. If the duration of a program is less than 40 days, the educational component may be limited to tutorial remediation activities, ~~and~~ career employability skills instruction, education counseling, and transition services that prepare students for a return to school, the community, and their home settings based on the students' needs.

(6) Participation in the program by students of compulsory



643760

school-attendance age as provided for in s. 1003.21 shall be mandatory. All students of noncompulsory school-attendance age who have not received a high school diploma or its equivalent shall participate in the educational program, unless the student files a formal declaration of his or her intent to terminate school enrollment as described in s. 1003.21 and is afforded the opportunity to take the general educational development test and attain a Florida high school diploma before ~~prior to~~ release from a juvenile justice education program facility. A student ~~youth~~ who has received a high school diploma or its equivalent and is not employed shall participate in workforce development or other career ~~or technical~~ education or Florida College System institution or university courses while in the program, subject to available funding.

(7) An individualized A progress monitoring plan shall be developed for all students not classified as exceptional education students upon entry in a juvenile justice education program and upon reentry in the school district ~~who score below the level specified in district school board policy in reading, writing, and mathematics or below the level specified by the Commissioner of Education on statewide assessments as required by s. 1008.25.~~ These plans shall address academic, literacy, and career and technical ~~life~~ skills and shall include provisions for intensive remedial instruction in the areas of weakness.

(8) Each district school board shall maintain an academic record for each student enrolled in a juvenile justice program ~~facility~~ as prescribed by s. 1003.51. Such record shall delineate each course completed by the student according to procedures in the State Course Code Directory. The district



643760

school board shall include a copy of a student's academic record in the discharge packet when the student exits the program facility.

(9) ~~Each~~ ~~The Department of Education shall ensure that all~~ district school board shall boards make provisions for high school level students youth to earn credits toward high school graduation while in residential and nonresidential juvenile justice programs facilities. Provisions must be made for the transfer of credits and partial credits earned.

(10) School districts and juvenile justice education providers shall develop individualized transition plans during the course of a student's stay in a juvenile justice education program to coordinate academic, career and technical, and secondary and postsecondary services that assist the student in successful community reintegration upon release. Development of the transition plan shall be a collaboration of the personnel in the juvenile justice education program, reentry personnel, personnel from the school district where the student will return, the student, the student's family, and Department of Juvenile Justice personnel for committed students.

(a) Transition planning must begin upon a student's placement in the program. The transition plan must include, at a minimum:

1. Services and interventions that address the student's assessed educational needs and postrelease education plans.

2. Services to be provided during the program stay and services to be implemented upon release, including, but not limited to, continuing education in secondary school, career and technical programs, postsecondary education, or employment,



643760

based on the student's needs.

3. Specific monitoring responsibilities to determine whether the individualized transition plan is being implemented and the student is provided access to support services that will sustain the student's success by individuals who are responsible for the reintegration and coordination of these activities.

(b) For the purpose of transition planning and reentry services, representatives from the school district and the one stop center where the student will return shall participate as members of the local Department of Juvenile Justice reentry teams. The school district, upon return of a student from a juvenile justice education program, must consider the individual needs and circumstances of the student and the transition plan recommendations when reenrolling a student in a public school. A local school district may not maintain a standardized policy for all students returning from a juvenile justice program but place students based on their needs and their performance in the program.

(c) The Department of Education and the Department of Juvenile Justice shall provide oversight and guidance to school districts, education providers, and reentry personnel on how to implement effective educational transition planning and services.

(11) ~~(10)~~ The district school board shall recruit and train teachers who are interested, qualified, or experienced in educating students in juvenile justice programs. Students in juvenile justice programs shall be provided a wide range of education ~~educational~~ programs and opportunities including textbooks, technology, instructional support, and ~~other~~



643760

resources commensurate with resources provided ~~available~~ to students in public schools, including textbooks and access to technology. If the district school board operates a juvenile justice education program at a juvenile justice facility, the district school board, in consultation with the director of the juvenile justice facility, shall select the instructional personnel assigned to that program. The Secretary of Juvenile Justice or the director of a juvenile justice program may request that the performance of a teacher assigned by the district to a juvenile justice education program be reviewed by the district and that the teacher be reassigned based upon an evaluation conducted pursuant to s. 1012.34 or for inappropriate behavior ~~Teachers assigned to educational programs in juvenile justice settings in which the district school board operates the educational program shall be selected by the district school board in consultation with the director of the juvenile justice facility. Educational programs in Juvenile justice education programs facilities shall have access to the substitute teacher pool used utilized by the district school board.~~

(12) ~~(11)~~ District school boards may contract with a private provider for the provision of education ~~educational~~ programs to students ~~youths~~ placed with the Department of Juvenile Justice and shall generate local, state, and federal funding, including funding through the Florida Education Finance Program for such students. The district school board's planning and budgeting process shall include the needs of Department of Juvenile Justice programs in the district school board's plan for expenditures for state categorical and federal funds.

(13) ~~(12)~~ (a) Funding for eligible students enrolled in



643760

juvenile justice education programs shall be provided through the Florida Education Finance Program as provided in s. 1011.62 and the General Appropriations Act. Funding shall include, at a minimum:

1. Weighted program funding or the basic amount for current operation multiplied by the district cost differential as provided in s. 1011.62(1)(s) and (2);

2. The supplemental allocation for juvenile justice education as provided in s. 1011.62(10);

3. A proportionate share of the district's exceptional student education guaranteed allocation, the supplemental academic instruction allocation, and the instructional materials allocation;

4. An amount equivalent to the proportionate share of the state average potential discretionary local effort for operations, which shall be determined as follows:

a. If the district levies the maximum discretionary local effort and the district's discretionary local effort per FTE is less than the state average potential discretionary local effort per FTE, the proportionate share shall include both the discretionary local effort and the compression supplement per FTE. If the district's discretionary local effort per FTE is greater than the state average per FTE, the proportionate share shall be equal to the state average; or

b. If the district does not levy the maximum discretionary local effort and the district's actual discretionary local effort per FTE is less than the state average potential discretionary local effort per FTE, the proportionate share shall be equal to the district's actual discretionary local



643760

effort per FTE. If the district's actual discretionary local effort per FTE is greater than the state average per FTE, the proportionate share shall be equal to the state average potential local effort per FTE; and

5. A proportionate share of the district's proration to funds available, if necessary.

(b) Juvenile justice education ~~educational~~ programs to receive the appropriate FEFP funding for Department of Juvenile Justice programs shall include those operated through a contract with the Department of Juvenile Justice ~~and which are under purview of the Department of Juvenile Justice quality assurance standards for education.~~

(c) Consistent with the rules of the State Board of Education, district school boards are required to request an alternative FTE survey for Department of Juvenile Justice programs experiencing fluctuations in student enrollment.

(d) FTE count periods shall be prescribed in rules of the State Board of Education and shall be the same for programs of the Department of Juvenile Justice as for other public school programs. The summer school period for students in Department of Juvenile Justice programs shall begin on the day immediately following the end of the regular school year and end on the day immediately preceding the subsequent regular school year. Students shall be funded for no more than 25 hours per week of direct instruction.

(e) Each juvenile justice education program must receive all federal funds for which the program is eligible.

(14) ~~(13)~~ Each district school board shall negotiate a cooperative agreement with the Department of Juvenile Justice on



643760

the delivery of educational services to students ~~youths~~ under the jurisdiction of the Department of Juvenile Justice. Such agreement must include, but is not limited to:

(a) Roles and responsibilities of each agency, including the roles and responsibilities of contract providers.

(b) Administrative issues including procedures for sharing information.

(c) Allocation of resources including maximization of local, state, and federal funding.

(d) Procedures for educational evaluation for educational exceptionalities and special needs.

(e) Curriculum and delivery of instruction.

(f) Classroom management procedures and attendance policies.

(g) Procedures for provision of qualified instructional personnel, whether supplied by the district school board or provided under contract by the provider, and for performance of duties while in a juvenile justice setting.

(h) Provisions for improving skills in teaching and working with students referred to juvenile justice programs ~~delinquents~~.

(i) Transition plans for students moving into and out of juvenile programs ~~facilities~~.

(j) Procedures and timelines for the timely documentation of credits earned and transfer of student records.

(k) Methods and procedures for dispute resolution.

(l) Provisions for ensuring the safety of education personnel and support for the agreed-upon education program.

(m) Strategies for correcting any deficiencies found through the accountability and evaluation system and student



643760

performance measures ~~quality assurance process.~~

~~(15)(14)~~ Nothing in this section or in a cooperative agreement requires ~~shall be construed to require~~ the district school board to provide more services than can be supported by the funds generated by students in the juvenile justice programs.

~~(16)(15)(a)~~ The Department of Education, in consultation with the Department of Juvenile Justice, district school boards, and providers, shall adopt rules establishing: ~~establish~~

(a) Objective and measurable student performance measures to evaluate a student's educational progress while participating in a prevention, day treatment, or residential program. The student performance measures must be based on appropriate outcomes for all students in juvenile justice education programs, taking into consideration the student's length of stay in the program. Performance measures shall include outcomes that relate to student achievement of career education goals, acquisition of employability skills, receipt of a high school diploma, and grade advancement.

(b) A performance rating system to be used by the Department of Education to evaluate ~~quality assurance standards for the delivery of educational services within each of the juvenile justice programs. The performance rating shall be primarily based on data regarding student performance as described in paragraph (a) component of residential and nonresidential juvenile justice facilities.~~

(c) The timeframes, procedures, and resources to be used to improve a low-rated educational program or to terminate or reassign the program ~~These standards shall rate the district~~



643760

~~school board's performance both as a provider and contractor. The quality assurance rating for the educational component shall be disaggregated from the overall quality assurance score and reported separately.~~

~~(d)(b) The Department of Education, in partnership with the Department of Juvenile Justice, shall develop a comprehensive accountability and program improvement quality assurance review process. The accountability and program improvement process shall be based on student performance measures by type of program and shall rate education program performance. The accountability system shall identify and recognize high-performing education programs. The Department of Education, in partnership with the Department of Juvenile Justice, shall identify low-performing programs. Low-performing education programs shall receive an onsite program evaluation from the Department of Juvenile Justice. School improvement, technical assistance, or the reassignment of the program shall be based, in part, on the results of the program evaluation. Through a corrective action process, low-performing programs must demonstrate improvement or reassign the program and schedule for the evaluation of the educational component in juvenile justice programs. The Department of Juvenile Justice quality assurance site visit and the education quality assurance site visit shall be conducted during the same visit.~~

~~(c) The Department of Education, in consultation with district school boards and providers, shall establish minimum thresholds for the standards and key indicators for educational programs in juvenile justice facilities. If a district school board fails to meet the established minimum standards, it will~~



643760

~~be given 6 months to achieve compliance with the standards. If after 6 months, the district school board's performance is still below minimum standards, the Department of Education shall exercise sanctions as prescribed by rules adopted by the State Board of Education. If a provider, under contract with the district school board, fails to meet minimum standards, such failure shall cause the district school board to cancel the provider's contract unless the provider achieves compliance within 6 months or unless there are documented extenuating circumstances.~~

~~(d) The requirements in paragraphs (a), (b), and (c) shall be implemented to the extent that funds are available.~~

(17) The department, in collaboration with the Department of Juvenile Justice, shall collect data and report on commitment, day treatment, prevention, and detention programs. The report shall be submitted to the President of the Senate, the Speaker of the House of Representatives, and the Governor by February 1 of each year. The report must include, at a minimum:

(a) The number and percentage of students who:

1. Return to an alternative school, middle school, or high school upon release and the attendance rate of such students before and after participation in juvenile justice education programs.

2. Receive a standard high school diploma or a high school equivalency diploma.

3. Receive industry certification.

4. Receive occupational completion points.

5. Enroll in a postsecondary educational institution.

6. Complete a juvenile justice education program without



643760

reoffending.

7. Reoffend within 1 year after completion of a day treatment or residential commitment program.

8. Remain employed 1 year after completion of a day treatment or residential commitment program.

9. Demonstrate learning gains pursuant to paragraph (3) (b).

(b) The following cost data for each juvenile justice education program:

1. The amount of funding provided by district school boards to juvenile justice programs and the amount retained for administration, including documenting the purposes of such expenses.

2. The status of the development of cooperative agreements.

3. Recommendations for system improvement.

4. Information on the identification of, and services provided to, exceptional students, to determine whether these students are properly reported for funding and are appropriately served.

(18)-(16) The district school board shall not be charged any rent, maintenance, utilities, or overhead on such facilities. Maintenance, repairs, and remodeling of existing facilities shall be provided by the Department of Juvenile Justice.

(19)-(17) When additional facilities are required, the district school board and the Department of Juvenile Justice shall agree on the appropriate site based on the instructional needs of the students. When the most appropriate site for instruction is on district school board property, a special capital outlay request shall be made by the commissioner in accordance with s. 1013.60. When the most appropriate site is on



643760

state property, state capital outlay funds shall be requested by the Department of Juvenile Justice provided by s. 216.043 and shall be submitted as specified by s. 216.023. Any instructional facility to be built on state property shall have educational specifications jointly developed by the district school board and the Department of Juvenile Justice and approved by the Department of Education. The size of space and occupant design capacity criteria as provided by State Board of Education rules shall be used for remodeling or new construction whether facilities are provided on state property or district school board property.

(20) ~~(18)~~ The parent of an exceptional student shall have the due process rights provided for in this chapter.

~~(19) The Department of Education and the Department of Juvenile Justice, after consultation with and assistance from local providers and district school boards, shall report annually to the Legislature by February 1 on the progress toward developing effective educational programs for juvenile delinquents, including the amount of funding provided by district school boards to juvenile justice programs, the amount retained for administration including documenting the purposes for such expenses, the status of the development of cooperative agreements, the results of the quality assurance reviews including recommendations for system improvement, and information on the identification of, and services provided to, exceptional students in juvenile justice commitment facilities to determine whether these students are properly reported for funding and are appropriately served.~~

(21) ~~(20)~~ The education ~~educational~~ programs at the Arthur



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~~Dozier School for Boys in Jackson County~~ and the Florida School for Boys in Okeechobee shall be operated by the Department of Education, either directly or through grants or contractual agreements with other public or duly accredited education agencies approved by the Department of Education.

(22) ~~(21)~~ The State Board of Education shall ~~may~~ adopt ~~any~~ rules necessary to implement ~~the provisions of~~ this section, ~~including uniform curriculum, funding, and second chance schools.~~ Such rules must require the minimum amount of paperwork and reporting.

(23) ~~(22)~~ The Department of Juvenile Justice and the Department of Education, in consultation with Workforce Florida, Inc., the statewide Workforce Development Youth Council, district school boards, Florida College System institutions, providers, and others, shall jointly develop a multiagency plan for career education which describes the funding, curriculum, transfer of credits, goals, and outcome measures for career education programming in juvenile commitment facilities, pursuant to s. 985.622. The plan must be reviewed annually.

Section 5. Subsection (3) of section 985.632, Florida Statutes, is amended to read:

985.632 Quality assurance and cost-effectiveness.—

(3) The department shall annually collect and report cost data for every program operated or contracted by the department. The cost data shall conform to a format approved by the department and the Legislature. Uniform cost data shall be reported and collected for state-operated and contracted programs so that comparisons can be made among programs. The department shall ensure that there is accurate cost accounting



643760

for state-operated services including market-equivalent rent and other shared cost. The cost of the educational program provided to a residential facility shall be reported and included in the cost of a program. The department shall submit an annual cost report to the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of each house of the Legislature, the appropriate substantive and fiscal committees of each house of the Legislature, and the Governor, no later than December 1 of each year. Cost-benefit analysis for educational programs will be developed and implemented in collaboration with and in cooperation with the Department of Education, local providers, and local school districts. Cost data for the report shall include data collected by the Department of Education for the purposes of preparing the annual report required by s. 1003.52(17) ~~1003.52(19)~~.

Section 6. Paragraph (b) of subsection (18) of section 1001.42, Florida Statutes, is amended to read:

1001.42 Powers and duties of district school board.—The district school board, acting as a board, shall exercise all powers and perform all duties listed below:

(18) IMPLEMENT SCHOOL IMPROVEMENT AND ACCOUNTABILITY.—Maintain a state system of school improvement and education accountability as provided by statute and State Board of Education rule. This system of school improvement and education accountability shall be consistent with, and implemented through, the district's continuing system of planning and budgeting required by this section and ss. 1008.385, 1010.01, and 1011.01. This system of school improvement and education accountability shall comply with the provisions of ss. 1008.33,



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1008.34, 1008.345, and 1008.385 and include the following:

(b) *Public disclosure.*—The district school board shall provide information regarding the performance of students and educational programs as required pursuant to ss. 1008.22 and 1008.385 and implement a system of school reports as required by statute and State Board of Education rule which shall include schools operating for the purpose of providing educational services to students ~~youth~~ in Department of Juvenile Justice programs, and for those schools, report on the elements specified in s. 1003.52(16) ~~1003.52(19)~~. Annual public disclosure reports shall be in an easy-to-read report card format and shall include the school's grade, high school graduation rate calculated without high school equivalency examinations ~~GED tests~~, disaggregated by student ethnicity, and performance data as specified in state board rule.

Section 7. This act shall take effect July 1, 2014.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to juvenile justice education
programs; amending s. 985.622, F.S.; revising
requirements for the multiagency education plan for
students in juvenile justice education programs,
including virtual education as an option; amending s.
1001.31, F.S.; authorizing instructional personnel at
all juvenile justice facilities to access specific



643760

student records at the district; amending s. 1003.51, F.S.; revising terminology; revising requirements for rules to be maintained by the State Board of Education; providing expectations for effective education programs for students in Department of Juvenile Justice programs; revising requirements for contract and cooperative agreements for the delivery of appropriate education services to students in Department of Juvenile Justice programs; requiring the Department of Education to ensure that juvenile justice students who are eligible have access to high school equivalency testing and assist juvenile justice education programs with becoming high school equivalency testing centers; revising requirements for an accountability system for juvenile justice education programs; revising requirements for district school boards; amending s. 1003.52, F.S.; revising requirements for activities to be coordinated by the coordinators for juvenile justice education programs; authorizing contracting for educational assessments; revising requirements for assessments; authorizing access to local virtual education courses; requiring that an education program shall be based on each student's transition plan and assessed educational needs; providing requirements for prevention and day treatment juvenile justice education programs; requiring progress monitoring plans for all students not classified as exceptional student education students; revising requirements for such plans;



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requiring that the Department of Education, in partnership with the Department of Juvenile Justice, ensure that school districts and juvenile justice education providers develop individualized transition plans; providing requirements for such plans; providing that the Secretary of Juvenile Justice or the director of a juvenile justice program may request that a school district teacher's performance be reviewed by the district and that the teacher be reassigned in certain circumstances; requiring the Department of Education to establish by rule objective and measurable student performance measures and program performance ratings; providing requirements for such ratings; requiring a comprehensive accountability and program improvement process; providing requirements for such a process; deleting provisions for minimum thresholds for the standards and key indicators for education programs in juvenile justice facilities; revising data collection and annual report requirements; deleting provisions concerning the Arthur Dozier School for Boys; requiring rulemaking; amending ss. 985.632 and 1001.42, F.S.; revising terminology; revising a cross-reference; providing an effective date.

By Senator Bean

4-00353-14

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1 A bill to be entitled
 2 An act relating to juvenile justice education
 3 programs; amending s. 985.622, F.S.; revising
 4 requirements for the multiagency career education plan
 5 for students in juvenile justice education programs;
 6 revising terminology; revising the date by which the
 7 Department of Juvenile Justice and the Department of
 8 Education are required to align certain policies and
 9 practices with the multiagency career education plan;
 10 requiring both departments to provide a report on the
 11 implementation of the multiagency education plan to
 12 the Governor and the Legislature; amending s. 985.632,
 13 F.S.; requiring the Department of Juvenile Justice to
 14 provide cost and effectiveness information for
 15 education programs and program activities to the
 16 Legislature and to the public; requiring
 17 implementation of an accountability system to ensure
 18 student needs are met; deleting legislative intent
 19 language; revising requirements for the department to
 20 publish an annual report that includes data on
 21 education program costs and effectiveness, student
 22 learning gains, and recommendations for modification
 23 or elimination of juvenile justice education programs
 24 or program activities; amending s. 1001.31, F.S.;
 25 expanding access to certain student records held by a
 26 district school system to all instructional personnel
 27 in juvenile justice education programs; amending s.
 28 1003.51, F.S.; revising terminology; revising
 29 requirements for rules adopted by the State Board of

Page 1 of 37

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

4-00353-14

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30 Education related to policies and standards for
 31 students in juvenile justice education programs;
 32 providing expectations for effective education
 33 programs for students in Department of Juvenile
 34 Justice programs; revising requirements for contract
 35 and cooperative agreements for the delivery of
 36 appropriate education services to students in juvenile
 37 justice education programs; requiring education
 38 providers to maintain additional education records for
 39 students in juvenile justice education programs;
 40 requiring the Department of Education to ensure that
 41 students in juvenile justice education programs who
 42 are eligible have access to high school equivalency
 43 examinations and to assist juvenile justice education
 44 programs with becoming high school equivalency
 45 examination centers; requiring district school boards
 46 to respond to a request for student education records,
 47 to provide access to certain courses to students in
 48 juvenile justice education programs, to complete
 49 certain assessments, and to monitor compliance with
 50 education contracts for students in juvenile justice
 51 education programs; revising requirements for an
 52 accountability system for all juvenile justice
 53 education programs; amending s. 1003.52, F.S.;
 54 revising legislative findings and activities related
 55 to educational services in juvenile justice education
 56 programs to be coordinated between the Department of
 57 Education and the Department of Juvenile Justice;
 58 revising requirements for a joint agency plan for

Page 2 of 37

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4-00353-14

2014598__

59 juvenile justice education service enhancements;
 60 authorizing contracting for educational assessments,
 61 programs of instruction, and education services;
 62 revising requirements for assessments; requiring
 63 access to local virtual education courses in juvenile
 64 justice education programs; requiring that an
 65 educational program be based on each student's
 66 transition plan, each student's assessed educational
 67 needs, and programs available in the school district;
 68 providing requirements for prevention, day treatment,
 69 and residential juvenile justice education programs;
 70 requiring individualized progress monitoring plans for
 71 all students not classified as students of exceptional
 72 student education programs upon the students' entry
 73 into a juvenile justice program and reentry into a
 74 school district; revising requirements for the
 75 individualized progress monitoring plan; requiring
 76 that school districts and juvenile justice education
 77 providers develop an individualized transition plan
 78 for students in consultation with others; providing
 79 requirements for the individualized transition plan;
 80 requiring a school district to consider the
 81 individualized transition plan when reenrolling a
 82 student in district schools; requiring the Department
 83 of Education and the Department of Juvenile Justice to
 84 provide oversight and guidance on transition planning
 85 and services; authorizing the Secretary of Juvenile
 86 Justice or the director of a juvenile justice facility
 87 to request that a school district teacher's

Page 3 of 37

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4-00353-14

2014598__

88 performance in a juvenile justice education program be
 89 reviewed by the district and that the teacher be
 90 reassigned in certain circumstances; revising the
 91 eligibility of certain juvenile justice education
 92 programs to receive Florida Education Finance Program
 93 funding; revising the requirements of the cooperative
 94 agreement between district school boards and the
 95 Department of Juvenile Justice regarding the delivery
 96 of educational services to students in juvenile
 97 justice education programs; requiring the Department
 98 of Education to establish by rule certain objective
 99 and measurable student performance standards and
 100 education program performance ratings; providing
 101 requirements for such ratings; requiring a
 102 comprehensive accountability and education program
 103 improvement process; providing requirements for such a
 104 process; deleting provisions establishing minimum
 105 thresholds for the standards and key indicators for
 106 education programs in juvenile justice programs;
 107 requiring the Department of Education and the
 108 Department of Juvenile Justice to monitor and report
 109 specific data concerning the performance of students
 110 in juvenile justice education programs; eliminating a
 111 required annual report to the Legislature regarding
 112 the development of effective education programs for
 113 students in juvenile justice programs; requiring the
 114 Department of Education and the Department of Juvenile
 115 Justice to collect specific data on the development of
 116 effective education programs for students in juvenile

Page 4 of 37

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117 justice programs; deleting references to educational
 118 programs at the Arthur Dozier School for Boys;
 119 requiring, rather than authorizing, the State Board of
 120 Education to adopt rules; amending s. 1001.42, F.S.;
 121 revising terminology; conforming a cross-reference;
 122 providing a directive to the Division of Law Revision
 123 and Information; providing an effective date.

124
 125 Be It Enacted by the Legislature of the State of Florida:

126
 127 Section 1. Section 985.622, Florida Statutes, is amended to
 128 read:

129 985.622 Multiagency plan for career vocational education.—

130 (1) The Department of Juvenile Justice and the Department
 131 of Education shall, in consultation with the statewide Workforce
 132 Development Youth Council, school districts, providers, and
 133 others, jointly develop a multiagency plan for career vocational
 134 education which that establishes the curriculum, goals, and
 135 outcome measures for career vocational programs in juvenile
 136 justice education programs commitment facilities. The plan must
 137 be reviewed annually, be revised as appropriate, and include:

138 (a) Provisions for maximizing appropriate state and federal
 139 funding sources, including funds under the Workforce Investment
 140 Act and the Perkins Act;

141 (b) Provisions for eliminating barriers to the expansion of
 142 occupation-specific job training and high school equivalency
 143 examination preparation opportunities;

144 (c) (b) The responsibilities of both departments and all
 145 other appropriate entities; and

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146 (d) (e) A detailed implementation schedule.

147 (2) The plan must define career vocational programming that
 148 is appropriate based upon:

149 (a) The age and assessed educational abilities and goals of
 150 the student youth to be served; and

151 (b) The typical length of stay and custody characteristics
 152 at the juvenile justice commitment program to which each student
 153 youth is assigned.

154 (3) The plan must include a definition of career vocational
 155 programming which that includes the following classifications of
 156 juvenile justice education programs commitment facilities that
 157 will offer career vocational programming by one of the following
 158 types:

159 (a) Type 1 A.—Programs that teach personal accountability
 160 skills and behaviors that are appropriate for students youth in
 161 all age groups and ability levels and that lead to work habits
 162 that help maintain employment and living standards.

163 (b) Type 2 B.—Programs that include Type 1 A program
 164 content and an orientation to the broad scope of career choices,
 165 based upon personal abilities, aptitudes, and interests.
 166 Exploring and gaining knowledge of occupation options and the
 167 level of effort required to achieve them are essential
 168 prerequisites to skill training.

169 (c) Type 3 C.—Programs that include Type 1 A program
 170 content and the career education vocational competencies or the
 171 prerequisites needed for entry into a specific occupation.

172 (4) The plan must also address strategies to facilitate
 173 involvement of business and industry in the design, delivery,
 174 and evaluation of career vocational programming in juvenile

4-00353-14

2014598

justice ~~commitment facilities and conditional release~~ programs, including apprenticeship and work experience programs, mentoring and job shadowing, and other strategies that lead to postrelease employment. Incentives for business involvement, such as tax breaks, bonding, and liability limits, should be investigated, implemented where appropriate, or recommended to the Legislature for consideration.

(5) The plan must also evaluate the effect of the mobility of students between juvenile justice education programs and school districts on the educational outcomes of students and whether the continuity of the education of students can be better addressed through virtual education.

(6) ~~(5)~~ The Department of Juvenile Justice and the Department of Education shall each align its respective agency policies, practices, technical manuals, contracts, quality-assurance standards, performance-based-budgeting measures, and outcome measures with the plan in juvenile justice education programs ~~commitment facilities~~ by July 31, 2015 ~~2001~~. Each agency shall provide a report on the implementation of this section to the Governor, the President of the Senate, and the Speaker of the House of Representatives by August 31, 2015 ~~2001~~.

(7) ~~(6)~~ All provider contracts executed by the Department of Juvenile Justice or the school districts after January 1, 2015 ~~2002~~, must be aligned with the plan.

(8) ~~(7)~~ The planning and execution of quality assurance reviews conducted by the Department of Education or the Department of Juvenile Justice after August 1, 2015 ~~2002~~, must be aligned with the plan.

(9) ~~(8)~~ Outcome measures reported by the Department of

4-00353-14

2014598

Juvenile Justice and the Department of Education for students ~~youth~~ released on or after January 1, 2016 ~~2002~~, should include outcome measures that conform to the plan.

Section 2. Subsections (1) and (3) of section 985.632, Florida Statutes, are amended to read:

985.632 Quality assurance and cost-effectiveness.—

(1) The department shall:

(a) Provide cost and effectiveness information on programs and program activities in order to compare, improve, or eliminate a program or program activity as necessary.

(b) Provide cost and effectiveness data on programs and program activities to the Legislature in order for resources to be allocated for achieving desired performance outcomes.

(c) Provide cost and effectiveness information on programs and program activities to the public.

(d) Implement a system of accountability in order to provide the best and most appropriate programs and program activities to meet student needs.

(e) Continue to improve service delivery ~~It is the intent of the Legislature that the department:~~

~~(a) Ensure that information be provided to decisionmakers in a timely manner so that resources are allocated to programs of the department which achieve desired performance levels.~~

~~(b) Provide information about the cost of such programs and their differential effectiveness so that the quality of such programs can be compared and improvements made continually.~~

~~(c) Provide information to aid in developing related policy issues and concerns.~~

~~(d) Provide information to the public about the~~

4-00353-14

2014598

effectiveness of such programs in meeting established goals and objectives.

~~(e) Provide a basis for a system of accountability so that each client is afforded the best programs to meet his or her needs.~~

~~(f) Improve service delivery to clients.~~

~~(g) Modify or eliminate activities that are not effective.~~

(3) By March 1 of each year, the department, in consultation with the Department of Education, shall publish a report on the costs and effectiveness of programs and program activities. The report must include uniform cost data for each program operated by the department or by providers under contract with the department. The Department of Education shall provide the cost data on each education program operated by a school district or a provider under contract with a school district. Cost data shall be formatted and presented in a manner approved by the Legislature. The report must also include data on student learning gains, as provided by the Department of Education, for all juvenile justice education programs as required under s. 1003.52(3)(b), information required under s. 1003.52(17) and (21), the cost-effectiveness of each program offered, and recommendations for modification or elimination of programs or program activities. The department shall annually collect and report cost data for every program operated or contracted by the department. The cost data shall conform to a format approved by the department and the Legislature. Uniform cost data shall be reported and collected for state-operated and contracted programs so that comparisons can be made among programs. The department shall ensure that there is accurate

4-00353-14

2014598

~~cost accounting for state-operated services including market-equivalent rent and other shared cost. The cost of the educational program provided to a residential facility shall be reported and included in the cost of a program. The department shall submit an annual cost report to the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of each house of the Legislature, the appropriate substantive and fiscal committees of each house of the Legislature, and the Governor, no later than December 1 of each year. Cost-benefit analysis for educational programs will be developed and implemented in collaboration with and in cooperation with the Department of Education, local providers, and local school districts. Cost data for the report shall include data collected by the Department of Education for the purposes of preparing the annual report required by s. 1003.52(19).~~

Section 3. Section 1001.31, Florida Statutes, is amended to read:

1001.31 Scope of district system.—A district school system shall include all public schools, classes, and courses of instruction and all services and activities directly related to education in that district which are under the direction of the district school officials. A district school system may also include alternative site schools for disruptive or violent students youth. Such schools for disruptive or violent students youth may be funded by each district or provided through cooperative programs administered by a consortium of school districts, private providers, state and local law enforcement agencies, and the Department of Juvenile Justice. Pursuant to

4-00353-14

2014598__

cooperative agreement, a district school system shall provide instructional personnel at juvenile justice education programs ~~facilities of 50 or more beds or slots~~ with access to the district school system database for the purpose of accessing student academic, immunization, and registration records for students assigned to the programs. Such access must ~~shall~~ be in the same manner as provided to other schools in the district.

Section 4. Section 1003.51, Florida Statutes, is amended to read:

1003.51 Other public educational services.—

(1) The general control of other public educational services shall be vested in the State Board of Education except as provided in this section ~~herein~~. The State Board of Education shall, at the request of the Department of Children and Families ~~Family Services~~ and the Department of Juvenile Justice, advise as to standards and requirements relating to education to be met in all state schools or institutions under their control which provide educational programs. The Department of Education shall provide supervisory services for the educational programs of all such schools or institutions. The direct control of any of these services provided as part of the district program of education shall rest with the district school board. These services shall be supported out of state, district, federal, or other ~~lawful~~ funds, depending on the requirements of the services being supported.

(2) The State Board of Education shall adopt rules ~~and maintain an administrative rule~~ articulating expectations for effective education programs for students ~~youth~~ in Department of Juvenile Justice education programs, including, but not limited

4-00353-14

2014598__

to, education programs in juvenile justice prevention, day treatment, residential, commitment ~~and detention programs~~ facilities. The rules must establish ~~rule shall articulate~~ policies and standards for education programs for students ~~youth~~ in Department of Juvenile Justice programs and must ~~shall~~ include the following:

(a) The interagency collaborative process needed to ensure effective programs with measurable results.

(b) The responsibilities of the Department of Education, the Department of Juvenile Justice, Workforce Florida, Inc., district school boards, and providers of education services to students ~~youth~~ in Department of Juvenile Justice programs.

(c) Academic expectations.

(d) Career and technical expectations.

(e) Education transition planning and services.

(f) ~~(d)~~ Service delivery options available to district school boards, including direct service and contracting.

(g) ~~(e)~~ Assessment procedures, which:

1. For prevention, day treatment, and residential programs, include appropriate academic and career assessments administered at program entry and exit which ~~that~~ are selected by the Department of Education in partnership with representatives from the Department of Juvenile Justice, district school boards, and education providers.

2. Require academic assessments for students in a detention facility to be administered within 5 school days, and career assessments or career interest surveys to be administered within 22 school days, after entry into the facility. A detention facility may not use the common assessment and shall use an

4-00353-14

2014598

academic assessment for reading and mathematics which must be the foundation for developing a student's educational program. ~~Require district school boards to be responsible for ensuring the completion of the assessment process.~~

~~3. Require assessments for students in detention who will move on to commitment facilities, to be designed to create the foundation for developing the student's education program in the assigned commitment facility.~~

3.4. Require assessments of students in juvenile justice education programs sent directly to commitment facilities to be completed within the first 10 school days after a of the student's entry into an education program commitment.

The results of these assessments, together with a portfolio depicting the student's academic and career accomplishments, shall be included in the discharge packet package assembled for each student youth.

(h) ~~(f)~~ Recommended instructional programs, including, but not limited to, secondary education, high school equivalency examination preparation, postsecondary education, career training, and job preparation.

(i) ~~(g)~~ Funding requirements, which must shall include the requirement that at least 90 percent of the FEFP funds generated by students in Department of Juvenile Justice education programs or in an education program for juveniles under s. 985.19 be spent on instructional costs for those students. One hundred percent of the formula-based categorical funds generated by students in Department of Juvenile Justice education programs must be spent on appropriate categoricals such as instructional

4-00353-14

2014598

materials and public school technology for those students.

(j) ~~(h)~~ Qualifications of instructional staff, procedures for the selection of instructional staff, and procedures for to ensure consistent instruction and qualified staff year round. Qualifications for career education instructors must be standardized across the state and must be based on state certification, local school district approval, and industry-recognized credentials and training. Procedures for the use of noncertified instructional personnel who possess expert knowledge or experience in their field of instruction must be established.

(k) ~~(i)~~ Transition services, including the roles and responsibilities of appropriate personnel in the juvenile justice education program, the school district to which the student will return districts, provider organizations, and the Department of Juvenile Justice.

(l) ~~(j)~~ Procedures and timeframe for transfer of education records when a student youth enters and leaves a juvenile justice education program facility.

(m) ~~(k)~~ The requirement that each district school board maintain an academic transcript for each student enrolled in a juvenile justice education program which facility that delineates each course completed by the student as provided by the State Course Code Directory.

(n) ~~(l)~~ The requirement that each district school board make available and transmit a copy of a student's transcript in the discharge packet when the student exits a juvenile justice program facility.

(o) ~~(m)~~ Contract requirements.

4-00353-14

2014598

~~(p)(a)~~ Performance expectations for providers and district school boards, including student performance standards by type of program, education program performance ratings, school improvement, and corrective action plans for low-performing education programs ~~the provision of a progress monitoring plan as required in s. 1008.25.~~

~~(q)(e)~~ The role and responsibility of the district school board in securing workforce development funds.

~~(r)(p)~~ A series of graduated sanctions for district school boards whose educational programs in Department of Juvenile Justice programs ~~facilities~~ are considered to be unsatisfactory and for instances in which district school boards fail to meet standards prescribed by law, rule, or State Board of Education policy. These sanctions must ~~shall~~ include the option of requiring a district school board to contract with a provider or another district school board if the educational program in at the Department of Juvenile Justice program is performing below minimum standards ~~facility has failed a quality assurance review~~ and, after 6 months, is still performing below minimum standards.

~~(s)~~ Curriculum, guidance counseling, transition, and education services expectations, including curriculum flexibility for detention facilities operated by the Department of Juvenile Justice.

~~(t)(q)~~ Other aspects of program operations.

(3) The Department of Education, in partnership with the Department of Juvenile Justice, the district school boards, and providers, shall:

(a) Develop and implement requirements for contracts and

4-00353-14

2014598

cooperative agreements regarding ~~Maintain model contracts for~~ the delivery of appropriate education services to students youth in Department of Juvenile Justice education programs ~~to be used for the development of future contracts.~~ The minimum contract requirements must include, but are not limited to, payment structure and amounts; access to district services; contract management provisions; data reporting requirements, including reporting of full-time equivalent student membership; administration of federal programs such as Title I, exceptional student education, and the Carl D. Perkins Career and Technical Education Act of 2006; and ~~model contracts shall reflect the~~ policy and standards included in subsection (2). ~~The Department of Education shall ensure that appropriate district school board personnel are trained and held accountable for the management and monitoring of contracts for education programs for youth in juvenile justice residential and nonresidential facilities.~~

(b) Develop and implement ~~Maintain model~~ procedures for transitioning students youth into and out of Department of Juvenile Justice education programs. These procedures must ~~shall~~ reflect the policy and standards adopted pursuant to subsection (2).

(c) Maintain standardized required content of education records to be included as part of a student's youth's commitment record and implement procedures for securing the student's education records. ~~The education records must~~ These requirements shall reflect the policy and standards adopted pursuant to subsection (2) and shall include, but are not be limited to, the following:

1. A copy of the student's individual educational plan.

4-00353-14

2014598

465 2. A copy of the student's individualized progress
 466 monitoring plan.
 467 3. A copy of the student's individualized transition plan.
 468 4.2- Data on student performance on assessments taken
 469 according to s. 1008.22.
 470 5.3- A copy of the student's permanent cumulative record.
 471 6.4- A copy of the student's academic transcript.
 472 7.5- A portfolio reflecting the student's youth's academic
 473 and career and technical accomplishments, if age appropriate,
 474 while in the Department of Juvenile Justice program.
 475 (d) Establish ~~Maintain model procedures for securing the~~
 476 ~~education record and the roles and responsibilities of the~~
 477 ~~juvenile probation officer and others involved in the withdrawal~~
 478 ~~of the student from school and assignment to a~~ juvenile justice
 479 program commitment or detention facility. District school boards
 480 ~~shall respond to requests for student education records received~~
 481 ~~from another district school board or a juvenile justice~~
 482 ~~facility within 5 working days after receiving the request.~~
 483 (4) ~~Each~~ The Department of Education shall ensure that
 484 district school board shall: ~~boards~~
 485 (a) Notify students in juvenile justice education programs
 486 ~~residential or nonresidential facilities~~ who attain the age of
 487 16 years of the ~~provisions of~~ law regarding compulsory school
 488 attendance and make available the option of enrolling in an
 489 education a program to attain a Florida high school diploma by
 490 taking the high school equivalency examination before General
 491 ~~Educational Development test prior to release from the program~~
 492 ~~facility. The Department of Education shall assist juvenile~~
 493 justice education programs with becoming high school equivalency

Page 17 of 37

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4-00353-14

2014598

494 ~~examination centers District school boards or Florida College~~
 495 ~~System institutions, or both, shall waive CED testing fees for~~
 496 ~~youth in Department of Juvenile Justice residential programs and~~
 497 ~~shall, upon request, designate schools operating for the purpose~~
 498 ~~of providing educational services to youth in Department of~~
 499 ~~Juvenile Justice programs as CED testing centers, subject to CED~~
 500 ~~testing center requirements. The administrative fees for the~~
 501 ~~General Educational Development test required by the Department~~
 502 ~~of Education are the responsibility of district school boards~~
 503 ~~and may be required of providers by contractual agreement.~~
 504 (b) Respond to a request for student education records
 505 received from another district school board or a juvenile
 506 justice education program within 5 working days after receiving
 507 the request.
 508 (c) Provide access to courses offered pursuant to ss.
 509 1002.37, 1002.45, and 1003.498. School districts and providers
 510 may enter into cooperative agreements for the provision of
 511 curriculum associated with courses offered pursuant to s.
 512 1003.498 to enable providers to offer such courses.
 513 (d) Complete the assessment process required under
 514 subsection (2).
 515 (e) Monitor compliance with contracts for education
 516 programs for students in juvenile justice prevention, day
 517 treatment, residential, and detention programs.
 518 (5) The Department of Education shall establish and
 519 operate, ~~either~~ directly or indirectly through a contract, a
 520 mechanism to provide accountability measures that annually
 521 assess and evaluate all juvenile justice education programs
 522 using student performance data and program performance ratings

Page 18 of 37

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

4-00353-14

2014598

523 ~~by type of program quality assurance reviews of all juvenile~~
 524 ~~justice education programs~~ and shall provide technical
 525 assistance and related research to district school boards and
 526 ~~juvenile justice education providers on how to establish,~~
 527 ~~develop, and operate educational programs that exceed the~~
 528 ~~minimum quality assurance standards. The Department of~~
 529 Education, in consultation with the Department of Juvenile
 530 Justice, school districts, and education providers, shall
 531 develop annual recommendations for system and school
 532 improvement.

533 Section 5. Section 1003.52, Florida Statutes, is amended to
 534 read:

535 1003.52 Educational services in Department of Juvenile
 536 Justice education programs.—

537 (1) ~~The Legislature finds that education is the single most~~
 538 ~~important factor in the rehabilitation of adjudicated delinquent~~
 539 ~~youth in the custody of Department of Juvenile Justice programs.~~
 540 ~~It is the goal of the Legislature that youth in the juvenile~~
 541 ~~justice system continue to be allowed the opportunity to obtain~~
 542 ~~a high quality education.~~ The Department of Education shall
 543 serve as the lead agency for juvenile justice education
 544 programs, curriculum, support services, and resources. To this
 545 end, the Department of Education and the Department of Juvenile
 546 Justice shall each designate a Coordinator for Juvenile Justice
 547 Education Programs to serve as the point of contact for
 548 resolving issues not addressed by district school boards and to
 549 provide each department's participation in the following
 550 activities:

551 (a) Training, collaborating, and coordinating with ~~the~~

4-00353-14

2014598

552 ~~Department of Juvenile Justice,~~ district school boards, regional
 553 workforce boards, local youth councils, educational contract
 554 providers, and juvenile justice providers, whether state
 555 operated or contracted.

556 (b) Collecting information on the academic, career
 557 education, and transition performance of students in juvenile
 558 justice education programs and reporting on the results.

559 (c) Developing academic and career education protocols that
 560 provide guidance to district school boards and juvenile justice
 561 education providers in all aspects of education programming,
 562 including records transfer and transition.

563 (d) Implementing a joint accountability, program
 564 performance, and program improvement process ~~Prescribing the~~
 565 ~~roles of program personnel and interdepartmental district school~~
 566 ~~board or provider collaboration strategies.~~

567 Annually, a cooperative agreement and plan for juvenile justice
 568 education service enhancement shall be developed between the
 569 Department of Juvenile Justice and the Department of Education
 570 and submitted to the Secretary of Juvenile Justice and the
 571 Commissioner of Education by June 30. The plan must include, at
 572 a minimum, each agency's role regarding educational program
 573 accountability, technical assistance, training, and coordination
 574 of services.

576 (2) Students participating in Department of Juvenile
 577 Justice education programs pursuant to chapter 985 which are
 578 sponsored by a community-based agency or are operated or
 579 contracted for by the Department of Juvenile Justice shall
 580 receive education ~~educational~~ programs according to rules of the

4-00353-14

2014598__

State Board of Education. These students shall be eligible for services afforded to students enrolled in programs pursuant to s. 1003.53 and all corresponding State Board of Education rules.

(3) The district school board of the county in which the juvenile justice prevention, day treatment, residential, or detention program ~~residential or nonresidential care facility or juvenile assessment facility~~ is located shall provide or contract for appropriate educational assessments and an appropriate program of instruction and special education services.

(a) The district school board shall make provisions for each student to participate in basic, career education, and exceptional student programs as appropriate. Students served in Department of Juvenile Justice education programs shall have access to the appropriate courses and instruction to prepare them for the high school equivalency examination ~~GED test~~. Students participating in high school equivalency examination ~~GED~~ preparation programs shall be funded at the basic program cost factor for Department of Juvenile Justice education programs in the Florida Education Finance Program. Each program shall be conducted according to applicable law providing for the operation of public schools and rules of the State Board of Education. School districts shall provide the high school equivalency examination ~~GED~~ exit option for all juvenile justice education programs.

(b) ~~By October 1, 2004,~~ The Department of Education, with the assistance of the school districts and juvenile justice education providers, shall select a common student assessment instrument and protocol for measuring student learning gains and

4-00353-14

2014598__

student progression while a student is in a juvenile justice education program. The Department of Education and the Department of Juvenile Justice shall jointly review the effectiveness of this assessment and implement changes as necessary ~~The assessment instrument and protocol must be implemented in all juvenile justice education programs in this state by January 1, 2005.~~

(4) Educational services shall be provided at times of the day most appropriate for the juvenile justice program. School programming in juvenile justice detention, prevention, day treatment, and residential commitment, and rehabilitation programs shall be made available by the local school district during the juvenile justice school year, as provided ~~defined~~ in s. 1003.01(11). In addition, students in juvenile justice education programs shall have access to courses offered pursuant to ss. 1002.37, 1002.45, and 1003.498 ~~Florida Virtual School courses~~. The Department of Education and the school districts shall adopt policies necessary to provide ~~ensure~~ such access.

(5) The educational program must provide instruction based on each student's individualized transition plan, each student's assessed educational needs, and the education programs available in the school district to which the student will return. ~~Depending on the student's needs, educational programming may consist of remedial courses, shall consist of appropriate basic academic courses required for grade advancement, career education courses, high school equivalency examination preparation, or exceptional student education curricula and related services that which support the transition treatment goals and reentry and that which may lead to completion of the~~

4-00353-14

2014598

requirements for receipt of a high school diploma or its equivalent. Prevention and day treatment juvenile justice education programs must provide, at a minimum, career readiness and exploration opportunities as well as truancy and dropout prevention intervention services. Juvenile justice education programs in residential juvenile justice programs with a contracted minimum length of stay of 9 months must provide career education courses that lead to preapprentice certifications, industry certifications, occupational completion points, or work-related certifications. Residential programs with a contracted length of stay of less than 9 months may provide career education courses that lead to preapprentice certifications, industry certifications, occupational completion points, or work-related certifications. If the duration of a program is less than 40 days, the educational component may be limited to tutorial remediation activities, and career employability skills instruction, education counseling, and transition services that prepare students for a return to school, the community, and their home settings, based on the students' needs.

(6) Participation in the program by students of compulsory school-attendance age as provided for in s. 1003.21 ~~is shall be~~ mandatory. All students of noncompulsory school-attendance age who have not received a high school diploma or its equivalent shall participate in the educational program, unless the student files a formal declaration of his or her intent to terminate school enrollment as described in s. 1003.21 and is afforded the opportunity to take the high school equivalency examination ~~general educational development test~~ and attain a Florida high

4-00353-14

2014598

school diploma ~~before~~ prior to release from a juvenile justice program facility. A student ~~youth~~ who has received a high school diploma or its equivalent and is not employed shall participate in workforce development or other career ~~or technical~~ education or Florida College System institution or university courses while in the program, subject to available funding.

(7) An individualized ~~A~~ progress monitoring plan shall be developed for all students not classified as exceptional education students upon entry in a juvenile justice education program and upon reentry in the school district who score below the level specified in district school board policy in reading, writing, and mathematics or below the level specified by the Commissioner of Education on statewide assessments as required by s. 1008.25. These plans must ~~shall~~ address academic, literacy, and career and technical life skills and must ~~shall~~ include provisions for intensive remedial instruction in the areas of weakness.

(8) Each district school board shall maintain an academic record for each student enrolled in a juvenile justice education program facility as prescribed in ~~by~~ s. 1003.51. Such record must ~~shall~~ delineate each course completed by the student according to procedures in the State Course Code Directory. The district school board shall include a copy of a student's academic record in the discharge packet when the student exits the program facility.

(9) ~~Each~~ The Department of Education shall ensure that all district school board shall ~~boards~~ make provisions for high school level students youth to earn credits toward high school graduation while in residential and nonresidential juvenile

4-00353-14

2014598

justice education programs facilities. Provisions must be made for the transfer of credits and partial credits earned.

(10) School districts and juvenile justice education providers shall develop individualized transition plans during the course of a student's enrollment in a juvenile justice education program to coordinate academic, career and technical, and secondary and postsecondary services that assist the student in successful reintegration into the community upon release. Development of the transition plan must be a collaboration of the personnel in the juvenile justice education program, the reentry personnel, the personnel from the school district to which the student will return, the student, the student's family, and the personnel of the Department of Juvenile Justice for those students who are committed to a facility of the Department of Juvenile Justice.

(a) Transition planning must begin upon a student's placement in the program. The transition plan must include, at a minimum:

1. Services and interventions that address the student's assessed educational needs and postrelease education plans.

2. Services to be provided during the program stay and services to be provided upon release, including, but not limited to, continuing education in secondary school, career and technical programs, postsecondary education, or employment, based on the student's needs.

3. Specific monitoring responsibilities to determine whether the individualized transition plan is being implemented and whether the student is provided access to support services by individuals who are responsible for the student's

4-00353-14

2014598

reintegration into the community and for the coordination of activities that will sustain the student's success.

(b) For the purpose of transition planning and reentry services, representatives from the one-stop career center and the school district to which the student will return shall participate as members of the local Department of Juvenile Justice reentry team. The school district, upon a student's return from a juvenile justice program, shall consider the individual needs and circumstances of the student and the transition plan recommendations when reenrolling a student in a public school. A local school district may not maintain a standardized policy for all students returning from a juvenile justice program but shall place a student based on the student's needs and performance in the juvenile justice education program.

(c) The Department of Education and the Department of Juvenile Justice shall provide oversight and guidance to school districts, education providers, and reentry personnel on the implementation of effective educational transition planning and services.

~~(11)-(10)~~ The district school board shall recruit and train teachers who are interested, qualified, or experienced in educating students in juvenile justice education programs. Students in juvenile justice education programs shall be provided a wide range of education ~~educational~~ programs and opportunities including textbooks, technology, instructional support, and ~~other~~ resources commensurate with resources provided available to students in public schools. If the district school board operates a juvenile justice education program at a juvenile justice facility, the district school

4-00353-14

2014598__

board, in consultation with the director of the juvenile justice facility, shall select the instructional personnel assigned to that program. The Secretary of Juvenile Justice or the director of a juvenile justice facility may request that the performance of a teacher assigned by the district to a juvenile justice education program be reviewed by the district and that the teacher be reassigned based upon an evaluation conducted pursuant to s. 1012.34 or for inappropriate behavior. Teachers assigned to educational programs in juvenile justice settings in which the district school board operates the educational program shall be selected by the district school board in consultation with the director of the juvenile justice facility. Educational programs in Juvenile justice education programs must facilities shall have access to the substitute teacher pool used utilized by the district school board.

(12)~~(11)~~ District school boards may contract with a private provider for the provision of education ~~educational~~ programs to students ~~youths~~ placed with the Department of Juvenile Justice and shall generate local, state, and federal funding, including funding through the Florida Education Finance Program for such students. The district school board's planning and budgeting process must ~~shall~~ include the needs of Department of Juvenile Justice education programs in the district school board's plan for expenditures for state categorical and federal funds.

(13)~~(12)~~ (a) Funding for eligible students enrolled in juvenile justice education programs shall be provided through the Florida Education Finance Program as provided in s. 1011.62 and the General Appropriations Act. Funding must ~~shall~~ include, at a minimum:

4-00353-14

2014598__

1. Weighted program funding or the basic amount for current operation multiplied by the district cost differential as provided in s. 1011.62(1)(s) and (2);

2. The supplemental allocation for juvenile justice education as provided in s. 1011.62(10);

3. A proportionate share of the district's exceptional student education guaranteed allocation, the supplemental academic instruction allocation, and the instructional materials allocation;

4. An amount equivalent to the proportionate share of the state average potential discretionary local effort for operations, which shall be determined as follows:

a. If the district levies the maximum discretionary local effort and the district's discretionary local effort per FTE is less than the state average potential discretionary local effort per FTE, the proportionate share must ~~shall~~ include both the discretionary local effort and the compression supplement per FTE. If the district's discretionary local effort per FTE is greater than the state average per FTE, the proportionate share must ~~shall~~ be equal to the state average; or

b. If the district does not levy the maximum discretionary local effort and the district's actual discretionary local effort per FTE is less than the state average potential discretionary local effort per FTE, the proportionate share must ~~shall~~ be equal to the district's actual discretionary local effort per FTE. If the district's actual discretionary local effort per FTE is greater than the state average per FTE, the proportionate share must ~~shall~~ be equal to the state average potential local effort per FTE; and

4-00353-14

2014598

- 813 5. A proportionate share of the district's proration to
 814 funds available, if necessary.
- 815 (b) Juvenile justice ~~education~~ educational programs to
 816 receive the appropriate FEFP funding for Department of Juvenile
 817 Justice education programs ~~must shall~~ include those operated
 818 through a contract with the Department of Juvenile Justice ~~and~~
 819 ~~which are under purview of the Department of Juvenile Justice~~
 820 ~~quality assurance standards for education.~~
- 821 (c) Consistent with the rules of the State Board of
 822 Education, district school boards shall ~~are required to~~ request
 823 an alternative FTE survey for Department of Juvenile Justice
 824 education programs experiencing fluctuations in student
 825 enrollment.
- 826 (d) FTE count periods shall be prescribed in rules of the
 827 State Board of Education and must shall be the same for programs
 828 of the Department of Juvenile Justice as for other public school
 829 programs. The summer school period for students in Department of
 830 Juvenile Justice education programs ~~must shall~~ begin on the day
 831 immediately following the end of the regular school year and end
 832 on the day immediately preceding the subsequent regular school
 833 year. Students shall be funded for no more than 25 hours per
 834 week of direct instruction.
- 835 (e) Each juvenile justice education program must receive
 836 all federal funds for which the program is eligible.
- 837 ~~(14)(13)~~ Each district school board shall negotiate a
 838 cooperative agreement with the Department of Juvenile Justice on
 839 the delivery of educational services to students youths under
 840 the jurisdiction of the Department of Juvenile Justice. Such
 841 agreement must include, but is not limited to:

Page 29 of 37

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4-00353-14

2014598

- 842 (a) Roles and responsibilities of each agency, including
 843 the roles and responsibilities of contract providers.
- 844 (b) Administrative issues including procedures for sharing
 845 information.
- 846 (c) Allocation of resources including maximization of
 847 local, state, and federal funding.
- 848 (d) Procedures for educational evaluation for educational
 849 exceptionalities and special needs.
- 850 (e) Curriculum and delivery of instruction.
- 851 (f) Classroom management procedures and attendance
 852 policies.
- 853 (g) Procedures for provision of qualified instructional
 854 personnel, whether supplied by the district school board or
 855 provided under contract by the provider, and for performance of
 856 duties while in a juvenile justice setting.
- 857 (h) Provisions for improving skills in teaching and working
 858 with students referred to juvenile justice education programs
 859 ~~delinquents.~~
- 860 (i) Transition plans for students moving into and out of
 861 juvenile justice education programs ~~facilities.~~
- 862 (j) Procedures and timelines for the timely documentation
 863 of credits earned and transfer of student records.
- 864 (k) Methods and procedures for dispute resolution.
- 865 (l) Provisions for ensuring the safety of education
 866 personnel and support for the agreed-upon education program.
- 867 (m) Strategies for correcting any deficiencies found
 868 through the accountability and evaluation system and student
 869 performance standards ~~quality assurance process.~~
- 870 ~~(15)(14)~~ ~~Nothing in~~ This section or ~~in~~ a cooperative

Page 30 of 37

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

4-00353-14

2014598

agreement ~~does not shall be construed to~~ require the district school board to provide more services than can be supported by the funds generated by students in the juvenile justice education programs.

~~(16)(15)(a)~~ The Department of Education, in consultation with the Department of Juvenile Justice, district school boards, and providers, shall adopt rules establishing: ~~establish~~

(a) Objective and measurable student performance standards to evaluate a student's educational progress while participating in a prevention, day treatment, or residential program. The student performance standards must be based on appropriate outcomes for all students in juvenile justice education programs, taking into consideration a student's length of stay in the program. Performance standards must include outcomes that relate to student achievement of career education goals, acquisition of employability skills, receipt of a high school diploma or its equivalent, and grade advancement.

(b) A performance rating system to be used by the Department of Education to evaluate quality assurance standards for the delivery of educational services within each juvenile justice program. The performance rating must be primarily based on data regarding student performance as described in paragraph (a) component of residential and nonresidential juvenile justice facilities.

(c) The timeframes, procedures, and resources to be used to improve a low-performing education program or to terminate or reassign the education program. These standards shall rate the district school board's performance both as a provider and contractor. The quality assurance rating for the educational

4-00353-14

2014598

~~component shall be disaggregated from the overall quality assurance score and reported separately.~~

~~(d)(b)~~ The Department of Education shall develop A comprehensive accountability and program improvement quality assurance review process. The accountability and program improvement process must be based on student performance measures by type of program and must rate education program performance. The accountability system must identify and recognize high-performing education programs. The Department of Education, in partnership with the Department of Juvenile Justice, shall identify low-performing education programs. Low-performing education programs must receive an onsite program evaluation from the Department of Juvenile Justice. School improvement, technical assistance, or the reassignment of the program shall be based, in part, on the results of the program evaluation. Low-performing education programs must demonstrate improvement through a corrective action process or be reassigned and schedule for the evaluation of the educational component in juvenile justice programs. The Department of Juvenile Justice quality assurance site visit and the education quality assurance site visit shall be conducted during the same visit.

~~(e)~~ The Department of Education, in consultation with district school boards and providers, shall establish minimum thresholds for the standards and key indicators for educational programs in juvenile justice facilities. If a district school board fails to meet the established minimum standards, it will be given 6 months to achieve compliance with the standards. If after 6 months, the district school board's performance is still below minimum standards, the Department of Education shall

4-00353-14

2014598

exercise sanctions as prescribed by rules adopted by the State Board of Education. If a provider, under contract with the district school board, fails to meet minimum standards, such failure shall cause the district school board to cancel the provider's contract unless the provider achieves compliance within 6 months or unless there are documented extenuating circumstances.

(d) The requirements in paragraphs (a), (b), and (c) shall be implemented to the extent that funds are available.

(17) The Department of Education, in collaboration with the Department of Juvenile Justice, shall monitor and report on the educational performance of students in commitment, day treatment, prevention, and detention programs. The report by the Department of Education must include, at a minimum, the number and percentage of students who:

(a) Return to an alternative school, middle school, or high school upon release and the attendance rate of such students before and after participation in juvenile justice education programs.

(b) Receive a standard high school diploma or a high school equivalency diploma.

(c) Receive industry certification.

(d) Receive occupational completion points.

(e) Enroll in a postsecondary educational institution.

(f) Complete a juvenile justice education program without reoffending.

(g) Reoffend within 1 year after completion of a day treatment or residential commitment program.

(h) Remain employed 1 year after completion of a day

4-00353-14

2014598

treatment or residential commitment program.

The results of this report shall be included in the report required under s. 985.632.

(18)(16) The district school board ~~may~~ shall not be charged any rent, maintenance, utilities, or overhead on such facilities. Maintenance, repairs, and remodeling of existing facilities shall be provided by the Department of Juvenile Justice.

(19)(17) When additional facilities are required, the district school board and the Department of Juvenile Justice shall agree on the appropriate site based on the instructional needs of the students. When the most appropriate site for instruction is on district school board property, a special capital outlay request shall be made by the commissioner in accordance with s. 1013.60. When the most appropriate site is on state property, state capital outlay funds shall be requested by the Department of Juvenile Justice provided by s. 216.043 and shall be submitted as specified by s. 216.023. Any instructional facility to be built on state property must ~~shall~~ have educational specifications jointly developed by the district school board and the Department of Juvenile Justice and approved by the Department of Education. The size of space and occupant design capacity criteria as provided by State Board of Education rules shall be used for remodeling or new construction whether facilities are provided on state property or district school board property.

(20)(18) The parent of an exceptional student shall have the due process rights provided for in this chapter.

4-00353-14

2014598

987 ~~(21)(19)~~ The Department of Education and the Department of
 988 Juvenile Justice, after consultation with and assistance from
 989 local providers and district school boards, shall collect data
 990 ~~report annually to the Legislature by February 1~~ on the progress
 991 toward developing effective education ~~educational~~ programs for
 992 juvenile delinquents, including the amount of funding provided
 993 by district school boards to juvenile justice education
 994 ~~programs;~~ the amount of of funding retained for administration,
 995 including documenting the purposes for such expenses;~~;~~ the
 996 status of the development of cooperative agreements; juvenile
 997 justice education program results, including the identification
 998 of high-performing and low-performing education programs and
 999 aggregate student performance results; ~~the results of the~~
 1000 ~~quality assurance reviews including recommendations for system~~
 1001 ~~improvement;~~ and the information on the identification of, and
 1002 services provided to, exceptional students in juvenile justice
 1003 education programs ~~commitment facilities~~ to determine whether
 1004 these students are properly reported for funding and are
 1005 appropriately served.

1006 ~~(22)(20)~~ The education program ~~educational programs~~ at the
 1007 ~~Arthur Dozier School for Boys in Jackson County~~ and the Florida
 1008 School for Boys in Okeechobee shall be operated by the
 1009 Department of Education, ~~either~~ directly or through grants or
 1010 contractual agreements with other public or duly accredited
 1011 education agencies approved by the Department of Education.

1012 ~~(23)(21)~~ The State Board of Education shall may adopt any
 1013 rules necessary to implement ~~the provisions of~~ this section;
 1014 ~~including uniform curriculum, funding, and second chance~~
 1015 ~~schools~~. Such rules must require the minimum amount of paperwork

4-00353-14

2014598

1016 and reporting.

1017 ~~(24)(22)~~ The Department of Juvenile Justice and the
 1018 Department of Education, in consultation with Workforce Florida,
 1019 Inc., the statewide Workforce Development Youth Council,
 1020 district school boards, Florida College System institutions,
 1021 providers, and others, shall jointly develop a multiagency plan
 1022 for career education which describes the funding, curriculum,
 1023 transfer of credits, goals, and outcome measures for career
 1024 education programming in juvenile commitment facilities,
 1025 pursuant to s. 985.622. The plan must be reviewed annually.

1026 Section 6. Paragraph (b) of subsection (18) of section
 1027 1001.42, Florida Statutes, is amended to read:

1028 1001.42 Powers and duties of district school board.—The
 1029 district school board, acting as a board, shall exercise all
 1030 powers and perform all duties listed below:

1031 (18) IMPLEMENT SCHOOL IMPROVEMENT AND ACCOUNTABILITY.—
 1032 Maintain a state system of school improvement and education
 1033 accountability as provided by statute and State Board of
 1034 Education rule. This system of school improvement and education
 1035 accountability shall be consistent with, and implemented
 1036 through, the district's continuing system of planning and
 1037 budgeting required by this section and ss. 1008.385, 1010.01,
 1038 and 1011.01. This system of school improvement and education
 1039 accountability shall comply with the provisions of ss. 1008.33,
 1040 1008.34, 1008.345, and 1008.385 and include the following:

1041 (b) *Public disclosure*.—The district school board shall
 1042 provide information regarding the performance of students and
 1043 educational programs as required pursuant to ss. 1008.22 and
 1044 1008.385 and implement a system of school reports as required by

4-00353-14

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statute and State Board of Education rule which ~~must shall~~
include schools operating for the purpose of providing
educational services to ~~students youth~~ in Department of Juvenile
Justice ~~education~~ programs, and, for those schools, report on
the elements specified in ~~s. 1003.52(21) s. 1003.52(19)~~. Annual
public disclosure reports ~~must shall~~ be in an easy-to-read
report card format and ~~must shall~~ include the school's grade,
high school graduation rate calculated without high school
equivalency examinations ~~GED tests~~, disaggregated by student
ethnicity, and performance data as specified in state board
rule.

Section 7. The Division of Law Revision and Information is
directed to prepare a reviser's bill for introduction at the
next regular session of the Legislature to change the terms
"General Educational Development test" or "GED test" to "high
school equivalency examination" and change the terms "general
education diploma," "graduate equivalency diploma," or "GED" to
"high school equivalency diploma" wherever those terms appear in
the Florida Statutes.

Section 8. This act shall take effect July 1, 2014.



The Florida Senate

Committee Agenda Request

To: Senator Greg Evers, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: March 13, 2014

I respectfully request that **Senate Bill # 598**, relating to Juvenile Justice Education Program, be placed on the:

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

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

THE FLORIDA SENATE
APPEARANCE RECORD

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

7/24

Meeting Date

Topic Sen. CJ

Bill Number SB 598
(if applicable)

Name Wansley Walters

Amendment Barcode _____
(if applicable)

Job Title Secretary

Address 2737 Centview Dr

Phone 850-717-2717

Tallahassee FL 32399
City State Zip

E-mail —

Speaking: ☒ For ☐ Against ☐ Information

Representing Dept of Juvenile

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/24

Meeting Date

Topic DJS Education

Bill Number 598
(if applicable)

Name Chris Dawson

Amendment Barcode _____
(if applicable)

Job Title _____

Address 301 E Pine St Suite 1400
Street

Phone 850 449 0066

Orlando FL 32801
City State Zip

E-mail chris.dawson@guy-robinson.com

Speaking: ☒ For ☐ Against ☐ Information

Representing FL Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/24/14
Meeting Date

Topic JS Education Bill Number 598
(if applicable)

Name Samantha Sexton Amendment Barcode _____
(if applicable)

Job Title Assoc. Dir. of Government Affairs

Address One West Adams St., #301 Phone 904-383-9403
Street

Jacksonville FL 32202
City State Zip

E-mail samantha.sexton@
pacecenter.org

Speaking: ☒ For ☐ Against ☐ Information

Representing PACE Center for Girls

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/24/2014

Meeting Date

Topic Juvenile Justice Education Bill Number SB598
(if applicable)

Name Cathy Craig-Myers Amendment Barcode _____
(if applicable)

Job Title Executive Director

Address 3333 W. Pensacola Street Phone 850-671-3442
Street

Tallahassee FL 32304 E-mail cathy@fjja.org
City State Zip

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Juvenile Justice 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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic Invenke Educat,

Bill Number 598
(if applicable)

Name Ben Wilcox

Amendment Barcode _____
(if applicable)

Job Title _____

Address _____
Street

Phone _____

City _____ *State* _____ *Zip* _____

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing The Children's Campaign

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/CS/SB 746

INTRODUCER: Criminal Justice Committee; Health Policy Committee; and Senator Sobel

SUBJECT: Health Care Clinic Act

DATE: March 25, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	Fav/CS
2.	Sumner	Cannon	CJ	Fav/CS
3.			CA	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 746 amends the definition of “clinic” to include any entity that “receives remuneration” rather than entities that “tender charges for reimbursement.” The bill also makes clinics subject to additional inspections, administrative penalties,¹ and any applicable criminal penalties if an inspection or investigation reveals that the clinic hired or continued to employ a physician whose license is suspended or revoked or the licenses of two or more physicians have been suspended or revoked as a consequence of the physicians’ actions while engaged by the clinic.

II. Present Situation:

Clinics in the state must be licensed by the Agency for Health Care Administration (AHCA);² however, there are numerous exclusions from the definition of “clinic” in s. 400.9905, F.S.,³ and from the requirement to obtain a license as a clinic. The definition of “clinic” only includes entities that “tender charges for reimbursement.” The AHCA interprets this phrase to only include entities that bill third parties, such as Medicare, Medicaid, and insurance companies.

¹ See s. 400.995, F.S., allowing the AHCA to deny, revoke, or suspend a license and impose fines of up to \$5,000 for violations of the Health Care Clinic Act.

² s. 400.991, F.S.

³ s. 400.9905(4)(a)-(n), F.S.

Entities that provide health care services on a “cash only” basis are excluded from the definition of “clinic” and, as such, need not be licensed by the AHCA.⁴

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 400.9905, F.S., to amend the definition of “clinic” to include any entity that “receives remuneration” rather than entities that “tender charges for reimbursement.” The effect of this change is to require “cash only” clinics to obtain a license as a clinic and, as a result, these facilities will be subject to periodic inspections which may help detect and deter unlawful practices.

Section 2 of the bill amends s. 400.995, F.S., to subject clinics to additional inspections, administrative penalties,⁵ licensure suspension or revocation, any applicable criminal penalties⁶ or any combination thereof if:

- An inspection or investigation reveals that the clinic hired or continued to employ a physician whose license is suspended or revoked; or
- The licenses of two or more physicians have been suspended or revoked as a consequence of the physicians’ actions while engaged by the clinic.

Section 3 establishes an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁴ See AHCA bill analysis for SB 746, on file with Health Policy Committee staff.

⁵ See s. 400.995, F.S., allowing the AHCA to deny, revoke, or suspend a license and impose fines of up to \$5,000 for violations of the Health Care Clinic Act.

⁶ The criminal penalties are not specified, however, these penalties could include a felony of the third degree imposed by s. 458.327(1)(b), F.S., on physicians who attempt to use a license which is suspended or revoked to practice medicine.

B. Private Sector Impact:

“Cash only” clinics that are not currently licensed will be required to obtain a license from the AHCA and pay a \$2,000 licensing fee. Also, clinics that hire or continue to employ a physician whose license is suspended or revoked may be required to pay a fine of up to \$5,000.

C. Government Sector Impact:

The AHCA anticipates an increased workload for clinic licensure of approximately 10 percent and to require four new FTEs to manage the increased workload.⁷ The increased workload will generate an estimated one-time cost to the AHCA of approximately \$16,000 and estimated recurring costs of approximately \$60,000.⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 400.9905 and 400.995.

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 Criminal Justice on March 24, 2014:

The CS amends CS/SB 746 to subject clinics to additional inspections and licensure suspension or revocation (or any combination of penalties including administrative and criminal penalties) if an inspection or investigation reveals that the licenses of two or more physicians have been suspended or revoked as a consequence of the physicians' actions while engaged by the clinic

CS by Health Policy on March 11, 2014:

The CS amends SB 746 to state that only a clinic that hires or continues to employ, directly or contractually, a physician whose license is suspended or revoked is liable for sanctions or criminal penalties.

⁷ Supra n. 4

⁸ Id.

B. Amendments:

None.

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



238866

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/24/2014	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Smith) recommended the following:

Senate Amendment (with title amendment)

Delete lines 176 - 189
and insert:

Section 2. Present subsection (6) of section 400.995, Florida Statutes, is renumbered as subsection (7), and a new subsection (6) is added to that section, to read:

400.995 Agency administrative penalties.—

(6) A clinic is subject to additional inspections,
administrative penalties, licensure suspension or revocation,



238866

applicable criminal penalties, or any combination of the above
if:

(a) An inspection or investigation reveals that the clinic
hired or continues to directly or contractually engage a
physician whose license is suspended or revoked; or

(b) The licenses of two or more physicians have been
suspended or revoked as a consequence of the physicians' actions
while engaged by the clinic.

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

And the title is amended as follows:

Delete lines 4 - 7

and insert:

"clinic"; amending s. 400.995, F.S.; providing that a
clinic is subject to penalties if it engages
physicians whose licenses have been suspended or
revoked; providing an effective date.



382502

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/24/2014	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Smith) recommended the following:

Senate Amendment (with title amendment)

After line 170
insert:

(o) Entities that do not receive remuneration for health care services and provide such services under the supervision of a physician licensed under chapter 458 or chapter 459 whose license is active.

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



382502

11 And the title is amended as follows:
12 Delete line 4
13 and insert:
14 "clinic" and adding another exception to the term;
15 amending s. 400.9935, F.S.; clarifying that

By the Committee on Health Policy; and Senator Sobel

588-02460-14

2014746c1

A bill to be entitled

An act relating to the Health Care Clinic Act;
amending s. 400.9905, F.S.; redefining the term
"clinic"; amending s. 400.9935, F.S.; clarifying that
a clinic that employs a physician whose license is
suspended or revoked is subject to administrative and
criminal penalties; providing an effective date.

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

Section 1. Subsection (4) of section 400.9905, Florida
Statutes, is amended to read:

400.9905 Definitions.—

(4) "Clinic" means an entity that provides ~~where~~ health
care services ~~are provided~~ to individuals and that receives
remuneration ~~which tenders charges for reimbursement~~ for such
services, including a mobile clinic and a portable equipment
provider. As used in this part, the term does not include and
the licensure requirements of this part do not apply to:

(a) Entities licensed or registered by the state under
chapter 395; entities licensed or registered by the state and
providing only health care services within the scope of services
authorized under their respective licenses under ss. 383.30-
383.335, chapter 390, chapter 394, chapter 397, this chapter
except part X, chapter 429, chapter 463, chapter 465, chapter
466, chapter 478, part I of chapter 483, chapter 484, or chapter
651; end-stage renal disease providers authorized under 42
C.F.R. part 405, subpart U; providers certified under 42 C.F.R.
part 485, subpart B or subpart H; or an any entity that provides

Page 1 of 7

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neonatal or pediatric hospital-based health care services or
other health care services by licensed practitioners solely
within a hospital licensed under chapter 395.

(b) Entities that own, directly or indirectly, entities
licensed or registered by the state pursuant to chapter 395;
entities that own, directly or indirectly, entities licensed or
registered by the state and providing only health care services
within the scope of services authorized pursuant to their
respective licenses under ss. 383.30-383.335, chapter 390,
chapter 394, chapter 397, this chapter except part X, chapter
429, chapter 463, chapter 465, chapter 466, chapter 478, part I
of chapter 483, chapter 484, or chapter 651; end-stage renal
disease providers authorized under 42 C.F.R. part 405, subpart
U; providers certified under 42 C.F.R. part 485, subpart B or
subpart H; or an any entity that provides neonatal or pediatric
hospital-based health care services by licensed practitioners
solely within a hospital licensed under chapter 395.

(c) Entities that are owned, directly or indirectly, by an
entity licensed or registered by the state pursuant to chapter
395; entities that are owned, directly or indirectly, by an
entity licensed or registered by the state and providing only
health care services within the scope of services authorized
pursuant to their respective licenses under ss. 383.30-383.335,
chapter 390, chapter 394, chapter 397, this chapter except part
X, chapter 429, chapter 463, chapter 465, chapter 466, chapter
478, part I of chapter 483, chapter 484, or chapter 651; end-
stage renal disease providers authorized under 42 C.F.R. part
405, subpart U; providers certified under 42 C.F.R. part 485,
subpart B or subpart H; or an any entity that provides neonatal

Page 2 of 7

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588-02460-14

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or pediatric hospital-based health care services by licensed practitioners solely within a hospital under chapter 395.

(d) Entities that are under common ownership, directly or indirectly, with an entity licensed or registered by the state pursuant to chapter 395; entities that are under common ownership, directly or indirectly, with an entity licensed or registered by the state and providing only health care services within the scope of services authorized pursuant to their respective licenses under ss. 383.30-383.335, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, part I of chapter 483, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; or an ~~any~~ entity that provides neonatal or pediatric hospital-based health care services by licensed practitioners solely within a hospital licensed under chapter 395.

(e) An entity that is exempt from federal taxation under 26 U.S.C. s. 501(c)(3) or (4), an employee stock ownership plan under 26 U.S.C. s. 409 that has a board of trustees at least two-thirds of which are Florida-licensed health care practitioners and provides only physical therapy services under physician orders, a ~~any~~ community college or university clinic, and an ~~any~~ entity owned or operated by the federal or state government, including agencies, subdivisions, or municipalities thereof.

(f) A sole proprietorship, group practice, partnership, or corporation that provides health care services by physicians covered by s. 627.419, that is directly supervised by one or

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more of such physicians, and that is wholly owned by one or more of those physicians or by a physician and the spouse, parent, child, or sibling of that physician.

(g) A sole proprietorship, group practice, partnership, or corporation that provides health care services by licensed health care practitioners under chapter 457, chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 466, chapter 467, chapter 480, chapter 484, chapter 486, chapter 490, chapter 491, or part I, part III, part X, part XIII, or part XIV of chapter 468, or s. 464.012, and that is wholly owned by one or more licensed health care practitioners, or the licensed health care practitioners set forth in this paragraph and the spouse, parent, child, or sibling of a licensed health care practitioner if one of the owners who is a licensed health care practitioner is supervising the business activities and is legally responsible for the entity's compliance with all federal and state laws. However, a health care practitioner may not supervise services beyond the scope of the practitioner's license, except that, for the purposes of this part, a clinic owned by a licensee in s. 456.053(3)(b) which provides only services authorized pursuant to s. 456.053(3)(b) may be supervised by a licensee specified in s. 456.053(3)(b).

(h) Clinical facilities affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows.

(i) Entities that provide only oncology or radiation therapy services by physicians licensed under chapter 458 or chapter 459 or entities that provide oncology or radiation

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therapy services by physicians licensed under chapter 458 or chapter 459 which are owned by a corporation whose shares are publicly traded on a recognized stock exchange.

(j) Clinical facilities affiliated with a college of chiropractic accredited by the Council on Chiropractic Education at which training is provided for chiropractic students.

(k) Entities that provide licensed practitioners to staff emergency departments or to deliver anesthesia services in facilities licensed under chapter 395 and that derive at least 90 percent of their gross annual revenues from the provision of such services. Entities claiming an exemption from licensure under this paragraph must provide documentation demonstrating compliance.

(l) Orthotic, prosthetic, pediatric cardiology, or perinatology clinical facilities or anesthesia clinical facilities that are not otherwise exempt under paragraph (a) or paragraph (k) and that are a publicly traded corporation or are wholly owned, directly or indirectly, by a publicly traded corporation. As used in this paragraph, a publicly traded corporation is a corporation that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange.

(m) Entities that are owned by a corporation that has \$250 million or more in total annual sales of health care services provided by licensed health care practitioners where one or more of the persons responsible for the operations of the entity is a health care practitioner who is licensed in this state and who is responsible for supervising the business activities of the entity and is responsible for the entity's compliance with state

588-02460-14

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law for purposes of this part.

(n) Entities that employ 50 or more licensed health care practitioners licensed under chapter 458 or chapter 459 where the billing for medical services is under a single tax identification number. The application for exemption under this subsection ~~must~~ shall contain information that includes: the name, residence, and business address and phone number of the entity that owns the practice; a complete list of the names and contact information of all the officers and directors of the corporation; the name, residence address, business address, and medical license number of each licensed Florida health care practitioner employed by the entity; the corporate tax identification number of the entity seeking an exemption; a listing of health care services to be provided by the entity at the health care clinics owned or operated by the entity and a certified statement prepared by an independent certified public accountant which states that the entity and the health care clinics owned or operated by the entity have not received payment for health care services under personal injury protection insurance coverage for the preceding year. If the agency determines that an entity which is exempt under this subsection has received payments for medical services under personal injury protection insurance coverage, the agency may deny or revoke the exemption from licensure under this subsection.

Notwithstanding this subsection, an entity shall be deemed a clinic and must be licensed under this part in order to receive reimbursement under the Florida Motor Vehicle No-Fault Law, ss.

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175 627.730-627.7405, unless exempted under s. 627.736(5)(h).

176 Section 2. Paragraph (b) of subsection (1) of section
177 400.9935, Florida Statutes, is amended to read:

178 400.9935 Clinic responsibilities.—

179 (1) Each clinic shall appoint a medical director or clinic
180 director who shall agree in writing to accept legal
181 responsibility for the following activities on behalf of the
182 clinic. The medical director or the clinic director shall:

183 (b) Ensure that all practitioners providing health care
184 services or supplies to patients maintain a current active and
185 unencumbered Florida license. If an inspection or investigation
186 reveals that a clinic hired or continued to employ, directly or
187 contractually, a physician whose license is suspended or
188 revoked, the clinic is subject to the administrative penalties
189 specified in s. 400.995 and applicable criminal penalties.

190 Section 3. This act shall take effect July 1, 2014.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ELEANOR SOBEL
33rd District

COMMITTEES:
Children, Families, and Elder Affairs, *Chair*
Ethics and Elections, *Vice Chair*
Health Policy, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health
and Human Services
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Regulated Industries
Rules

SELECT COMMITTEE:
Select Committee on Patient Protection
and Affordable Care Act, *Vice Chair*

March 17, 2014

Senator Greg Evers, Chair
Committee on Criminal Justice
308 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399

Dear Chair Evers:

This letter is to request that **SB 746, "Health Care Clinic Act"**, be placed on the agenda of the next scheduled meeting of the Criminal Justice Committee.

The proposed legislation would require anti-aging and cosmetic surgery clinics that take cash only (remuneration) to be licensed, with exceptions for federally-licensed clinics. Cosmetic surgery establishments and anti-aging clinics are avoiding licensure and regulation by taking cash only from their clients. **Many of these establishments are owned and operated by felons** who dole out illegal amounts of Human Growth Hormones (HGH) and anabolic steroids.

Thank you for your consideration of this request.

Respectfully,

A handwritten signature in cursive script that reads "Eleanor Sobel".

Eleanor Sobel
State Senator, 33rd District

cc: Sue Arnold, Amanda Cannon

REPLY TO:

- ☐ The "Old" Library, First Floor, 2600 Hollywood Blvd., Hollywood, Florida 33020 (954) 924-3693 FAX: (954) 924-3695
- ☐ 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

WAIVE TIME
IN SUPPORT

3-24-2014

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

Meeting Date

Topic HEALTH CARE CLINIC ACT

Bill Number SB 746
(if applicable)

Name STEPHEN R. WINN

Amendment Barcode _____
(if applicable)

Job Title EXECUTIVE DIRECTOR

Address 2001 APALACHEE PARKWAY

Phone 878-7364

TALLAHASSEE, FL 32301
City State Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/24/14
Meeting Date

Topic Health Clinic

Bill Number CS/5B746
(if applicable)

Name Wayne M. Daniel

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address 200 West College Ave.
Street

Phone (850) 251-9389

Tall. Fla
City State Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing NATIONAL ASSOCIATION OF SOCIAL WORKERS Florida Chapter

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/24/14

Meeting Date

Topic _____

Bill Number 746
(if applicable)

Name Chris Nuland

Amendment Barcode _____
(if applicable)

Job Title _____

Address 1000 Riverside Ave #115
Street
Jacksonville, FL 32204
City State Zip

Phone 904-233-3051

E-mail nulandlaw@aol.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Society of Plastic Surgeons / Florida Chapter, American College of Physicians

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/24/14

Meeting Date

Topic Health Care Clinic Act

Bill Number SB 746
(if applicable)

Name Jeff Scott

Amendment Barcode _____
(if applicable)

Job Title _____

Address 1430 Piedmont Dr. SE
Street

Phone 224-6491

TLH FL 32308
City State Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 768

INTRODUCER: Criminal Justice Committee and Senator Braynon

SUBJECT: Human Trafficking

DATE: March 25, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/CS
2.			JU	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 768 makes a variety of changes that impact human trafficking victims:

- Provides that the definition of “sexual abuse of a child” used in dependency proceedings includes allowing, encouraging, or forcing a child to participate in human trafficking for commercial sexual activity;
- Provides protections for the disclosure of court record information that identifies a victim of human trafficking of a minor for labor or services or human trafficking for commercial sexual activity;
- Clarifies the offense of human trafficking includes human trafficking that does and does not involve a venture;
- Prohibits a public employee or officer with access to specified personal information regarding a victim of human trafficking of a minor for labor or services or human trafficking for commercial sexual activity from willfully and knowingly disclosing that information to an unauthorized person or entity;
- Authorizes a compensation claim filed by a person engaged in prostitution as a result of being a victim of human trafficking for commercial sexual activity; and
- Provides that a victim of human trafficking of a minor for labor or services or human trafficking for commercial sexual activity is eligible for victim relocation assistance.

II. Present Situation:

Human Trafficking

Section 787.06, F.S., punishes “human trafficking,” which the statute defines as “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining¹ of another person for the purpose of exploitation of that person.”²

The statute punishes a variety of acts relating to human trafficking.³ Specifically, the statute provides that any person who knowingly, or in reckless disregard of the facts, engages in, or attempts to engage in, or benefits financially by receiving anything of value from participation in a venture⁴ that has subjected a person to human trafficking:

- Using coercion⁵ for labor⁶ or services⁷ commits a first degree felony (s. 787.06(3)(a), F.S.);⁸
- Using coercion for commercial sexual activity⁹ commits a first degree felony (s. 787.06(3)(b), F.S.);
- Using coercion for labor or services of any individual who is an unauthorized alien¹⁰ commits a first degree felony (s. 787.06(3)(c), F.S.);
- Using coercion for commercial sexual activity of any individual who is an unauthorized alien commits a first degree felony (s. 787.06(3)(d), F.S.);
- Using coercion for labor or services who does so by the transfer or transport of any individual from outside this state to within the state commits a felony of the first degree (s. 787.06(3)(e), F.S.);

¹ “Obtain” means, in relation to labor or services, to secure performance thereof. Section 787.06(2)(g), F.S.

² Section 787.06(2)(d), F.S.

³ The statute was substantially amended by the Legislature in 2012. HB 7049 (2012-97, L.O.F.). Among other things the legislation consolidated in s. 787.06, F.S., sex trafficking offenses that were previously contained in other statutes.

⁴ “Venture” means any group of two or more individuals associated in fact, whether or not a legal entity.

Section 787.06(2)(k), F.S.

⁵ “Coercion” means: 1) using or threatening to use physical force against any person; 2) restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will; 3) using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined; 4) destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person; 5) causing or threatening to cause financial harm to any person; 6) enticing or luring any person by fraud or deceit; or 7) providing a controlled substance as outlined in Schedule I or Schedule II of s. 893.03, F.S., to any person for the purpose of exploitation of that person. Section 787.06(2)(a), F.S. “Financial harm” includes extortionate extension of credit, loan sharking as defined in s. 687.071, F.S., or employment contracts that violate the statute of frauds as provided in s. 725.01, F.S. Section 787.06(2)(c), F.S.

⁶ “Labor” means work of economic or financial value. Section 787.06(2)(e), F.S.

⁷ “Services” means any act committed at the behest of, under the supervision of, or for the benefit of another. The term includes, but is not limited to, forced marriage, servitude, or the removal of organs. Section 787.06(2)(h), F.S.

⁸ Generally, a first degree felony is punishable by up to 30 years in state prison, a fine of up to \$10,000, or imprisonment and a fine. Sections 775.082 and 77.083, F.S.

⁹ “Commercial sexual activity” means any violation of ch. 796, F.S. (sexual battery), or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography. Section 787.06(2)(b), F.S. “Sexually explicit performance” means an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest. Section 787.06(2)(i), F.S.

¹⁰ When specifically provided by statute a first degree felony may be punishable by imprisonment for a term of years not exceeding life imprisonment. Section 775.082, F.S.

- Using coercion for commercial sexual activity who does so by the transfer or transport of any individual from outside this state to within the state commits a first degree felony (s. 787.06(3)(f), F.S.);
- For commercial sexual activity in which any child under the age of 18 is involved commits a first degree felony, which may be punished by imprisonment for a term of years not exceeding life (s. 787.06(3)(g), F.S.); or
- For commercial sexual activity in which any child under the age of 15 is involved commits a life felony (s. 787.06(3)(h), F.S.).

Additionally, it is first degree felony for any parent, legal guardian, or other person having custody or control of a minor to sell or otherwise transfer custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, with knowledge or in reckless disregard of the fact that, as a consequence of the sale or transfer, the minor will be subject to human trafficking (s. 787.06(4), F.S.).

Definition of “Sexual Abuse of a Child”

Section 39.01, F.S., is the definition section for ch. 39, F.S. (proceedings relating to the protection of the welfare of children).¹¹ The definition of “sexual abuse of a child” in s. 39.01(67), F.S., includes a number of specified acts. Relevant to the bill, included in that definition at s. 39.01(67)(g), F.S., is the sexual exploitation of a child, which includes the act of a child offering to engage in or engaging in prostitution, provided that the child is not under arrest or is not being prosecuted in a delinquency or criminal proceeding for a violation of any offense in ch. 796, F.S. (prostitution) based on such behavior; or allowing, encouraging, or forcing a child to:

- Solicit for or engage in prostitution;
- Engage in a sexual performance, as defined by ch. 827, F.S. (child abuse); or
- Participate in the trade of sex trafficking as provided in s. 796.035 (selling or buying of minors into prostitution).

Prior to legislation that passed in 2012,¹² s. 796.03, F.S., provided:

Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, with knowledge that, as a consequence of the sale or transfer, the minor will engage in prostitution, perform naked for compensation, or otherwise participate in the trade of sex trafficking, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

¹¹ Ch. 39, F.S., establishes a Florida child dependency process and provides the process and procedures for: reporting child abuse and neglect; protective investigations; taking children into custody and shelter hearings; petition, arraignment, and adjudication of dependency; disposition of the dependent child; post-disposition change of custody; case plans; permanency; judicial reviews; and termination of parental rights.

¹² See footnote 3.

As a result of the 2012 legislation, the offense was modified and reference to the “trade of sex trafficking” was removed.¹³ The statute now reads:

Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, with knowledge or in reckless disregard of the fact that, as a consequence of the sale or transfer, the minor will engage in prostitution commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Consequently, as a result of the 2012 legislative changes, the reference to “trade of sex trafficking in s. 796.035” does not reflect current law.

Victim Identity Information in Judicial Proceedings and Records

Section 92.56, F.S., provides that the confidential and exempt status of criminal intelligence information or criminal investigative information made confidential and exempt pursuant to s. 119.071(2)(h), F.S., must be maintained in court records pursuant to s. 119.0714(1)(h), F.S.,¹⁴ and in court proceedings, including testimony from witnesses.

Section 119.071(2)(h), F.S., provides that the following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

- Any information, including the photograph, name, address, or other fact, which reveals the identity of the victim of the crime of child abuse as defined by ch. 827, F.S.¹⁵
- Any information which may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in ch. 794, F.S. (sexual battery), ch. 796, F.S. (prostitution), ch. 800, F.S. (lewd acts), ch. 827, F.S. (child abuse), or ch. 847, F.S. (acts involving obscenity or materials harmful to a minor).
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under any of the previously referenced chapters, regardless of whether the photograph, videotape, or image identifies the victim.¹⁶

¹³ Additionally, the 2012 legislation repealed s. 796.045, F.S., which punished sex trafficking. Sex trafficking is now addressed under s. 787.06, F.S.

¹⁴ Section 119.0714(1), F.S., provides that nothing in ch. 119, F.S. (the public records chapter), shall be construed to exempt from s. 119.07(1), F.S. (inspection and copying), a public record that was made a part of a court file and that is not specifically closed by order of court, except for a record or information specified in that subsection. One of the exceptions is criminal intelligence information or criminal investigative information that is confidential and exempt as provided in s. 119.071(2)(h), F.S. Section 119.0714(1)(h), F.S.

¹⁵ Section 827.03(1)(b), F.S., defines “child abuse” as: 1) intentional infliction of physical or mental injury upon a child; 2) an intentional act that could reasonably be expected to result in physical or mental injury to a child; or 3) active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.

¹⁶ Section 2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency: a) in the furtherance of its official duties and responsibilities; b) for print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered; and c) to another governmental agency in the furtherance of its official duties and responsibilities.

If a petition for access to such confidential and exempt records is filed with the trial court having jurisdiction over the alleged offense, the court must maintain the confidential and exempt status of this information if the state or the victim demonstrates that:

- The identity of the victim is not already known in the community;
- The victim has not voluntarily called public attention to the offense;
- The identity of the victim has not otherwise become a reasonable subject of public concern;
- The disclosure of the victim's identity would be offensive to a reasonable person; and
- The disclosure of the victim's identity would:
 - Endanger the victim because the assailant has not been apprehended and is not otherwise known to the victim;
 - Endanger the victim because of the likelihood of retaliation, harassment, or intimidation;
 - Cause severe emotional or mental harm to the victim;
 - Make the victim unwilling to testify as a witness; or
 - Be inappropriate for other good cause shown.

A defendant charged with a crime described in ch. 794, F.S., or ch. 800, F.S., or with child abuse, aggravated child abuse, or sexual performance by a child as described in ch. 827, F.S., may apply to the trial court for an order of disclosure of information in court records held confidential and exempt pursuant to s. 119.0714(1)(h), F.S., or maintained as confidential and exempt pursuant to court order under s. 92.56, F.S.

The previously-described victim identification information may be released to the defendant or his or her attorney in order to prepare the defense. The confidential and exempt status of this information may not be construed to prevent the disclosure of the victim's identity to the defendant; however, the defendant may not disclose the victim's identity to any person other than the defendant's attorney or any other person directly involved in the preparation of the defense. A willful and knowing disclosure of the identity of the victim to any other person by the defendant constitutes contempt.

The state may use a pseudonym instead of the victim's name to designate the victim of a crime described in ch. 794, F.S., or ch. 800, F.S., or of child abuse, aggravated child abuse, or sexual performance by a child as described in ch. 827, F.S., or any crime involving the production, possession, or promotion of child pornography as described in ch. 847, F.S., in all court records and records of court proceedings, both civil and criminal.

The protection of s. 92.56, F.S., may be waived by the victim of the alleged offense by filing with the court a written consent to the use or release of identifying information during court proceedings and in the records of court proceedings.

Section 92.56, F.S., does not prohibit the publication or broadcast of the substance of trial testimony in a prosecution for an offense described in ch. 794, F.S., or ch. 800, F.S., or a crime of child abuse, aggravated child abuse, or sexual performance by a child, as described in ch. 827, F.S., but the publication or broadcast may not include an identifying photograph, an identifiable voice, or the name or address of the victim, unless the victim has filed with the court a written consent to the publication or the court has declared such records not confidential and exempt as provided for in s. 92.56 (1), F.S. A willful and knowing violation of s. 92.56, F.S., or a willful and knowing failure to obey any court order issued under the statute constitutes contempt.

Victim Compensation and Relocation Assistance

The Florida Crimes Compensation Act¹⁷ authorizes the Florida Attorney General's Division of Victim Services to administer a compensation program to ensure financial assistance for victims of crime. Injured crime victims may be eligible for financial assistance for medical care, lost income, mental health services, funeral expenses and other out-of-pocket expenses directly related to the injury.¹⁸ Currently, s. 906.065(2), F.S., provides that compensation claims filed by persons engaged in an unlawful activity at the time of the crime upon which the claim is based are not eligible for an award.

Section 960.199, F.S., provides relocation assistance to victims of sexual battery. The "Department of Legal Affairs" (i.e. the Florida Attorney General's Office) administers the assistance program. Under this program, a victim of sexual battery¹⁹ who needs relocation assistance may receive a one-time payment not exceeding \$1,500 on any one claim and a lifetime maximum of \$3,000 if all of the following criteria are met:

- There must be proof that a sexual battery offense was committed.
- The sexual battery offense must be reported to the proper authorities.
- The victim's need for assistance must be certified by a certified rape crisis center in this state.
- The center certification must assert that the victim is cooperating with law enforcement officials, if applicable, and must include documentation that the victim has developed a safety plan.
- The act of sexual battery must be committed in the victim's place of residence or in a location that would lead the victim to reasonably fear for his or her continued safety in the place of residence.

III. Effect of Proposed Changes:

The bill makes a variety of changes that impact human trafficking victims:

- Provides that the definition of "sexual abuse of a child" used in dependency proceedings includes allowing, encouraging, or forcing a child to participate in human trafficking for commercial sexual activity;
- Provides protections for the disclosure of court record information that identifies a victim of human trafficking of a minor for labor or services or human trafficking for commercial sexual activity;
- Clarifies the offense of human trafficking includes human trafficking that does and does not involve a venture;
- Prohibits a public employee or officer with access to specified personal information regarding a victim of human trafficking of a minor for labor or services or human trafficking for commercial sexual activity from willfully and knowingly disclosing that information to an unauthorized person or entity;

¹⁷ Sections 960.01-960.28, F.S.

¹⁸ See <http://myfloridalegal.com/pages.nsf/main/1c7376f380d0704c85256cc6004b8ed3!OpenDocument> (last visited on March 18, 2014).

¹⁹ See s. 794.011, F.S. (sexual battery).

- Authorizes a compensation claim filed by a person engaged in prostitution as a result of being a victim of human trafficking for commercial sexual activity; and
- Provides that a victim of human trafficking of a minor for labor or services or human trafficking for commercial sexual activity is eligible for victim relocation assistance.

Section 1. Amends the definition of “sexual abuse of a child” in s. 39.01, F.S., the definitions section for ch. 39, F.S., to delete reference to “the trade of sex trafficking as provide in s. 796.035” (an obsolete reference) and include within that definition the sexual exploitation of a child that involves allowing, encouraging, or forcing a child to participate in human trafficking:

- For commercial sexual activity in which a child younger than 18 years of age is involved; and
- For commercial sexual activity in which a child younger than 15 years of age is involved.

Section 2. Amends s. 92.56, F.S. (judicial proceedings and court records involving sexual offenses), to specify in the title of the statute that the statute also includes human trafficking offenses and to add the following offenses to s. 92.56(2), (3), and (5), F.S., that involve human trafficking:

- Using coercion for labor or services, if the victim is younger than 18 years of age;
- Using coercion for commercial sexual activity;
- Using coercion for commercial sexual activity of an individual who is an unauthorized alien;
- Using coercion for commercial sexual activity who does so by the transfer or transport of an individual from outside this state to within the state;
- For commercial sexual activity in which a child younger than 18 years of age is involved; and
- For commercial sexual activity in which a child younger than 15 years of age is involved.

The effect of these changes is threefold. First, a defendant charged with any of these specified human trafficking offenses may apply to the trial court for an order of disclosure of information in court records held confidential and exempt pursuant to s. 119.0714(1)(h), F.S., or maintained as confidential and exempt pursuant to court order, in order for the defendant to prepare for his or her defense. However, current law continues to apply regarding information about the victim’s identity:

- Information regarding the victim’s identity may be released to the defendant or defendant’s counsel in order to prepare the defense;
- The defendant is prohibited from disclosing the victim’s identity to any person other than the defendant’s counsel or any other person directly involved in the preparation of the defense; and
- The defendant’s willful and knowing disclosure of this information to any other person constitutes contempt.

Second, the state may use a pseudonym instead of the victim’s name to designate the victim of any of these specified human trafficking offenses in all court records and records of court proceedings, both civil and criminal.

Third, s. 92.56, F.S., does not prohibit the publication or broadcast of the substance of trial testimony in a prosecution for any of these human trafficking offenses. However, current law continues to apply regarding information about the victim's identity:

- The publication or broadcast may not include an identifying photograph, an identifiable voice, or the name or address of the victim, unless the victim has filed with the court a written consent to the publication or the court has declared such records not confidential and exempt as provided for in s. 92.56(1), F.S.; and
- A willful and knowing violation of s. 92.56, F.S., or a willful and knowing failure to obey any court order issued under the statute constitutes contempt.

Section 3. Currently, s. 787.06(3), F.S., provides that it is unlawful for any person to knowingly, or in reckless disregard of the facts, engage in, or attempt to engage in, or benefit financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking involving any of a number of specified acts. This subsection appears to apply to human trafficking that does and does not involve a venture. The bill slightly rewords current law to make it even clearer that the law proscribes both:

(3) A ~~Any~~ person who knowingly, or in reckless disregard of the facts, engages in, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking:

Section 4. Section 906.065(2), F.S., provides that compensation claims filed by persons engaged in an unlawful activity at the time of the crime upon which the claim is based are not eligible for an award under the Florida Crimes Compensation Act. The bill amends this subsection to provide an exception for a victim engaged in prostitution as a result of being a victim of human trafficking:

- Using coercion for commercial sexual activity;
- Using coercion for commercial sexual activity of an individual who is an unauthorized alien;
- Using coercion for commercial sexual activity who does so by the transfer or transport of an individual from outside this state to within the state;
- For commercial sexual activity in which a child younger than 18 years of age is involved; or
- For commercial sexual activity in which a child younger than 15 years of age is involved.

Section 5. Section 960.199, F.S., provides relocation assistance to victims of sexual battery. The bill amends this statute to authorize relocation assistance to a victim of human trafficking:

- Using coercion for commercial sexual activity;
- Using coercion for commercial sexual activity of an individual who is an unauthorized alien;
- Using coercion for commercial sexual activity who does so by the transfer or transport of an individual from outside this state to within the state;
- For commercial sexual activity in which a child younger than 18 years of age is involved; or
- For commercial sexual activity in which a child younger than 15 years of age is involved.

The bill also amends criteria in the statute for granting relocation assistance to sexual battery victims and victims of human trafficking involving commercial sexual activity. The statute currently provides that the victim's need for assistance must be certified by a certified rape

center in this state. The bill allows this certification to be made by the state attorney or statewide prosecutor having jurisdiction over the offense.

The statute provides that the center's certification must assert that the victim is cooperating with law enforcement officials, if applicable, and must include documentation that the victim has developed a safety plan. The bill provides that, with the approval of the state attorney or statewide prosecutor, the center must make this assertion.

Section 6. Provides that the bill takes effect on July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final official estimate of the prison bed impact, if any, of legislation, has yet reviewed the bill. However, the Legislature's Office of Economic and Demographic Research preliminarily estimates that the bill will not have a prison bed impact.

In its analysis of the impact of the bill on the court system, the Office of the State Courts Administrator (OSCA) states that the anticipated judicial or court workload impact is not significant. However, the OSCA provides the following additional comments regarding the bill's impact:

The existing definition of "sexual abuse" of a child includes allowing, encouraging, or forcing a child to engage in prostitution. The extent to which judicial workload would be affected by this bill depends upon the number of

human trafficking offenses that would be filed as a result of this bill, which is unknown. The more human trafficking cases that are filed as a result of this bill, the more judicial workload may be increased due to prosecution of the cases, decisions on applications for disclosure of information by defendants in the cases, and because the increased opportunity for a public employee or officer to unlawfully disclose information about victims may result in additional prosecutions of such violations.²⁰

The Department of Legal Affairs has not provided an analysis of the bill's impact. The bill may result in more victims receiving victim compensation funds from the department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.01, 92.56, 787.06, 960.065, and 960.199.

IX. Additional Information:

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

CS by Criminal Justice on March 24, 2014:

Removes a provision from the bill that provides a penalty for a public employee/officer who willfully and knowingly discloses certain information regarding a human trafficking victim to a person not authorized to have access to that information.

- B. **Amendments:**

None.

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

²⁰ 2014 Judicial Impact Statement (SB 768) (March 5, 2014), Office of the State Courts Administrator (on file with the Senate Committee on Criminal Justice).



236686

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/24/2014	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Smith) recommended the following:

Senate Amendment (with title amendment)

Delete lines 188 - 208.

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

And the title is amended as follows:

Delete lines 14 - 17

and insert:

making technical changes; amending s.



349736

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/24/2014	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Smith) recommended the following:

Senate Amendment (with title amendment)

Delete line 251
and insert:
certified rape crisis center or certified domestic violence
center in this state or by the state

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

And the title is amended as follows:

Delete line 26



349736

11 and insert:
12 prosecutor; requiring the state attorney's or
13 statewide prosecutor's approval of a rape crisis
14 center's or a domestic violence center's

By Senator Braynon

36-00787B-14

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1 A bill to be entitled
 2 An act relating to human trafficking; amending s.
 3 39.01, F.S.; redefining the term "sexual abuse of a
 4 child" to include human trafficking; amending s.
 5 92.56, F.S.; authorizing a defendant who has been
 6 charged with specified human trafficking offenses to
 7 apply for an order of disclosure of confidential and
 8 exempt information; authorizing the court to use a
 9 pseudonym, instead of a victim's name, to designate
 10 the victim of specified human trafficking offenses;
 11 providing that trial testimony for specified human
 12 trafficking offenses may be published or broadcast
 13 under certain circumstances; amending s. 787.06, F.S.;
 14 making technical changes; amending s. 794.024, F.S.;
 15 prohibiting a public employee or officer from
 16 disclosing specified information about a victim of
 17 specified human trafficking offenses; amending s.
 18 960.065, F.S.; providing an exception to ineligibility
 19 for victim assistance awards to specified victims of
 20 human trafficking; amending s. 960.199, F.S.;
 21 authorizing the Department of Legal Affairs to provide
 22 relocation assistance to a victim of specified human
 23 trafficking offenses; requiring the human trafficking
 24 offense to be reported to the proper authorities and
 25 certified by the state attorney or statewide
 26 prosecutor; requiring the state attorney or statewide
 27 prosecutor's approval of a rape crisis center's
 28 certification that a victim is cooperating with law
 29 enforcement officials; providing that the act of human

Page 1 of 10

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36-00787B-14

2014768__

30 trafficking must occur under certain circumstances for
 31 the victim to be eligible for relocation assistance;
 32 providing an effective date.
 33
 34 Be It Enacted by the Legislature of the State of Florida:
 35
 36 Section 1. Paragraph (g) of subsection (67) of section
 37 39.01, Florida Statutes, is amended to read:
 38 39.01 Definitions.—When used in this chapter, unless the
 39 context otherwise requires:
 40 (67) "Sexual abuse of a child" for purposes of finding a
 41 child to be dependent means one or more of the following acts:
 42 (g) The sexual exploitation of a child, which includes the
 43 act of a child offering to engage in or engaging in
 44 prostitution, provided that the child is not under arrest or is
 45 not being prosecuted in a delinquency or criminal proceeding for
 46 a violation of any offense in chapter 796 based on such
 47 behavior; or allowing, encouraging, or forcing a child to:
 48 1. Solicit for or engage in prostitution;
 49 2. Engage in a sexual performance, as defined by chapter
 50 827; or
 51 3. Participate in commercial sexual activity ~~the trade of~~
 52 ~~sex trafficking~~ as provided in ss. 787.06(3)(g) or (h) and
 53 796.035 ~~s. 796.035~~.
 54 Section 2. Section 92.56, Florida Statutes, is amended to
 55 read:
 56 92.56 Judicial proceedings and court records involving
 57 sexual offenses and human trafficking.—
 58 (1)(a) The confidential and exempt status of criminal

Page 2 of 10

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36-00787B-14

2014768

intelligence information or criminal investigative information made confidential and exempt pursuant to s. 119.071(2)(h) must be maintained in court records pursuant to s. 119.0714(1)(h) and in court proceedings, including testimony from witnesses.

(b) If a petition for access to such confidential and exempt records is filed with the trial court having jurisdiction over the alleged offense, the confidential and exempt status of such information shall be maintained by the court if the state or the victim demonstrates that:

1. The identity of the victim is not already known in the community;

2. The victim has not voluntarily called public attention to the offense;

3. The identity of the victim has not otherwise become a reasonable subject of public concern;

4. The disclosure of the victim's identity would be offensive to a reasonable person; and

5. The disclosure of the victim's identity would:

a. Endanger the victim because the assailant has not been apprehended and is not otherwise known to the victim;

b. Endanger the victim because of the likelihood of retaliation, harassment, or intimidation;

c. Cause severe emotional or mental harm to the victim;

d. Make the victim unwilling to testify as a witness; or

e. Be inappropriate for other good cause shown.

(2) A defendant charged with a crime specified ~~described~~ in s. 787.06(3)(a), if the victim is younger than 18 years of age, in s. 787.06(3)(b), (d), (f), (g), or (h), or in chapter 794 or chapter 800, or with child abuse, aggravated child abuse, or

36-00787B-14

2014768

sexual performance by a child as described in chapter 827, may apply to the trial court for an order of disclosure of information in court records held confidential and exempt pursuant to s. 119.0714(1)(h) or maintained as confidential and exempt pursuant to court order under this section. Such identifying information concerning the victim may be released to the defendant or his or her attorney in order to prepare the defense. The confidential and exempt status of this information ~~does may not be construed to~~ prevent the disclosure of the victim's identity to the defendant; however, the defendant may not disclose the victim's identity to any person other than the defendant's attorney or any other person directly involved in the preparation of the defense. A willful and knowing disclosure of the identity of the victim to any other person by the defendant constitutes contempt.

(3) The state may use a pseudonym instead of the victim's name to designate the victim of a crime specified ~~described~~ in s. 787.06(3)(a), if the victim is younger than 18 years of age, in s. 787.06(3)(b), (d), (f), (g), or (h), or in chapter 794 or chapter 800, or of child abuse, aggravated child abuse, or sexual performance by a child as described in chapter 827, or any crime involving the production, possession, or promotion of child pornography as described in chapter 847, in all court records and records of court proceedings, both civil and criminal.

(4) The protection of this section may be waived by the victim of the alleged offense in a writing filed with the court, in which the victim consents to the use or release of identifying information during court proceedings and in the

36-00787B-14

2014768__

records of court proceedings.

(5) This section does not prohibit the publication or broadcast of the substance of trial testimony in a prosecution for an offense ~~specified~~ described in s. 787.06(3)(a), if the victim is younger than 18 years of age, in s. 787.06(3)(b), (d), (f), (g), or (h), or in chapter 794 or chapter 800, or for a crime of child abuse, aggravated child abuse, or sexual performance by a child, as described in chapter 827; however, ~~but~~ the publication or broadcast may not include an identifying photograph, an identifiable voice, or the name or address of the victim, unless the victim has consented in writing to the publication and filed such consent with the court or unless the court has declared such records not confidential and exempt as provided for in subsection (1).

(6) A willful and knowing violation of this section or a willful and knowing failure to obey a ~~any~~ court order issued under this section constitutes contempt.

Section 3. Subsection (3) of section 787.06, Florida Statutes, is amended to read:

787.06 Human trafficking.—

(3) A ~~Any~~ person who knowingly, or in reckless disregard of the facts, engages in, or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking:

(a) Using coercion for labor or services commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Using coercion for commercial sexual activity commits a

36-00787B-14

2014768__

felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Using coercion for labor or services of an ~~any~~ individual who is an unauthorized alien commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) Using coercion for commercial sexual activity of an ~~any~~ individual who is an unauthorized alien commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(e) Using coercion for labor or services who does so by the transfer or transport of an ~~any~~ individual from outside this state to within the state commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(f) Using coercion for commercial sexual activity who does so by the transfer or transport of an ~~any~~ individual from outside this state to within the state commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(g) For commercial sexual activity in which a ~~any~~ child younger than under the age of 18 years of age is involved commits a felony of the first degree, punishable by imprisonment for a term of years not exceeding life, or as provided in s. 775.082, s. 775.083, or s. 775.084. In a prosecution under this paragraph in which the defendant had a reasonable opportunity to observe the person who was subject to human trafficking, the state is not required to ~~need not~~ prove that the defendant knew that the person was younger than ~~had not attained the age of~~ 18 years of age.

36-00787B-14

2014768

175 (h) For commercial sexual activity in which ~~a any~~ child
 176 ~~younger than under the age of 15 years of age~~ is involved
 177 commits a life felony, punishable as provided in s. 775.082, s.
 178 775.083, or s. 775.084. In a prosecution under this paragraph in
 179 which the defendant had a reasonable opportunity to observe the
 180 person who was subject to human trafficking, the state is not
 181 required to need not prove that the defendant knew that the
 182 person was younger than had not attained the age of 15 years of
 183 age.

184
 185 For each instance of human trafficking of any individual under
 186 this subsection, a separate crime is committed and a separate
 187 punishment is authorized.

188 Section 4. Section 794.024, Florida Statutes, is amended to
 189 read:

190 794.024 Unlawful to disclose identifying information.—

191 (1) A public employee or officer who has access to the
 192 photograph, name, or address of a person who is alleged to be
 193 the victim of an offense specified described in this chapter, in
 194 s. 787.06(3)(a), if the victim is younger than 18 years of age,
 195 in s. 787.06(3)(b), (d), (f), (g), or (h), in chapter 800, or in
 196 s. 827.03, s. 827.04, or s. 827.071 may not willfully and
 197 knowingly disclose such information ~~it~~ to a person who is not
 198 assisting in the investigation or prosecution of the alleged
 199 offense or to any person other than the defendant, the
 200 defendant's attorney, a person specified in an order entered by
 201 the court having jurisdiction of the alleged offense, or
 202 organizations authorized to receive such information made exempt
 203 by s. 119.071(2)(h), or to a rape crisis center or sexual

Page 7 of 10

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36-00787B-14

2014768

204 assault counselor, as defined in s. 90.5035(1)(b), who will be
 205 offering services to the victim.

206 (2) A violation of subsection (1) constitutes a misdemeanor
 207 of the second degree, punishable as provided in s. 775.082 or s.
 208 775.083.

209 Section 5. Subsection (2) of section 960.065, Florida
 210 Statutes, is amended to read:

211 960.065 Eligibility for awards.—

212 (2) A Any claim is ineligible for an award if it is filed
 213 by or on behalf of a person who:

214 (a) Committed or aided in the commission of the crime upon
 215 which the claim for compensation was based;

216 (b) Was engaged in an unlawful activity at the time of the
 217 crime upon which the claim for compensation is based, unless the
 218 victim was engaged in prostitution as a result of being a victim
 219 of human trafficking as described in s. 787.06(3)(b), (d), (f),
 220 (g), or (h);

221 (c) Was in custody or confined, regardless of conviction,
 222 in a county or municipal detention facility, a state or federal
 223 correctional facility, or a juvenile detention or commitment
 224 facility at the time of the crime upon which the claim for
 225 compensation is based;

226 (d) Has been adjudicated as a habitual felony offender,
 227 habitual violent offender, or violent career criminal under s.
 228 775.084; or

229 (e) Has been adjudicated guilty of a forcible felony
 230 offense as described in s. 776.087

231
 232 ~~is ineligible for an award.~~

Page 8 of 10

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36-00787B-14

2014768__

233 Section 6. Section 960.199, Florida Statutes, is amended to
 234 read:

235 960.199 Relocation assistance for victims of sexual battery
 236 or human trafficking.-

237 (1) The department may award a one-time payment of up to
 238 \$1,500 on any one claim and a lifetime maximum of \$3,000 to a
 239 victim of sexual battery as defined in s. 794.011 or of human
 240 trafficking as described in s. 787.06(3)(b), (d), (f), (g), or
 241 (h) who needs relocation assistance.

242 (2) In order for an award to be granted to a victim for
 243 relocation assistance:

244 (a) There must be proof that a sexual battery offense or
 245 human trafficking offense as described in s. 787.06(3)(b), (d),
 246 (f), (g), or (h) was committed.

247 (b) The sexual battery offense or human trafficking offense
 248 as specified in s. 787.06(3)(b), (d), (f), (g), or (h) must be
 249 reported to the proper authorities.

250 (c) The victim's need for assistance must be certified by a
 251 certified rape crisis center in this state or by the state
 252 attorney or statewide prosecutor having jurisdiction over the
 253 offense.

254 (d) With the approval of the state attorney or statewide
 255 prosecutor, the center's center certification must assert that
 256 the victim is cooperating with law enforcement officials, if
 257 applicable, and must include documentation that the victim has
 258 developed a safety plan.

259 (e) The act of sexual battery or human trafficking as
 260 specified in s. 787.06(3)(b), (d), (f), (g), or (h) must be
 261 committed in the victim's place of residence or in a location

Page 9 of 10

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36-00787B-14

2014768__

262 that would lead the victim to reasonably fear for his or her
 263 continued safety in the place of residence.

264 (3) Relocation payments for a sexual battery or human
 265 trafficking claim under this section shall be denied if the
 266 department has previously approved or paid out a domestic
 267 violence relocation claim under s. 960.198 to the same victim
 268 regarding the same incident.

269 Section 7. This act shall take effect July 1, 2014.

Page 10 of 10

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Regulated Industries, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on General
Government
Children, Families, and Elder Affairs
Ethics and Elections
Gaming
Health Policy

SENATOR OSCAR BRAYNON II

Democratic Whip
36th District

January 14, 2014

Senator Greg Evers, Chair
Criminal Justice
308 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Evers:

This letter is to request that **Senate Bill # 768**, relating to ***Human Trafficking*** be placed on the agenda of the next scheduled meeting of the committee.

SB 768 Redefining the term "sexual abuse of a child" to include human trafficking; authorizing a defendant who has been charged with specified human trafficking offenses to apply for an order of disclosure of confidential and exempt information; prohibiting a public employee or officer from disclosing specified information about a victim of specified human trafficking offenses; providing an exception to ineligibility for victim assistance awards to specified victims of human trafficking, etc.

Thank you for consideration of this request.

Sincerely,

A handwritten signature in dark ink, appearing to read "Oscar Braynon II".

Senator Braynon
District 36

cc. *Amanda Cannon, Staff Director,*
Sue Arnold, Committee Administrative Assistant, Room 510K

REPLY TO:

- ☐ 608 NW 183rd Street, Miami Gardens, Florida 33169 (305) 654-7150 FAX: (305) 654-7152
- ☐ 213 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

WD

3/24/14
Meeting Date

Topic Victim Relocation - Sexual Battery *Mr. Hickey*

Name Jennifer Drift

Job Title Executive Director

Address 1820 E. PARK AVENUE, SUITE 100
Street

MALDEN FL 32301
City State Zip

Bill Number SB 0768
(if applicable)

Amendment Barcode 349 736
(if applicable)

Phone (850) 297-2000

E-mail jdrift@fcasv.org

Speaking: ☐ For ☒ Against ☐ Information Amendment

Representing FLORIDA COUNCIL AGAINST SEXUAL VIOLENCE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/24/14

Meeting Date

Topic Human Trafficking

Bill Number 768
(if applicable)

Name Samantha Sexton

Amendment Barcode —
(if applicable)

Job Title Assoc. Dir. of Government Affairs

Address One West Adams St., #301

Phone 904-383-9403

Street

Jacksonville

FL

32202

City

State

Zip

E-mail samantha.sexton@
pacecenter.org

Speaking: ☒ For ☐ Against ☐ Information

Representing PACE Center for Girls

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/24/14

Meeting Date

Vietnam Relocation

Topic

Sex Traffick / Sexual Battery

Bill Number

~~HS 68~~ 768

(if applicable)

Name

Jennifer Dula

Amendment Barcode

(if applicable)

Job Title

Executive Director

Address

1020 E. PARK AVENUE

Phone

(850) 297-2000

Street

City

Thru

State

FL

Zip

32301

E-mail

j.dula@flcav.org

Speaking:

☐ For

☒ Against

☐ Information

Representing

FLORIDA COUNCIL AGAINST SEXUAL VIOLENCE

Appearing at request of Chair:

☐ Yes

☒ No

Lobbyist registered with Legislature:

☒ Yes

☐ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 812

INTRODUCER: Criminal Justice Committee and Senator Detert

SUBJECT: Court-ordered Expunction of Criminal History Records

DATE: March 25, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 812 allows a person to immediately apply for a certificate of eligibility for a criminal history record expunction if at trial the judge or jury renders a not guilty verdict. (Currently if the trial results in an acquittal, the accused is required to have his or her record sealed for ten years before being eligible to apply for an expunction.) However, the bill prohibits the records of a person adjudicated not guilty by reason of insanity from being eligible for a record expunction.

The bill also allows a youth who has been arrested for a felony, with numerous specified exceptions, to have his or her nonjudicial arrest record expunged upon successful completion of a prearrest, postarrest, or teen court diversion program. (Currently only nonviolent misdemeanor arrests are eligible to be expunged under the juvenile diversion expunction statute.)

II. Present Situation:

Criminal History Expunction

Sections 943.0585 and 943.059, F.S., set forth procedures for sealing and expunging criminal history records. The courts have jurisdiction over their own judicial records containing criminal history information and over their procedures for maintaining and destroying those records. The Florida Department of Law Enforcement (FDLE) can administratively expunge non-judicial records of arrest that are made contrary to law or by mistake.

When a record is expunged, it is physically destroyed and no longer exists if it is in the custody of a criminal justice agency¹ other than the FDLE. Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order. The FDLE, on the other hand, is required to retain expunged records. When a record is sealed, it is not destroyed, but access is limited to the subject of the record, his or her attorney, criminal justice agencies for their respective criminal justice purposes, and certain other specified agencies for their respective licensing and employment purposes.²

Persons who have had their criminal history records sealed or expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment,³ petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.⁴

Records that have been sealed or expunged are confidential and exempt from the public records law. It is a first degree misdemeanor to divulge their existence, except to specified entities for licensing or employment purposes.⁵

In 1992, the Legislature amended the sealing and expunction statute to require a person seeking a sealing or expunction to first obtain a certificate of eligibility from FDLE and then, if the person meets the statutory criteria based on the department's criminal history check and receives a certificate, he or she can petition the court for a record sealing or expunction.⁶ It is then up to the court to decide whether the sealing or expunction is appropriate.

To receive a certificate of eligibility, a person must:

- Submit to FDLE a written, certified statement from the appropriate state attorney or statewide prosecutor indicating that:
 - An indictment, information, or other charging document was not filed or issued in the case; or if filed, was dismissed or nolle prosequi by the state attorney or statewide prosecutor or was dismissed by a court of competent jurisdiction;
 - None of the charges related to the record the person wishes to expunge resulted in a trial, without regard to whether the outcome of the trial was other than an adjudication of guilt; and

¹ Section 943.045(11), F.S., defines a criminal justice agency as follows: a court; the FDLE; the DJJ; the protective investigations component of the Department of Children and Families (DCF), which investigates the crimes of abuse and neglect; or any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice.

² These types of employment include: a criminal justice agency; the Florida Bar; working in a sensitive position involving direct contact with children, the developmentally disabled, or the elderly through the DCF, Division of Vocational Rehabilitation within the Department of Education (DOE), the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice; or persons seeking to be employed or licensed by the DOE, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity licensing child care facilities; or a Florida seaport.

³ *Id.*

⁴ Section 943.0585(4)(a), F.S.

⁵ Section 943.0585(4)(c), F.S.

⁶ Section 943.0585(2), F.S.

- The criminal history record does not relate to a violation of specified offenses regardless of whether adjudication was withheld⁷;
- Pay a \$75 processing fee;
- Submit a certified copy of the disposition of the record desired to be expunged;
- Have not previously been adjudicated guilty of any offense or adjudicated delinquent for any felony or misdemeanor specified in s. 943.051(3)(b), F.S.⁸;
- Have never been adjudicated guilty or delinquent for any of the acts stemming from the arrest or alleged criminal activity of the record desired to be expunged;
- Have never had a prior sealing or expunction of a criminal history record (unless it is the required ten year sealing for the offense desired to be expunged); and
- No longer be under any court supervision related to the disposition of the record desired to be expunged.

In addition to the certificate, a petition to expunge a criminal history record must also include the petitioner's sworn statement that he or she:

- Has not previously been adjudicated guilty of any offense or adjudicated delinquent for any felony or misdemeanor offense specified in s. 943.051(3)(b), F.S.;
- Has not been adjudicated guilty or delinquent for any of the charges he or she is currently trying to have expunged;
- Has not obtained a prior sealing or expunction (unless it is the required ten year sealing for the offense desired to be expunged); and
- Is eligible to the best of his or her knowledge and has no other pending expunction or sealing petitions before the court.⁹

The statute also requires that the record be sealed for 10 years before it can be expunged, unless charges were not filed or were dismissed by the prosecutor or court, regardless of the outcome of the trial.¹⁰ In other words, if the formal adjudication of guilt is withheld by the court, or the applicant is acquitted, the record must first be sealed for ten years. If the charges are dropped, the record can be immediately expunged.

⁷ These offenses include the following: sexual misconduct with developmentally disabled clients, mental health patients, or forensic clients; luring or enticing a child; sexual battery; procuring a person under 18 years for prostitution; lewd, lascivious, or indecent assault upon a child; lewd or lascivious offenses committed on an elderly or disabled person; voyeurism; communications fraud; sexual performance by a child; unlawful distribution of obscene materials to a minor; unlawful activities involving computer pornography; selling or buying minors for the purpose of engaging in sex trafficking or prostitution, or sexually explicit conduct; offenses by public officers and employees; drug trafficking; and, other dangerous crimes such as arson, aggravated assault or battery, illegal use of explosives, child abuse or aggravated child abuse, elderly or disabled abuse, aggravated elderly or disabled abuse, aircraft piracy, sexual activity with a child, terrorism, manufacturing controlled substances, kidnapping, murder, robbery, home invasion robbery, carjacking, stalking, domestic violence, burglary and any violation specified as a predicate offense for sexual predator or sexual offender registration.

⁸ These misdemeanors include: assault; battery; carrying a concealed weapon; unlawful use of destructive devices or bombs; negligent treatment of children; assault or battery on a law enforcement officer, firefighter, or other specified officers; open carrying of a weapon; exposure of sexual organs; unlawful possession of a firearm; petit theft; cruelty to animals; arson; and unlawful possession or discharge of a weapon or firearm at a school- sponsored event or on school property.

⁹ Section 943.0585(1)(b), F.S.

⁹ Section 943.0585(1)(b), F.S.

¹⁰ Section 943.0585(2)(h), F.S.

Any person knowingly providing false information on the sworn statement commits a felony of the third degree.¹¹

There is currently no provision in the expunction statute requiring persons or entities that display or disseminate arrest information that becomes expunged to remove it from the publication or Internet posting.

Juvenile Diversion Expunction

Youth who successfully complete a prearrest, postarrest, or teen court diversion program after being arrested for a nonviolent misdemeanor are eligible to have their arrest expunged, providing they have no other past criminal history.¹² A nonviolent misdemeanor includes simple assault or battery when the expunction process is approved in writing by the local state attorney. A domestic violence arrest is not eligible for expunction. Receiving a juvenile diversion expunction does not prohibit a youth from requesting a regular sealing or expunction under s. 943.0585 or s. 943.059, F.S., if he or she is otherwise eligible.¹³

The expunged arrest record is available to law enforcement only under certain enumerated circumstances, such as when it is needed to determine eligibility for the diversion program, when a youth is seeking law enforcement employment, or when it is needed for a criminal justice investigation. Local law enforcement records are treated as if they have been sealed (only available to limited entities for limited purposes¹⁴).

The FDLE is required to expunge the nonjudicial arrest record of a successful participant in a prearrest, postarrest, or teen court diversion program if the youth does the following: submits a timely filed application¹⁵ signed by the parents or by the minor if he or she is of age by then; submits a statement by the state attorney that the youth has successfully completed a prearrest or postarrest diversion program that was limited to minors arrested for a nonviolent misdemeanor (excluding domestic violence) who have not otherwise been charged with or found to have committed any criminal offense; participates in a diversion program that allows an expunction to occur; and provides that he or she has not been charged with or found to have committed a prior criminal offense.¹⁶ The application must be submitted no later than six months after completion of the diversion program.

The FDLE is authorized to charge a \$75 processing fee for each juvenile diversion expunction request, but the executive director can waive the fee.¹⁷

¹¹ Section 943.0585(1), F.S.

¹² Section 943.0582, F.S.

¹³ *Id.*

¹⁴ See s. 943.059(4), F.S.

¹⁵ Within 6 months of completing the program.

¹⁶ Section 943.0582(3), F.S.

¹⁷ Section 943.0582(4), F.S.

III. Effect of Proposed Changes:

Criminal History Expunction

The bill allows a person to immediately apply for a certificate of eligibility for a criminal history record expunction if at trial the judge or jury renders a not guilty verdict. (Currently if the trial results in an acquittal, the accused is required to have his or her record sealed for ten years before being eligible to apply for an expunction.) Such person must submit to FDLE a certified written statement from the state attorney or statewide prosecutor indicating that the judge or jury rendered a not guilty verdict.

However, the bill prohibits the records of a person adjudicated not guilty by reason of insanity from being eligible for a record expunction under this new provision. It also clarifies that if a record of a person found incompetent to stand trial is expunged, that does not prevent entry of the judgment or finding in state and national databases to determine eligibility to purchase or possess a firearm or carry a concealed firearm pursuant to state and federal law. The bill also does not preclude the authorized governmental agency determining eligibility from accessing or using such judgment or finding.

Juvenile Diversion Expunction

The bill allows a youth who has been arrested for a felony, with numerous specified exceptions, to have his or her nonjudicial arrest record expunged upon successful completion of a prearrest, postarrest, or teen court diversion program. (Currently only nonviolent misdemeanor arrests are eligible to be expunged under the juvenile diversion expunction statute.)

The felony offenses that will not be eligible for expunction under the bill include the following offenses that are also prohibited from being sealed or expunged under the regular sealing and expunction statutes:¹⁸

- Sexual misconduct with developmentally disabled clients, mental health patients, or forensic clients;
- Luring or enticing a child;
- Sexual battery;
- Procuring a person under 18 years for prostitution;
- Lewd, lascivious, or indecent assault upon a child;
- Lewd or lascivious offenses committed on an elderly or disabled person;
- Voyeurism;
- Communications fraud;
- Sexual performance by a child;
- Unlawful distribution of obscene materials to a minor;
- Unlawful activities involving computer pornography;
- Selling or buying minors for the purpose of engaging in sex trafficking or prostitution, or sexually explicit conduct;
- Offenses by public officers and employees;
- Drug trafficking;

¹⁸ Sections 943.0585 and 943.059, F.S.

- Other dangerous crimes such as arson, aggravated assault or battery, illegal use of explosives, child abuse or aggravated child abuse, elderly or disabled abuse, aggravated elderly or disabled abuse, aircraft piracy, kidnapping, sexual battery, homicide, manslaughter, sexual activity with a child, robbery, home invasion robbery, carjacking, stalking and aggravated stalking, domestic violence, terrorism, manufacturing controlled substances, and burglary¹⁹; and
- Any violation specified as a predicate offense for sexual predator or sexual offender registration.²⁰

The bill also deletes the provision prohibiting a misdemeanor domestic violence arrest from being expunged under this statute, making it possible for a youth who meets the statutory requirements to now be able to get an expunction for a misdemeanor domestic violence arrest.

Finally, if a minor completes a diversion program before the effective date of the bill, he or she has six months from the effective date to submit an expunction application.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Office of the State Courts Administrators, any increase in the fiscal impact on the State Courts System resulting from the expanded eligibility for records expunction is expected to be absorbed within existing resources.

¹⁹ Section 907.041, F.S.

²⁰ See ss. 775.21 and 943.0435, F.S.

The FDLE anticipates minimal revenues from the potential increase in the number of certificates of eligibility application fees as a result of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 943.0585 and 943.0582.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Criminal Justice on March 24, 2014:

- Clarifies that if a record of a person found to be incompetent to stand trial is expunged, that does not prevent entry of the judgment or finding in state and national databases to determine eligibility to purchase or possess a firearm or carry a concealed firearm pursuant to state and federal law. It also does not preclude the authorized governmental agency determining eligibility from accessing or using such judgment or finding.
- Allows a youth who has been arrested for a felony, with numerous specified exceptions, to have his or her nonjudicial arrest record expunged upon successful completion of a prearrest, postarrest, or teen court diversion program.
- Deletes the provision requiring private entities to remove expunged arrest information from the Internet.

B. Amendments:

None.



908198

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2014	.	
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	.	

The Committee on Criminal Justice (Dean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraphs (c), (e), and (f) of subsection (3)
and subsection (5) of section 943.0582, Florida Statutes, are
amended to read:

943.0582 Prearrest, postarrest, or teen court diversion
program expunction.—

(3) The department shall expunge the nonjudicial arrest



908198

record of a minor who has successfully completed a prearrest or postarrest diversion program if that minor:

(c) Submits to the department, with the application, an official written statement from the state attorney for the county in which the arrest occurred certifying that he or she has successfully completed that county's prearrest or postarrest diversion program, that his or her participation in the program was based on an arrest for a nonviolent misdemeanor, or for a felony that does not relate to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, and that he or she has not otherwise been charged with or found to have committed any criminal offense or comparable ordinance violation.

~~(e) Participated in a prearrest or postarrest diversion program based on an arrest for a nonviolent misdemeanor that would not qualify as an act of domestic violence as that term is defined in s. 741.28.~~

(e)-(f) Has never, prior to filing the application for expunction, been charged with or been found to have committed any criminal offense or comparable ordinance violation.

(5) In the case of a minor whose completion of the program occurred before the effective date of this section, the



908198

application for prearrest or postarrest diversion expunction must be submitted within 6 months after the effective date of this section.

(6)~~(5)~~ Expunction or sealing granted under this section does not prevent the minor who receives such relief from petitioning for the expunction or sealing of a later criminal history record as provided for in ss. 943.0583, 943.0585, and 943.059, if the minor is otherwise eligible under those sections.

Section 2. Paragraphs (a) and (h) of subsection (2) and subsection (4) of section 943.0585, Florida Statutes, are amended to read:

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.



908198

893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information



908198

derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to petitioning the court to expunge a criminal history record, a person seeking to expunge a criminal history record shall apply to the department for a certificate of eligibility for expunction. The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for expunction. A certificate of eligibility for expunction is valid for 12 months after the date stamped on the certificate when issued by the department. After that time, the petitioner must reapply to the department for a new certificate of eligibility. Eligibility for a renewed certification of eligibility must be based on the status of the applicant and the law in effect at the time of the renewal application. The department shall issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person:

(a) Has obtained, and submitted to the department, a written, certified statement from the appropriate state attorney or statewide prosecutor which indicates:

1. That an indictment, information, or other charging document was not filed or issued in the case.

2. That an indictment, information, or other charging document, if filed or issued in the case, was dismissed or nolle prossed ~~prosequi~~ by the state attorney or statewide prosecutor, or ~~or~~ was dismissed by a court of competent jurisdiction, or a



908198

127 judge or jury rendered a verdict of not guilty. The records of a
128 person adjudicated not guilty by reason of insanity are not
129 eligible for expunction under this section and that none of the
130 charges related to the arrest or alleged criminal activity to
131 which the petition to expunge pertains resulted in a trial,
132 without regard to whether the outcome of the trial was other
133 than an adjudication of guilt.

134 3. That the criminal history record does not relate to a
135 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
136 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
137 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
138 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
139 any violation specified as a predicate offense for registration
140 as a sexual predator pursuant to s. 775.21, without regard to
141 whether that offense alone is sufficient to require such
142 registration, or for registration as a sexual offender pursuant
143 to s. 943.0435, where the defendant was found guilty of, or pled
144 guilty or nolo contendere to any such offense, or that the
145 defendant, as a minor, was found to have committed, or pled
146 guilty or nolo contendere to committing, such an offense as a
147 delinquent act, without regard to whether adjudication was
148 withheld.

149 (h) Has previously obtained a court order sealing the
150 record under this section, former s. 893.14, former s. 901.33,
151 or former s. 943.058 for a minimum of 10 years because
152 adjudication was withheld ~~or because all charges related to the~~
153 ~~arrest or alleged criminal activity to which the petition to~~
154 ~~expunge pertains were not dismissed prior to trial, without~~
155 ~~regard to whether the outcome of the trial was other than an~~



908198

~~adjudication of guilt.~~ The requirement for the record to have previously been sealed for a minimum of 10 years does not apply when a plea was not entered, when or all charges related to the arrest or alleged criminal activity to which the petition to expunge pertains were dismissed prior to trial, or when a judge or jury rendered a verdict of not guilty. The records of a person adjudicated not guilty by reason of insanity are not eligible for expunction under this section.

(4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any criminal history record of a minor or an adult which is ordered expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge. If a person is found to be incompetent to stand trial, the expunction of the criminal history record shall not prevent entry of the judgment or finding in state and national databases for use in determining eligibility to purchase or possess a firearm or to carry a concealed firearm, as authorized in s. 790.065(2)(a)4.c. and 18 U.S.C. s. 922(t), nor shall it prevent a governmental agency that is authorized by state or federal law to determine eligibility to purchase or possess a firearm or to carry a



908198

concealed firearm from accessing or using the record of the
judgment or finding in the course of such agency's official
duties.

(a) The person who is the subject of a criminal history record that is expunged under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;
2. Is a defendant in a criminal prosecution;
3. Concurrently or subsequently petitions for relief under this section, s. 943.0583, or s. 943.059;
4. Is a candidate for admission to The Florida Bar;
5. Is seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly; or
6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities.



908198

(b) Subject to the exceptions in paragraph (a), a person who has been granted an expunction under this section, former s. 893.14, former s. 901.33, or former s. 943.058 may not be held under any provision of law of this state to commit perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge an expunged criminal history record.

(c) Information relating to the existence of an expunged criminal history record which is provided in accordance with paragraph (a) is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the existence of a criminal history record ordered expunged to the entities set forth in subparagraphs (a)1., 4., 5., 6., and 7. for their respective licensing, access authorization, and employment purposes, ~~and~~ to criminal justice agencies for their respective criminal justice purposes, and with respect to a governmental agency that is authorized by state or federal law to determine eligibility to purchase or possess a firearm or to carry a concealed firearm, the department shall disclose the record of a finding of incompetence to stand trial for use in the course of such agency's official duties. It is unlawful for any employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to disclose information relating to the existence of an expunged criminal history record of a person seeking employment, access authorization, or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for



908198

employment, access authorization, or licensure decisions. Any person who violates this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 3. This act shall take effect July 1, 2014.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to expunction; amending s. 943.0582, F.S.; allowing minors who have certain felony arrests to have the Department of Law Enforcement expunge their nonjudicial arrest record upon successful completion of a prearrest or postarrest diversion program; extending the application submission date for minors who completed the program before a certain date; amending s. 943.0585, F.S.; revising the information that must be provided in the written statement from the state attorney or statewide prosecutor in order for a person to be eligible for a criminal history record expunction; revising when a certificate of eligibility for expunction shall be issued; authorizing the Department of Law Enforcement to enter certain expunged records in specified databases; requiring the Department of Law Enforcement to disclose certain expunged records to specified governmental entities; providing an effective date.



954948

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/21/2014	.	
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	.	
	.	

The Committee on Criminal Justice (Dean) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 115 - 127

and insert:

(h) Has previously obtained a court order sealing the record under this section, former s. 893.14, former s. 901.33, or former s. 943.058 for a minimum of 10 years because adjudication was withheld ~~or because all charges related to the arrest or alleged criminal activity to which the petition to expunge pertains were not dismissed prior to trial, without~~



954948

11 ~~regard to whether the outcome of the trial was other than an~~
12 ~~adjudication of guilt.~~ The requirement for the record to have
13 previously been sealed for a minimum of 10 years does not apply
14 when a plea was not entered, when or all charges related to the
15 arrest or alleged criminal activity to which the petition to
16 expunge pertains were dismissed prior to trial, or when a judge
17 or jury rendered a verdict of not guilty. The records of a
18 person adjudicated not guilty by reason of insanity are not
19 eligible for expunction under this section.

20 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
21 criminal history record of a minor or an adult which is ordered
22 expunged by a court of competent jurisdiction pursuant to this
23 section must be physically destroyed or obliterated by any
24 criminal justice agency having custody of such record; except
25 that any criminal history record in the custody of the
26 department must be retained in all cases. A criminal history
27 record ordered expunged that is retained by the department is
28 confidential and exempt from the provisions of s. 119.07(1) and
29 s. 24(a), Art. I of the State Constitution and not available to
30 any person or entity except upon order of a court of competent
31 jurisdiction. A criminal justice agency may retain a notation
32 indicating compliance with an order to expunge. If a person is
33 adjudicated not guilty by reason of insanity or is found to be
34 incompetent to stand trial, the expunction of the criminal
35 history record shall not prevent entry of the judgment or
36 finding in state and national databases for use in determining
37 eligibility to purchase or possess a firearm or to carry a
38 concealed firearm, as authorized in s. 790.065(2)(a)4.c. and 18
39 U.S.C. s. 922(t), nor shall it prevent a governmental agency



954948

that is authorized by state or federal law to determine eligibility to purchase or possess a firearm or to carry a concealed firearm from accessing or using the record of the judgment or finding in the course of such agency's official duties.

(a) The person who is the subject of a criminal history record that is expunged under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;
2. Is a defendant in a criminal prosecution;
3. Concurrently or subsequently petitions for relief under this section, s. 943.0583, or s. 943.059;
4. Is a candidate for admission to The Florida Bar;
5. Is seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly; or
6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial



954948

69 school, or any local governmental entity that licenses child
70 care facilities.

71 (b) Subject to the exceptions in paragraph (a), a person
72 who has been granted an expunction under this section, former s.
73 893.14, former s. 901.33, or former s. 943.058 may not be held
74 under any provision of law of this state to commit perjury or to
75 be otherwise liable for giving a false statement by reason of
76 such person's failure to recite or acknowledge an expunged
77 criminal history record.

78 (c) Information relating to the existence of an expunged
79 criminal history record which is provided in accordance with
80 paragraph (a) is confidential and exempt from the provisions of
81 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
82 except that the department shall disclose the existence of a
83 criminal history record ordered expunged to the entities set
84 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
85 respective licensing, access authorization, and employment
86 purposes, ~~and~~ to criminal justice agencies for their respective
87 criminal justice purposes, and with respect to a governmental
88 agency that is authorized by state or federal law to determine
89 eligibility to purchase or possess a firearm or to carry a
90 concealed firearm, the department shall disclose the record of
91 an adjudication of not guilty by reason of insanity or a finding
92 of incompetence to stand trial for use in the course of such
93 agency's official duties. It is unlawful for any employee of an
94 entity set forth in subparagraph (a)1., subparagraph (a)4.,
95 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to
96 disclose information relating to the existence of an expunged
97 criminal history record of a person seeking employment, access



954948

authorization, or licensure with such entity or contractor,
except to the person to whom the criminal history record relates
or to persons having direct responsibility for employment,
access authorization, or licensure decisions. Any person who
violates this paragraph commits a misdemeanor of the first
degree, punishable as provided in s. 775.082 or s. 775.083.

===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

And the directory clause is amended as follows:

Delete lines 15 - 17

and insert:

Section 1. Paragraphs (a) and (h) of subsection (2) and
subsection (4) of section 943.0585, Florida Statutes, are
amended to read:

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

And the title is amended as follows:

Delete line 7

and insert:

criminal history record expunction; revising when a
certificate of eligibility for expunction shall be
issued; authorizing the Department of Law Enforcement
to enter certain expunged records in specified
databases; requiring the Department of Law Enforcement
to disclose certain expunged records to specified
governmental entities; requiring a person

By Senator Detert

28-01286A-14

2014812__

A bill to be entitled

An act relating to court-ordered expunction of criminal history records; amending s. 943.0585, F.S.; revising the information that must be provided in the written statement from the state attorney or statewide prosecutor in order for a person to be eligible for a criminal history record expunction; requiring a person or entity that publishes, displays, or disseminates information regarding an arrest that has been expunged to remove such information under certain circumstances; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 943.0585, Florida Statutes, is amended, and paragraph (d) is added to subsection (4) of that section, to read:

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and

Page 1 of 5

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

28-01286A-14

2014812__

received a certificate of eligibility for expunction pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one

Page 2 of 5

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28-01286A-14

2014812__

59 arrest or one incident of alleged criminal activity.
 60 Notwithstanding any law to the contrary, a criminal justice
 61 agency may comply with laws, court orders, and official requests
 62 of other jurisdictions relating to expunction, correction, or
 63 confidential handling of criminal history records or information
 64 derived therefrom. This section does not confer any right to the
 65 expunction of any criminal history record, and any request for
 66 expunction of a criminal history record may be denied at the
 67 sole discretion of the court.

68 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
 69 petitioning the court to expunge a criminal history record, a
 70 person seeking to expunge a criminal history record shall apply
 71 to the department for a certificate of eligibility for
 72 expunction. The department shall, by rule adopted pursuant to
 73 chapter 120, establish procedures pertaining to the application
 74 for and issuance of certificates of eligibility for expunction.
 75 A certificate of eligibility for expunction is valid for 12
 76 months after the date stamped on the certificate when issued by
 77 the department. After that time, the petitioner must reapply to
 78 the department for a new certificate of eligibility. Eligibility
 79 for a renewed certification of eligibility must be based on the
 80 status of the applicant and the law in effect at the time of the
 81 renewal application. The department shall issue a certificate of
 82 eligibility for expunction to a person who is the subject of a
 83 criminal history record if that person:

84 (a) Has obtained, and submitted to the department, a
 85 written, certified statement from the appropriate state attorney
 86 or statewide prosecutor which indicates:

87 1. That an indictment, information, or other charging

Page 3 of 5

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28-01286A-14

2014812__

88 document was not filed or issued in the case.

89 2. That an indictment, information, or other charging
 90 document, if filed or issued in the case, was dismissed or nolle
 91 ~~prossed~~ prosequi by the state attorney or statewide prosecutor,
 92 or was dismissed by a court of competent jurisdiction, or a
 93 judge or jury rendered a verdict of not guilty. The records of a
 94 person adjudicated not guilty by reason of insanity are not
 95 eligible for expunction under this section and that none of the
 96 charges related to the arrest or alleged criminal activity to
 97 which the petition to expunge pertains resulted in a trial,
 98 without regard to whether the outcome of the trial was other
 99 than an adjudication of guilt.

100 3. That the criminal history record does not relate to a
 101 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
 102 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
 103 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
 104 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
 105 any violation specified as a predicate offense for registration
 106 as a sexual predator pursuant to s. 775.21, without regard to
 107 whether that offense alone is sufficient to require such
 108 registration, or for registration as a sexual offender pursuant
 109 to s. 943.0435, where the defendant was found guilty of, or pled
 110 guilty or nolo contendere to any such offense, or that the
 111 defendant, as a minor, was found to have committed, or pled
 112 guilty or nolo contendere to committing, such an offense as a
 113 delinquent act, without regard to whether adjudication was
 114 withheld.

115 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
 116 criminal history record of a minor or an adult which is ordered

Page 4 of 5

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

28-01286A-14

2014812

expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

(d) A person or entity that publishes, displays, or in any way disseminates information regarding an arrest that has been expunged shall remove such information from any publication, Internet posting, or credit report upon receipt of a certified copy of an order granting a petition to expunge without further notice or cost to the individual who is the subject of the order.

Section 2. This act shall take effect July 1, 2014.



The Florida Senate

Committee Agenda Request

A handwritten checkmark is located in the upper right quadrant of the page.

To: Senator Greg Evers, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: February 18, 2014

I respectfully request that **812**, relating to Court-ordered Expunction of Criminal History Records, be placed on the:

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

A handwritten signature in cursive script, reading "Nancy Detert", is written over a horizontal line.

Senator Nancy C. Detert
Florida Senate, District 28

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 24, 2014

Meeting Date

Topic ~~Service of Process~~ EXPUNCTION

Bill Number 812
(if applicable)

Name Nancy Daniels

Amendment Barcode _____
(if applicable)

Job Title Public Defender, 2nd Judicial Circuit

Address 301 S. Monroe Street

Phone 850.606.1010

Street

Tallahassee

Florida

32301

City

State

Zip

E-mail nancy.daniels@flpd2.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 912

INTRODUCER: Judiciary Committee and Senator Dean

SUBJECT: Service of Process

DATE: March 21, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 912 provides that a process server, either as appointed by the sheriff or the court, does not commit the criminal act of trespass and is immune from civil liability when the process server needs to enter property other than a structure or conveyance to serve process, provided that the process server does not open a closed gate or door or cross any fences.

The bill authorizes a process server to post a criminal witness subpoena for witnesses to appear for a deposition if the process server has attempted but failed to serve the subpoena one time, rather than the three times required in current law.

II. Present Situation:

Service of Process

Process servers deliver summons, subpoenas, and other forms of process in civil actions.¹ The sheriff is responsible for serving as process server for the initial nonenforceable civil process, criminal witness subpoenas, and criminal summonses. However, Florida law authorizes two options to the sheriff serving as process server. The sheriff may establish an approved list of

¹ Section 48.011, F.S.

special process servers.² Alternatively, the chief judge of each judicial circuit may establish an approved list of persons.³

Process Servers Selected by the Sheriff

A person applying as a special process server must:

- Be at least 18 years old;
- Have no mental or legal disability;
- Be a permanent resident of the state;
- Submit to a background investigation, including a criminal history check;
- Provide a certificate of good conduct that specifies that the applicant has no pending criminal case or any record of a felony conviction or misdemeanor involving moral turpitude or dishonesty within the last 5 years;
- Take an examination testing the applicant's knowledge of laws and rules on service of process; and
- Take an oath that the applicant will honestly, diligently, and faithfully exercise the duties of a special process server.⁴

The sheriff issues each special process server an identification card with an identification number, printed name, signature and photograph, and expiration date.⁵

The sheriff is authorized to revoke an appointment at any time that the sheriff determines a special process server is not fully and properly discharging the duties as a special process server.⁶ Every special process server appointed is subject to annual recertification and reappointment by the sheriff.⁷

Process Servers Selected by the Chief Judge

The chief judge of each judicial circuit may establish an approved list of certified process servers. The chief judge may add to the list persons who have met the same requirements as that provided for sheriff appointments of special process servers.⁸

Each person whose name has been added to the approved list is subject to annual recertification and reappointment by the chief judge.⁹

Rule 1.070, Florida Rules of Civil Procedure, authorizes service of process to be made by an officer authorized in law to serve process, or through court appointment of any competent person provided that the person does not have an interest in the civil action.¹⁰

² Section 48.021(1), F.S.

³ Section 48.27, F.S.

⁴ Section 48.021(2)(b), F.S.

⁵ Section 48.021(2)(d), F.S.

⁶ Section 48.021(2)(e), F.S.

⁷ Section 48.021(2)(a), F.S.

⁸ Section 48.27(1), F.S.

⁹ *Id.*

¹⁰ FLA. R. CIV. PROC. 1.070(b); Rule 3.030, FLA. R. CRIM. PROC., requires service of every pleading subsequent to an initial indictment or information on which a defendant is to be tried unless the court orders otherwise.

Service of Process Procedure

Service of process is made by delivering a copy of it to the person to be served with a copy of the legal complaint, petition, or other initial pleading or paper, or by leaving copies at his or her residence with any resident who is at least 15 years old.¹¹ If an employer is contacted by a person authorized to make service of process, the employer must allow the person to serve an employee in a designated private area.¹² A server may make substitute service on the spouse of the person to be served anywhere in the county, unless the underlying cause of action is an adversary proceeding between the spouses.¹³

Gated residential communities must grant unannounced entry into the community, including common areas and elements, to a person who is attempting to serve process.¹⁴

Few appellate cases exist nationally in which an appellate court has considered whether a process server was trespassing. However, in a 2012 opinion from the Florida Fourth District Court of Appeal, the court stated in dicta that a process server serving process is not trespassing.¹⁵

A criminal witness subpoena may be posted by a process server at the witness's residence if the process server has attempted, but failed, three times to serve the subpoena at different times of day or night or on different dates.¹⁶

Trespass

A person commits trespass on property other than a structure or conveyance if the person willfully enters upon, or remains in any property other than the actual structure or conveyance:

- After notice against entering or remaining is given, either through actual communication to the offender or by posting, fencing, or cultivation;¹⁷ or
- If the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense other than the offense of trespass.¹⁸

The term unenclosed curtilage refers to the unenclosed land or grounds and outbuildings directly and immediately adjacent to and connected with the dwelling and necessary, convenient, and regularly used in connection with the dwelling.¹⁹

Trespass on property other than a structure or conveyance is a first degree misdemeanor, punishable by up to a year in jail and a \$1,000 fine.²⁰ However, if the person is armed with a

¹¹ Section 48.031(1)(a), F.S.

¹² Section 48.031(1)(b), F.S.

¹³ Section 48.031(2)(a), F.S.

¹⁴ Section 48.031(7), F.S.

¹⁵ *Garrido v. State*, 97 So. 2d 291, 298 (Fla. 4th DCA 2012).

¹⁶ Section 48.031(3)(b), F.S.

¹⁷ The term "cultivated land" is land cleared of its natural vegetation and presently planted with a crop, orchard, grove, pasture, or trees or fallow land as part of a crop rotation. Section 810.011(6), F.S.

¹⁸ Section 810.09 (1)(a), F.S.

¹⁹ Section 810.09(1)(b), F.S.

²⁰ Sections 810.09(2)(a), 775.082, and 775.083, F.S.

firearm or other dangerous weapon during the time of the trespass, he or she commits a third degree felony, punishable by up to 5 years in prison and a \$5,000 fine.²¹

Immunity from Liability

The term “sovereign immunity” refers to the English common law concept that the government may not be sued because “the King can do no wrong.” Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of governments unless immunity is expressly waived.

Article X, s. 13, of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the power to waive immunity in part or in full by general law.

Section 768.28, F.S., contains a broad, limited waiver of sovereign immunity applicable to the state. Under this law, officers, employees, and agents of the state are not personally liable in tort for any injury or damage suffered as a result of any act, event, or omission of action committed in the scope of employment.²² However, personal liability may result from actions committed in bad faith, with a malicious purpose, or when in wanton and willful disregard of human rights, safety, or property.

The waiver of immunity places caps on recovery at \$200,000 for any one person or \$300,000 for all recovery related to one incident. A plaintiff may receive a judgment exceeding the caps, but only at the prerogative of the Legislature through the claims bill process.²³

III. Effect of Proposed Changes:

The bill provides that persons who serve as process servers, either as appointed by the sheriff or the court do not commit the criminal act of trespass of property other than a structure or conveyance when they need to enter property to serve process. However, the person may not open a closed gate or door or cross any fences.

The bill also grants process servers civil immunity as the result of entering property to serve process, provided that the process server does not open a closed gate or door or cross over any fences. A court would consider a sheriff serving process to be an agent of the state. With respect to sheriffs, this bill provides an exception to the broad waiver of sovereign immunity in the statutes. Therefore, the bill appears to grant absolute immunity from suit to sheriffs who comply with the provisions of this bill.

Absolute immunity is also granted to private process servers.

The bill authorizes a process server to post criminal witness subpoenas for witnesses to appear in a deposition if the process server has attempted but failed to serve the subpoena one time, rather than the three times required in current law.

²¹ Section 810.09(2)(c), F.S.

²² Section 768.28(9)(a), F.S.

²³ Section 768.28(5), F.S.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

More private individuals may apply for and serve as process servers as they will not be deterred by concern of a criminal charge of trespass or civil liability. The bill, by clarifying the authority of process servers to enter property, may facilitate the delivery of process to the intended recipients.

C. Government Sector Impact:

This bill may reduce costs for sheriffs, to the extent that sheriffs incur litigation costs in civil liability actions. The bill, by clarifying the authority of process servers to enter property, may protect process servers from improper arrests by law enforcement officers.

Costs of service of process may be reduced by permitting the posting of criminal witness subpoenas for depositions if the process server is unable to serve the subpoena one time, rather than the current three times required in law.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 48.031 and 810.09.

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

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

CS by Judiciary on March 11, 2014:

The committee substitute:

- Provides that process servers are immune from civil liability and the criminal charge of trespass only if the process server does not open a closed gate or door or cross any fences.
- Authorizes a process server of a criminal witness subpoena for a deposition to post the subpoena if the process server attempted but failed to serve the subpoena one time.

B. Amendments:

None.



179956

LEGISLATIVE ACTION

Senate

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. .
. .

House

The Committee on Criminal Justice (Dean) recommended the following:

Senate Amendment

Delete lines 35 - 72
and insert:
process and the process server does not open a locked gate or door or cross over any fences.

(c)-(b) An employer ~~Employers~~, when contacted by an individual authorized to serve ~~make service of~~ process, shall allow ~~permit~~ the authorized individual to serve an employee ~~make service on employees~~ in a private area designated by the



179956

employer.

(3)(a) The service of process of witness subpoenas, whether in criminal cases or civil actions, shall be made as provided in subsection (1). However, service of a subpoena on a witness in a criminal traffic case, a misdemeanor case, or a second degree or third degree felony may be made by United States mail directed to the witness at the last known address, and the service must be mailed at least 7 days before ~~prior to~~ the date of the witness's required appearance. Failure of a witness to appear in response to a subpoena served by United States mail that is not certified may not be grounds for finding the witness in contempt of court.

(b) A criminal witness subpoena commanding the witness to appear for a court appearance may be posted by a person authorized to serve process at the witness's residence if three attempts to serve the subpoena, made at different times of the day or night on different dates, have failed. A criminal witness subpoena commanding the witness to appear for a deposition may be posted by a person authorized to serve process at the witness's residence if one attempt to serve the subpoena has failed. The subpoena must be posted at least 5 days before ~~prior to~~ the date of the witness's required appearance.

Section 2. Subsection (4) is added to section 810.09, Florida Statutes, to read:

810.09 Trespass on property other than structure or conveyance.—

(4) This section does not apply to a person who is authorized to serve process pursuant to chapter 48; Rule 3.030, Florida Rules of Criminal Procedure; or Rule 1.070, Florida



179956

40 Rules of Civil Procedure if his or her entrance onto such
41 property is necessary to serve process and the process server
42 does not open a locked gate or door or cross over any fences.

By the Committee on Judiciary; and Senator Dean

590-02437-14

2014912c1

A bill to be entitled

An act relating to service of process; amending s. 48.031, F.S.; providing that certain individuals authorized to serve process do not commit the offense of trespass on property other than a structure or conveyance and are not subject to civil liability under certain circumstances; allowing the posting of a criminal witness subpoena under specified circumstances; amending s. 810.09, F.S.; providing that the offense of trespass on property other than a structure or conveyance is not applicable to certain persons who are authorized to serve process under certain circumstances; providing an effective date.

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

Section 1. Subsections (1) and (3) of section 48.031, Florida Statutes, are amended to read:

48.031 Service of process generally; service of witness subpoenas.—

(1) (a) Service of original process is made by delivering a copy of it to the person to be served with a copy of the complaint, petition, or other initial pleading or paper or by leaving the copies at his or her usual place of abode with any person residing therein who is 15 years of age or older and informing the person of their contents. A minor ~~Minors~~ who is ~~are~~ or has ~~have~~ been married is ~~shall be~~ served as provided in this section.

(b) An individual authorized to serve process pursuant to

590-02437-14

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this chapter; Rule 3.030, Florida Rules of Criminal Procedure; or Rule 1.070, Florida Rules of Civil Procedure does not commit the offense of trespass on property other than a structure or conveyance under s. 810.09 and is not subject to civil liability if his or her entrance onto such property is necessary to serve process and the process server does not open a closed gate or door or cross over any fences.

(c) (b) An employer ~~Employers~~, when contacted by an individual authorized to serve ~~make service of~~ process, shall allow ~~permit~~ the authorized individual to serve an employee ~~make service on employees~~ in a private area designated by the employer.

(3) (a) The service of process of witness subpoenas, whether in criminal cases or civil actions, shall be made as provided in subsection (1). However, service of a subpoena on a witness in a criminal traffic case, a misdemeanor case, or a second degree or third degree felony may be made by United States mail directed to the witness at the last known address, and the service must be mailed at least 7 days before ~~prior to~~ the date of the witness's required appearance. Failure of a witness to appear in response to a subpoena served by United States mail that is not certified may not be grounds for finding the witness in contempt of court.

(b) A criminal witness subpoena commanding the witness to appear for a court appearance may be posted by a person authorized to serve process at the witness's residence if three attempts to serve the subpoena, made at different times of the day or night on different dates, have failed. A criminal witness subpoena commanding the witness to appear for a deposition may

590-02437-14

2014912c1

59 be posted at the witness's residence by a person authorized to
60 serve process if one attempt to serve the subpoena has failed.
61 The subpoena must be posted at least 5 days before ~~prior to~~ the
62 date of the witness's required appearance.

63 Section 2. Subsection (4) is added to section 810.09,
64 Florida Statutes, to read:

65 810.09 Trespass on property other than structure or
66 conveyance.—

67 (4) This section does not apply to a person who is
68 authorized to serve process pursuant to chapter 48; Rule 3.030,
69 Florida Rules of Criminal Procedure; or Rule 1.070, Florida
70 Rules of Civil Procedure if his or her entrance onto such
71 property is necessary to serve process and the process server
72 does not open a closed gate or door or cross over any fences.

73 Section 3. This act shall take effect July 1, 2014.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Environmental Preservation and
Conservation, *Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on General
Government
Children, Families, and Elder Affairs
Criminal Justice
Gaming
Military Affairs, Space, and Domestic Security

SENATOR CHARLES S. DEAN, SR.
5th District

March 17, 2014

The Honorable Greg Evers
308 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Evers,

I respectfully request you place Senate Bill 912, relating to Service of Process, on your Criminal Justice Committee agenda at your earliest convenience.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Charles S. Dean".

Charles S. Dean
State Senator District 5

cc: Amanda Cannon, Staff Director

REPLY TO:

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

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 24, 2014

Meeting Date

Topic Service of Process

Bill Number 912
(if applicable)

Name Nancy Daniels

Amendment Barcode _____
(if applicable)

Job Title Public Defender, 2nd Judicial Circuit

Address 301 S. Monroe Street
Street
Tallahassee Florida 32301
City State Zip

Phone 850.606.1010

E-mail nancy.daniels@flpd2.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

3/24/2014

Meeting Date

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

Topic Service of Process

Bill Number Senate bill 912
(if applicable)

Name James Kachy

Amendment Barcode _____
(if applicable)

Job Title Process Server

Address 2957 Capital park drive
Street Suite 17
Tallahassee FL 32301
City State Zip

Phone 850 545 3452

E-mail James Kachy@process.net

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Association of Professional Process Server

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/24/14
Meeting Date

Topic Service of Process

Bill Number SB 912
(if applicable)

Name Michael Compton

Amendment Barcode _____
(if applicable)

Job Title Legislative Chairman for FHPPS

Address 1280 Cedar Center Dr.
Street
Tallahassee, FL 32301
City State Zip

Phone 850-433-4332

E-mail mike@processamerica.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Association of Professional Process Servers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/24
Meeting Date

Topic Process Servers

Bill Number 912
(if applicable)

Name Brennan Fogarty

Amendment Barcode _____
(if applicable)

Job Title _____

Address 108 E. Jefferson St.
Street
Tallahassee FL 32313
City State Zip

Phone 850-294-7583

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing FL Association Professional Process Servers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Environmental Preservation and
Conservation, *Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on General
Government
Children, Families, and Elder Affairs
Criminal Justice
Gaming
Military Affairs, Space, and Domestic Security

SENATOR CHARLES S. DEAN, SR.
5th District

March 24, 2014

The Honorable Greg Evers
308 Senate Office Building
404 South Monroe St.
Tallahassee, FL 32399-1100

Dear Chairman Evers,

Thank you for allowing Senate Bill 912, Relating to Service of Process, and Senate Bill 920, Relating to Protection of Crime Victims, to be placed on your agenda. Unfortunately, I will be unable to attend the Committee meeting and would like to request your permission to allow my aide, Chase Daniels, to present this bill in my place.

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

Sincerely,

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

Charles S. Dean
State Senator, District 5

cc: Amanda Cannon, Staff Director

REPLY TO:

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

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 920

INTRODUCER: Senator Dean

SUBJECT: Protection of Crime Victims

DATE: March 14, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.			JU	
3.			AP	

I. Summary:

SB 920 requires a private investigator or investigative agency to determine if the individual being investigated is a petitioner requesting notification of service of a protective injunction against domestic, repeat, dating, or sexual violence or a participant in the Address Confidentiality Program for domestic violence victims. The bill prohibits a private investigator from releasing that petitioner's or participant's personal identifying information. Violating this prohibition results in a first degree misdemeanor penalty and suspension or revocation of the investigator's license.

The bill also amends provisions relating to injunctions for protection against domestic, repeat, dating, or sexual violence, stalking, or cyberstalking as follows:

- Requires a temporary injunction to remain in effect until the final injunction is served on a respondent; and
- Provides that a respondent violates the terms of a final injunction against stalking or cyberstalking by possessing a firearm or ammunition (currently a first degree misdemeanor).

Finally, the bill expands the circumstances under which a law enforcement officer may conduct a warrantless arrest to include acts of stalking, cyberstalking, child abuse, and violations of a protective injunction for these acts.

II. Present Situation:

Regulation of Private Investigators

The profession of private investigation is regulated by the Department of Agriculture.¹ Private investigation is the investigation by a person for the purpose of obtaining information on any of the following matters:

- Crimes or threats against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for authorizing such investigation;
- The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons;
- The credibility of witnesses or other persons;
- The whereabouts of missing persons, owners of unclaimed property or escheated property, or heirs to estates;
- The location or recovery of lost or stolen property;
- The causes and origin of, or responsibility for, fires, libels, slanders, losses, accidents, damage, or injuries to real or personal property; or
- The business of securing evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases.²

Every private investigator³ must meet specified educational and training requirements and obtain a Class “C” license.⁴ A Class “C” licensee may conduct investigations, own or manage a private investigation agency, carry a firearm, and perform bodyguard services.⁵ A private investigator must comply with all regulations of the profession and is subject to specified disciplinary actions or criminal penalties for violating any provision of ch. 493, F.S.⁶

Address Confidentiality Program

Domestic violence victims may apply to the Office of the Attorney General (Attorney General) to have his or her address designated as confidential.⁷ The application must meet specified requirements. For example, a sworn statement must be provided that there is good reason to believe the subject of the application is the victim of domestic violence and the subject fears for his or her safety, or the safety of the subject’s children.⁸ Once a properly completed application is filed, the Attorney General must certify the subject as a program participant, and designate an

¹ See ss. 493.6100 and 493.6101(1), F.S.

² Section 493.6101(17), F.S.

³ Section 493.6101(16), F.S., defines “private investigator” to mean any individual who, for consideration, advertises as providing or performs private investigation.

⁴ Sections 493.6201 and 493.6203, F.S.

⁵ Section 493.6201(3), (5), (7), and (8), F.S.

⁶ Sections 493.6118 and 493.6120, F.S.

⁷ Section 741.403(1), F.S., states that any adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of a person adjudicated incapacitated under ch. 744, F.S., may apply to the Attorney General.

⁸ Section 741.403(1)(a), F.S.

address to serve as the victim's address.⁹ The Attorney General becomes the agent for purposes of service of process and receipt of mail.¹⁰

Section 741.465, F.S., specifies that the addresses, telephone numbers, and social security numbers of Address Program participants are exempt from the public records requirements of s. 119.07(1), F.S., and Article 1, Section 24(a) of the State Constitution. A limited number of specified instances are provided that allow the confidential information to be released. There is no criminal penalty for releasing a program participant's confidential information.

Injunctions for Protection against Specified Acts of Violence

Domestic Violence

Any person who is the victim of domestic violence¹¹ or who reasonably believes that he or she is in imminent danger of becoming the victim of domestic violence may file a petition for an injunction for protection against domestic violence.¹² The sworn petition must allege the existence of domestic violence and include specific facts and circumstances upon which relief is sought.¹³ A hearing must be set at the earliest possible time after a petition is filed,¹⁴ and the respondent must be personally served with a copy of the petition.¹⁵ At the hearing, specified injunctive relief may be granted if the court finds that the petitioner is:

- The victim of domestic violence; or
- Has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence.¹⁶

If it appears to the court that an immediate and present danger of domestic violence exists when the petition is filed, the court may grant an ex parte temporary injunction.^{17,18} Temporary injunctions are only effective for a fixed period of time that cannot exceed 15 days.¹⁹ The hearing on the petition must be set for a date on or before the date when the temporary injunction expires.²⁰

⁹ Section 741.403(1) and (3), F.S. The certification is valid for four years, unless it is withdrawn or invalidated.

¹⁰ Section 741.403(1)(b), F.S.

¹¹ Section 741.28, F.S., defines "domestic violence" as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

¹² Section 741.30, F.S.

¹³ Section 741.30(3), F.S.

¹⁴ Section 741.30(4), F.S.

¹⁵ *Id.*

¹⁶ Section 741.30(6), F.S. Either party may move the court to modify or dissolve an injunction at any time. Section 741.30(6)(c) and (10), F.S.

¹⁷ The court may grant such relief as it deems proper, including an injunction restraining the respondent from committing any acts of domestic violence, awarding to the petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner, and providing the petitioner a temporary parenting plan. Section 741.30(5), F.S.

¹⁸ The only evidence admissible in the ex parte hearing is verified pleadings or affidavits, unless the respondent appears at the hearing *or* has received reasonable notice of the hearing. Section 741.30(5)(b), F.S.

¹⁹ Section 741.30(5)(c), F.S.

²⁰ The court may grant a continuance of the hearing for good cause, which may include obtaining service of process. A temporary injunction must be extended, if necessary, during any period of continuance. Section 741.30(5)(c), F.S.

Repeat, Dating, and Sexual Violence

Section 784.046, F.S., governs the issuance of injunctions against repeat violence,²¹ dating violence,²² and sexual violence.²³ This statute largely parallels the provisions discussed above regarding domestic violence injunctions.

Stalking and Cyberstalking

Section 784.0485, F.S., governs the issuance of injunctions against stalking and cyberstalking. This statute largely parallels the provisions discussed above regarding domestic violence injunctions.

All three statutes are silent as to whether a temporary injunction may remain in effect past the 15 day time limit to allow a final injunction that is issued by the court to be served on the respondent.

Violation of an Injunction against Specified Acts of Violence

A respondent violates the terms of an injunction against domestic, repeat, dating, or sexual violence, stalking, or cyberstalking if the respondent willfully:

- Refuses to vacate the dwelling that the parties share;²⁴
- Goes to, or is within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
- Commits an act of domestic, repeat, dating, or sexual violence, or stalking against the petitioner;
- Commits any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner;
- Telephones, contacts, or otherwise communicates with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party;
- Knowingly and intentionally comes within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
- Defaces or destroys the petitioner's personal property, including the petitioner's car; or

²¹ Section 784.046(1)(b), F.S., defines "repeat violence" to mean two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member. Section 784.046(1)(a), F.S., defines "violence" to mean any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death, by a person against any other person.

²² Section 784.046(1)(d), F.S., defines "dating violence" to mean violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The following factors are considered when determining the existence of such a relationship: it must have existed within the past six months; it must have been characterized by the expectation of affection or sexual involvement between the parties; and it must have included that the persons be involved over time and on a continuous basis. (Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization.)

²³ Section 784.046(1)(c), F.S., defines "sexual violence" to mean any one incident of: sexual battery, lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age, luring or enticing a child, sexual performance by a child, or any other forcible felony that involves a sexual act being attempted or committed. For purposes of this definition, it does not matter whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.

²⁴ This action does not apply to an injunction against stalking or cyberstalking. Section 784.0487(4), F.S.

- Refuses to surrender firearms or ammunition if ordered to do so by the court.²⁵

A court can enforce a violation of an injunction through civil or criminal contempt proceedings, or the state attorney may prosecute the violation as a first degree misdemeanor.^{26,27}

Prohibition against Possessing a Firearm or Ammunition

Under the firearms statute, a person may not have in his or her care, custody, possession, or control any firearm or ammunition if he or she has been issued a final protective injunction restraining that person from committing acts of domestic violence, stalking, or cyberstalking (acts of repeat, dating, or sexual violence are not currently included).²⁸ Violation of the prohibition results in a first degree misdemeanor penalty under s. 790.233, F.S. This prohibition is mirrored in the domestic violence statute,²⁹ but not in the stalking or cyberstalking statute.

Warrantless Arrests

Section 901.15, F.S., prescribes when a law enforcement officer is authorized to conduct a warrantless arrest. Generally, the officer must witness a misdemeanor offense before making a warrantless arrest. If the officer does not witness it, he or she must first obtain an arrest warrant.³⁰

There are certain exceptions to this rule, including when there is probable cause to believe that a person:

- Possesses a firearm or ammunition when the person is subject to a final injunction against domestic violence, stalking, or cyberstalking;³¹
- Commits a criminal act that violates the terms of an injunction against domestic, repeat, dating, or sexual violence;³² or
- Commits an act of domestic or dating violence.³³

Law enforcement officers acting in good faith and exercising due care in making a warrantless arrest are granted civil immunity when they believe a person has committed an act of domestic or dating violence, or violated the terms of an injunction against domestic, repeat, dating, or sexual violence.

²⁵ Sections 741.31(4)(a), 784.047, and 784.0487, F.S.

²⁶ A first degree misdemeanor is punishable by up to one year in county jail and a potential \$1,000 fine. Sections 775.082 and 775.083, F.S.

²⁷ Sections 741.30(9), 784.046(9), and 784.0485(9), F.S.

²⁸ Section 790.233, F.S.

²⁹ Section 741.31(4)(b), F.S.

³⁰ Section 901.15, F.S.

³¹ Section 901.15(6), F.S., in accordance with s. 790.233, F.S.

³² This includes injunctions issued in accordance with ss. 741.30 or 784.046, F.S., or a foreign protection order accorded full faith and credit pursuant to s. 741.315, F.S. Additionally, the arrest may be made over the objection of the petitioner, if necessary. Section 901.15(6), F.S.

³³ Section 901.15(7), F.S., further provides that the arrest may be made without consent of the victim.

III. Effect of Proposed Changes:

Regulation of Private Investigators

The bill creates s. 493.6204, F.S., to require a licensed private investigator or investigative agency to determine if the individual being investigated is a petitioner requesting notification of service of a protective injunction against domestic, repeat, dating, or sexual violence or a participant in the Address Confidentiality Program for domestic violence victims. If the subject of the investigation is such a petitioner or participant, the bill prohibits private investigators, private investigative agencies, and their agents from releasing the petitioner's or participant's personal identifying information. Private investigators who violate this prohibition commit a first degree misdemeanor under the bill and are subject to suspension or revocation of their license.

Injunctions for Protection against Specified Acts of Violence

The bill amends ss. 741.30 and 741.31, F.S., (domestic violence), s. 784.046, F.S., (repeat, dating, or sexual violence), and s. 784.0485, F.S. (stalking and cyberstalking), to specify that a temporary injunction is effective for a fixed period of time that cannot exceed 15 days, unless a final injunction is issued. In such instances, the temporary injunction remains in effect until the final injunction is served on the respondent.

The bill also amends s. 784.0487, F.S., to make it a first degree misdemeanor for a person to violate a stalking or cyberstalking injunction by having in his or her care, custody, possession, or control any firearm or ammunition. This mirrors current provisions found in s. 790.233, F.S., the firearms statute, as well as s. 741.31, F.S., which addresses violations of domestic violence injunctions.

Warrantless Arrests

The bill amends s. 901.15, F.S., to permit a law enforcement officer to conduct a warrantless arrest when there is probable cause to believe that the person has committed:

- A criminal act that violates the terms of an injunction against stalking or cyberstalking, or an act of child abuse occurring after a protective investigation is initiated;³⁴ or
- An act of repeat or sexual violence, stalking, cyberstalking, or child abuse.³⁵

Similarly, the bill broadens the civil immunity provision to include a law enforcement officer who makes a good faith arrest of a person believed to have committed any of the above acts.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

³⁴ This injunction is governed by s. 39.504, F.S.

³⁵ As provided in s. 39.01, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The bill could have a detrimental impact on private investigators.

C. Government Sector Impact:

There could be an indeterminate fiscal impact upon local jails to the extent that more persons are prosecuted and sent to jail for a first degree misdemeanor offense under the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 741.30, 741.31, 784.046, 784.0485, 784.0487, and 901.15.

This bill creates section 493.6204 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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



863916

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/20/2014	.	
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	.	
	.	

The Committee on Criminal Justice (Dean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (c) of subsection (5) of section
741.30, Florida Statutes, is amended to read:

741.30 Domestic violence; injunction; powers and duties of
court and clerk; petition; notice and hearing; temporary
injunction; issuance of injunction; statewide verification
system; enforcement; public records exemption.—



863916

(5)

(c) Any such ex parte temporary injunction is ~~shall be~~ effective for a fixed period not to exceed 15 days. However, if a final injunction is issued for the same case, the effectiveness of the ex parte temporary injunction extends until the final injunction is served upon the respondent. A full hearing, as provided by this section, shall be set for a date no later than the date when the temporary injunction ceases to be effective. The court may grant a continuance of the hearing before or during a hearing for good cause shown by any party, which must ~~shall~~ include a continuance to obtain service of process. An ~~Any~~ injunction shall be extended, if necessary, so that it remains to remain in full force and effect during any period of continuance.

Section 2. Paragraph (c) of subsection (6) of section 784.046, Florida Statutes, is amended to read:

784.046 Action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.—

(6)

(c) Any such ex parte temporary injunction is ~~shall be~~ effective for a fixed period not to exceed 15 days. An ~~However,~~ ~~an~~ ex parte temporary injunction granted under subparagraph (2)(c)2. is effective for 15 days following the date the respondent is released from incarceration. However, if a final injunction is issued for the same case, the effectiveness of the ex parte temporary injunction extends until the final injunction is served upon the respondent. A full hearing, as provided by



863916

this section, shall be set for a date no later than the date when the temporary injunction ceases to be effective. The court may grant a continuance ~~of the ex parte injunction and the full hearing~~ before or during a hearing, for good cause shown by any party, which must include a continuance to obtain service of process. An injunction shall be extended, if necessary, so that it remains in full force and effect during any period of continuance.

Section 3. Paragraph (c) of subsection (5) of section 784.0485, Florida Statutes, is amended to read:

784.0485 Stalking; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.—

(5)

(c) Any such ex parte temporary injunction is effective for a fixed period not to exceed 15 days. However, if a final injunction is issued for the same case, the effectiveness of the ex parte temporary injunction extends until the final injunction is served upon the respondent. A full hearing, as provided in this section, shall be set for a date no later than the date when the temporary injunction ceases to be effective. The court may grant a continuance of the hearing before or during a hearing for good cause shown by any party, which must ~~shall~~ include a continuance to obtain service of process. An injunction shall be extended, if necessary, so that it remains ~~to remain~~ in full force and effect during any period of continuance.

Section 4. Section 784.047, Florida Statutes, is amended to



863916

read:

784.047 Penalties for violating protective injunction
against violators.—

(1) A person who willfully violates an injunction for
protection against repeat violence, sexual violence, or dating
violence, issued pursuant to s. 784.046, or a foreign protection
order accorded full faith and credit pursuant to s. 741.315, by:

(a)~~(1)~~ Refusing to vacate the dwelling that the parties
share;

(b)~~(2)~~ Going to, or being within 500 feet of, the
petitioner's residence, school, or place of employment, or a
specified place frequented regularly by the petitioner or ~~and~~
any named family or household member;

(c)~~(3)~~ Committing an act of repeat violence, sexual
violence, or dating violence against the petitioner;

(d)~~(4)~~ Committing any other violation of the injunction
through an intentional unlawful threat, word, or act to do
violence to the petitioner;

(e)~~(5)~~ Telephoning, contacting, or otherwise communicating
with the petitioner directly or indirectly, unless the
injunction specifically allows indirect contact through a third
party;

(f)~~(6)~~ Knowingly and intentionally coming within 100 feet
of the petitioner's motor vehicle, whether or not that vehicle
is occupied;

(g)~~(7)~~ Defacing or destroying the petitioner's personal
property, including the petitioner's motor vehicle; or

(h)~~(8)~~ Refusing to surrender firearms or ammunition if
ordered to do so by the court,



863916

commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A person who violates a final injunction for protection against repeat violence, sexual violence, or dating violence by having in his or her care, custody, possession, or control any firearm or ammunition violates s. 790.233 and commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 5. Paragraph (a) of subsection (4) of section 784.0487, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

784.0487 Violation of an injunction for protection against stalking or cyberstalking.—

(4) A person who willfully violates an injunction for protection against stalking or cyberstalking issued pursuant to s. 784.0485, or a foreign protection order accorded full faith and credit pursuant to s. 741.315, by:

(a) Going to, or being within 500 feet of, the petitioner's residence, school, or place of employment, or a specified place frequented regularly by the petitioner, ~~and~~ any named family members, or individuals closely associated with the petitioner;

commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6) A person who violates a final injunction for protection against stalking or cyberstalking by having in his or her care, custody, possession, or control any firearm or ammunition violates s. 790.233 and commits a misdemeanor of the first



863916

degree, punishable as provided in s. 775.082 or s. 775.083.

Section 6. Subsection (1) of section 790.233, Florida Statutes, is amended to read:

790.233 Possession of firearm or ammunition prohibited when person is subject to an injunction against committing acts of domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking; penalties.—

(1) A person may not have in his or her care, custody, possession, or control any firearm or ammunition if the person has been issued a final injunction that is currently in force and effect, restraining that person from committing acts of:

(a) Domestic violence, as issued under s. 741.30;

(b) Repeat violence, dating violence, or sexual violence,
as issued under s. 784.046; or ~~from committing acts of~~

(c) Stalking or cyberstalking, as issued under s. 784.0485.

Section 7. Subsections (6) and (7) of section 901.15, Florida Statutes, are amended to read:

901.15 When arrest by officer without warrant is lawful.—A law enforcement officer may arrest a person without a warrant when:

(6) There is probable cause to believe that the person has committed a criminal act according to s. 790.233 or according to s. 39.504, s. 741.31, ~~or~~ s. 784.047, or s. 784.0487 which violates an injunction for protection entered pursuant to s. 39.504, s. 741.30, ~~or~~ s. 784.046, or s. 784.0485, or a foreign protection order accorded full faith and credit pursuant to s. 741.315, over the objection of the petitioner, if necessary.

(7) There is probable cause to believe that the person has committed an act of child abuse as provided in s. 39.01; an act



863916

of domestic violence, as defined in s. 741.28; an act of, ~~or~~
dating violence, repeat violence, or sexual violence as provided
in s. 784.046; or an act of stalking or cyberstalking as
provided in s. 784.0485. The decision to arrest does ~~shall~~ not
require consent of the victim or consideration of the
relationship of the parties. It is the public policy of this
state to strongly discourage arrest and charges of both parties
for domestic violence or dating violence on each other and to
encourage training of law enforcement and prosecutors in these
areas. A law enforcement officer who acts in good faith and
exercises due care in making an arrest under this subsection,
under s. 39.504, s. 741.31(4), ~~or s. 784.047~~, or s. 784.0487, or
pursuant to a foreign order of protection accorded full faith
and credit pursuant to s. 741.315, is immune from civil
liability that otherwise might result by reason of his or her
action.

Section 8. This act shall take effect October 1, 2014.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to protective orders; amending ss.
741.30, 784.046, and 784.0485, F.S.; extending the
effectiveness of certain temporary injunctions in
domestic violence, repeat violence, sexual violence,
dating violence, or stalking proceedings in certain
circumstances; amending ss. 784.047 and 784.0487,



863916

F.S.; providing that it is unlawful for a person to violate a final injunction for protection against repeat violence, dating violence, sexual violence, stalking, or cyberstalking by having in his or her care, custody, possession, or control any firearm or ammunition; providing penalties; amending s. 790.233, F.S.; conforming provisions to changes made by the act; amending s. 901.15, F.S.; expanding situations in which an arrest without a warrant is lawful to include probable cause of repeat violence, sexual violence, stalking, cyberstalking, or child abuse; providing an effective date.



503996

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/20/2014	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Dean) recommended the following:

Senate Amendment to Amendment (863916)

Delete lines 5 - 67

and insert:

Section 1. Paragraph (c) of subsection (5) of section 741.30, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

741.30 Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification



503996

system; enforcement; public records exemption.-

(5)

(c) Any such ex parte temporary injunction is ~~shall be~~ effective for a fixed period not to exceed 15 days unless after a full hearing, a final injunction is issued on the same case. In that instance, the temporary injunction remains in full force and effect until the final injunction is served upon the respondent.

(d) A full hearing, as provided by this section, shall be set for a date no later than the date when the ex parte temporary injunction ceases to be effective. The court may grant a continuance of the hearing before or during a hearing for good cause shown by any party. The need to obtain service of process constitutes good cause. A temporary, which shall include a ~~continuance to obtain service of process. Any injunction that is~~ already served must ~~shall~~ be extended, if necessary, so that it remains to remain in full force and effect during any period of continuance.

Section 2. Paragraph (c) of subsection (6) of section 784.046, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

784.046 Action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.-

(6)

(c) Any such ex parte temporary injunction is ~~shall be~~ effective for a fixed period not to exceed 15 days, and- ~~However,~~ an ex parte temporary injunction granted under



503996

subparagraph (2)(c)2. is effective for 15 days following the date the respondent is released from incarceration unless after a full hearing, a final injunction is issued on the same case. In that instance, the temporary injunction remains in full force and effect until the final injunction is served upon the respondent.

(d) A full hearing, as provided by this section, shall be set for a date no later than the date when the ex parte temporary injunction ceases to be effective. The court may grant a continuance of the ~~ex parte injunction and the full hearing~~ before or during the a hearing, for good cause shown by any party. The need to obtain service of process constitutes good cause. A temporary injunction that is already served must be extended, if necessary, so that it remains in full force and effect during any period of continuance.

Section 3. Paragraph (c) of subsection (5) of section 784.0485, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

784.0485 Stalking; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.—

(5)

(c) Any such ex parte temporary injunction is effective for a fixed period not to exceed 15 days unless after a full hearing, a final injunction is issued on the same case. In that instance, the temporary injunction remains in full force and effect until the final injunction is served upon the respondent.

(d) A full hearing, as provided in this section, shall be



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69 set for a date no later than the date when the ex parte
70 temporary injunction ceases to be effective. The court may grant
71 a continuance of the hearing before or during the ~~a~~ hearing for
72 good cause shown by any party. The need to obtain service of
73 process constitutes good cause. A temporary, which shall include
74 ~~a continuance to obtain service of process. An~~ injunction that
75 is already served must shall be extended, if necessary, so that
76 it remains ~~to remain~~ in full force and effect during any period
77 of continuance.

By Senator Dean

5-00547A-14

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1 A bill to be entitled
 2 An act relating to the protection of crime victims;
 3 creating s. 493.6204, F.S.; requiring a licensed
 4 private investigator and private investigative agency
 5 to determine if an individual being investigated is a
 6 petitioner requesting notification of service of an
 7 injunction for protection against domestic violence,
 8 repeat violence, sexual violence, or dating violence
 9 or is a participant in the Address Confidentiality
 10 Program for Victims of Domestic Violence within the
 11 Office of the Attorney General; prohibiting the
 12 private investigator, the private investigative
 13 agency, and their agents from releasing such
 14 petitioner's or participant's personal identifying
 15 information; providing penalties; amending s. 741.30,
 16 F.S.; revising the effective period of an ex parte
 17 temporary injunction for protection against domestic
 18 violence; amending s. 741.31, F.S.; making technical
 19 changes; amending s. 784.046, F.S.; revising the
 20 effective period of an ex parte temporary injunction
 21 for protection against repeat violence, sexual
 22 violence, or dating violence; amending s. 784.0485,
 23 F.S.; revising the effective period of an ex parte
 24 temporary injunction for protection against stalking;
 25 amending s. 784.0487, F.S.; providing that a person
 26 commits a misdemeanor of the first degree if he or she
 27 violates a final injunction for protection against
 28 stalking or cyberstalking by having in his or her
 29 care, custody, possession, or control any firearm or

Page 1 of 9

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5-00547A-14

2014920__

30 ammunition; providing penalties; making technical
 31 changes; amending s. 901.15, F.S.; conforming
 32 provisions to changes made by the act; expanding
 33 situations in which an arrest without a warrant is
 34 lawful to include probable cause for stalking,
 35 cyberstalking, child abuse, or failing to comply with
 36 certain protective injunctions; providing an effective
 37 date.

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

41 Section 1. Section 493.6204, Florida Statutes, is created
 42 to read:

43 493.6204 Prohibition against releasing information.—If a
 44 private investigator licensed under this chapter or a private
 45 investigative agency licensed under this chapter is hired to
 46 investigate an individual, the private investigator or the
 47 private investigative agency shall determine if the individual
 48 is a petitioner requesting notification of service of an
 49 injunction for protection against domestic violence under s.
 50 741.30(8)(c) or against repeat violence, sexual violence, or
 51 dating violence under s. 784.046(8)(c) or if the individual is a
 52 participant in the Address Confidentiality Program for Victims
 53 of Domestic Violence under s. 741.465. If the individual is such
 54 a petitioner or participant, the private investigator, the
 55 private investigative agency, or their agents may not release to
 56 anyone the individual's name, social security number, home
 57 address, employment address, home telephone number, employment
 58 telephone number, cellular telephone number, or e-mail address

Page 2 of 9

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5-00547A-14

2014920__

59 or other electronic means of locating or identifying the
 60 individual. A violation of this section is a misdemeanor of the
 61 first degree, punishable as provided in s. 775.082 or s.
 62 775.083, and the license of such private investigator or private
 63 investigative agency is subject to suspension or revocation as
 64 provided in this chapter.

65 Section 2. Paragraph (c) of subsection (5) of section
 66 741.30, Florida Statutes, is amended to read:

67 741.30 Domestic violence; injunction; powers and duties of
 68 court and clerk; petition; notice and hearing; temporary
 69 injunction; issuance of injunction; statewide verification
 70 system; enforcement; public records exemption.-

71 (5)

72 (c) Any such ex parte temporary injunction is shall be
 73 effective for a fixed period not to exceed 15 days unless a
 74 final injunction is issued for the same case which extends the
 75 effectiveness of the ex parte temporary injunction until the
 76 final injunction is served. A full hearing, as provided by this
 77 section, shall be set for a date no later than the date when the
 78 temporary injunction ceases to be effective. The court may grant
 79 a continuance of the hearing before or during a hearing for good
 80 cause shown by any party, which must shall include a continuance
 81 to obtain service of process. An Any injunction shall be
 82 extended, if necessary, so that it remains to remain in full
 83 force and effect during any period of continuance.

84 Section 3. Subsection (4) of section 741.31, Florida
 85 Statutes, is amended to read:

86 741.31 Violation of an injunction for protection against
 87 domestic violence.-

Page 3 of 9

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5-00547A-14

2014920__

88 (4) (a) A person who willfully violates an injunction for
 89 protection against domestic violence issued pursuant to s.
 90 741.30, or a foreign protection order accorded full faith and
 91 credit pursuant to s. 741.315, by:

92 1. Refusing to vacate the dwelling that the parties share;

93 2. Going to, or being within 500 feet of, the petitioner's
 94 residence, school, or place of employment, or a specified place
 95 frequented regularly by the petitioner and any named family or
 96 household member;

97 3. Committing an act of domestic violence against the
 98 petitioner;

99 4. Committing any other violation of the injunction through
 100 an intentional unlawful threat, word, or act to do violence to
 101 the petitioner;

102 5. Telephoning, contacting, or otherwise communicating with
 103 the petitioner directly or indirectly, unless the injunction
 104 specifically allows indirect contact through a third party;

105 6. Knowingly and intentionally coming within 100 feet of
 106 the petitioner's motor vehicle, whether or not that vehicle is
 107 occupied;

108 7. Defacing or destroying the petitioner's personal
 109 property, including the petitioner's motor vehicle; or

110 8. Refusing to surrender firearms or ammunition if ordered
 111 to do so by the court,

112
 113 commits a misdemeanor of the first degree, punishable as
 114 provided in s. 775.082 or s. 775.083.

115 (b)1. A person who violates a final injunction for
 116 protection against domestic violence by having in his or her

Page 4 of 9

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5-00547A-14

2014920

care, custody, possession, or control any firearm or ammunition
~~violates It is a violation of s. 790.233, and commits a~~
 misdemeanor of the first degree, punishable as provided in s.
 775.082 or s. 775.083, ~~for a person to violate a final~~
~~injunction for protection against domestic violence by having in~~
~~his or her care, custody, possession, or control any firearm or~~
~~ammunition.~~

2. It is the intent of the Legislature that the
 disabilities regarding possession of firearms and ammunition are
 consistent with federal law. Accordingly, this paragraph does
~~shall~~ not apply to a state or local officer as defined in s.
 943.10(14), holding an active certification, who receives or
 possesses a firearm or ammunition for use in performing official
 duties on behalf of the officer's employing agency, unless
 otherwise prohibited by the employing agency.

Section 4. Paragraph (c) of subsection (6) of section
 784.046, Florida Statutes, is amended to read:

784.046 Action by victim of repeat violence, sexual
 violence, or dating violence for protective injunction; dating
 violence investigations, notice to victims, and reporting;
 pretrial release violations; public records exemption.—

(6)

(c) Any such ex parte temporary injunction ~~is shall be~~
 effective for a fixed period not to exceed 15 days unless a
final injunction is issued for the same case which extends the
effectiveness of the temporary injunction until the final
injunction is served. However, an ex parte temporary injunction
 granted under subparagraph (2)(c)2. is effective for 15 days
 following the date the respondent is released from incarceration

5-00547A-14

2014920

unless a final injunction is issued for the same case which
extends the effectiveness of the ex parte temporary injunction
until the final injunction is served. A full hearing, as
 provided by this section, shall be set for a date no later than
 the date when the temporary injunction ceases to be effective.
 The court may grant a continuance of the ex parte injunction and
 the full hearing before or during a hearing, for good cause
 shown by any party.

Section 5. Paragraph (c) of subsection (5) of section
 784.0485, Florida Statutes, is amended to read:

784.0485 Stalking; injunction; powers and duties of court
 and clerk; petition; notice and hearing; temporary injunction;
 issuance of injunction; statewide verification system;
 enforcement.—

(5)

(c) Any such ex parte temporary injunction is effective for
 a fixed period not to exceed 15 days unless a final injunction
is issued for the same case which extends the effectiveness of
the ex parte temporary injunction until the final injunction is
served. A full hearing, as provided in this section, shall be
 set for a date no later than the date when the temporary
 injunction ceases to be effective. The court may grant a
 continuance of the hearing before or during a hearing for good
 cause shown by any party, which must ~~shall~~ include a continuance
 to obtain service of process. An injunction shall be extended,
 if necessary, so that it ~~remains to remain~~ remains in full force and
 effect during any period of continuance.

Section 6. Subsection (4) of section 784.0487, Florida
 Statutes, is amended, and subsection (6) is added to that

5-00547A-14

2014920__

section, to read:

784.0487 Violation of an injunction for protection against stalking or cyberstalking.—

(4) A person who willfully violates an injunction for protection against stalking or cyberstalking issued pursuant to s. 784.0485, or a foreign protection order accorded full faith and credit pursuant to s. 741.315, by:

(a) Going to, or being within 500 feet of, the petitioner's residence, school, or place of employment, ~~or~~ a specified place frequented regularly by the petitioner and any named family members or individuals closely associated with the petitioner;

(b) Committing an act of stalking against the petitioner;

(c) Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner;

(d) Telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly, unless the injunction specifically allows indirect contact through a third party;

(e) Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;

(f) Defacing or destroying the petitioner's personal property, including the petitioner's motor vehicle; or

(g) Refusing to surrender firearms or ammunition if ordered to do so by the court,

commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

5-00547A-14

2014920__

(6) A person who violates a final injunction for protection against stalking or cyberstalking by having in his or her care, custody, possession, or control any firearm or ammunition violates s. 790.233 and commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 7. Subsections (6) and (7) of section 901.15, Florida Statutes, are amended to read:

901.15 When arrest by officer without warrant is lawful.—A law enforcement officer may arrest a person without a warrant when:

(6) There is probable cause to believe that the person has committed a criminal act according to s. 790.233 or according to s. 39.504, s. 741.31, ~~or~~ s. 784.047, or s. 784.0487 which violates an injunction for protection entered pursuant to s. 39.504, s. 741.30, ~~or~~ s. 784.046, or s. 784.0485, or a foreign protection order accorded full faith and credit pursuant to s. 741.315, over the objection of the petitioner, if necessary.

(7) There is probable cause to believe that the person has committed an act of domestic violence, ~~as defined in s. 741.28;~~ ~~or~~ dating violence, repeat violence, or sexual violence as defined ~~provided~~ in s. 784.046; stalking or cyberstalking as defined in s. 784.048; or abuse as defined in s. 39.01. The decision to arrest ~~does shall~~ not require consent of the victim or consideration of the relationship of the parties. It is the public policy of this state to strongly discourage arrest and charges of both parties for domestic violence or dating violence on each other and to encourage training of law enforcement and prosecutors in these areas. A law enforcement officer who acts in good faith and exercises due care in making an arrest under

5-00547A-14

2014920

233 this subsection, under s. 39.504, s. 741.31(4), ~~or~~ s. 784.047,
234 or s. 784.0487, or pursuant to a foreign order of protection
235 accorded full faith and credit pursuant to s. 741.315~~7~~, is immune
236 from civil liability that otherwise might result by reason of
237 his or her action.

238 Section 8. This act shall take effect October 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/24/14

Meeting Date

Topic Protection of Crime Victims

Bill Number 920
(if applicable)

Name Keri Rayborn Silver

Amendment Barcode _____
(if applicable)

Job Title _____

Address PO Box 1565
Street

Phone 850-524-2394

Tallahassee FL 32302
City State Zip

E-mail Keri@raybornconsultants.com

Speaking: ☒ For ☐ Against ☐ Information

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 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 1006

INTRODUCER: Criminal Justice Committee and Senator Hays

SUBJECT: Consumer Collection Practices

DATE: March 25, 2014

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2. <u>Sumner</u>	<u>Cannon</u>	<u>CJ</u>	Fav/CS
3. _____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1006 subjects “control persons” of consumer collection agencies (CCAs) to state and federal criminal background checks, and subjects these persons to disqualifying periods based on the severity and recency of a criminal conviction. The bill enhances the authority of the Office of Financial Regulation (OFR) to register, investigate, examine, and bring enforcement actions against consumer collection agencies. The bill requires CCA registrants to report criminal convictions, changes from the initial application, and changes to the controlling persons of a CCA agency.

II. Present Situation:

Consumer debt covers non-business debt such as mortgages, credit cards, medical debts, and other debts mainly for personal, family, or household purposes. Depending on the terms of the loan, a grace period may be provided before a debt becomes delinquent. Generally, most credit issuers will attempt to collect on a delinquent debt between 120-180 days after delinquency, before it is deemed uncollectible and is “charged off” corporate records. Typically, the charged-off debt is then either assigned or sold as part of a portfolio to a third-party collection agency or collection law firm, which in turn may use a variety of collection methods and judgment remedies to recover the asset, subject to applicable statutes of limitations. These remedies enable creditors to minimize losses due to non-repayment by borrowers, and help ensure the availability and affordability of consumer credit.

State and Federal Regulation

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

Federal: The Fair Debt Collection Practices Act (FDCPA) is primarily enforced by the Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau. The FTC has received more consumer complaints about the debt collection industry than any other specific industry, and these complaints have constituted around 25 percent of the total number of complaints received by the FTC over the past 3 years.

Florida: At the state level, part VI of chapter 559, Florida Statutes, is the Florida Consumer Collection Practices Act (the Act), and was enacted in 1972. The Act prohibits many of the same debt collection practices prohibited by the FDCPA, and gives regulatory oversight authority to the Florida Office of Financial Regulation (OFR). The Act defines “consumer collection agency” as “any debt collector or business entity engaged in the business of soliciting consumer debts for collection or of collecting consumer debts, and which is not otherwise expressly exempted from the Act.” The OFR received 1,261 consumer complaints regarding consumer collection agencies in the past fiscal year.

A debt collector is generally defined as any person who uses any instrumentality of interstate commerce in any business the principal purpose of which is the collection of debts or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Both acts define “debt collector” narrowly, and exclude persons such as original creditors and their in-house collectors and persons serving legal process in connection with the judicial enforcement of any debt. Both acts also provide private civil remedies to debtors for violations; if successful, the consumer may recover actual and statutory damages and attorney’s fees and costs. If the court finds that the suit fails to raise a justiciable issue of law or fact, the consumer is liable for court costs and reasonable attorney’s fees incurred by the defendant.

In terms of the FDCPA’s relation to state law, both acts were designed to work harmoniously, except to the extent state law conflicts with the FDCPA. The Act also provides that in the event of an inconsistency with the FDCPA, the provision which is more protective for the consumer or debtor shall prevail.

Registration of Consumer Collection Agencies in Florida

The OFR is responsible for the registration of consumer collection agencies that are not otherwise exempted by the Act. The Act exempts from registration, original creditors, Florida Bar members, financial institutions authorized to do business in Florida and their wholly owned subsidiaries and affiliates, and insurance companies authorized to do business in this state.

According to the OFR, there are currently 1,344 registered consumer collection agencies in Florida. During the 2012-2013 fiscal year, the OFR received 408 CCA applications. Of that number, the OFR approved 372 and denied 60 applications, and 25 applications were withdrawn.

Once registered, CCAs must renew their registration between October 1 and December 31 of every year.

A consumer collection agency must meet minimal requirements to register with the OFR and is “entitled to be registered when registration information is complete on its face and the \$200 registration fee has been paid.” Unlike other regulatory programs administered by the OFR, the Act gives the OFR very limited statutory authority to deny registration of consumer collection agencies. Currently, the OFR cannot deny registration to any applicant, even if its control persons have been convicted of felony financial crimes or the applicant has been subject to serious regulatory sanctions. Currently, the Act only permits the OFR to reject a registration if the applicant or any principal of the applicant previously held any professional license or state registration that was the subject of any suspension or revocation which has not been explained by the applicant to the satisfaction of the office either in the initial application or upon written request of the OFR. As written, the OFR presumably would have to grant registration after a satisfactory explanation of a disciplinary proceeding from an applicant, regardless of the egregiousness of the underlying facts.

Other regulatory programs administered by the OFR provide statutory and rule authority to deny licensure or registration based on applicants’ civil, criminal, and regulatory history, which provides important public protections in light of the nature of industries regulated by the OFR and their access to consumers’ financial information. With regard to criminal actions, other chapters authorize denial based on the severity and recency of a criminal plea or conviction of individuals or “control or relevant persons” listed on an application for licensure or registration. Specifically, these chapters impose disqualifying periods during which an applicant is ineligible for licensure until expiration of the disqualifying period and allow for aggravating and mitigating factors. These programs are statutorily authorized to require electronic fingerprints from applicants for state and national criminal background checks. These fingerprints are also retained by the Florida Department of Law Enforcement (FDLE) to enable rapid notification to the OFR if a licensee is arrested and/or becomes subject to a criminal prosecution.

The following table illustrates disqualifying periods for these other licenses under the OFR’s jurisdiction. These disqualifying periods are explained in further detail through commission rule.¹

¹ Pursuant to s. 20.121(3)(a), F.S., the Financial Services Commission (the Governor and Cabinet) serves as the agency head for purposes of rulemaking and appoints the OFR’s Commissioner, who serves as the agency head for purposes of final agency action for all areas within the OFR’s regulatory authority.

Industry/License Type	Felonies involving fraud, dishonesty, breach of trust, money laundering, or other acts of moral turpitude	All other felonies	Misdemeanors involving fraud, dishonesty, or other acts of moral turpitude
Mortgage loan originators; control persons of mortgage brokers and lenders (ch. 494, F.S.) ²	- Permanent bar ³ - 15 year bar for felonies involving acts of moral turpitude	7 year bar	5 year bar
Relevant persons of money services businesses (ch. 560, F.S.) ⁴	15 year bar	7 year bar	5 year bar
Associated persons of securities issuers, dealers, and investment advisers (ch. 517, F.S.) ⁵	15 year bar	N/A	5 year bar

Unregistered Activity

The Act provides that it is a first-degree misdemeanor to collect debts in this state without first registering with the OFR or to seek registration through fraud, misrepresentation, or concealment.⁶ Additionally, unregistered out-of-state consumer debt collectors can be subject to administrative fines of up to \$10,000 and enforcement actions by the Office of the Attorney General.⁷

However, the OFR is limited in its enforcement authority over unregistered in-state collection agencies. As written, it only authorizes the OFR to issue cease and desist orders over any person if it has any reason to believe the person has violated the Act, but authorizes the OFR to impose administrative fines only on registrants.⁸

Enforcement

In 2010, the Legislature enacted several amendments to the Act to enhance the OFR's oversight of the debt collection industry:

- Required registrants to maintain and produce certain books and records for at least 3 years after a transaction, and provided rulemaking authority to determine the content, retention, and destruction of the required records;⁹

² See Chapter 69V-40, Fla. Admin. Code (Mortgage Brokerage).

³ The permanent bar for the more severe felonies in the mortgage industry is required by federal law. In 2008, Congress enacted the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, which requires states to implement minimum licensing standards for the mortgage industry. In 2009, the Florida Legislature enacted ch. 2009-241, L.O.F., to reflect these federal requirements. In subsequent legislative sessions, the Florida Legislature enacted similar licensing bars for the two other industries described (ch. 560 and ch. 517, F.S.).

⁴ See Chapter 69V-560, Fla. Admin. Code (Money Transmitters).

⁵ See Chapter 69W-600, Fla. Admin. Code (Registration of Dealers, Investment Advisers, Associated Persons).

⁶ Section 559.785, F.S.

⁷ Section 559.565, F.S.

⁸ Sections 559.727 and 559.730, F.S.

⁹ See Rules 69V-180.080 and 69V-180.090, Fla. Admin. Code.

- Designated the OFR, not the Department of Financial Services, as the agency responsible for handling and investigating consumer complaints regarding debt collection;
- Simplified the complaint statute; required consumer complaints to be subject to penalty of perjury; required registrants to respond to the OFR's inquiries regarding consumer complaints;
- Authorized the OFR to issue and enforce investigative subpoenas;
- Authorized the OFR to impose fines of up to \$10,000 per violation, suspensions or revocations on registrants, and cease-and-desist orders against any person.¹⁰

The OFR is required to notify the appropriate state attorney or the Attorney General of any determination by the OFR that an unregistered CCA has violated the Act.¹¹

However, the Act limits the OFR's authority to examine the books and records of only registrants to determine compliance with the Act, and the OFR's investigative authority is limited to instances when a consumer complaint has been filed against a CCA.¹²

III. Effect of Proposed Changes:

The bill expands the OFR's registration and enforcement authority under the Act. The bill creates two new definitions in s. 559.55, F.S., of the Act:

- "Commission" is defined as the Financial Services Commission. This relates to the bill's grant of rulemaking authority in a new s. 559.554, F.S., to require the electronic submission of forms, documents and fees required by the Act, and to adopt 5-year, 7-year, and 15-year disqualifying periods from registration based on applicants' criminal histories.
- "Control person" – these natural persons must be fingerprinted and will be subject to registration review.

The bill repeals provisions in the registration statute, s. 559.553, F.S., that provide the current sole basis for denying registration, and creates new requirements in s. 559.555, F.S., for applicants, including a completed application form, a nonrefundable application fee of \$200, and criminal background checks. Control persons of applicants must submit live-scan fingerprints for processing by the Florida Department of Law Enforcement (FDLE) for state criminal background checks and by the Federal Bureau of Investigation (FBI) for national criminal background checks to enable the OFR to determine applicants' fitness for registration. The costs of fingerprint processing are borne by the persons subject to the background check, while the OFR will pay an annual fee to FDLE for the retention of fingerprints. Based on information provided by the OFR, the average cost to process live-scan fingerprints from an approved service provider is \$65 per control person, and the annual retention fee is \$6.¹³ CCAs who become registered before the bill's effective date of October 1, 2014, must have control persons submit live-scan fingerprints prior to the expiration of their registration on December 31, 2014 (i.e. before the next renewal cycle).

¹⁰ Ch. 2010-127, L.O.F. and s. 559.5556, F.S. *See also* Rule 69V-180.080, Fla. Admin. Code (Consumer Collection Agency Records), which set forth required books and records and was adopted pursuant to the 2010 legislation.

¹¹ Section 559.725(5), F.S.

¹² Sections 559.5556 and 559.725(4), F.S.

¹³ E-mail from the OFR on file with Banking & Insurance staff.

The bill subjects registrants to reporting requirements in a new s. 559.5551, F.S. This section requires registrants to notify the OFR when control persons are convicted or plead no lo contendere to certain offenses, when changes occur in the information contained in the initial application (such as a new business address), and of changes in the registrant's business organization (such as a new control person). The bill provides that the OFR may bring an administrative action to ensure compliance with the Act in order to deter registrants from adding an unqualified control person without regulatory approval. Registrants must submit a nonrefundable \$200 renewal fee and fingerprint retention fee of \$6 at renewal time.

The bill creates s. 559.5541, F.S., to authorize the OFR to make unannounced examinations and investigations to determine whether a person (as opposed to only registrants) has violated the Act or related rules, regardless of whether a consumer complaint has been filed against the CCA. The Act also permits the OFR to enter into joint or concurrent examinations with a state or federal regulatory agency, as long as the other regulator abides with the confidentiality provisions of ch. 119 and the Act.¹⁴

The bill provides additional grounds for administrative action in s. 559.730, F.S., such as unregistered activity, material misstatements on a registration application, regulatory actions and certain civil judgments, failure to maintain books and records, and acts of fraud and misrepresentation. These acts can subject an applicant or registrant to denial, suspension, revocation, and administrative fines. The bill provides that the OFR may impose an administrative fine of up to \$1,000 per day for each day that a consumer collection agency acts without a valid registration.

The bill authorizes the OFR to summarily suspend registrations pursuant to s. 120.60(6), F.S., based on the arrest for specified crimes of the registrant or control person, and provides that such arrests are deemed sufficient to constitute an immediate danger to the public's health, safety, and welfare. The OFR has similar or identical summary suspension authority in chs. 494 and 517, F.S.

The bill also allows the OFR to deny requests to terminate a registration or to withdraw a registration application if the OFR believes there are grounds for denial, suspension, restriction, or revocation.

The bill provides an effective date of October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁴ Senate Bill 1004 is the public records bill linked to this bill that will make certain information related to investigations and examinations of consumer collection agencies confidential and exempt from public records disclosure.

C. Trust Funds Restrictions:

None.

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

The bill requires control persons to submit electronic/live-scan fingerprints to live-scan vendors (who in turn submit fees to the FDLE for the background checks). This will result in estimated total revenues of \$53,040. This estimate is based on the OFR's revenue projection estimate that the OFR will receive 408 initial consumer collection agency applications for 2014-2015,¹⁵ with an average of 2 control persons per applicant to be fingerprinted.

Although the fee charged by each live-scan vendor varies, the average fee (according to the OFR) is \$65.

- 408 applications x 2 control persons per applicant = 816 control persons expected for the first fiscal year and for each subsequent fiscal year.¹⁶
- 816 control persons x \$65 per applicant = \$53,040 to cover the costs of fingerprinting each control person related to a CCA application (paid directly to FDLE).

The \$65 average live-scan cost consists of the live-scan vendor's cost of providing the services as well as the \$40.50 fee that is charged by the FDLE, which is apportioned as:

- \$24 for a state background check, which is deposited into the FDLE Operating Trust Fund, and
- \$16.50 for national background check, which is forwarded to the FBI.¹⁷

For state revenue purposes, the estimated fiscal impact is:

- 816 control persons x \$24 (state background check) for the initial and each subsequent fiscal year = \$19,584.
- Due to the bill's October 1, 2014 effective date, only a small population in the 2014 renewal cycle would be subject to the new fingerprinting requirements of the bill. Accordingly, the initial fiscal year impact includes the fingerprinting of 2,566 control persons. It should be noted, however, that the bill would authorize full fingerprinting at renewal time for those registrants renewing by December 31, 2014 that were approved before October 1, 2014.¹⁸
- Accordingly, the first fiscal year includes:
- 2,566 control persons fingerprinted at 12/31/2014, renewal x \$24 (state background check) = \$61,584.
- The total estimated revenue for the first fiscal year is \$81,168.

¹⁵ E-mail from the OFR on file with Banking & Insurance staff.

¹⁶ According to the OFR, the number of projected control persons remained the same for subsequent fiscal years due to the possibility that the number of licensees may either increase or decrease. E-mail from the OFR on file with Banking & Insurance staff.

¹⁷ FDLE's bill analysis of SB 1006 on file with Banking & Insurance staff.

¹⁸ OFR's bill analysis of SB 1006 on file with Banking & Insurance staff.

In addition, the bill requires that fingerprints be retained as part of renewing a CCA registration. The cost to retain fingerprints at the state level is \$6 per control person. Based on the OFR's 2012 statistics, there were 1,283 CCA registration renewals. Using an average of 2 control persons per CCA, there would be 2,566 control persons subject to the \$6 annual retention fee that OFR would collect during registration renewal. Thus, the estimated total revenues for retention fees would be \$15,396, which would be passed onto the FDLE as a journal transfer from non-operating expenses to the FDLE.¹⁹

- 1,283 CCA registrant renewals x 2 control persons per registrant = 2,566 control persons.
- 2,566 control persons x \$6 per person = \$15,396 to cover the costs of retained fingerprint fees to be passed onto FDLE (for the initial and each subsequent fiscal year).

B. Private Sector Impact:

The bill requires that control persons of non-exempt collection agencies be fingerprinted and screened. Each control person will incur an average live-scan cost of \$65.²⁰ The \$65 average live-scan cost consists of the live-scan vendor's cost of providing the services as well as the \$40.50 fee that is charged by the FDLE, which is apportioned as:

- \$24 for a state background check, which is deposited into the FDLE Operating Trust Fund, and
- \$16.50 for a national background check, which is forwarded to the FBI.²¹

Once registered, control persons of CCAs must submit an annual fee of \$6 for the cost of retaining fingerprints with the FDLE.²²

First Fiscal Year:

408 applications x 2 control persons = 816 control persons
 816 x \$65 = \$53,040

2,566 control persons fingerprinted at December 31, 2014, renewal
 2,566 x \$65 = \$166,790
 Total for Year 1 = \$219,830

Subsequent Fiscal Years:

408 applications x 2 control persons = 816 control persons
 816 x \$65 = \$53,040

Retained print costs for 2,566 control persons at each renewal
 2,566 x \$6 = \$15,396
 Total Year 2 = \$68,436

¹⁹ *Id.*

²⁰ According to the OFR, the average cost to process electronic fingerprints through a live-scan vendor is \$65, which is inclusive of the \$40.50 charge by FDLE and a cost added by the vendor to cover their services. E-mail from the OFR on file with Banking & Insurance staff.

²¹ FDLE's bill analysis of SB 1006 on file with Banking & Insurance staff.

²² OFR's bill analysis of SB 1006 on file with Banking & Insurance staff.

C. Government Sector Impact:

The estimated total revenues for fingerprint retention fees would be \$15,396, which would be passed onto the FDLE as a journal transfer from non-operating expenses.

The FDLE has indicated that while this bill alone does not necessitate additional FTE or other resources, the bill in combination with additional background screening bills could create a need for additional staffing or other resources.

The OFR indicated that the bill may result in a slight increase in investigations and examinations under the Act, but it should be able to absorb this caseload increase with existing resources.

The bill grants rulemaking authority to the Financial Services Commission to require electronic submission of required forms, documents, and fees, and to establish disqualifying periods from registration based on applicants' criminal histories. Rules 69V-180.030 to 69V-180.100, Fla. Admin. Code, will need to be amended to implement these requirements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 559.55, 559.553, 559.554, 559.5541, 559.555, 559.5551, 559.565, and 559.730.

This bill creates the following sections of the Florida Statutes: 559.554, 559.5541, and 559.5551.

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

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

CS by Criminal Justice on March 24, 2014:

Makes technical and conforming changes by replacing the word “federal” with the word “national” when describing the type of criminal background check that is conducted by the FBI.

B. Amendments:

None.



929696

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/24/2014	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Altman) recommended the following:

Senate Amendment

Delete line 264
and insert:
national criminal history background check must be conducted



461132

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/24/2014	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Altman) recommended the following:

Senate Amendment

Delete line 279
and insert:
the state and national criminal history background checks and

By Senator Hays

11-00402B-14

20141006__

1 A bill to be entitled
 2 An act relating to consumer collection practices;
 3 amending s. 559.55, F.S.; defining terms; amending s.
 4 559.553, F.S.; removing provisions relating to the
 5 revocation or suspension of a professional license
 6 which allow the Office of Financial Regulation to
 7 reject an applicant for registration; conforming a
 8 cross-reference to changes made by the act; creating
 9 s. 559.554, F.S.; providing for the powers and duties
 10 of the Financial Services Commission and the Office of
 11 Financial Regulation; creating s. 559.5541, F.S.;
 12 authorizing the office to conduct examinations and
 13 investigations; amending s. 559.555, F.S.; revising
 14 requirements for registration as a consumer collection
 15 agency; specifying a registration fee; creating s.
 16 559.5551, F.S.; requiring registrants to report,
 17 within a specified time period, a conviction of, or
 18 plea of nolo contendere to, a crime or an
 19 administrative enforcement action; requiring
 20 registrants to report, within a specified time period,
 21 a change in a control person or the form of the
 22 organization, or any other change in the information
 23 supplied in the initial application; amending s.
 24 559.565, F.S.; conforming a cross-reference to changes
 25 made by the act; amending s. 559.730, F.S.; revising
 26 the administrative remedies and penalties available to
 27 the office; requiring the commission to adopt
 28 guidelines to impose administrative penalties;
 29 providing an effective date.

Page 1 of 18

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

11-00402B-14

20141006__

30
 31 Be It Enacted by the Legislature of the State of Florida:
 32
 33 Section 1. Section 559.55, Florida Statutes, is reordered
 34 and amended to read:
 35 559.55 Definitions.—The following terms shall, unless the
 36 context otherwise indicates, have the following meanings for the
 37 purpose of this part:
 38 (1) "Commission" means the Financial Services Commission.
 39 (6)(1) "Debt" or "consumer debt" means any obligation or
 40 alleged obligation of a consumer to pay money arising out of a
 41 transaction in which the money, property, insurance, or services
 42 that which are the subject of the transaction are primarily for
 43 personal, family, or household purposes, whether or not such
 44 obligation has been reduced to judgment.
 45 (8)(2) "Debtor" or "consumer" means any natural person
 46 obligated or allegedly obligated to pay any debt.
 47 (4) "Control person" means an individual, partnership,
 48 corporation, trust, or organization that possesses the power,
 49 directly or indirectly, to direct the management or policies of
 50 a company, whether through ownership of securities, by contract,
 51 or otherwise. The term includes, but is not limited to:
 52 (a) A company's executive officers, including the
 53 president, chief executive officer, chief financial officer,
 54 chief operations officer, chief legal officer, chief compliance
 55 officer, director, and other individuals having similar status
 56 or functions.
 57 (b) For a corporation, a shareholder who, directly or
 58 indirectly, owns 10 percent or more or that has the power to

Page 2 of 18

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

11-00402B-14

20141006

59 vote 10 percent or more, of a class of voting securities unless
 60 the applicant is a publicly traded company.

61 (c) For a partnership, all general partners and limited or
 62 special partners who have contributed 10 percent or more or that
 63 have the right to receive, upon dissolution, 10 percent or more
 64 of the partnership's capital.

65 (d) For a trust, each trustee.

66 (e) For a limited liability company, all elected managers
 67 and those members who have contributed 10 percent or more or
 68 that have the right to receive, upon dissolution, 10 percent or
 69 more of the partnership's capital.

70 (5)(3) "Creditor" means a any person who offers or extends
 71 credit creating a debt or to whom a debt is owed. The term, but
 72 does not include a any person to the extent that they receive an
 73 assignment or transfer of a debt in default solely for the
 74 purpose of facilitating collection of such debt for another.

75 (10)(4) "Office" means the Office of Financial Regulation
 76 of the ~~Financial Services~~ commission.

77 (2)(5) "Communication" means the conveying of information
 78 regarding a debt, directly or indirectly, to a any person
 79 through any medium.

80 (7)(6) "Debt collector" means a any person who uses an any
 81 instrumentality of commerce within this state, whether initiated
 82 from within or outside this state, in any business the principal
 83 purpose of which is the collection of debts, or who regularly
 84 collects or attempts to collect, directly or indirectly, debts
 85 owed or due or asserted to be owed or due another. The term
 86 "debt collector" includes a any creditor who, in the process of
 87 collecting her or his own debts, uses a any name other than her

11-00402B-14

20141006

88 or his own which would indicate that a third person is
 89 collecting or attempting to collect such debts. The term does
 90 not include:

91 (a) An ~~Any~~ officer or employee of a creditor while, in the
 92 name of the creditor, collecting debts for such creditor;

93 (b) A ~~Any~~ person while acting as a debt collector for
 94 another person, both of whom are related by common ownership or
 95 affiliated by corporate control, if the person acting as a debt
 96 collector for persons to whom it is so related or affiliated and
 97 if the principal business of such persons is not the collection
 98 of debts;

99 (c) An ~~Any~~ officer or employee of any federal, state, or
 100 local governmental body to the extent that collecting or
 101 attempting to collect any debt is in the performance of her or
 102 his official duties;

103 (d) A ~~Any~~ person while serving or attempting to serve legal
 104 process on another ~~any other~~ person in connection with the
 105 judicial enforcement of a ~~any~~ debt;

106 (e) A ~~Any~~ not-for-profit organization which, at the request
 107 of consumers, performs bona fide consumer credit counseling and
 108 assists consumers in the liquidation of their debts by receiving
 109 payments from such consumers and distributing such amounts to
 110 creditors; or

111 (f) A ~~Any~~ person collecting or attempting to collect any
 112 debt owed or due or asserted to be owed or due another to the
 113 extent that such activity is incidental to a bona fide fiduciary
 114 obligation or a bona fide escrow arrangement; concerns a debt
 115 which was originated by such person; concerns a debt which was
 116 not in default at the time it was obtained by such person; or

11-00402B-14 20141006__

concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(3)(7) "Consumer collection agency" means a ~~any~~ debt collector or business entity engaged in the business of soliciting consumer debts for collection or of collecting consumer debts, which debt collector or business is not expressly exempted as specified in s. 559.553(3) ~~set forth in s. 559.553(4)~~.

(11)(8) "Out-of-state consumer debt collector" means a ~~any~~ person whose business activities in this state involve both collecting or attempting to collect consumer debt from debtors located in this state by means of interstate communication originating from outside this state and soliciting consumer debt accounts for collection from creditors who have a business presence in this state. For purposes of this subsection, a creditor has a business presence in this state if either the creditor or an affiliate or subsidiary of the creditor has an office in this state.

(9) "Federal Fair Debt Collection Practices Act" or "Federal Act" means the federal legislation regulating fair debt collection practices, as specified ~~set forth~~ in Pub. L. No. 95-109, as amended and published in 15 U.S.C. ss. 1692 et seq.

Section 2. Section 559.553, Florida Statutes, is amended to read:

559.553 Registration of consumer collection agencies required; exemptions.—

(1) A ~~After January 1, 1994, no person may not shall~~ engage in business in this state as a consumer collection agency or continue to do business in this state as a consumer collection

11-00402B-14 20141006__

agency without first registering in accordance with this part, and thereafter maintaining a valid registration.

(2) Each consumer collection agency doing business in this state shall register with the office and renew such registration annually as set forth in s. 559.555.

~~(3) A prospective registrant shall be entitled to be registered when registration information is complete on its face and the applicable registration fee has been paid; however, the office may reject a registration submitted by a prospective registrant if the registrant or any principal of the registrant previously has held any professional license or state registration which was the subject of any suspension or revocation which has not been explained by the prospective registrant to the satisfaction of the office either in the registration information submitted initially or upon the subsequent written request of the office. In the event that an attempted registration is rejected by the office the prospective registrant shall be informed of the basis for rejection.~~

(3)(4) This section does ~~shall~~ not apply to:

(a) An ~~Any~~ original creditor.

(b) A ~~Any~~ member of The Florida Bar.

(c) A ~~Any~~ financial institution authorized to do business in this state and any wholly owned subsidiary and affiliate thereof.

(d) A ~~Any~~ licensed real estate broker.

(e) An ~~Any~~ insurance company authorized to do business in this state.

(f) A ~~Any~~ consumer finance company and any wholly owned subsidiary and affiliate thereof.

11-00402B-14

20141006__

- 175 (g) A ~~Any~~ person licensed pursuant to chapter 520.
- 176 (h) An ~~Any~~ out-of-state consumer debt collector who does
- 177 not solicit consumer debt accounts for collection from credit
- 178 grantors who have a business presence in this state.
- 179 (i) An ~~Any~~ FDIC-insured institution or subsidiary or
- 180 affiliate thereof.
- 181 (4)(5) ~~An~~ ~~Any~~ out-of-state consumer debt collector as
- 182 defined in s. 559.55(11) ~~s. 559.55(8)~~ who is not exempt from
- 183 registration by application of subsection (3) ~~(4)~~ and who fails
- 184 to register in accordance with this part shall be subject to an
- 185 enforcement action by the state as specified in s. 559.565.
- 186 Section 3. Section 559.554, Florida Statutes, is created to
- 187 read:
- 188 559.554 Powers and duties of the commission and office.-
- 189 (1) The office is responsible for the administration and
- 190 enforcement of this part.
- 191 (2) The commission may adopt rules to administer this part,
- 192 including rules:
- 193 (a) Requiring electronic submission of forms, documents,
- 194 and fees required by this part.
- 195 (b) Establishing time periods during which a consumer
- 196 collection agency is barred from registration due to prior
- 197 criminal convictions of, or guilty or nolo contendere pleas by,
- 198 an applicant's control persons, regardless of adjudication.
- 199 1. The rules must provide:
- 200 a. A 15-year disqualifying period for felonies involving
- 201 fraud, dishonesty, breach of trust, money laundering, or other
- 202 acts of moral turpitude.
- 203 b. A 7-year disqualifying period for felonies not specified

11-00402B-14

20141006__

- 204 in sub-subparagraph a.
- 205 c. A 5-year disqualifying period for misdemeanors involving
- 206 fraud, dishonesty, or other acts of moral turpitude.
- 207 2. The rules must provide for an additional waiting period
- 208 due to dates of imprisonment or community supervision, the
- 209 commitment of multiple crimes, and other factors reasonably
- 210 related to the applicant's criminal history.
- 211 3. The rules must provide for mitigating factors for crimes
- 212 identified in sub-subparagraphs 1.a.-c.
- 213 4. An applicant is not eligible for registration until
- 214 expiration of the disqualifying period set by rule.
- 215 5. Section 112.011 does not apply to eligibility for
- 216 registration under this part.
- 217 (3) All fees, charges, and fines collected pursuant to this
- 218 part shall be deposited into the Regulatory Trust Fund of the
- 219 office.
- 220 Section 4. Section 559.5541, Florida Statutes, is created
- 221 to read:
- 222 559.5541 Examinations and investigations.-
- 223 (1) Notwithstanding s. 559.725(4), the office may, without
- 224 advance notice, conduct examinations and investigations, within
- 225 or outside this state, to determine whether a person has
- 226 violated this part or related rules. For purposes of this
- 227 section, the office may examine the books, accounts, records,
- 228 and other documents or matters of any person subject to this
- 229 part. The office may compel the production of all relevant
- 230 books, records, and other documents and materials relative to an
- 231 examination or investigation. Examinations may not be made more
- 232 often than once during a 48-month period unless the office has

11-00402B-14

20141006

233 reason to believe a person has violated or will violate this
 234 part or related rules.

235 (2) In order to reduce the burden on persons subject to
 236 this part, the office may conduct a joint or concurrent
 237 examination with a state or federal regulatory agency and may
 238 furnish a copy of all examinations to an appropriate regulator
 239 if the regulator agrees to abide by the confidentiality
 240 provisions in chapter 119 and this part. The office may also
 241 accept an examination from any appropriate regulator.

242 Section 5. Section 559.555, Florida Statutes, is amended to
 243 read:

244 559.555 Registration of consumer collection agencies;
 245 procedure.—

246 (1) A Any person who acts ~~required to register~~ as a
 247 consumer collection agency must be registered in accordance with
 248 this section. ~~shall furnish to the office the registration fee~~
 249 ~~and information as follows:~~

250 (2) In order to apply for a consumer collection agency
 251 registration, an applicant must:

252 (a) Submit a completed application form as prescribed by
 253 rule of the commission.

254 (b) Submit a nonrefundable application fee of \$200.
 255 Application fees may not be prorated for partial years of
 256 registration.

257 (c) Submit fingerprints for each of the applicant's control
 258 persons in accordance with rules adopted by the commission.

259 1. The fingerprints may be submitted through a third-party
 260 vendor authorized by the Department of Law Enforcement to
 261 provide live-scan fingerprinting.

11-00402B-14

20141006

262 2. A state criminal history background check must be
 263 conducted through the Department of Law Enforcement, and a
 264 federal criminal history background check must be conducted
 265 through the Federal Bureau of Investigation.

266 3. All fingerprints submitted to the Department of Law
 267 Enforcement must be submitted electronically and entered into
 268 the statewide automated biometric identification system
 269 established in s. 943.05(2)(b) and available for use in
 270 accordance with s. 943.05(2)(g) and (h). The office shall pay an
 271 annual fee to the Department of Law Enforcement to participate
 272 in the system and inform the Department of Law Enforcement of
 273 any person whose fingerprints are no longer required to be
 274 retained.

275 4. The costs of fingerprint processing, including the cost
 276 of retaining the fingerprints, shall be borne by the person
 277 subject to the background check.

278 5. The office is responsible for reviewing the results of
 279 the state and federal criminal history background checks and
 280 determining whether the applicant meets registration
 281 requirements.

282 (3) The office shall issue a consumer collection agency
 283 registration to each person who is not otherwise ineligible and
 284 who meets the requirements of this section. However, it is a
 285 ground for denial of registration if the applicant or one of the
 286 applicant's control persons has committed any violation
 287 specified in this part, or is the subject of a pending felony
 288 criminal prosecution or a prosecution or an administrative
 289 enforcement action, in any jurisdiction, which involves fraud,
 290 dishonesty, breach of trust, money laundering, or any other act

11-00402B-14

20141006__

of moral turpitude.

(4) A registration issued under this part is not transferable or assignable.

(5) A consumer collection agency shall report, on a form prescribed by rule of the commission, any change in the information contained in an initial application form, or an amendment thereto, within 30 days after the change is effective.

~~(1) The registrant shall pay to the office a registration fee in the amount of \$200. All amounts collected shall be deposited by the office to the credit of the Regulatory Trust Fund of the office.~~

~~(2) Each registrant shall provide to the office the business name or trade name, the current mailing address, the current business location which constitutes its principal place of business, and the full name of each individual who is a principal of the registrant. "Principal of a registrant" means the registrant's owners if a partnership or sole proprietorship, corporate officers, corporate directors other than directors of a not-for-profit corporation organized pursuant to chapter 617 and Florida resident agent if a corporate registrant. The registration information shall include a statement clearly identifying and explaining any occasion on which any professional license or state registration held by the registrant, by any principal of the registrant, or by any business entity in which any principal of the registrant was the owner of 10 percent or more of such business, was the subject of any suspension or revocation.~~

(6)(3) Renewal of registration shall be made between October 1 and December 31 of each year. There shall be no

11-00402B-14

20141006__

proration of the fee for any registration. In order to renew a consumer collection agency registration, a registrant must submit a nonrefundable renewal fee equal to the registration fee and a nonrefundable fee to cover the costs of further fingerprint processing and retention as set forth by commission rule.

(7) A consumer collection agency registrant whose initial registration is approved and issued by the office pursuant to this section before October 1, 2014, who seeks renewal of the registration must submit fingerprints for each control person for live-scan processing pursuant to paragraph (2)(c). Such fingerprints must be submitted before renewing a registration that is scheduled to expire December 31, 2014.

Section 6. Section 559.5551, Florida Statutes, is created to read:

559.5551 Requirements of registrants.—A registrant under this part shall report to the office in a manner prescribed by rule of the commission:

(1) A conviction of, or plea of nolo contendere to, regardless of adjudication, a crime or administrative violation that involves fraud, dishonesty, breach of trust, money laundering, or any other act of moral turpitude, in any jurisdiction, by the registrant or any control person within 30 days after the date of conviction, entry of a plea of nolo contendere, or final administrative action.

(2) A conviction of, or plea of nolo contendere to, regardless of adjudication, a felony committed by the registrant or any control person within 30 days after the date of conviction or the date the plea of nolo contendere is entered.

11-00402B-14

20141006

349 (3) A change to the information contained in an initial
 350 application form or an amendment to the application within 30
 351 days after the change is effective.

352 (4) An addition or subtraction of a control person or a
 353 change in the form of business organization. A control person
 354 added by a registrant is subject to this part and must submit
 355 fingerprints in accordance with s. 559.555 and the rules of the
 356 commission. The office may bring an administrative action in
 357 accordance with s. 559.730 to enforce this part if the added
 358 control person fails to meet registration requirements or comply
 359 with any other provision of this part.

360 Section 7. Section 559.565, Florida Statutes, is amended to
 361 read:

362 559.565 Enforcement action against out-of-state consumer
 363 debt collector.— The remedies of this section are cumulative to
 364 other sanctions and enforcement provisions of this part for any
 365 violation by an out-of-state consumer debt collector, as defined
 366 in s. 559.55(11) ~~s. 559.55(8)~~.

367 (1) An out-of-state consumer debt collector who collects or
 368 attempts to collect consumer debts in this state without first
 369 registering in accordance with this part is subject to an
 370 administrative fine of up to \$10,000 together with reasonable
 371 attorney fees and court costs in any successful action by the
 372 state to collect such fines.

373 (2) ~~A~~ Any person, whether or not exempt from registration
 374 under this part, who violates s. 559.72 is subject to sanctions
 375 the same as any other consumer debt collector, including
 376 imposition of an administrative fine. The registration of a duly
 377 registered out-of-state consumer debt collector is subject to

11-00402B-14

20141006

378 revocation or suspension in the same manner as the registration
 379 of any other registrant under this part.

380 (3) In order to effectuate this section and enforce the
 381 requirements of this part as it relates to out-of-state consumer
 382 debt collectors, the Attorney General is expressly authorized to
 383 initiate such action on behalf of the state as he or she deems
 384 appropriate in any state or federal court of competent
 385 jurisdiction.

386 Section 8. Section 559.730, Florida Statutes, is amended to
 387 read:

388 559.730 Grounds for disciplinary action; administrative
 389 remedies.—

390 (1) Each of the following acts constitutes a ground for
 391 which the disciplinary actions specified in subsection (2) may
 392 be taken against a person registered or required to be
 393 registered under this part:

394 (a) Failure to disburse funds in accordance with
 395 agreements.

396 (b) Fraud, misrepresentation, deceit, negligence, or
 397 incompetence in a collection transaction.

398 (c) Commission of fraud, misrepresentation, concealment, or
 399 dishonest dealing by trick, scheme, or device; culpable
 400 negligence; breach of trust in a business transaction in any
 401 state, nation, or territory; or aiding, assisting, or conspiring
 402 with another person engaged in such misconduct and in
 403 furtherance thereof.

404 (d) Being convicted of, or entering a plea of guilty or
 405 nolo contendere to, regardless of adjudication, a felony or
 406 crime involving fraud, dishonesty, breach of trust, money

11-00402B-14

20141006__

laundering, or act of moral turpitude.

(e) Having a final judgment entered against the registrant in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit.

(f) Being the subject of a decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order by a court of competent jurisdiction or an administrative law judge, or by a state or federal agency, involving a violation of a federal or state law relating to debt collection or a rule or regulation adopted under such law.

(g) Having a license or registration, or the equivalent, to practice a profession or occupation denied, suspended, or revoked, or otherwise acted against, including the denial of a registration or license by a registration or licensing authority of this state or another state, territory, or country.

(h) Acting as a consumer collection agency without a current registration issued under this part.

(i) A material misstatement or omission of fact on an initial or amended registration application.

(j) Payment to the office for a registration or permit with a check or electronic transmission of funds, which is dishonored by the applicant's or registrant's financial institution.

(k) Failure to comply with, or a violation of, any provision of this part, or any rule or order made or issued pursuant to this part.

(l) Failure to maintain, preserve, and keep available for examination all books, accounts, or other documents required by this part and the rules of the commission.

(m) Refusal to permit an investigation or examination of

11-00402B-14

20141006__

books and records, or refusal to comply with an office subpoena or subpoena duces tecum.

(n) Failure to timely pay a fee, charge, or fine imposed or assessed pursuant to this part and the rules of the commission.

(2) If the office finds a person in violation of any act specified in this section, it may enter an order imposing one or more of the following penalties:

(a) Issuance of a reprimand.

(b) Suspension of a registration, subject to reinstatement upon satisfying all reasonable conditions imposed by the office.

(c) Revocation of a registration.

(d) Denial of a registration.

(e) Imposition of a fine of up to \$10,000 for each count or separate offense.

(f) An administrative fine of up to \$1,000 per day for each day that a person engages as a consumer collection agency without a valid registration issued under this part.

~~(1) The office may impose an administrative fine against, or revoke or suspend the registration of, a registrant under this part who has committed a violation of s. 559.72. Final action to fine, suspend, or revoke the registration of a registrant is subject to review in accordance with chapter 120.~~

(3)(2) The office may impose suspension rather than revocation of a registration if circumstances warrant that one or the other should be imposed and the registrant demonstrates that the registrant has taken affirmative steps that can be expected to effectively eliminate the violations and that the registrant's registration has never been previously suspended.

(4) A consumer collection agency is subject to the

11-00402B-14 20141006__

465 disciplinary actions specified in subsection (2) for a violation
 466 of subsection (1) by a control person of the consumer collection
 467 agency.

468 (5) Pursuant to s. 120.60(6), the office may summarily
 469 suspend the registration of a consumer collection agency if the
 470 office has reason to believe that a registrant poses an
 471 immediate, serious danger to the public's health, safety, or
 472 welfare. The arrest of the registrant, or the consumer
 473 collection agency's control person, for any felony or any crime
 474 involving fraud, dishonesty, breach of trust, money laundering,
 475 or any other act of moral turpitude is deemed sufficient to
 476 constitute an immediate danger to the public's health, safety,
 477 or welfare. Any proceeding for the summary suspension of a
 478 registration must be conducted by the commissioner of the
 479 office, or designee, who shall issue the final summary order.

480 (6) The office may deny a request to terminate a
 481 registration or withdraw a registration application if the
 482 office believes that an act that would be a ground for
 483 registration denial, suspension, restriction, or revocation
 484 under this part has been committed.

485 ~~(7)(3) In addition to, or in lieu of suspension or~~
 486 ~~revocation of a registration, the office may impose an~~
 487 ~~administrative fine of up to \$10,000 per violation against a~~
 488 ~~registrant for violations of s. 559.72. The Financial Services~~
 489 ~~commission shall adopt rules establishing guidelines for~~
 490 ~~imposing administrative penalties.~~

491 ~~(8)(4)~~ This part does not preclude any person from pursuing
 492 remedies available under the Federal Fair Debt Collection
 493 Practices Act for any violation of such act.

11-00402B-14 20141006__

494 Section 9. This act shall take effect October 1, 2014.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ALAN HAYS
11th District

COMMITTEES:
Appropriations Subcommittee on General
Government, *Chair*
Children, Families, and Elder Affairs, *Vice Chair*
Governmental Oversight and
Accountability, *Vice Chair*
Appropriations
Appropriations Subcommittee on Criminal and
Civil Justice
Banking and Insurance
Commerce and Tourism

JOINT COMMITTEES:
Joint Select Committee on Collective Bargaining,
Co-Chair
Joint Legislative Auditing Committee
Joint Legislative Budget Commission

MEMORANDUM

To: Senator Greg Evers, Chair
Criminal Justice Committee
CC: Amanda Cannon, Staff Director
Sue Arnold, Committee Administrative Assistant

From: Senator D. Alan Hays

Subject: Request to agenda SB 1006 – Consumer Collection Practices

Date: March 6, 2014

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

D. Alan Hays, DMD
State Senator, District 11

REPLY TO:

- ☐ 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- ☐ 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- ☐ 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- ☐ 685 West Montrose Street, Suite 110, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

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DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/24/2014

Meeting Date

Topic _____

Bill Number SB 1006
(if applicable)

Name Jo Morris

Amendment Barcode _____
(if applicable)

Job Title Legislative Affairs Director

Address 200 E. Gaines St.
Street

Phone _____

Tallahassee FL 32399
City State Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Office of Financial Regulation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 1030

INTRODUCER: Health Policy Committee and Senators Bradley, Bean, Brandes, and others

SUBJECT: Low-THC Marijuana and Cannabis

DATE: March 21, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	Fav/CS
2.	Erickson	Cannon	CJ	Favorable
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1030 creates s. 456.60, F.S., in order to allow the compassionate use of low-THC marijuana. The bill allows certain patients whose Florida licensed physician registers them with the Department of Health (DOH) to use low-THC marijuana under limited circumstances. The bill defines low-THC marijuana as containing no more than .5 percent of tetrahydrocannabinol (THC) and at least 15 percent of cannabidiol (CBD).

Physicians may only register patients with severe and chronic seizures or muscle spasms who they have treated for 6 or more months and they must adhere to a number of requirements including keeping a plan of treatment for that patient and monitoring the patient's use of the low-THC marijuana. Patients who are ordered low-THC marijuana by their physician are added to a registry that is created and maintained by the DOH. Such patients may only purchase or acquire low-THC marijuana in the amount ordered by their physician and only from a dispensing organization that is approved by the DOH.

The bill establishes a number of criteria that an organization must meet and continuously adhere to in order to be approved by the DOH as a dispensing organization. The DOH is required to approve at least one, but no more than four, such organizations.

The bill also exempts patients and their legal representatives from the legal restrictions on purchasing, acquiring, possession, and medical use of low-THC marijuana in other parts of the Florida Statutes. Approved dispensing organizations, including its owners, managers, and

employees are exempted from such legal restrictions for the cultivation, production, possession, and sale of low-THC marijuana and for possessing and disposing of any byproducts of such cultivation and production.

II. Present Situation:

Treatment of Marijuana in Florida

Florida law defines Cannabis as “all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin”¹ and places it, along with other sources of THC, on the list of Schedule 1 controlled substances.² Schedule 1 controlled substances are substances that have a high potential for abuse and no currently accepted medical use in treatment in the United States. As a Schedule 1 controlled substance, possession and trafficking in cannabis carry criminal penalties that vary from a first degree misdemeanor³ up to a first degree felony with a mandatory minimum sentence of 15 years in state prison and a \$200,000 fine.⁴ Paraphernalia⁵ that is sold, manufactured, used, or possessed with the intent to be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance is also prohibited and carries criminal penalties ranging from a first degree misdemeanor to a third degree felony.⁶

Medical Marijuana in Florida – the Necessity Defense

Despite the fact that the use, possession, and sale of marijuana is prohibited by state law, Florida courts have found that circumstances can necessitate medical use of marijuana and circumvent the application of any criminal penalties. The necessity defense was successfully applied in a marijuana possession case in *Jenks v. State*⁷ where the First District Court of Appeal found that “section 893.03 does not preclude the defense of medical necessity” for the use of marijuana if the defendant:

- Did not intentionally bring about the circumstance which precipitated the unlawful act;
- Could not accomplish the same objective using a less offensive alternative available; and
- The evil sought to be avoided was more heinous than the unlawful act.

In the cited case the defendants, a married couple, were suffering from uncontrollable nausea due to AIDS treatment and had testimony from their physician that he could find no effective alternative treatment. Under these facts, the First District found that the Jenks met the criteria for

¹ Section 893.02(c), F.S.

² Section 893.03(c)7. and 37., F.S.

³ This penalty is applicable to possession or delivery of less than 20 grams of cannabis. See s. 893.13(3) and (6)(b), F.S.

⁴ Trafficking in more than 25 pounds, or 300 plants, of cannabis is a first degree felony with a mandatory minimum sentence that varies from 3 to 15 years in state prison depending on the quantity of the cannabis possessed, sold, etc. See s. 893.135(1)(a), F.S.

⁵ This term is defined in s. 893.145, F.S.

⁶ Section 893.147, F.S.

⁷ 582 So.2d 676 (Fla. 1st DCA 1991), *review denied*, 589 So.2d 292 (Fla. 1991)

the necessity defense and ordered an acquittal of the charges of cultivating cannabis and possession of drug paraphernalia.

Medical Marijuana Laws in Other States

Currently, 20 states and the District of Columbia⁸ have some form of law that permits the use of marijuana for medicinal purposes. These laws vary widely in detail but most are similar in that they touch on several recurring themes. Most state laws include the following in some form:

- A list of medical conditions for which a practitioner can recommend the use of medical marijuana to a patient.
 - Nearly every state has a list of medical conditions though the particular conditions vary from state to state. Most states also include a way to expand the list either by allowing a state agency or board to add medical conditions to the list or by including a “catch-all” phrase.⁹ Most states require that the patient receive certification from at least one, but often two, physicians designating that the patient has a qualifying condition before the patient may be issued an ID card.
- Provisions for the patient to designate one or more caregivers who can possess the medical marijuana and assist the patient in preparing and using the medical marijuana.
 - The number of caregivers allowed and the qualifications to become a caregiver vary from state to state. Most states allow one or two caregivers and require that they be at least 21 years of age and, typically, cannot be the patient’s physician. Caregivers are generally allowed to purchase or grow marijuana for the patient, be in possession of the allowed quantity of marijuana, and aid the patient in using the marijuana, but are strictly prohibited from using the marijuana themselves.
- A required identification card for the patient, caregiver, or both that is typically issued by a state agency.
- A registry of people who have been issued an ID card.
- A method for registered patients and caregivers to obtain medical marijuana.
 - There are two general methods by which patients can obtain medical marijuana: either they must self-cultivate the marijuana in their homes, or the state allows specified marijuana points of sale or dispensaries. The regulations governing such dispensaries vary widely.
- General restrictions on where medical marijuana may be used.
 - Typically, medical marijuana may not be used in public places, such as parks and on buses, or in areas where there are more stringent restrictions placed on the use of drugs, such as in or around schools or in prisons.

⁸ These states include Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois (effective 2014), Maine, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington. California was the first to establish a medical marijuana program in 1996 and Illinois was the most recent state to pass medical marijuana legislation in August of 2013. Illinois legislation became effective in January, 2014. See <http://www.ncsl.org/issues-research/health/state-medical-marijuana-laws.aspx>. (last visited on March 19, 2014).

⁹ An example is California’s law that includes “any other chronic or persistent medical symptom that either: Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990, or if not alleviated, may cause serious harm to the patient's safety or physical or mental health.”

State Medical Marijuana Laws and Their Interaction with the Federal Government

The Federal Controlled Substances Act lists Marijuana as a schedule 1 drug with no accepted medical uses. Under federal law possession, manufacturing, and distribution of marijuana is a crime.¹⁰ Although state medical marijuana laws protect patients from prosecution for the legitimate use of marijuana under the guidelines established in that state, such laws do not protect individuals from prosecution under federal law should the federal government choose to enforce those laws.

In August of 2013, the United States Justice Department (USDOJ) issued a publication entitled “Smart on Crime: Reforming the Criminal Justice System for the 21st Century.”¹¹ This document details the federal government’s changing stance on low-level drug crimes announcing a “change in Department of Justice charging policies so that certain people who have committed low-level, nonviolent drug offenses, who have no ties to large-scale organizations, gangs, or cartels will no longer be charged with offenses that impose draconian mandatory minimum sentences. Under the revised policy, these people would instead receive sentences better suited to their individual conduct rather than excessive prison terms more appropriate for violent criminals or drug kingpins.” In addition, the USDOJ published on August 29, 2013, a memorandum with the subject “Guidance regarding Marijuana Enforcement.” This memorandum made clear that the USDOJ considered small-scale marijuana use to be a state matter which the states may choose to punish or not, and, while larger operations would fall into the purview of the USDOJ, those operations that adhere to state laws legalizing marijuana in states that have robust regulatory systems for such laws would be far less likely to come under federal scrutiny.¹² These announcements generally indicate the USDOJ’s relative unwillingness to prosecute such cases leaving such prosecutions largely up to state authorities.

Tetrahydrocannabinol

Tetrahydrocannabinol, or THC, is the major psychoactive constituent of marijuana. The potency of marijuana, in terms of psychoactivity, is dependent on THC concentration and is usually expressed as percent of THC per dry weight of material.

Average THC concentration in marijuana is 1-5 percent and the form of marijuana known as *sinsemilla* is derived from the unpollinated female cannabis plant and is preferred for its high THC content (up to 17 percent THC). Recreational doses are highly variable and users often titer their own dose. A single intake of smoke from a pipe or joint is called a hit (approximately 1/20th of a gram). The lower the potency or THC content the more hits are needed to achieve the desired effects.¹³

¹⁰ The punishments vary depending on the amount of marijuana and the intent with which the marijuana is possessed. See <http://www.fda.gov/regulatoryinformation/legislation/ucm148726.htm#cntlsbd>. (last visited on March 19, 2014).

¹¹ See <http://www.justice.gov/ag/smart-on-crime.pdf>. (last visited on March 19, 2014).

¹² See USDOJ memo on “Guidance Regarding Marijuana Enforcement,” August 29, 2013, available at <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf> (last visited on March 19, 2014).

¹³ Drugs and Human Performance Fact Sheet for Cannabis / Marijuana, National Highway Traffic Safety Administration, available at <http://www.nhtsa.gov/people/injury/research/job185drugs/cannabis.htm> (last visited on March 19, 2014).

Marinol is a currently approved drug¹⁴ that consists of a man-made form of THC known as dornabinol.¹⁵ Marinol is used to treat anorexia associated with weight loss in patients with AIDS and nausea and vomiting associated with cancer chemotherapy in patients who have failed to adequately respond to conventional antiemetic treatments. Marinol has a variety of side-effects including a cannabinoid dose-related “high.”¹⁶

Cannabidiol

Cannabidiol, or CBD, is another cannabinoid that is found in marijuana and, although THC has psychoactive effects, CBD and other cannabinoids are not known to cause intoxication.¹⁷ There is some evidence that shows that CBD is effective in treating seizure disorders,^{18,19} although much of this evidence is anecdotal. Currently, the drug Epidiolex, which is a liquid form of highly purified CBD extract, has been approved by the FDA in November 2013, as an orphan drug²⁰ that may be used to treat Dravet syndrome.^{21,22}

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 456.60, F.S., to allow the compassionate use of low-THC marijuana. The bill:

- Defines the terms:
 - “Dispensing organization” to mean an organization approved by the DOH to cultivate, process, and dispense low-THC marijuana;
 - “Low-THC marijuana” to mean a substance that contains no more than .5 percent of any THC and at least 15 percent of CBD and which is dispensed from a dispensing organization;
 - “Medical use” to mean the administration of the ordered amount of low-THC marijuana with the exception of possession, use, or administration by smoking and the transfer of low-THC marijuana to a person other than the qualified patient or his or her legal representative;
 - “Qualified patient” to mean a Florida resident who has been added to the compassionate use registry by a Florida licensed physician; and
 - “Smoking” to mean burning or igniting a substance and inhaling the smoke. The term smoking does not include the use of a vaporizer.

¹⁴ The drug is approved by the US Food and Drug Administration.

¹⁵ See <http://www.marinol.com/about-marinol.cfm> (last visited on March 19, 2014).

¹⁶ For Marinol prescribing information, see http://www.rxabbvie.com/pdf/marinol_PI.pdf (last visited on March 19, 2014).

¹⁷ This information is from GW Pharmaceuticals, see <http://www.gwpharm.com/FAQ.aspx> (last visited on March 19, 2014).

¹⁸ See <http://www.cnn.com/2013/08/07/health/charlotte-child-medical-marijuana/> (last visited on March 19, 2014).

¹⁹ See also the presentation to the Florida House Criminal Justice Subcommittee on the Charlotte’s Web strain of marijuana on January 9, 2014.

²⁰ An orphan drug is defined as a drug that is intended for the safe and effective treatment, diagnosis, or prevention of rare diseases/disorders that affect fewer than 200,000 people in the U.S., or that affect more than 200,000 persons but are not expected to recover the costs of developing and marketing a treatment drug. See <http://www.fda.gov/forindustry/DevelopingProductsforRareDiseasesConditions/default.htm>. (last visited on March 19, 2014).

²¹ See <http://www.gwpharm.com/LGS%20Orphan%20Designation.aspx> (last visited on March 19, 2014).

²² Dravet syndrome is a rare form of childhood epilepsy. See http://www.ninds.nih.gov/disorders/dravet_syndrome/dravet_syndrome.htm last visited on March 19, 2014).

- Allows Florida licensed physicians to order low-THC marijuana for a patient suffering from a physical medical condition, or treatment for a medical condition, that chronically produces symptoms of seizure or severe and persistent muscle spasms. The physician may only order low-THC marijuana if:
 - The physician has tried alternate treatment options and there are no satisfactory alternative treatments to eliminate the patient's symptoms;
 - The patient is a permanent resident of Florida;
 - The physician has treated the patient for his or her symptoms for at least 6 months;
 - The physician, along with a second physician for patients under the age of 18, determines the risk of ordering low-THC marijuana are reasonable;
 - The physician registers as the orderer for the named patient on the registry, updates the registry with the order's contents, and deactivates the patient's registration when treatment is discontinued;
 - The physician maintains a patient treatment plan that includes the dose, route of administration, planned duration, and monitoring of the patient's symptoms and other indicators of tolerance or reaction to the low-THC marijuana; and
 - The physician submits the treatment plan quarterly to the University of Florida College of Pharmacy for research on the safety and efficacy of the low-THC marijuana.
- Requires the DOH to:
 - Create a secure, electronic, and online registry for the registration of physicians and patients which must be able to be accessed by law enforcement and the dispensing organization in order to verify patient orders. The dispensing organization must be able to record the low-THC marijuana dispensed and the registry must prevent an active registration of a patient by multiple physicians.
 - Authorize at least one, but no more than four, dispensing organizations to ensure reasonable statewide accessibility and availability of low-THC marijuana as necessary. The DOH must develop an application form and impose initial and biennial renewal fees that are sufficient to cover the costs of administering their responsibilities under this section. An applicant for approval as a dispensing organization must be able to show:
 - The technical and technological ability to cultivate and produce low-THC marijuana;
 - The ability to secure the premises, resources, and personnel necessary to operate;
 - The ability to maintain accountability of all marijuana related products and to prevent diversion of those substances;
 - An infrastructure reasonably located to dispense low-THC marijuana statewide or regionally as determined by the DOH;
 - The financial ability to maintain operations for the duration of the 2-year cycle;
 - That all owners, managers, and employees have been fingerprinted and passed a level II background screening; and,
 - Any additional criteria determined by the DOH to be needed to safely implement the section.
 - Monitor physician registration and ordering of low-THC marijuana in order to be able to take disciplinary action as needed.
- Requires a dispensing organization to maintain compliance with all listed criteria for approval at all times and to verify before dispensing any low-THC marijuana that a patient has an active registration and that the patient's order matches the one recorded on the registry

and has not already been filled. When the dispensing organization dispenses any low-THC marijuana it must record the date, time, quantity, and form of the marijuana dispensed.

- Creates exceptions from all other sections of law for:
 - Qualified patients and their legal representatives to purchase, acquire, and possess for that patient's medical use up to the ordered amount of low-THC marijuana;
 - Dispensing organizations, including their owners, managers, and employees to acquire, possess, cultivate, and dispose of excess product in reasonable quantities to produce low-THC marijuana and for such organizations to possess, process, and dispense low-THC marijuana. The bill also clarifies that dispensing organizations and their owners, managers, and employees are not subject to licensure and regulation under ch. 465, F.S., relating to pharmacies.

Section 2 of the bill amends s. 893.02, F.S., to exempt from the definition of "cannabis" any plant of the genus *Cannabis* that contains 0.5 percent or less of THC and more than 15 percent of CBD; the seeds of such plant; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such a plant or its seeds or resin, if possessed or used in conformance with the newly created s. 456.60, F.S. This exemption, in effect, legalizes the plants, seeds, resins, and materials that conform to the exemption.

Section 3 of the bill establishes an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have a positive fiscal impact on the private sector organizations that are approved by the DOH to become dispensing organizations.

C. Government Sector Impact:**DOH Impact**

The DOH will require \$120,000 to fund the creation of the compassionate use registry and will require further funds to maintain the registry, as well as approve and monitor the dispensing organizations.²³ However, these costs should be funded from the initial and license renewal fees charged to the dispensing organizations.

The DOH will incur a recurring increase in workload associated with monitoring physician registration and prescribing of medical-grade marijuana. The impact is indeterminate at this time, therefore, the fiscal impact cannot be calculated.

The DOH may experience a recurring increase in workload associated with the enforcement and regulation of this legislation. The impact is indeterminate at this time, therefore, the fiscal impact cannot be calculated.

The DOH will incur non-recurring costs for rulemaking, which current budget authority is adequate to absorb.

FDLE and County Crime Lab Impact

The Florida Department of Law Enforcement (FDLE) states that the definition change to the term “cannabis” in Section 2 of the bill will require the FDLE to analyze all cannabis samples confiscated in order to prove that they are not exempt under the new definition. To do so will create an increased workload and the FDLE will require 25 new Crime Lab Analysts and at least 10 additional Gas Chromatographs to perform the additional analyses. The FDLE will incur an estimated \$1,832,700 recurring costs for the new personnel and a one-time cost of \$650,000 for new Gas Chromatographs.²⁴

The FDLE also believes the bill would have a fiscal impact on county crime laboratories. Information assessing that impact was not available.

Section 1 of the bill may generate additional revenue for the FDLE due to an increase in the number of criminal history checks performed. The current cost for a state record check is \$24.²⁵ It is unknown how many criminal history record checks will be submitted.

VI. Technical Deficiencies:

None.

²³ Analysis of SB 1030 (July 1, 2014), Florida Department of Health (on file with Senate Committee on Health Policy and the Senate Committee on Criminal Justice). All information in the “Fiscal Impact” section of this analysis relevant to the DOH is from the DOH analysis.

²⁴ Analysis of SB 1030 (July 1, 2014), Florida Department of Law Enforcement (on file with Senate Committee on Health Policy and the Senate Committee on Criminal Justice). All information in the “Fiscal Impact” section of this analysis relevant to the FDLE is from the FDLE analysis.

²⁵ The cost for a state and national criminal history record check is \$40.50 (\$24 goes into the FDLE Operating Trust Fund and \$16.50 from each request is forwarded to the Federal Bureau of Investigation).

VII. Related Issues:**Compassionate Use Registry**

Consideration should be given to creating a public records exemption for the personal identifying information in the compassionate use registry.

Background Screening of Owners, Managers, and Employees of a Dispensing Organization Applicant

The FDLE states that participation in the state's and federal fingerprint retention program would ensure that all arrests of owners, managers, and employees of a dispensing organization applicant occurring after the initial criminal history screening of those persons (lines 114-116 of the bill) are made known to the licensing agency.²⁶

VIII. Statutes Affected:

This bill substantially amends section 893.02 of the Florida Statutes.

This bill creates section 456.60 of the Florida Statutes.

IX. Additional Information:

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

CS by Health Policy on March 11, 2014:

The CS amends SB 1030 to:

- Change the name of “medical-grade marijuana” to “low-THC marijuana” throughout the bill;
- Amend a typo in the definition of “low-THC marijuana”; and,
- Change “prescribe” to “order” throughout the bill to avoid a conflict with other statutes that define “prescriptions” as being filled at a pharmacy.

- B. **Amendments:**

None.

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

²⁶ Analysis of SB 1030 (July 1, 2014), Florida Department of Law Enforcement.

By the Committee on Health Policy; and Senators Bradley, Bean, Brandes, Galvano, Sobel, Soto, Gardiner, Stargel, and Simpson

588-02462-14

20141030c1

A bill to be entitled

An act relating to low-THC marijuana and cannabis; creating s. 456.60, F.S.; defining terms; authorizing specified physicians to order low-THC marijuana for use by specified patients; providing conditions; providing duties of the Department of Health; requiring the department to create a compassionate use registry; providing requirements for the registry; requiring the department to authorize a specified number of dispensing organizations; providing requirements and duties for a dispensing organization; providing exceptions to specified laws; amending s. 893.02, F.S.; revising the definition of the term "cannabis" for purposes of the Florida Comprehensive Drug Abuse Prevention and Control Act and as applicable to certain criminal offenses proscribing the sale, manufacture, delivery, possession, or purchase of cannabis, to which penalties apply; providing an effective date.

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

Section 1. Section 456.60, Florida Statutes, is created to read:

456.60 Compassionate use of low-THC marijuana.—

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

(a) "Dispensing organization" means an organization approved by the department to cultivate, process, and dispense low-THC marijuana pursuant to this section.

588-02462-14

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(b) "Low-THC marijuana" means a substance that contains no more than 0.5 percent of any tetrahydrocannabinol and at least 15 percent cannabidiol and that is dispensed only from a dispensing organization.

(c) "Medical use" means administration of the ordered amount of low-THC marijuana. The term does not include the possession, use, or administration by smoking. The term also does not include the transfer of low-THC marijuana to a person other than the qualified patient for whom it was ordered or the qualified patient's legal representative on behalf of the qualified patient.

(d) "Qualified patient" means a resident of this state who has been added to the compassionate use registry by a physician licensed under chapter 458 or chapter 459 to receive low-THC marijuana from a dispensing organization.

(e) "Smoking" means burning or igniting a substance and inhaling the smoke. Smoking does not include the use of a vaporizer.

(2) PHYSICIAN ORDERING.—A physician licensed under chapter 458 or chapter 459 who has examined and treated a patient suffering from a physical medical condition, or from treatment for a medical condition, which chronically produces symptoms of seizures or severe and persistent muscle spasms may order for the patient's medical use low-THC marijuana to treat or alleviate such symptoms if no other satisfactory alternative treatment options exist for that patient and all of the following conditions apply:

(a) The patient is a permanent resident of this state.

(b) The physician has treated the patient for his or her

588-02462-14

20141030c1

59 symptoms or a medical condition in which his or her symptoms
 60 were present for at least 6 months.

61 (c) The physician has tried alternate treatment options
 62 that have not alleviated the patient's symptoms.

63 (d) The physician determines the risks of ordering low-THC
 64 marijuana are reasonable in light of the potential benefit for
 65 that patient. If a patient is younger than 18 years of age, a
 66 second physician must concur with this determination, and such
 67 determination must be documented in the patient's medical
 68 record.

69 (e) The physician registers as the orderer of low-THC
 70 marijuana for the named patient on the compassionate use
 71 registry maintained by the department and updates the registry
 72 to reflect the contents of the order. The physician shall
 73 inactivate the patient's registration when treatment is
 74 discontinued.

75 (f) The physician maintains a patient treatment plan that
 76 includes the dose, route of administration, planned duration,
 77 and monitoring of the patient's symptoms and other indicators of
 78 tolerance or reaction to the low-THC marijuana.

79 (g) The physician submits the patient treatment plan
 80 quarterly to the University of Florida College of Pharmacy for
 81 research on the safety and efficacy of low-THC marijuana on
 82 patients with such symptoms.

83 (3) DUTIES OF THE DEPARTMENT.—The department shall:

84 (a) Create a secure, electronic, and online compassionate
 85 use registry for the registration of physicians and patients as
 86 provided under this section. The registry must be accessible to
 87 law enforcement agencies and to a dispensing organization in

588-02462-14

20141030c1

88 order to verify patient authorization for low-THC marijuana and
 89 record the low-THC marijuana dispensed. The registry must
 90 prevent an active registration of a patient by multiple
 91 physicians.

92 (b) Authorize at least one, but no more than four,
 93 dispensing organizations, to ensure reasonable statewide
 94 accessibility and availability as necessary for patients
 95 registered in the compassionate use registry and who are ordered
 96 low-THC marijuana under this section. The department shall
 97 develop an application form and impose an initial application
 98 and biennial renewal fee that is sufficient to cover the costs
 99 of administering this section. An applicant for approval as a
 100 dispensing organization must be able to demonstrate:

101 1. The technical and technological ability to cultivate and
 102 produce low-THC marijuana.

103 2. The ability to secure the premises, resources, and
 104 personnel necessary to operate as a dispensing organization.

105 3. The ability to maintain accountability of all raw
 106 materials, finished product, and any byproducts to prevent
 107 diversion or unlawful access to or possession of these
 108 substances.

109 4. An infrastructure reasonably located to dispense low-THC
 110 marijuana to registered patients statewide or regionally as
 111 determined by the department.

112 5. The financial ability to maintain operations for the
 113 duration of the 2-year approval cycle.

114 6. That all owners, managers, and employees have been
 115 fingerprinted and successfully passed background screening
 116 pursuant to s. 435.04.

588-02462-14

20141030c1

7. Additional criteria determined by the department to be necessary to safely implement this section.

(c) Monitor physician registration and ordering of low-THC marijuana for ordering practices which could facilitate unlawful diversion or misuse of low-THC marijuana, and take disciplinary action as indicated.

(4) DISPENSING ORGANIZATION.—An approved dispensing organization shall maintain compliance with the criteria demonstrated for selection and approval under subsection (3) as a dispensing organization at all times. Before dispensing low-THC marijuana to a qualified patient, the dispensing organization shall verify that the patient has an active registration in the compassionate use registry, the order presented matches the order contents as recorded in the registry, and the order has not already been filled. Upon dispensing the low-THC marijuana, the dispensing organization shall record in the registry the date, time, quantity, and form of low-THC marijuana dispensed.

(5) EXCEPTIONS TO OTHER SECTIONS OF LAW.—

(a) Notwithstanding any other section of law, but subject to the requirements of this section, a qualified patient and the qualified patient's legal representative may purchase, acquire, and possess for the patient's medical use up to the amount of low-THC marijuana ordered to the patient.

(b) Notwithstanding any other section of law, but subject to the requirements of this section, an approved dispensing organization and its owners, managers, and employees may acquire, possess, cultivate, and lawfully dispose of excess product in reasonable quantities to produce low-THC marijuana

588-02462-14

20141030c1

and possess, process, and dispense low-THC marijuana.

(c) An approved dispensing organization is not subject to licensure and regulation under chapter 465, and the owners, managers, and employees of a dispensing organization are not subject to licensure and regulation for the practice of pharmacy under chapter 465.

Section 2. Subsection (3) of section 893.02, Florida Statutes, is amended to read:

893.02 Definitions.—The following words and phrases as used in this chapter shall have the following meanings, unless the context otherwise requires:

(3) "Cannabis" means all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. The term does not include any plant of the genus *Cannabis* that contains 0.5 percent or less of tetrahydrocannabinol and more than 15 percent of cannabidiol; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or resin, if possessed or used in conformance with s. 456.60.

Section 3. This act shall take effect July 1, 2014.



The Florida Senate

Committee Agenda Request

✓

To: Senator Greg Evers, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: March 17, 2014

I respectfully request that **Senate Bill # 1030**, relating to Low-THC Marijuana and Cannabis, be placed on the:

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

A handwritten signature in black ink, appearing to read "Rob Bradley", is written over a horizontal line.

Senator Rob Bradley
Florida Senate, District 7



The Florida Senate

Committee Agenda Request

To: Senator Greg Evers, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: March 21, 2014

I respectfully request that **Senate Bill #1030**, relating to Medical-grade marijuana and Cannabis, be placed on the:

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

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

Senator Jeff Brandes
Florida Senate, District 22

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-24-14

Meeting Date

Topic LOW THC BILL

Bill Number 1030

(if applicable)

Name KARA KAMPMAYER

Amendment Barcode _____

(if applicable)

Job Title PRESIDENT

Address 825 South Gray Way

Street

FLORIDA Inverness FL 34480

City

State

Zip

Phone (352) 419-5662

E-mail KARALLUV3@yahoo.com

Speaking: ☒ For ☐ Against ☒ Information

Representing FLORIDAS ANGELS OF MERCY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-24-14
Meeting Date

Topic LOW THC BILL

Bill Number 1030
(if applicable)

Name Moriah Barnhart

Amendment Barcode _____
(if applicable)

Job Title _____

Address 12903 Pine Valley Circle
Street
OTO Dayton CO 80831
City State Zip

Phone 1-873-720-5893

E-mail moriahbarnhart@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

Representing Self

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-24-14

Meeting Date

Topic LOW THG BILL

Bill Number 1030

(if applicable)

Name ROBERT P JORDAN

Amendment Barcode

(if applicable)

Job Title DISABLE VET

Address 4307 98 AVE E.

Phone 941 981 3000

Street PARRISH

FL 34219

City

State

Zip

E-mail

Speaking: ☒ For ☐ Against ☒ Information

Representing FLORIDA CAN

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/24/14
Meeting Date

Topic _____ Bill Number 1030
Name Holley Masely (if applicable)
Job Title _____ Amendment Barcode _____ (if applicable)

Address 211 Norwich Dr Phone 857-232-0004
Street Duff Breeze City FL State 32561 Zip
City State Zip

Speaking: ☒ For ☐ Against ☐ Information

Representing Ray Ann Masely

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date

Topic Medical Marijuana

Bill Number 1030
(if applicable)

Name Anneliese Clark

Amendment Barcode
(if applicable)

Job Title Mom

Address 1336 Hideaway Dr S
Street

Phone 904-813-5028

Jacksonville FL 32259
City State Zip

E-mail

Speaking: ☒ For ☐ Against ☐ Information

Representing Christina Clark

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-24-14

Meeting Date

Topic MEDICAL MARIJUANA

Bill Number SB1030
(if applicable)

Name Jodi James

Amendment Barcode _____
(if applicable)

Job Title Executive Director

Address 1375 Cypress Ave
Street

Phone 321 890-7302 @

MELBOURNE FL 32935
City State Zip

E-mail jamesflorida@gmail.com

Speaking: ☐ For ☐ Against ☒ Information

Representing FLORIDA CANNABIS ACTION NETWORK

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-24-13

Meeting Date

Topic Low THc Bill

Bill Number 1030
(if applicable)

Name Ryan Roman

Amendment Barcode _____
(if applicable)

Job Title Disabled

Address 11334 77th St E

Phone 941-812-4271

Street

Parnish

City

FL

State

34219

Zip

E-mail _____

Speaking: ☒ For ☐ Against ☒ Information

Representing Self and patients with cancer

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

Waive in Support

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

3/24/14

Meeting Date

Topic

Charlotte's Web

Bill Number

SB 1030

(if applicable)

Name

Ron Watson

Amendment Barcode

(if applicable)

Job Title

Lobbyist

Address

3738 Mordon Way

Phone

(850) 567-1202

Street

Tallahassee

FL

32309

City

State

Zip

E-mail

Watson.Stratigis@comcast.net

Speaking:



For



Against



Information

Representing

FL Medical Cannabis Association / & my son

Appearing at request of Chair:



Yes



No

Lobbyist registered with Legislature:



Yes



No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date

Topic CBD ^{medical} Marijuana

Bill Number 1030
(if applicable)

Name Marshall McGaw

Amendment Barcode _____
(if applicable)

Job Title Accountant

Address 9817 Crestmont Circle
Street
Pensacola, FL 32514
City State Zip

Phone 850-281-7362

E-mail marshallmcgaw@cox.net

Speaking: ☒ For ☐ Against ☐ Information

Representing Jacob McGaw (my son)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/24/14
Meeting Date

Topic Low - THC Marijuana & Cannabis

Bill Number 1030
(if applicable)

Name Keri Rayborn Silver

Amendment Barcode _____
(if applicable)

Job Title _____

Address PO Box 1565
Street

Phone 850-524-2394

Tallahassee FL 32302
City State Zip

E-mail Keri@raybornconsultants.com

Speaking: ☒ For ☐ Against ☐ Information

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 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 1234

INTRODUCER: Senator Bullard

SUBJECT: Florida Law Enforcement Officers' Hall of Fame

DATE: March 21, 2014

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Cannon	CJ	Favorable
2. _____	_____	GO	_____
3. _____	_____	AP	_____

I. Summary:

SB 1234 establishes a Florida Law Enforcement Officers' Hall of Fame, which is administered by the Florida Department of Law Enforcement (FDLE) without appropriation of state funds. The Department of Management Services (DMS) must set aside an area on the Plaza Level of the Capitol Building (and meet other specifications) for the Hall of Fame and consult with the FDLE regarding the design and theme of the area. The bill also specifies the procedures for recommendations of potential nominees and selection of officers for induction.

II. Present Situation:

The FDLE has provided the following information relevant to the bill:

Florida has no publicly established Hall of Fame for law enforcement officers, and there is no Hall of Fame in Florida that gives preference to law enforcement officers who were born in Florida or adopted Florida as their home. Florida is, however, home to the American Police Hall of Fame and Museum (APHF), which was founded in 1960 and is the nation's first national police museum and memorial dedicated to American law enforcement officers killed in the line of duty. Through interactive displays, simulators and thousands of artifacts, the APHF Museum educates the public about the history and current trends of American law enforcement. The APHF Memorial lists over 8,000 officers who were killed in the line of duty. Their names are permanently etched on the Memorial's marble walls, which are added to once a year for Police Memorial Day (May 15th). The APHF Museum houses two non-profit law enforcement associations: The National Association of Chiefs of Police (NACOP) and the American Federation of

Police and Concerned Citizens (AFP&CC), which provide financial and program support.¹

The Legislature has established four Halls of Fame “that honor persons born in Florida or who adopted Florida as their home, and who have made significant contributions to the state”²: the Florida Women’s Hall of Fame³; the Florida Veterans’ Hall of Fame⁴; the Florida Civil Rights Hall of Fame⁵; and the Florida Artists Hall of Fame.⁶

The approach taken by the bill in establishing and administering the Law Enforcement Officers’ Hall of Fame is substantially similar to the approach taken in s. 265.003, F.S., which establishes the Florida Veterans’ Hall of Fame. This statute specifies that an agency (the Department of Veterans Affairs) must administer the Florida Veterans’ Hall of Fame “without appropriation of state funds.”⁷ The Department of Management Services (DMS) must set aside an area on the Plaza Level of the Capitol Building, where a plaque is displayed.⁸ The DMS must consult with Department of Veterans’ Affairs, the administering agency, regarding the design and theme of the area.⁹

Presently, numerous agencies, associations, and organizations present state and national awards for “officer of the year,” “deputy of the year,” etc., including, but not limited to, the Florida Attorney General,¹⁰ the Florida Police Chiefs Association,¹¹ and the Florida Sheriffs Association.¹²

Section 683.115, F.S., designates May 15th of each year as “Law Enforcement Memorial Day.” The Capitol Courtyard contains a law enforcement officer memorial monument to honor fallen officers. This monument is maintained by the Fraternal Order of Police. A memorial service for fallen officers is held annually at the Capitol.

¹ Analysis of SB 1234 (March 5, 2014) (footnote omitted), Florida Department of Law Enforcement (on file with the Senate Criminal Justice Committee) (further cited as “FDLE Bill Analysis”).

² *Id.*

³ Section 265.001, F.S.

⁴ Section 265.003, F.S.

⁵ Section 760.065, F.S.

⁶ Section 265.2865, F.S.

⁷ Section 265.003(2)(a), F.S.

⁸ Section 265.003(2)(b) and (c), F.S.

⁹ Section 265.003(2)(b), F.S.

¹⁰ “Attorney General Pam Bondi Honors Law Enforcement Officers and Victim Advocates During Crime Victims’ Week Ceremony” (News Release) (April 24, 2013), Florida Office of the Attorney General, available at <http://myfloridalegal.com/852562220065EE67.nsf/0/9485E43A4865854485257B5700620577?Open&Highlight=0,law,enforcement,officer,of,the,year> (last visited on March 12, 2014).

¹¹ “The ‘Lee McGehee’ Police Officer of the Year Awards,” Florida Police Chiefs Association, available at <http://www.fPCA.com/lee-mcgehee-police-officer-of-the-year-award> (last visited on March 12, 2014).

¹² “Deputy Tim Liberatore is 2013 Florida Sheriffs Association’s Law Enforcement Officer of the Year” (Press Release) (August 7, 2013), Florida Sheriffs Association, available at <http://www.flsheriffs.org/newsroom/entry/deputy-time-liberatore-is-2013-florida-sheriffs-associations-law-enforcemen> (last visited on March 12, 2014).

III. Effect of Proposed Changes:

The bill creates s. 265.004, F.S., which establishes the Florida Law Enforcement Officers' Hall of Fame. According to intent language in the proposed statute:

The Legislature intends to recognize and honor those law enforcement officers who, through their works, service, and exemplary accomplishments during or following their service as law enforcement officers, have dedicated their lives to, and sacrificed their lives for, the safety of the residents of Florida and have made significant contributions to this state.

The Hall of Fame is administered by the FDLE without appropriation of state funds. The bill directs the DMS to set aside an appropriate public area on the Plaza Level of the Capitol Building for the Hall of Fame. The DMS must consult with the FDLE regarding the design and theme of the area.

The FDLE must:

- Affix the name of each inductee on a plaque displayed in the designated area of the Capitol Building;
- Annually accept recommendations of persons to be considered for induction into the Hall of Fame from law enforcement organizations the FDLE deems appropriate, including but not limited to, the Police Benevolent Association;
- Transmit a list of nominees to the Governor and Cabinet who will select the nominees to be inducted; and
- In making its recommendations to the Governor and Cabinet, give preference to law enforcement officers who were born in Florida or adopted Florida as their home state.

The FDLE may:

- Establish criteria and set specific time periods for the acceptance of nominations and for the selection process for nominees; and
- Establish, organize, and conduct a formal induction ceremony.

The bill takes effect on July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:**FDLE Impact**

The FDLE has provided the following comments regarding the impact of the bill on the department:

FDLE believes it is important to recognize the many accomplishments of Florida's law enforcement officers; as of December 20, 2013, there were 45,273 certified law enforcement officers in Florida. In order for the Florida Law Enforcement Officers' Hall of Fame initiative to be meaningful, it will require an extensive vetting process in order to examine and evaluate all nominations submitted to the department.

Although the bill directs FDLE to administer the Florida Law Enforcement Officers' Hall of Fame without appropriation of state funds, the associated costs related to staff time and agency resources that will be expended to carry out this annual activity cannot be absorbed within FDLE's existing appropriated resources.¹³

The FDLE further states:

The FDLE is required to accept nominations of persons to be considered for induction, and transmit the names to the Governor and Cabinet. The FDLE is, also, authorized to establish guidelines for the process of selecting nominees. In order to implement these statutory requirements, the FDLE will need 1 FTE to develop the guidelines that will govern the implementation, and to solicit, review and more importantly, vet the applications prior to processing the names submitted for consideration.

The following specific information is provided by the FDLE regarding expenditures for the 1 FTE, Government Analyst:

- FY 2014-15: \$63,520 (\$53,142 salary & benefits), \$10,034 (expense), and \$344 (HR)¹⁴

¹³ All of the information for the "Government Sector Impact" section of this bill analysis is from the FDLE Bill Analysis.

¹⁴ Standard costs associated with the FTE such as DMS personnel management and People First.

- FY 2015-16: \$57,259 (\$53,142 salary & benefits), \$3,773 (expenses), and \$344 (HR)
- FY 2016-17: \$57,259 (\$53,142 salary & benefits), \$3,773 (expenses), and \$344 (HR)

The FDLE further states that the bill “requires that the name of each person inducted into the Hall of Fame be placed on a plaque displayed in the designated area of the Capitol building. The costs related to this plaque will be absorbed into FDLE’s appropriated budget.”

DMS Impact

The DMS is required to set aside an area on the Plaza level of the Capitol Building for the Hall of Fame. An analysis of the bill by the DMS is not available, but the FDLE states that the DMS “may incur non-recurring expenses to prepare the area.”

VI. Technical Deficiencies:

The FDLE indicates that some intent language in the bill could create ambiguities that may make it difficult to implement provisions of the bill:

SB 1234 grants FDLE rule-making authority to “establish criteria and set specific time periods for the acceptance of nominations and for the selection process for nominees” whose names are transmitted to the Governor and Cabinet.¹⁵ However, an apparent inconsistency in the intent language may pose difficulties for FDLE in carrying out this duty.

Section 1 states that “[T]he Legislature intends to recognize and honor those law enforcement officers who, through their works, service, and *exemplary accomplishments during or following their service as law enforcement officers*, have dedicated their lives to, and *sacrificed their lives for*,...” (Emphasis added). To the law enforcement community, the words “sacrificed their lives for” mean “died in the line of duty.” This section could be interpreted to limit eligibility only to those who have died in the line of duty, as evidenced by the inclusion of the words “exemplary accomplishments during or following their service as law enforcement officers.” If this point is not clarified, the FDLE will have difficulty in establishing criteria for the process of accepting recommendations and selecting nominees to forward to the Governor and Cabinet.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 265.005 of the Florida Statutes.

¹⁵ While the FDLE interprets this language as granting the department rule-making authority, the bill does not specifically state that the FDLE may adopt rules.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Bullard

39-01039-14

20141234__

A bill to be entitled

An act relating to the Florida Law Enforcement Officers' Hall of Fame; creating s. 265.005, F.S.; providing legislative intent; establishing the Florida Law Enforcement Officers' Hall of Fame; providing for administration of the hall of fame by the Department of Law Enforcement; directing the Department of Management Services to designate a location; establishing procedures for selection, nomination, and induction of members; providing an effective date.

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

Section 1. Section 265.005, Florida Statutes, is created to read:

265.005 Florida Law Enforcement Officers' Hall of Fame.—

(1) The Legislature intends to recognize and honor those law enforcement officers who, through their works, service, and exemplary accomplishments during or following their service as law enforcement officers, have dedicated their lives to, and sacrificed their lives for, the safety of the citizens of Florida and have made significant contributions to this state.

(2) There is established the Florida Law Enforcement Officers' Hall of Fame.

(a) The Florida Law Enforcement Officers' Hall of Fame is administered by the Department of Law Enforcement without appropriation of state funds.

(b) The Department of Management Services shall set aside an appropriate public area on the Plaza Level of the Capitol

39-01039-14

20141234__

Building for the Florida Law Enforcement Officers' Hall of Fame and shall consult with the Department of Law Enforcement regarding the design and theme of the area.

(c) The Department of Law Enforcement shall affix the name of each person inducted into the Florida Law Enforcement Officers' Hall of Fame on a plaque displayed in the designated area of the Capitol Building.

(3) (a) The Department of Law Enforcement shall annually accept nominations of persons to be considered for induction into the Florida Law Enforcement Officers' Hall of Fame from law enforcement organizations that the department deems appropriate, including, but not limited to, the Police Benevolent Association. The department shall transmit a list of nominees to the Governor and Cabinet who will select the nominees to be inducted.

(b) In making its recommendations to the Governor and Cabinet, the Department of Law Enforcement shall give preference to law enforcement officers who were born in Florida or adopted Florida as their home state.

(4) The Department of Law Enforcement may establish criteria and set specific time periods for the acceptance of nominations and for the selection process for nominees. The department may establish, organize, and conduct a formal induction ceremony.

Section 2. This act shall take effect July 1, 2014.

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 Criminal Justice

BILL: SB 1322

INTRODUCER: Senator Evers

SUBJECT: Law Enforcement and Corrections Officers

DATE: March 21, 2014

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Cannon	CJ	Pre-meeting
2. _____	_____	GO	_____
3. _____	_____	CA	_____

I. Summary:

SB 1322 amends Part VI of Chapter 112, F.S., which provides protections and rights to law enforcement officers and correctional officers who are under investigation and subject to interrogation by members of their agency for any reason that could lead to disciplinary action, suspension, demotion, or dismissal. The bill:

- Provides that procedures under s. 112.532, F.S. (law enforcement officers' and correctional officers' rights), are exclusive procedures for investigation of all law enforcement and correctional officers subject to any internal or external investigation;
- Requires that officers subject to investigation be advised of the "specific nature" of the investigation prior to any interrogation session;
- Requires that a copy of any recording of an interrogation be provided upon request of the officer's representative or legal counsel;
- Removes an exemption for sheriffs and deputy sheriffs from a provision of s. 112.532, F.S., which requires a complaint review board;
- Authorizes legal counsel for an officer subject to disciplinary action to receive a copy of the investigative file, including the final investigate report and all evidence, and to address the findings in the report before disciplinary action is imposed;
- Relevant to a notice of disciplinary action, provides that action may include disciplinary probation;
- Authorizes the investigating agency to provide the officer's representative or legal counsel with notice of intent to proceed with disciplinary action;
- Provides that procedures in s. 122.534, F.S., apply to intentional failure to comply with Part VI at any time from the beginning of the investigation until the imposition of discipline or the investigation is closed; and
- If an agency fails to comply with Part VI, authorizes an officer to seek injunctive relief in the circuit court of the county in which the alleged violation occurred.

II. Present Situation:

Rights and Procedures under Part VI of Chapter 112, F.S.

Part VI of Chapter 112, F.S., provides protections and rights to law enforcement officers¹ and correctional officers² who are under investigation and subject to interrogation by members of their agency for any reason that could lead to disciplinary action, suspension, demotion, or dismissal.”³ Section 112.532, F.S., specifies the rights and protections provided to a law enforcement officer or correctional officer to include all of the following:

- Generally requiring that the interrogation be conducted at a reasonable hour and at the officer’s place of employment.
- Requiring that the officer be provided with the rank, name, and command of the officer in charge of the investigation, the interrogating officer, and all persons present during the interrogation.
- Requiring that all questions directed to the officer be asked by or through one interrogator during any one investigative interrogation, unless specifically waived by the officer.
- Informing the officer of the investigation before any interrogation begins, and the names of all complainants.⁴
- Interviewing all identifiable witnesses, whenever possible, prior to the beginning of the investigative interview of the officer.⁵
- Before the beginning of any investigative interview of that officer, providing the officer with the complaint, all witness statements, including all other existing subject officer statements, and all other existing evidence, including, but not limited to, incident reports, GPS locator information, and audio or video recordings relating to the incident under investigation.⁶
- Requiring that interrogating sessions be for reasonable periods and timed to allow for such personal necessities and rest periods as are reasonably necessary.
- Providing that an officer may not be subjected to offensive language or be threatened with transfer, dismissal, or disciplinary action, and a promise or reward may not be made as an inducement to answer any questions.
- Requiring that the formal interrogation of an officer, including all recess periods, be recorded on audio tape, or otherwise preserved in such a manner as to allow a transcript to be prepared, and there shall be no unrecorded questions or statements.
- Requiring that, upon the request of the interrogated officer, a copy of any recording of the interrogation session be made available to the interrogated officer no later than 72 hours, excluding holidays and weekends, following that interrogation.

¹ “Law enforcement officer” means any person, other than a chief of police, who is employed full time by any municipality or the state or any political subdivision thereof and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state; and includes any person who is appointed by the sheriff as a deputy sheriff pursuant to s. 30.07, F.S. Section 112.531(1), F.S.

² “Correctional officer” means any person, other than a warden, who is appointed or employed full time by the state or any political subdivision thereof whose primary responsibility is the supervision, protection, care, custody, or control of inmates within a correctional institution; and includes correctional probation officers, as defined in s. 943.10(3), F.S. However, the term does not include any secretarial, clerical, or professionally trained personnel. Section 112.531(2), F.S.

³ Section 112.532(1), F.S.

⁴ An officer, after being informed of the right to review witness statements, may voluntarily waive this right and provide a voluntary statement at any time. Section 112.532(1)(d), F.S.

⁵ *Id.*

⁶ *Id.*

- If the officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, requiring that the officer be completely informed of all his or her rights before commencing the interrogation.
- Providing that, at the request of any officer under investigation, he or she has the right to be represented by counsel or any other representative of his or her choice, who shall be present at all times during the interrogation whenever the interrogation relates to the officer's continued fitness for law enforcement or correctional service.⁷

Notwithstanding the previously-described rights, Part VI does not limit the right of an agency to discipline or to pursue criminal charges against an officer.⁸

The statute establishes a complaint review board which is composed of 3 members or 5 members (for agencies or units having more than 100 law enforcement or correctional officers) and specifies how the members are selected. For the 3-member board, the aggrieved officer selects 1 member; for the 5-member board, the aggrieved officer selects 2 members. Sheriffs and deputy sheriffs are excluded from the complaint review board requirement.⁹

With certain exceptions, an investigation of an allegation against an officer must be completed within 180 days after the officer's agency receives notice of the allegation.¹⁰ When an investigation is completed, the agency must determine whether disciplinary action is appropriate.¹¹ If a determination for disciplinary action¹² is made, the agency must give notice¹³ in writing to the officer of its intent to proceed along with a proposal of the specific action sought.¹⁴

An investigation against an officer may be reopened if significant new evidence is discovered that could likely affect the outcome of the investigation and if the evidence:

- Could not have been reasonably discovered in the normal course of investigation; or
- Resulted from the predisciplinary response of the officer.¹⁵

The statute provides that no officer will be discharged; disciplined; demoted; denied promotion, transfer, or reassignment; or otherwise discriminated against in regard to his or her employment or appointment, or be threatened with any such treatment, by exercising any of the rights granted by Part VI.¹⁶

⁷ Section 112.32(1)(a)-(i), F.S.

⁸ Section 112.32(1)(j), F.S.

⁹ Section 112.532(2), F.S.

¹⁰ Section 112.532(6)(a), F.S.

¹¹ *Id.*

¹² An officer who is subject to disciplinary action may request the complete investigative file. Section 112.532(4)(a), F.S.

¹³ Notice must be provided to the officer within 180 days after the date the agency received notice of the alleged misconduct (the running of the limitations period may be tolled in certain instances). Section 112.532(6)(a), F.S.

¹⁴ The officer must be given notice before the effective date and given the reason for a dismissal, demotion, transfer, reassignment, or other personnel action that might result in loss of pay or benefits or be considered a punitive measure.

¹⁵ Section 112.532(6)(b), F.S. Any disciplinary action resulting from an investigation that is reopened pursuant to this paragraph must be completed within 90 days after the date the investigation is reopened.

¹⁶ Section 112.532(5), F.S.

Violations of Part VI of Chapter 112, F.S.

Section 112.534, F.S., sets forth the procedures that must be followed when a law enforcement or correctional agency intentionally fails to comply with Part VI while investigating the officer.

Prior to 2009, s. 112.534, F.S., provided:

If any law enforcement agency or correctional agency fails to comply with the requirements of this part, a law enforcement officer or correctional officer employed by or appointed to such agency who is personally injured by such failure to comply may apply directly to the circuit court of the county wherein such agency is headquartered and permanently resides for an injunction to restrain and enjoin such violation of the provisions of this part and to compel the performance of the duties imposed by this part.¹⁷

In 2009, the statute was rewritten and the injunction provision was removed.¹⁸

Currently, s. 112.534, F.S., requires an officer to advise the investigator of the intentional violation of Part VI.¹⁹ If the investigator fails to cure the violation or continues the violation after notification, the officer must request that the agency head be informed of the alleged intentional violation.²⁰ Once this request is made, the interview of the officer must cease and the officer can refuse to respond to further investigative questions.²¹

A written notice of the violation and a request for a compliance review hearing must then be filed within 3 working days.²² The notice must contain sufficient information to identify what rights are alleged to have been violated and the factual basis of each violation.²³ Unless otherwise remedied by the agency before the hearing, a compliance review hearing must be conducted within 10 working days after the request for a hearing is filed.²⁴

A compliance review panel (panel) is comprised of 3 members. One member is selected by the agency head, one member is selected by the officer filing the request, and one member is selected by the other 2 members.²⁵ The panel must review the circumstances and acts of the alleged intentional violation to determine whether or not the investigator or agency intentionally violated Part VI.²⁶ In making its determination, the panel may hear evidence, review relevant

¹⁷ Section 112.534(1), F.S. (2008). An officer has a right to bring a civil suit for damages suffered during the performance of the officer's official duties for abridgement of the officer's civil rights arising out of the officer's performance of official duties, or for the filing of a complaint which the person knew was false when filed. Section 112.532(3), F.S.

¹⁸ Chapter 2009-200, L.O.F.

¹⁹ The officer's notice of the violation is sufficient to notify the investigator of the requirements of Part VI that are alleged to have been violated and the factual basis for each violation. Section 112.534(1)(a), F.S.

²⁰ Section 112.534(1)(b), F.S.

²¹ *Id.* The officer's refusal to respond to further investigative questions does not constitute insubordination or any similar type of policy violation.

²² Section 112.534(1)(c), F.S.

²³ *Id.*

²⁴ The officer and agency can agree to an alternate hearing date. Section 112.534(1)(d), F.S.

²⁵ The panel members must be officers who are active from the same law enforcement discipline as the officer requesting the hearing and may be selected from any state, county, or municipal agency within the county in which the officer works. The compliance review hearing must be conducted in the county in which the officer works. Section 112.534(1)(d), F.S.

²⁶ Section 112.534(1)(d) and (e), F.S.

documents, and hear argument concerning the alleged intentional violation.²⁷ The officer bears the burden of proof to establish that the violation was intentional.²⁸ If the panel determines²⁹ that the violation is intentional, the investigator is immediately removed from the investigation.³⁰

III. Effect of Proposed Changes:

The bill amends Part VI of Chapter 112, F.S., which provides protections and rights to law enforcement officers and correctional officers who are under investigation and subject to interrogation by members of their agency for any reason that could lead to disciplinary action, suspension, demotion, or dismissal. The bill:

- Provides that procedures under s. 112.532, F.S. (law enforcement officers' and correctional officers' rights), are exclusive procedures for investigation of all law enforcement and correctional officers subject to any internal or external investigation;
- Requires that officers subject to investigation be advised of the "specific nature" of the investigation prior to any interrogation session;
- Requires that a copy of any recording of an interrogation be provided upon request of the officer's representative or legal counsel;
- Removes an exemption for sheriffs and deputy sheriffs from a provision of s. 112.532, F.S., which requires a complaint review board;
- Authorizes legal counsel for an officer subject to disciplinary action to receive a copy of the investigative file, including the final investigate report and all evidence, and to address the findings in the report before disciplinary action is imposed;
- Relevant to a notice of disciplinary action, provides that action may include disciplinary probation;
- Authorizes the investigating agency to provide the officer's representative or legal counsel with notice of intent to proceed with disciplinary action;
- Provides that procedures in s. 122.534, F.S., apply to intentional failure to comply with Part VI at any time from the beginning of the investigation until the imposition of discipline or the investigation is closed; and
- If an agency fails to comply with Part VI, authorizes an officer to seek injunctive relief in the circuit court of the county in which the alleged violation occurred.

The effective date of the bill is July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁷ Section 112.534(1)(e), F.S.

²⁸ Section 112.534(1)(f), F.S. The standard of proof is by a preponderance of the evidence.

²⁹ The determination of the panel must be made at the conclusion of the hearing, in writing, and filed with the agency head and the officer. Section 112.534(1)(f), F.S.

³⁰ Section 112.534(1)(g), F.S. The agency head must direct that an investigation be initiated against the investigator for purposes of agency disciplinary action. If that investigation is sustained, the sustained allegations against the investigator must be forwarded to the Criminal Justice Standards and Training Commission for review as an act of official misconduct or misuse of position.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

State Courts Impact:

The Office of the State Courts Administrator (OSCA) states that the provision of the bill permitting actions for injunctive relief in the circuit courts for intentional failure to comply with Part VI of ch. 112, F.S., “may have a substantial impact in relation to both court workload and expenditure of judicial time.”³¹ The OSCA provides the following specific information regarding revenue and expenditures:

- Revenues: The fiscal impact of this legislation on revenues to the State Courts’ trust funds from civil filing fees cannot be accurately determined due to the unavailability of data needed to establish the increase resulting from the new cause of action related to the intentional failure to comply with provisions as established in the bill.
- Expenditures: The fiscal impact of this bill on expenditures of the State Courts System is indeterminate due to the unavailability of data needed to quantifiably establish the increase in judicial time and court workload as a result of the new civil cause of action regarding the violation of the provisions of the bill.

Information is not available on whether the provisions of the bill will have an impact on state and local law enforcement and correctional agencies.

VI. Technical Deficiencies:

None.

³¹ 2014 Judicial Impact Statement (SB 1322) (March 6, 2014), Office of the State Courts Administrator (on file with the Senate Committee on Criminal Justice). All information in the “Government Sector Impact” section of this analysis is from the OSCA analysis.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 112.532 and 112.534.

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

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

None.

B. Amendments:

None.

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

By Senator Evers

2-01121A-14

20141322__

1 A bill to be entitled
 2 An act relating to law enforcement and corrections
 3 officers; amending s. 112.532, F.S.; specifying the
 4 exclusivity of procedures governing the investigation
 5 of law enforcement officers and correctional officers;
 6 authorizing an interrogated officer's representative
 7 or legal counsel to obtain a recording of an
 8 interrogation session upon request; requiring that an
 9 officer subject to disciplinary action or the
 10 officer's representative or legal counsel have an
 11 opportunity to address findings in a final
 12 investigative report before imposition of discipline;
 13 including disciplinary probation in specified
 14 disciplinary actions imposed by a law enforcement
 15 agency as a result of an investigation; requiring a
 16 law enforcement agency to provide notice of alleged
 17 misconduct to an officer's representative or legal
 18 counsel within a specified timeframe; amending s.
 19 112.534, F.S.; specifying the length of application of
 20 investigative procedures of a law enforcement agency
 21 or correctional agency; clarifying that the officer
 22 under investigation bears the burden of proof before
 23 the compliance review panel; authorizing an officer to
 24 seek injunctive relief if a law enforcement agency or
 25 correctional agency fails to comply with the
 26 requirements of part VI of ch. 112, F.S.; specifying
 27 the venue for such an action; providing an effective
 28 date.
 29

Page 1 of 12

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2-01121A-14

20141322__

30 Be It Enacted by the Legislature of the State of Florida:
 31
 32 Section 1. Section 112.532, Florida Statutes, is amended to
 33 read:
 34 112.532 Law enforcement officers' and correctional
 35 officers' rights.—The following procedures shall be the
 36 exclusive procedures for investigating all law enforcement
 37 officers and correctional officers subject to an internal or
 38 external investigation, notwithstanding any other law or
 39 ordinance. All law enforcement officers and correctional
 40 officers employed by or appointed to a law enforcement agency or
 41 a correctional agency shall have the following rights and
 42 privileges:
 43 (1) RIGHTS OF LAW ENFORCEMENT OFFICERS AND CORRECTIONAL
 44 OFFICERS WHILE UNDER INVESTIGATION.—Whenever a law enforcement
 45 officer or correctional officer is under investigation and
 46 subject to interrogation by members of his or her agency for any
 47 reason that could lead to disciplinary action, suspension,
 48 demotion, or dismissal, the interrogation must be conducted
 49 under the following conditions:
 50 (a) The interrogation shall be conducted at a reasonable
 51 hour, preferably at a time when the law enforcement officer or
 52 correctional officer is on duty, unless the seriousness of the
 53 investigation is of such a degree that immediate action is
 54 required.
 55 (b) The interrogation shall take place either at the office
 56 of the command of the investigating officer or at the office of
 57 the local precinct, police unit, or correctional unit in which
 58 the incident allegedly occurred, as designated by the

Page 2 of 12

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2-01121A-14

20141322__

investigating officer or agency.

(c) The law enforcement officer or correctional officer under investigation shall be informed of the rank, name, and command of the officer in charge of the investigation, the interrogating officer, and all persons present during the interrogation. All questions directed to the officer under interrogation shall be asked by or through one interrogator during any one investigative interrogation, unless specifically waived by the officer under investigation.

(d) The law enforcement officer or correctional officer under investigation must be informed of the specific nature of the investigation before any interrogation begins, and he or she must be informed of the names of all complainants. All identifiable witnesses shall be interviewed, whenever possible, before ~~prior to~~ the beginning of the investigative interview of the accused officer. The complaint, all witness statements, including all other existing subject officer statements, and all other existing evidence, including, but not limited to, incident reports, GPS locator information, and audio or video recordings relating to the incident under investigation, must be provided to each officer who is the subject of the complaint before the beginning of any investigative interview of that officer. An officer, after being informed of the right to review witness statements, may voluntarily waive the provisions of this paragraph and provide a voluntary statement at any time.

(e) Interrogating sessions shall be for reasonable periods and shall be timed to allow for such personal necessities and rest periods as are reasonably necessary.

(f) Throughout the course of an investigation, the law

2-01121A-14

20141322__

enforcement officer or correctional officer under interrogation may not be subjected to offensive language or be threatened with transfer, dismissal, or disciplinary action. A promise or reward may not be made as an inducement to answer any questions.

(g) The formal interrogation of a law enforcement officer or correctional officer, including all recess periods, must be recorded on audio tape, or otherwise preserved in such a manner as to allow a transcript to be prepared, and there shall be no unrecorded questions or statements. Upon the request of the interrogated officer or the interrogated officer's representative or legal counsel, a copy of any recording of the interrogation session must be made available to the interrogated officer no later than 72 hours, excluding holidays and weekends, following said interrogation.

(h) If the law enforcement officer or correctional officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, he or she shall be completely informed of all his or her rights before commencing the interrogation.

(i) At the request of any law enforcement officer or correctional officer under investigation, he or she has the right to be represented by legal counsel or any other representative of his or her choice, who shall be present at all times during the interrogation whenever the interrogation relates to the officer's continued fitness for law enforcement or correctional service.

(j) Notwithstanding the rights and privileges provided by this part, this part does not limit the right of an agency to discipline or to pursue criminal charges against an officer.

2-01121A-14

20141322__

117 (2) COMPLAINT REVIEW BOARDS.—A complaint review board shall
 118 be composed of three members: One member selected by the chief
 119 administrator of the agency or unit; one member selected by the
 120 aggrieved officer; and a third member to be selected by the
 121 other two members. Agencies or units having more than 100 law
 122 enforcement officers or correctional officers shall utilize a
 123 five-member board, with two members being selected by the
 124 administrator, two members being selected by the aggrieved
 125 officer, and the fifth member being selected by the other four
 126 members. The board members shall be law enforcement officers or
 127 correctional officers selected from any state, county, or
 128 municipal agency within the county. There shall be a board for
 129 law enforcement officers and a board for correctional officers
 130 whose members shall be from the same discipline as the aggrieved
 131 officer. ~~The provisions of this subsection shall not apply to~~
 132 ~~sheriffs or deputy sheriffs.~~

133 (3) CIVIL SUITS BROUGHT BY LAW ENFORCEMENT OFFICERS OR
 134 CORRECTIONAL OFFICERS.—Every law enforcement officer or
 135 correctional officer shall have the right to bring civil suit
 136 against any person, group of persons, or organization or
 137 corporation, or the head of such organization or corporation,
 138 for damages, either pecuniary or otherwise, suffered during the
 139 performance of the officer's official duties, for abridgment of
 140 the officer's civil rights arising out of the officer's
 141 performance of official duties, or for filing a complaint
 142 against the officer which the person knew was false when it was
 143 filed. This section does not establish a separate civil action
 144 against the officer's employing law enforcement agency for the
 145 investigation and processing of a complaint filed under this

2-01121A-14

20141322__

146 part.

147 (4) (a) NOTICE OF DISCIPLINARY ACTION.—A dismissal,
 148 demotion, transfer, reassignment, or other personnel action that
 149 might result in loss of pay or benefits or that might otherwise
 150 be considered a punitive measure may not be taken against any
 151 law enforcement officer or correctional officer unless the law
 152 enforcement officer or correctional officer is notified of the
 153 action and the reason or reasons for the action before the
 154 effective date of the action.

155 (b) Notwithstanding s. 112.533(2), whenever a law
 156 enforcement officer or correctional officer is subject to
 157 disciplinary action consisting of suspension with loss of pay,
 158 demotion, or dismissal, the officer or the officer's
 159 representative or legal counsel shall, upon request, be provided
 160 with a complete copy of the investigative file, including the
 161 final investigative report and all evidence, and with the
 162 opportunity for the officer and the officer's representative or
 163 legal counsel to address the findings in the report with the
 164 employing law enforcement agency before imposing disciplinary
 165 action consisting of suspension with loss of pay, demotion,
 166 disciplinary probation, or dismissal. The contents of the
 167 complaint and investigation shall remain confidential until such
 168 time as the employing law enforcement agency makes a final
 169 determination whether or not to issue a notice of disciplinary
 170 action consisting of suspension with loss of pay, demotion,
 171 disciplinary probation, or dismissal. This paragraph does not
 172 provide law enforcement officers with a property interest or
 173 expectancy of continued employment, employment, or appointment
 174 as a law enforcement officer.

2-01121A-14

20141322__

175 (5) RETALIATION FOR EXERCISING RIGHTS.—No law enforcement
 176 officer or correctional officer shall be discharged;
 177 disciplined; demoted; denied promotion, transfer, or
 178 reassignment; or otherwise discriminated against in regard to
 179 his or her employment or appointment, or be threatened with any
 180 such treatment, by reason of his or her exercise of the rights
 181 granted by this part.

182 (6) LIMITATIONS PERIOD FOR DISCIPLINARY ACTIONS.—

183 (a) Except as provided in this subsection, disciplinary
 184 action, suspension, demotion, or dismissal may not be undertaken
 185 by an agency against a law enforcement officer or correctional
 186 officer for any act, omission, or other allegation of misconduct
 187 if the investigation of the allegation is not completed within
 188 180 days after the date the agency receives notice of the
 189 allegation by a person authorized by the agency to initiate an
 190 investigation of the misconduct. If the agency determines that
 191 disciplinary action is appropriate, it shall complete its
 192 investigation and give notice in writing to the law enforcement
 193 officer or correctional officer or the officer's representative
 194 or legal counsel of its intent to proceed with disciplinary
 195 action, along with a proposal of the specific action sought,
 196 including length of suspension, if applicable. Notice to the
 197 officer or the officer's representative or legal counsel must be
 198 provided within 180 days after the date the agency received
 199 notice of the alleged misconduct, except as follows:

200 1. The running of the limitations period may be tolled for
 201 a period specified in a written waiver of the limitation by the
 202 law enforcement officer or correctional officer.

203 2. The running of the limitations period is tolled during

Page 7 of 12

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2-01121A-14

20141322__

204 the time that any criminal investigation or prosecution is
 205 pending in connection with the act, omission, or other
 206 allegation of misconduct.

207 3. If the investigation involves an officer who is
 208 incapacitated or otherwise unavailable, the running of the
 209 limitations period is tolled during the period of incapacitation
 210 or unavailability.

211 4. In a multijurisdictional investigation, the limitations
 212 period may be extended for a period of time reasonably necessary
 213 to facilitate the coordination of the agencies involved.

214 5. The running of the limitations period may be tolled for
 215 emergencies or natural disasters during the time period wherein
 216 the Governor has declared a state of emergency within the
 217 jurisdictional boundaries of the concerned agency.

218 6. The running of the limitations period is tolled during
 219 the time that the officer's compliance hearing proceeding is
 220 continuing beginning with the filing of the notice of violation
 221 and a request for a hearing and ending with the written
 222 determination of the compliance review panel or upon the
 223 violation being remedied by the agency.

224 (b) An investigation against a law enforcement officer or
 225 correctional officer may be reopened, notwithstanding the
 226 limitations period for commencing disciplinary action, demotion,
 227 or dismissal, if:

228 1. Significant new evidence has been discovered that is
 229 likely to affect the outcome of the investigation.

230 2. The evidence could not have reasonably been discovered
 231 in the normal course of investigation or the evidence resulted
 232 from the predisciplinary response of the officer.

Page 8 of 12

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2-01121A-14

20141322__

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Any disciplinary action resulting from an investigation that is reopened pursuant to this paragraph must be completed within 90 days after the date the investigation is reopened.

Section 2. Section 112.534, Florida Statutes, is amended to read:

112.534 Failure to comply; official misconduct.—

(1) If any law enforcement agency or correctional agency, including investigators in its internal affairs or professional standards division, or an assigned investigating supervisor, intentionally fails to comply with the requirements of this part at any time from the beginning of the investigation until the imposition of discipline or the investigation is closed, the following procedures apply. As used in ~~For purposes of~~ this section, the term "law enforcement officer" or "correctional officer" includes the officer's representative or legal counsel, except in application of paragraph (d).

(a) The law enforcement officer or correctional officer shall advise the investigator of the intentional violation of the requirements of this part which is alleged to have occurred. The officer's notice of violation is sufficient to notify the investigator of the requirements of this part which are alleged to have been violated and the factual basis of each violation.

(b) If the investigator fails to cure the violation or continues the violation after being notified by the law enforcement officer or correctional officer, the officer shall request that the agency head or his or her designee be informed of the alleged intentional violation. Once this request is made, the interview of the officer shall cease, and the officer's

2-01121A-14

20141322__

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refusal to respond to further investigative questions does not constitute insubordination or any similar type of policy violation.

(c) Thereafter, within 3 working days, a written notice of violation and request for a compliance review hearing shall be filed with the agency head or designee which must contain sufficient information to identify the requirements of this part which are alleged to have been violated and the factual basis of each violation. All evidence related to the investigation must be preserved for review and presentation at the compliance review hearing. For purposes of confidentiality, the compliance review panel hearing is ~~shall be~~ considered part of the original investigation.

(d) Unless otherwise remedied by the agency before the hearing, a compliance review hearing must be conducted within 10 working days after the request for a compliance review hearing is filed, unless, by mutual agreement of the officer and agency or for extraordinary reasons, an alternate date is chosen. The panel shall review the circumstances and facts surrounding the alleged intentional violation. The compliance review panel shall be made up of three members: one member selected by the agency head, one member selected by the officer filing the request, and a third member to be selected by the other two members. The review panel members shall be law enforcement officers or correctional officers who are active from the same law enforcement discipline as the officer requesting the hearing. Panel members may be selected from any state, county, or municipal agency within the county in which the officer works. The compliance review hearing shall be conducted in the county

2-01121A-14

20141322__

in which the officer works.

(e) ~~It is the responsibility of~~ The compliance review panel shall ~~to~~ determine whether or not the investigator or agency intentionally violated the requirements provided under this part. ~~The panel~~ ~~it~~ may hear evidence, review relevant documents, and hear arguments ~~argument~~ before making such a determination; however, all evidence received shall be strictly limited to the allegation under consideration and may not be related to the disciplinary charges pending against the officer. The investigative materials are considered confidential for purposes of the compliance review hearing and determination.

(f) The officer bears the burden of proof before the compliance review panel to establish that the violation of this part was intentional. The standard of proof for such a determination is by a preponderance of the evidence. The determination of the panel must be made at the conclusion of the hearing, in writing, and filed with the agency head and the officer.

(g) If the alleged violation is sustained as intentional by the compliance review panel, the agency head shall immediately remove the investigator from any further involvement with the investigation of the officer. Additionally, the agency head shall direct an investigation be initiated against the investigator determined to have intentionally violated the requirements provided under this part for purposes of agency disciplinary action. If that investigation is sustained, the sustained allegations against the investigator shall be forwarded to the Criminal Justice Standards and Training Commission for review as an act of official misconduct or misuse

Page 11 of 12

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2-01121A-14

20141322__

of position.

(h) If a law enforcement agency or a correctional agency fails to comply with any requirement of this part, the law enforcement officer or correctional officer may seek injunctive relief in the circuit court of the county in which the alleged violation occurred.

(2) (a) All the provisions of s. 838.022 ~~shall~~ apply to this part.

(b) The provisions of chapter 120 do not apply to this part.

Section 3. This act shall take effect July 1, 2014.

Page 12 of 12

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The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 1406

INTRODUCER: Criminal Justice Committee and Senator Abruzzo

SUBJECT: Care for Retired Law Enforcement Dogs

DATE: March 25, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1406 creates the Care for Retired Law Enforcement Dogs Program. The program will provide reimbursement for up to \$1,500 of annual veterinary costs associated with caring for a retired law enforcement dog.

Recurring funds in the amount of \$300,000 is appropriated to the Florida Department of Law Enforcement from the General Revenue Fund to fund the program for the 2014-15 fiscal year.

II. Present Situation:

As the bill states, in recent years, law enforcement dogs have become an integral part of many law enforcement efforts statewide, including suspect apprehension through tracking and searching, evidence location, drug and bomb detection, and search and rescue operations. Law enforcement agencies agree that the use of law enforcement dogs is an extremely cost-effective means for crime control and that these dogs possess skills and abilities that frequently exceed that of existing technology.

Section 843.19, F.S., sets forth the following criminal law violations involving police dogs and other service animals:

- Any person who intentionally and knowingly, without lawful cause or justification, causes great bodily harm, permanent disability, or death to, or uses a deadly weapon upon, a police dog, fire dog, SAR dog, or police horse commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

- Any person who actually and intentionally maliciously touches, strikes, or causes bodily harm to a police dog, fire dog, SAR dog, or police horse commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S.
- Any person who intentionally or knowingly maliciously harasses, teases, interferes with, or attempts to interfere with a police dog, fire dog, SAR dog, or police horse while the animal is in the performance of its duties commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S.

Just one example of a law enforcement dog's invaluable service is Koda, who worked with the Leon County Sheriff's Office. K9 Koda was shot and killed in January 2013 as he attempted to immobilize a subject following a vehicle pursuit. Deputies pursued a vehicle several blocks until the vehicle crashed into a ditch. The subject continued to flee on foot and then opened fire on K9 Koda and deputies. Two deputies returned fire and wounded the subject before taking him into custody. It was later determined that the subject was wanted on warrants for attempted first degree murder, aggravated battery with a deadly weapon, and discharging a firearm from a vehicle.¹

III. Effect of Proposed Changes:

The bill creates the Care for Retired Law Enforcement Dogs Program (program) within the Florida Department of Law Enforcement (FDLE). The program is funded from the General Revenue Fund with the sum of \$300,000, recurring funds, beginning in the 2014-2015 fiscal year. The funds will be appropriated to the FDLE Operating Trust Fund. FDLE will hold the funds in a separate depository account for the corporation under contract with FDLE to administer the program.

FDLE is given rulemaking authority to implement the provisions in the bill.

The program will provide up to \$1,500 to any former handler or adopter of a retired law enforcement dog for reimbursement of veterinary care for the dog if the agency from which the dog retired provides verification of the dog's service. The former handler or adopter must submit a valid invoice from a veterinarian in this state for reimbursement to occur. When the annual funding for the program is depleted, reimbursements must be discontinued for the remainder of the year.

"Retired law enforcement dog" is defined by the bill as a dog that has received certification in obedience and apprehension work from a certifying organization, such as the National Police Canine Association.² The dog must have been in the service of or employed by a law enforcement agency in this state for the purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders, but the dog no longer serves in the capacity of a law enforcement dog.

¹ Read more: <http://www.odmp.org/k9/1497-k9-koda#ixzz2vrveuHYu>

² www.npca.net (last visited March 13, 2014). The National Police Canine Association is one of many such organizations in the country including The Florida Law Enforcement Canine Association (FLECA) which is a 501(c)(3) non-profit organization dedicated to the training and certification of Florida's Law Enforcement Canine Teams according to the website, <http://www.flecak9.com/>. Additionally, the FDLE provides a 400 hour K-9 Team training course and proficiency exam.

The bill defines “law enforcement agency” as a state or local public agency that has primary responsibility for the prevention and detection of crime or the enforcement of the penal, traffic, highway, regulatory, game, immigration, postal, customs, or controlled substance laws.

The bill adopts the term “veterinarian” from s. 474.202, F.S. Subsection (11) of s. 474.202, F.S., defines “veterinarian” as a health care practitioner who is licensed to engage in the practice of veterinary medicine in Florida under the authority of this chapter.³ The bill refers to ss. 474.202(9) and (13), F.S., in defining “veterinary care.”⁴ The bill also lists the following veterinary services:

- annual wellness examinations,
- vaccines,
- internal and external parasite prevention treatments,
- testing and treatment of illnesses and diseases,
- medications,
- emergency care and surgeries,
- care provided in specialties of veterinary medicine such as veterinary oncology, and euthanasia, when provided by a veterinarian, and
- the term also includes cremation.

FDLE is directed to contract with a not-for-profit corporation to administer and manage the program. The corporation must be organized under ch. 617, F.S.⁵

The contract with FDLE is to be entered into with a not-for-profit corporation that:

- Is dedicated to the protection and care of retired law enforcement dogs.
- Holds tax-exempt status under the Internal Revenue code as a s. 501(c)(3) organization.⁶

³ Other references include: (6) “Limited-service veterinary medical practice” means offering or providing veterinary services at any location that has a primary purpose other than that of providing veterinary medical service at a permanent or mobile establishment permitted by the board; provides veterinary medical services for privately owned animals that do not reside at that location; operates for a limited time; and provides limited types of veterinary medical services.

(7) “Mobile veterinary establishment” and “mobile clinic” mean a mobile unit which contains the same treatment facilities as are required of a permanent veterinary establishment or which has entered into a written agreement with another veterinary establishment to provide any required facilities not available in the mobile unit. The terms do not refer to the use of a car, truck, or other motor vehicle by a veterinarian making a house call. s. 474.202, F.S.

⁴ (9) “Practice of veterinary medicine” means diagnosing the medical condition of animals and prescribing, dispensing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease thereof; performing any manual procedure for the diagnosis of or treatment for pregnancy or fertility or infertility of animals; or representing oneself by the use of titles or words, or undertaking, offering, or holding oneself out, as performing any of these functions. The term includes the determination of the health, fitness, or soundness of an animal.

(13) “Veterinary medicine” includes, with respect to animals, surgery, acupuncture, obstetrics, dentistry, physical therapy, radiology, theriogenology, and other branches or specialties of veterinary medicine. s. 474.202, F.S.

⁵ “Corporation not for profit” means a corporation no part of the income or profit of which is distributable to its members, directors, or officers, except as otherwise provided under this chapter. s. 617.01401(5), F.S.

⁶ Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the

- Has held tax-exempt status for at least 5 years.
- Agrees to be subject to review and audit at the discretion of the Auditor General to ensure accurate accounting and disbursement of state funds.
- Demonstrates the ability to effectively and efficiently disseminate information and assist former handlers and adopters of retired law enforcement dogs in understanding what the bill provides.
- Receives administrative fees, including salaries and benefits, not to exceed 10 percent of appropriated funds.

Funds held in the separate depository account for the corporation administering the program, must revert to FDLE if the contract between the corporation and FDLE expires or is terminated. All unexpended funds will be certified forward on July 1 of each year. The fund balance for the program may not exceed \$400,000.

The bill contains legislative findings related to the value of law enforcement dogs to the residents of Florida.

The provisions in the bill become effective July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who have adopted retired law enforcement dogs or former handlers who have kept their dogs after the dog's retirement may benefit from the program created by the bill if they are reimbursed for related veterinary costs.

C. Government Sector Impact:

At the time of the writing of this Bill Analysis it was unknown whether FDLE anticipated any fiscal impact resulting from the contract oversight and fund management required by the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 943.69, of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Criminal Justice on March 24, 2014:

- Provides rulemaking authority to FDLE so the agency can effectively implement the Care for Retired Law Enforcement Dogs Program.
- Creates a new numbered section of the Florida Statutes, s. 943.69, F.S.
- Contains legislative findings.
- Reorganizes the contents of the bill.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/24/2014	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Altman) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 943.69, Florida Statutes, is created to
read:

943.69 Care for Retired Law Enforcement Dogs Program Act.—

(1) SHORT TITLE.—This section may be cited as the “Care for
Retired Law Enforcement Dogs Program Act.”

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



791320

11 (a) "Law enforcement agency" means a lawfully established
12 state or local public agency having primary responsibility for
13 the prevention and detection of crime or the enforcement of the
14 penal, traffic, highway, regulatory, game, immigration, postal,
15 customs, or controlled substance laws.

16 (b) "Retired law enforcement dog" means any dog that was in
17 the service of or employed by a law enforcement agency in this
18 state for the principal purpose of aiding in the detection of
19 criminal activity, enforcement of laws, or apprehension of
20 offenders but that no longer serves in the capacity of a law
21 enforcement dog. The retired law enforcement dog must have
22 received certification in obedience and apprehension work from a
23 certifying organization such as the National Police Canine
24 Association or other certifying organization.

25 (c) "Veterinarian" has the same meaning as provided in s.
26 474.202, Florida Statutes.

27 (d) "Veterinary care" means any veterinary medical service
28 described in s. 474.202(9) or s. 474.202(13), Florida Statutes.
29 The term includes annual wellness examinations, vaccines,
30 internal and external parasite prevention treatments, testing
31 and treatment of illnesses and diseases, medications, emergency
32 care and surgeries, specialties of veterinary medicine such as
33 veterinary oncology, and euthanasia, if each of the services is
34 provided by a veterinarian. The term also includes cremation.

35 (3) LEGISLATIVE FINDINGS.— The Legislature finds that:

36 (a) Law enforcement dogs have become an integral part of
37 many law enforcement efforts statewide, including suspect
38 apprehension through tracking and searching, evidence location,
39 drug and bomb detection, and search and rescue operations;



791320

(b) Law enforcement agencies agree that the use of law enforcement dogs is an extremely cost-effective means for crime control and that these dogs possess skills and abilities that frequently exceed that of existing technology;

(c) The work of law enforcement dogs is often dangerous and can cause these dogs to incur injuries at a rate higher than the rate of injuries that occurs with nonworking dogs; and

(d) Law enforcement dogs provide significant contributions to the residents of this state.

(4) ESTABLISHMENT OF PROGRAM.—The Care for Retired Law Enforcement Dogs Program is created within the Department of Law Enforcement to provide a stable funding source for former handlers and adopters of retired law enforcement dogs to provide veterinary care for these dogs.

(5) ADMINISTRATION.—The Department of Law Enforcement shall contract with a corporation not for profit organized under chapter 617, Florida Statutes, to administer and manage the Care for Retired Law Enforcement Dogs Program. Notwithstanding the competitive sealed bid procedures required under chapter 287, Florida Statutes, the department shall enter into a contract with a corporation that:

(a) Is dedicated to the protection or care of retired law enforcement dogs;

(b) Holds exempt status under s. 501(a) of the Internal Revenue Code as an organization described in s. 501(c)(3) of the Internal Revenue Code;

(c) Has held its exempt status for at least 5 years;

(d) Agrees to be subject to review and audit at the discretion of the Auditor General to ensure accurate accounting



791320

and disbursement of state funds; and

(e) Demonstrates the ability to effectively and efficiently disseminate information and assist former handlers and adopters of retired law enforcement dogs in understanding the provisions of this section.

(6) FUNDING.—

(a) The corporation shall be the disbursing authority for funds appropriated by the Legislature to the Department of Law Enforcement for the Care for Retired Law Enforcement Dogs Program. These funds shall be disbursed upon receipt of:

1. Valid documentation from the law enforcement agency the dog retired from verifying that the dog was in the service of or employed by such agency; and

2. A valid invoice, submitted by the former handler or adopter of a retired law enforcement dog, from a veterinarian for veterinary care provided in the state to a retired law enforcement dog.

(b) Annual disbursements to any former handler or adopter of a retired law enforcement dog are limited to \$1,500 per retired law enforcement dog. A former handler or adopter of a retired law enforcement dog may not accumulate unused funds from one year for use in a future year.

(c) A former handler or adopter of a retired law enforcement dog who seeks reimbursement for veterinary services shall not receive reimbursement if funds for the Care for Retired Law Enforcement Dogs Program are depleted in the year for which the reimbursement is sought.

(d) Funds appropriated for the Care for Retired Law Enforcement Dogs Program shall be held in the Operating Trust



791320

Fund of the Department of Law Enforcement in a separate
depository account in the name of the corporation and subject to
the provisions of the contract with the department. The contract
must provide:

1. The corporation must receive administrative fees,
including salaries and benefits, not to exceed 10 percent of
appropriated funds; and

2. That any funds held in the separate depository account
in the name of the corporation must revert to the department if
the contract expires or is terminated.

(e) Notwithstanding s. 216.301, Florida Statutes, and
pursuant to s. 216.351, Florida Statutes, the Executive Office
of the Governor shall, on July 1 of each year, certify forward
all unexpended funds appropriated pursuant to this section.
However, in no event shall the fund balance for the Care for
Retired Law Enforcement Dogs Program exceed \$400,000.

(7) RULEMAKING AUTHORITY.- The department shall adopt rules
and forms pursuant to ss. 120.536(1) and 120.54 to implement the
requirements of this section.

Section 2. Beginning in the 2014-2015 fiscal year and each
year thereafter, the sum of \$300,000 in recurring funds is
appropriated from the General Revenue Fund to the Department of
Law Enforcement for the purpose of implementing the Care for
Retired Law Enforcement Dogs Program as created by this act.

Section 3. This act shall take effect July 1, 2014

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

And the title is amended as follows:

Delete everything before the enacting clause



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and insert:

A bill to be entitled

An act relating to care for retired law enforcement dogs; creating s. 943.69, F.S.; providing a short title; providing definitions; providing legislative findings; creating the Care for Retired Law Enforcement Dogs Program within the Department of Law Enforcement; requiring the department to contract with a corporation not for profit to administer the program and providing criteria therefor; providing specific procedures for how funds will be disbursed for the veterinary care of eligible retired law enforcement dogs; limiting the amount of funds available for any eligible retired law enforcement dog in any one year; providing for the deposit of program funds; providing for the reversion of funds to the department under certain circumstances; providing for the carryforward of unexpended appropriations for use in the program up to certain limits; providing rulemaking authority; providing an annual appropriation; providing an effective date.

By Senator Abruzzo

25-01460-14

20141406__

A bill to be entitled

An act relating to care for retired law enforcement dogs; providing a short title; providing definitions; creating the Care for Retired Law Enforcement Dogs Program within the Department of Law Enforcement; requiring the department to contract with a not-for-profit corporation meeting specified criteria to administer the program; providing specific procedures for disbursement of funds for the veterinary care of eligible retired law enforcement dogs; limiting the amount of annual funds available for an eligible retired law enforcement dog; providing for the deposit of program funds; providing for the reversion of funds to the department under certain circumstances; providing for the carryforward of unexpended appropriations for use in the program up to certain limits; providing an annual appropriation; providing an effective date.

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

Section 1. (1) SHORT TITLE.—This section may be cited as the "Care for Retired Law Enforcement Dogs Program Act."

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

(a) "Law enforcement agency" means a state or local public agency that has primary responsibility for the prevention and detection of crime or the enforcement of the penal, traffic, highway, regulatory, game, immigration, postal, customs, or controlled substance laws.

Page 1 of 5

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

25-01460-14

20141406__

(b) "Retired law enforcement dog" means any dog that was in the service of or employed by a law enforcement agency in this state for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders but that no longer serves in the capacity of a law enforcement dog. The retired law enforcement dog must have received certification in obedience and apprehension work from a certifying organization, such as the National Police Canine Association.

(c) "Veterinarian" has the same meaning as provided in s. 474.202, Florida Statutes.

(d) "Veterinary care" means any veterinary medical service described in s. 474.202(9) or s. 474.202(13), Florida Statutes, and includes annual wellness examinations, vaccines, internal and external parasite prevention treatments, testing and treatment of illnesses and diseases, prescribing and dispensing medications, emergency care and surgeries, care provided in specialties of veterinary medicine such as veterinary oncology, and euthanasia, when provided by a veterinarian. The term also includes cremation.

(3) ESTABLISHMENT OF PROGRAM.—

(a) In recent years, law enforcement dogs have become an integral part of many law enforcement efforts statewide, including suspect apprehension through tracking and searching, evidence location, drug and bomb detection, and search and rescue operations. Law enforcement agencies agree that the use of law enforcement dogs is an extremely cost-effective means for crime control and that these dogs possess skills and abilities that frequently exceed that of existing technology.

Page 2 of 5

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

25-01460-14

20141406__

59 (b) Recognizing that the work of law enforcement dogs is
 60 often dangerous and can cause these dogs to incur injuries at a
 61 rate higher than the rate of injuries that occurs with
 62 nonworking dogs, and recognizing the significant contributions
 63 that law enforcement dogs provide to the residents of this
 64 state, the Care for Retired Law Enforcement Dogs Program is
 65 created within the Department of Law Enforcement to provide a
 66 stable funding source to allow former handlers and adopters of
 67 retired law enforcement dogs to provide them with veterinary
 68 care.

69 (4) ADMINISTRATION.—The Department of Law Enforcement shall
 70 contract with a not-for-profit corporation organized under
 71 chapter 617, Florida Statutes, to administer and manage the Care
 72 for Retired Law Enforcement Dogs Program. Notwithstanding the
 73 competitive sealed bid procedures required under chapter 287,
 74 Florida Statutes, the department shall enter into a contract
 75 with a corporation that:

76 (a) Is dedicated to the protection or care of retired law
 77 enforcement dogs.

78 (b) Holds tax-exempt status under s. 501(a) of the Internal
 79 Revenue Code as an organization described in s. 501(c)(3) of the
 80 code.

81 (c) Has held its tax-exempt status for at least 5 years.

82 (d) Agrees to be subject to review and audit at the
 83 discretion of the Auditor General to ensure accurate accounting
 84 and disbursement of state funds.

85 (e) Demonstrates the ability to effectively and efficiently
 86 disseminate information and assist former handlers and adopters
 87 of retired law enforcement dogs in understanding the provisions

25-01460-14

20141406__

88 of this section.

89 (f) Receives administrative fees, including salaries and
 90 benefits, not to exceed 10 percent of appropriated funds.

91 (5) FUNDING.—

92 (a) The corporation shall be the disbursing authority for
 93 funds appropriated by the Legislature to the Department of Law
 94 Enforcement for the Care for Retired Law Enforcement Dogs
 95 Program. These funds shall be disbursed upon receipt of a valid
 96 invoice, submitted by the former handler or adopter of a retired
 97 law enforcement dog, from a veterinarian in this state for
 98 veterinary care provided to a retired law enforcement dog.

99 (b) Annual disbursements to any former handler or adopter
 100 of a retired law enforcement dog are limited to \$1,500 per
 101 retired law enforcement dog. A former handler or adopter of a
 102 retired law enforcement dog may not accumulate unused funds from
 103 one year for use in a future year.

104 (c) A former handler or adopter of a retired law
 105 enforcement dog who seeks reimbursement for veterinary services
 106 may not receive reimbursement if funds for the Care for Retired
 107 Law Enforcement Dogs Program are depleted in the year for which
 108 the reimbursement is sought.

109 (d) Funds appropriated for the Care for Retired Law
 110 Enforcement Dogs Program shall be held in the Operating Trust
 111 Fund of the Department of Law Enforcement in a separate
 112 depository account in the name of the corporation and subject to
 113 the provisions of the contract with the department. The contract
 114 must provide that any funds held in the separate depository
 115 account in the name of the corporation must revert to the
 116 department if the contract expires or is terminated.

25-01460-14 20141406__

117 Notwithstanding s. 216.301, Florida Statutes, and pursuant to s.
118 216.351, Florida Statutes, the Executive Office of the Governor
119 shall, on July 1 of each year, certify forward all unexpended
120 funds appropriated pursuant to this section. However, the fund
121 balance for the Care for Retired Law Enforcement Dogs Program
122 may not exceed \$400,000.

123 Section 2. Beginning in the 2014-2015 fiscal year and each
124 year thereafter, the sum of \$300,000 in recurring funds is
125 appropriated from the General Revenue Fund to the Department of
126 Law Enforcement for the purpose of implementing the Care for
127 Retired Law Enforcement Dogs Program as created by this act.

128 Section 3. This act shall take effect July 1, 2014.

CourtSmart Tag Report

Room: LL 37
Caption: Senate Criminal Justice

Case:
Judge:

Type:

Started: 3/24/2014 4:04:49 PM
Ends: 3/24/2014 5:58:15 PM **Length:** 01:53:27

4:04:52 PM	Meeting to order - Roll Call
4:06:46 PM	Tab 6-SB 598 by Senator Bean—Juvenile Justice Education Programs
4:07:40 PM	Barcode 643760
4:09:00 PM	Cathy Craig-Myers, Florida Juvenile Justice Assn
4:10:41 PM	Wansley Walters, Dept. of Juvenile Justice
4:14:52 PM	Roll Call
4:17:13 PM	Tab 7-CS/SB 746 by Senator Sobel—Health Care Clinic Act
4:19:30 PM	Barcode 238866
4:20:09 PM	Barcode 382502
4:21:15 PM	Chris Nuland, Florida Society of Plastic Surgeons
4:22:34 PM	Roll Call
4:23:32 PM	Tab 14-SB 1234 by Senator Bullard—Florida Law Enforcement Officers' Hall of Fame
4:24:05 PM	Roll Call
4:24:49 PM	Tab 4-SB 550 by Senator Hukill—Traveling Across County Lines to Commit a Felony Offensee
4:28:53 PM	Sheriff William Snyder, Stuart, Florida
4:38:00 PM	Roll Call
4:38:48 PM	Tab 2-SB 190 by Senator Braynon—False Personation
4:39:09 PM	Barcode 332122
4:40:03 PM	Roll Call
4:40:45 PM	Tab 8-SB 768 by Senator Braynon—Human Trafficking
4:41:39 PM	Barcode 236686
4:42:32 PM	Jennifer Dritt, Florida Council Against Sexual Violence
4:44:37 PM	Roll Call
4:45:45 PM	Tab 9-SB 812 by Senator Detert—Court-ordered Expunction of Criminal History Records (presented by Charlie Anderson)
4:46:21 PM	Barcode 908198
4:47:22 PM	Roll Call
4:48:02 PM	Tab 16-SB 1406 by Senator Abruzzo—Care for Retired Law Enforcement Dog (presented by Shreya Kuntawala)
4:48:53 PM	Barcode 791320
4:49:45 PM	Roll Call
4:51:37 PM	Tab 11-SB 920 by Senator Dean—Protection of Crime Victims (Presented by Chase Daniels)
4:52:27 PM	Roll Call
4:53:06 PM	Tab 12-SB 1006 by Senator Hays—Consumer Collection Practices (Jessica Crawford)
4:53:57 PM	Barcode 929696
4:54:16 PM	Barcode 461132
4:55:33 PM	Roll Call
4:56:17 PM	Tab 3-CS/SB 540 by Senator Simmons—Sharks
5:00:07 PM	Jerry Sansom, Organized Fisherman of Florida
5:00:50 PM	Roll Call
5:01:35 PM	Tab 5-SB 562 by Senator Gibson—Sexual Predators and Offenders
5:01:57 PM	Roll Call
5:03:20 PM	Tab 1-SB 170 by Senator Joyner—Administration of County and Municipal Delinquency Programs and Facilities (presented by Sen. Gibson)
5:04:38 PM	Rick Branch, First United Methodist Church, Pensacola, FL
5:06:51 PM	Roll Call
5:07:56 PM	Tab 13-CS/SB 1030 by Senators Bradley / Bean / Brandes—Low-THC Marijuana and Cannabis
5:09:55 PM	Marshall McGaw, Pensacola, FL (for his son).
5:17:02 PM	Ron Watson, FL Medical Cannabi Assoc, Tallahassee, FL (his son).
5:18:13 PM	Ryan Roman, Parrish, FL
5:35:06 PM	Jodi James, Florida Cannabis Action Network, Melbourne, FL
5:39:41 PM	Anneliese Clark, Jacksonville, FL (for her daughter, Christina Clark)

5:45:00 PM Holly Moseley, Gulf Breeze, FL (for her daughter Ray Ann Moseley)
5:52:19 PM Robert P. Jordan, Parrish, FL
5:53:53 PM Mariah Barnhart, Peyton, Colorado
5:57:21 PM Roll Call
5:57:45 PM Meeting adjourned.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR CHARLES S. DEAN, SR.
5th District

COMMITTEES:
Environmental Preservation and
Conservation, *Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on General
Government
Children, Families, and Elder Affairs
Criminal Justice
Gaming
Military Affairs, Space, and Domestic Security

March 24, 2014

The Honorable Greg Evers
308 Senate Office Building
404 South Monroe St.
Tallahassee, FL 32399-1100

Dear Chairman Evers,

The purpose of this letter is to seek your permission to be excused from the scheduled Criminal Justice Committee meeting on March 24th, 2014. Due to unforeseen personal conflicts, I will not be able to attend.

Should you have any questions concerning this matter, please do not hesitate to contact me personally.

Sincerely,

A handwritten signature in black ink that reads "Charles S. Dean". The signature is fluid and cursive.

Charles S. Dean
State Senator District 5

cc: Amanda Cannon, Staff Director

REPLY TO:

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

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore