

Tab 1 SB 298 by Evers; (Similar to H 0151) Installation of Tracking Devices or Tracking Applications						
252238	A	S		CJ, Evers	Delete L.22 - 33:	10/19 05:41 PM

Tab 2 SB 300 by Gaetz; (Similar to CS/H 0163) Weapons and Firearms						
703182	A	S	RCS	CJ, Bradley	Delete L.47:	10/20 11:30 AM
201112	A	S	TP	CJ, Bradley	btw L.75 - 76:	10/20 11:30 AM

Tab 3 SB 344 by Bradley; (Similar to H 0169) Justifiable Use or Threatened Use of Defensive Force						
807382	A	S	RCS	CJ, Bradley	Delete L.85 - 87:	10/20 11:30 AM

Tab 4 SPB 7006 by CJ; Corrections						
976882	A	S		CJ, Gibson	Delete L.47:	10/16 11:36 AM
328176	A	S		CJ, Brandes	btw L.85 - 86:	10/19 10:20 AM
723682	SA	S		CJ, Brandes	btw L.85 - 86:	10/19 05:06 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Evers, Chair
Senator Gibson, Vice Chair

MEETING DATE: Tuesday, October 20, 2015
TIME: 9:00—11:00 a.m.
PLACE: Mallory Horne Committee Room, 37 Senate Office Building

MEMBERS: Senator Evers, Chair; Senator Gibson, Vice Chair; Senators Bradley, Brandes, and Clemens

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 298 Evers (Similar H 151)	Installation of Tracking Devices or Tracking Applications; Revising an exception to a prohibition on the installation of tracking devices or applications to specify that the exception does not apply to the installation of such devices or applications when done through intentionally deceptive means or when done knowingly in the commission of a crime, etc. CJ 10/20/2015 Not Considered ACJ RC	Not Considered
2	SB 300 Gaetz (Similar CS/H 163)	Weapons and Firearms; Providing for construction of statutes that implicate the right to bear arms or engage in self-defense; specifying that a law enforcement officer may arrest a person for the unlicensed carrying of a concealed weapon only upon probable cause that such a violation is being committed; providing that a person licensed to carry a concealed firearm or weapon may also openly carry such firearm or weapon; providing that a person or entity who infringes on specified rights of an individual may be subject to liability under specified provisions, etc. CJ 10/20/2015 Fav/CS JU RC	Fav/CS Yeas 3 Nays 2
3	SB 344 Bradley (Similar H 169)	Justifiable Use or Threatened Use of Defensive Force; Specifying that once a prima facie claim of self-defense immunity has been raised, the burden of proof shall be on the party seeking to overcome the immunity from criminal prosecution; providing a directive to the Division of Law Revision and Information; entitling criminal defendants who successfully claim immunity to an award of specified costs, attorney fees, and related expenses, etc. CJ 10/20/2015 Fav/CS JU RC	Fav/CS Yeas 4 Nays 1

Consideration of proposed bill:

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, October 20, 2015, 9:00—11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SPB 7006	Corrections; Requiring the Criminal Justice Estimating Conference to develop projections of prison admissions and populations for elderly felony offenders; revising the definition of "victim injury" by removing a prohibition on assessing certain victim injury sentence points for sexual misconduct by an employee of the Department of Corrections or a private correctional facility with an inmate or an offender supervised by the department; expanding applicability of a current felony offense to include employees of private providers and private correctional facilities, etc.	Not Considered

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 298

INTRODUCER: Senator Evers

SUBJECT: Installation of Tracking Devices or Tracking Applications

DATE: October 19, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Pre-meeting
2.			ACJ	
3.			RC	

I. Summary:

SB 298 amends the law on tracking devices and tracking applications. The bill amends s. 934.425, F.S., to remove language that prohibits a private investigator from installing a trafficking device or trafficking application on behalf of another person unless such installation would otherwise be exempt under the statute if performed by the person engaging the private investigator. In place of this language, the bill prohibits a person who is acting on behalf of a business entity or an individual from installing or placing an electronic tracking device or application through intentionally deceptive means and without consent or installing or placing an electronic tracking device or application knowingly in the commission of a crime.

II. Present Situation:

The General Prohibition on Installation of Tracking Devices or Tracking Applications and Exceptions to This Prohibition

Section 934.425, F.S., was created by ch. 2015-137, L.O.F. Section 934.425(2), F.S., generally prohibits a person¹ from knowingly installing a tracking device² or tracking application³ on

¹ "Person" means an individual but does not include a business entity. Section 934.425(1)(d), F.S.

² "Tracking device" means any device whose primary purpose is to reveal its location or movement by the transmission of electronic signals. Section 934.425(1)(c), F.S.

³ "Tracking application" means any software program whose primary purpose is to track or identify the location or movement of an individual. Section 934.425(1)(b), F.S.

another person's property without the other person's consent.⁴ A person who violates s. 934.425, F.S., commits a second degree misdemeanor.⁵

Section 934.425(4), provides that the section does not apply to:

- A law enforcement officer (as defined in s. 943.10, F.S.) or any local, state, federal, or military law enforcement agency, that lawfully installs a tracking device or tracking application on another person's property as part of a criminal investigation.
- A parent or legal guardian of a minor child who installs a tracking device or tracking application on the minor child's property if:
 - The parents or legal guardians are lawfully married to each other and are not separated or otherwise living apart, and either parent or legal guardian consents to the installation of the tracking device or tracking application;
 - The parent or legal guardian is the sole surviving parent or legal guardian of the minor child;
 - The parent or legal guardian has sole custody of the minor child; or
 - The parents or legal guardians are divorced, separated, or otherwise living apart and both consent to the installation of the tracking device or tracking application.
- A caregiver of an elderly person or disabled adult (as those terms are defined in s. 825.101, F.S.), if the elderly person's or disabled adult's treating physician certifies that the installation of a tracking device or tracking application onto the elderly person's or disabled adult's property is necessary to ensure the safety of the elderly person or disabled adult.
- A person acting in good faith on behalf of a business entity⁶ for a legitimate business purpose. *However, relevant to the bill, this "good faith" exception does not apply to a person engaged in a private investigation (as defined in s. 493.6101, F.S.) on behalf of another person unless such activities would otherwise be exempt under subsection (4) if performed by the person engaging the private investigator.*
- An owner or lessee of a motor vehicle that installs, or directs the installation of, a tracking device or tracking application on such vehicle during the period of ownership or lease, provided that:
 - The tracking device or tracking application is removed before the vehicle's title is transferred or the vehicle's lease expires;
 - The new owner of the vehicle, in the case of a sale, or the lessor of the vehicle, in the case of an expired lease, consents in writing to the nonremoval of the tracking device or tracking application; or
 - The owner of the vehicle at the time of the installation of the tracking device or tracking application was the original manufacturer of the vehicle.

⁴ Section 943.425(3), F.S., provides that a person's consent is presumed to be revoked if: (a) The consenting person and the person to whom consent was given are lawfully married and one person files a petition for dissolution of marriage from the other; or (b) The consenting person or the person to whom consent was given files an injunction for protection against the other person pursuant to s. 741.30, F.S., s. 741.315, F.S., s. 784.046, F.S., or s. 784.0485, F.S.

⁵ Section 934.425(5), F.S. A second degree misdemeanor is punishable by up to 60 days in a county jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

⁶ "Business entity" means any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in this state. Section 934.425(1)(a), F.S.

Grounds for Disciplinary Action

Section 493.6118, F.S., specifies grounds for which disciplinary action may be taken by the Department of Agriculture and Consumer Services against any licensee, agency, or applicant regulated by ch. 493, F.S. (private investigative, private security, and repossession services), or any unlicensed person engaged in activities regulated under this chapter. One of the grounds for disciplinary action is the installation of a tracking device or tracking application in violation of s. 934.425, F.S.⁷

III. Effect of Proposed Changes:

Section 934.425, F.S., generally prohibits a person from knowingly installing a tracking device or tracking application on another person's property without the other person's consent. This section also provides that the prohibition does not apply to certain persons. Relevant to the bill, this prohibition does not apply to a person "acting in good faith on behalf of a business entity for a legitimate business purpose." However, this "good faith" exception does not apply to a private investigator conducting an investigation on behalf of another person unless such activities would otherwise be exempt if performed by the person engaging the private investigator.

The bill amends s. 934.425, F.S., to remove the language relating to private investigators from the exclusion to the "good faith" exception and provide instead that the "good faith" exception does not apply to "a person who, on behalf of a business entity or an individual, installs or places an electronic tracking device or application through intentionally deceptive means and without consent or installs or places an electronic tracking device or application knowingly in the commission of a crime."

As a result of these changes, a "person" (which would include a private investigator) could install a tracking device or tracking application "on behalf of a business entity for a legitimate business purpose," e.g., install a tracking device for a business to track its goods in transit. However, since the new exclusion to the "good faith" exception applies to a "person" and a "person" would include a private investigator, a private investigator could not install or place an electronic tracking device or application "through intentionally deceptive means and without consent" or install or place an electronic tracking device or application "knowingly in the commission of a crime."

The bill also reenacts s. 493.6118(1)(y), F.S., for the purpose of incorporating the amendment made by this act to s. 934.425, F.S.

The effective date of the bill is July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁷ See ch. 2015-137, L.O.F.

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:

None

VI. Technical Deficiencies:

The bill creates an exclusion from the “good faith” exception. The “good faith” exception does not apply to “a person who, on behalf of a business entity or an individual, installs or places an electronic tracking device or application through intentionally deceptive means and without consent or installs or places an electronic tracking device or application knowingly in the commission of a crime.”

The new exclusion from the “good faith” exception uses the words “on behalf of a business entity or *an individual*.” However, the “good faith” exception uses the words “on behalf of a business entity.” The definition of “business entity” in s. 934.425(1)(d), F.S., does not appear to include an individual.

The bill does not specify whether “with consent,” as used in the new exclusion from the “good faith” exception, means “with consent” of the person who will be tracked with the tracking device or “with consent” of the owner of the property on which the tracking device will be installed or placed. Section 934.425(2), F.S., generally prohibits a person from knowingly installing a tracking device or tracking application on another person’s property without the other person’s consent. Insofar as this general prohibition, consent means consent of the owner of the property on which the tracking device or tracking application is installed.

Depending on the situation, it may or may not be the case that the person being tracked with a tracking device is the owner of the property on which the tracking device is installed or placed. If the intent is that the words “with consent” mean with consent of the owner of the property on which the tracking device is installed or placed, the bill may need to be amended to indicate that the words “with consent” mean with consent of the owner of the property on which the tracking

device is installed or placed. If the property on which the tracking device is installed or placed is jointly owned, e.g., property owned by the private investigator's client and his or her spouse, consent from all owners of the property may arguably be required. The bill could clarify consent in the context of joint ownership of property.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 934.425 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.



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LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete lines 22 - 33

and insert:

(4) This section does not apply to:

(d) A person acting in good faith on behalf of a business entity for a legitimate business purpose.

This paragraph does not apply to:

1. A person engaged in private investigation, as defined in s. 493.6101, on behalf of another person, unless any of the



252238

11 following circumstances apply:

12 a. Such activities would otherwise be exempt under this
13 subsection if performed by the person engaging the private
14 investigator; or-

15 b. The installation or use of a tracking device or tracking
16 application was for the purpose of:

17 I. Securing evidence to be used before a court, board,
18 officer, or investigation committee;

19 II. Obtaining information to determine if a crime has been
20 committed or attempted against the United States, a territory of
21 the United States, a state, a person, or a legal business
22 entity;

23 III. Locating a person known to be a fugitive from justice;
24 or

25 IV. Locating lost or stolen property or locating assets
26 that have been awarded by the court.

27 2. A private investigator who is working on behalf of a
28 client who is subject to a protective order or a private
29 investigator who knows or has reason to know that a person
30 seeking his or her investigative services is involved in the
31 commission of a crime or an unlawful act.

32
33 ===== T I T L E A M E N D M E N T =====

34 And the title is amended as follows:

35 Delete lines 6 - 11

36 and insert:

37 specify circumstances in which the exception applies
38 and does not apply to private investigators;
39 reenacting s. 493.6118(1)(y), F.S.,

By Senator Evers

2-00354-16

2016298__

1 A bill to be entitled
2 An act relating to installation of tracking devices or
3 tracking applications; amending s. 934.425, F.S.;
4 revising an exception to a prohibition on the
5 installation of tracking devices or applications to
6 specify that the exception does not apply to the
7 installation of such devices or applications when done
8 through intentionally deceptive means or when done
9 knowingly in the commission of a crime; deleting a
10 provision concerning persons engaged in private
11 investigation; reenacting s. 493.6118(1)(y), F.S.,
12 relating to grounds for disciplinary action, to
13 incorporate the amendment made to s. 934.425, F.S., in
14 a reference thereto; providing an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Paragraph (d) of subsection (4) of section
19 934.425, Florida Statutes, is amended to read:

20 934.425 Installation of tracking devices or tracking
21 applications; exceptions; penalties.—

22 (4) This section does not apply to:

23 (d) A person acting in good faith on behalf of a business
24 entity for a legitimate business purpose. This paragraph does
25 not apply to a person who, on behalf of a business entity or an
26 individual, installs or places an electronic tracking device or
27 application through intentionally deceptive means and without
28 consent or installs or places an electronic tracking device or
29 application knowingly in the commission of a crime ~~engaged in~~

2-00354-16

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30 ~~private investigation, as defined in s. 493.6101, on behalf of~~
31 ~~another person unless such activities would otherwise be exempt~~
32 ~~under this subsection if performed by the person engaging the~~
33 ~~private investigator.~~

34 Section 2. For the purpose of incorporating the amendment
35 made by this act to section 934.425, Florida Statutes, in a
36 reference thereto, paragraph (y) of subsection (1) of section
37 493.6118, Florida Statutes, is reenacted to read:

38 493.6118 Grounds for disciplinary action.—

39 (1) The following constitute grounds for which disciplinary
40 action specified in subsection (2) may be taken by the
41 department against any licensee, agency, or applicant regulated
42 by this chapter, or any unlicensed person engaged in activities
43 regulated under this chapter.

44 (y) Installation of a tracking device or tracking
45 application in violation of s. 934.425.

46 Section 3. This act shall take effect July 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

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

10/20

Meeting Date

298

Bill Number (if applicable)

+ am

Amendment Barcode (if applicable)

Topic Trackway

Name Cynthia Henderson

Job Title _____

Address 108 E Jefferson St #A

Street

Phone 850 559 0855

Tallahassee FL 32308

City

State

Zip

Email cynthenderson

Speaking: For Against Information

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

Representing FALI

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

10/20

Meeting Date

298

Bill Number (if applicable)

Topic Tracking Devices

Amendment Barcode (if applicable)

Name Burt Hodge

Job Title _____

Address 842 E. Park Ave

Phone 850-561-3990

Street

Tallahassee FL 32301

City

State

Zip

Email burt@stateinformationbureau.com

Speaking: For Against Information

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

Representing State Info. Bureau, Inc (Private Invest.)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 300

INTRODUCER: Criminal Justice Committee and Senator Gaetz

SUBJECT: Weapons and Firearms

DATE: October 20, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 300 creates s. 776.00111, F.S., which states that the right to bear arms is a fundamental and individual right that exists in any place that a person has the right to be.

The new section of law requires the courts to use the highest standard of constitutional review, strict scrutiny, when analyzing any statute that implicates the right to bear arms or to defend one's self, defend others, or defend property.¹

The bill amends s. 790.053(1), F.S., to authorize concealed carry licensees to openly carry firearms or weapons, subject to the provisions in ss. 790.06 and 790.10, F.S. Section 790.06, F.S., is the concealed weapons and firearms licensing statute; s. 790.10, F.S., prohibits a person from exhibiting a firearm or weapon in the presence of another person in a rude, careless, angry, or threatening manner, not in necessary self defense.

The bill adds a new subsection (4) to s. 790.053, F.S., which specifies that, unless probable cause exists to believe that a crime has been committed by an individual, any person or entity

¹ The Florida Supreme Court has stated, "To withstand strict scrutiny, a law must be necessary to promote a compelling governmental interest and must be narrowly tailored to advance that interest. ... Strict scrutiny requires the State to demonstrate that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means." *State v. T.M.*, 907 So.2d 1101 (Fla. 2004)(citations omitted).

infringing upon the rights conferred on that individual by ch. 790², F.S., ch. 776³, F.S., s. 8, Art. I of the State Constitution⁴, or the Second Amendment to the United States Constitution⁵ is liable for certain damages, fines, and perhaps the loss of employment.

The new subsection (4) also provides that no immunity shall apply to persons infringing on such rights in violation of this subsection.

Section 790.02, F.S., authorizes an officer who is authorized to make arrests to make a warrantless arrest for the carrying of a concealed weapon in violation of s. 790.01, F.S., when the officer has reasonable grounds or probable cause to believe such offense has been committed. The bill provides that s. 790.02, F.S., should apply to the *unlicensed* carrying of a concealed weapon and that warrantless arrests may only be based upon probable cause.

Finally, the bill contains legislative findings and intent language in s. 790.25(1), F.S.,⁶ to:

- Specify that the Legislature finds that the possession and carrying of weapons and firearms by law-abiding individuals for lawful purposes, including self-defense, enhances public safety.
- Require the judiciary to construe this act in conjunction with the right to bear arms or defend one's self as provided in ch. 776, F.S.
- Specify that the right to bear arms and defend one's self is a fundamental and individual right that exists in any place that a person has the right to be, subject only to exceptionally and narrowly tailored restrictions that employ the least possible restriction on the right in order to achieve a compelling government interest.

The bill is effective upon becoming a law.

II. Present Situation:

Constitutional Provisions Regarding the Right to Keep and Bear Arms

The Second Amendment of the U.S. Constitution states, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."⁷ With respect to this provision, the U.S. Supreme Court has stated that the amendment guarantees "the individual right to possess and carry weapons in case of confrontation."⁸ According to the Fourth District Court of Appeals, the amendment encompasses the right to carry a gun both inside and outside the home for self-defense.⁹

Article I, section 8(a) of the Florida Constitution states, "The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed,

² "Weapons and Firearms."

³ "Justifiable Use of Force."

⁴ Florida right to keep and bear arms provision.

⁵ Federal right to keep and bear arms provision.

⁶ "Lawful ownership, possession, and use of firearms and other weapons – Declaration of Policy.", s. 790.25(1), F.S.

⁷ U.S. Const. Amend. II.

⁸ *Dist. of Columbia v. Heller (Heller I)*, 554 U.S. 570, 592 (2008).

⁹ *Norman v. State*, 159 So.3d 205, 212 (Fla. 4th DCA 2015) pet. for rev. pending, no. SC15-650.

except that the manner of bearing arms may be regulated by law.” Regarding this provision, the Florida Supreme Court has stated, “Although [sic] the Legislature may not entirely prohibit the right of the people to keep and bear arms, it can determine that certain arms or weapons may not be kept or borne by the citizen. We have specifically held that the Legislature can regulate the use and the manner of bearing certain specific weapons.”¹⁰

Statutory Regulation of Firearms, Self Defense, and Standards of Judicial Review

Statutes regarding the bearing of weapons and firearms in Florida have been adopted by the Legislature in ch. 790, F.S., entitled “Weapons and Firearms” and statutes regarding self-defense have been adopted by the Legislature in ch. 776, F.S., entitled “Justifiable Use of Force.”

With respect to judicial review of the constitutionality of Florida’s statutes relating to the right to bear arms for self-defense, the Fourth District Court of Appeals in *Norman v. State*, recently held that *intermediate, rather than strict, scrutiny* is the applicable standard for judicial review of regulations that do not “destroy the core right of self-defense enshrined in the Second Amendment.”¹¹

- Intermediate scrutiny “require[s] (1) the government’s stated objective to be significant, substantial, or important; and (2) a reasonable fit between the challenged regulation and the asserted objective.”¹²
- “[S]trict scrutiny requires the Government to prove that [a challenged law] ‘furthers a compelling interest and is narrowly tailored to achieve that interest.’”¹³

Under the intermediate scrutiny standard, the *Norman* court upheld the constitutionality of s. 790.053, F.S., which prohibits the open carrying of certain firearms and weapons, agreeing with the state’s assertion that it had a paramount interest in public safety which was furthered by the ban on open carry and finding that a reasonable fit existed between the challenged law and the state’s asserted objectives.¹⁴

Standard of Judicial Review in Other States

In at least three other states, strict scrutiny requirements for the review of restrictions on the right to bear arms have recently been adopted as constitutional amendments:

- Article 1, section 11 of the Louisiana Constitution, now provides after the amendment approved November 6, 2012, “The right of each citizen to keep and bear arms is fundamental and shall not be infringed. Any restriction on this right shall be subject to strict scrutiny.”¹⁵

¹⁰ *Rinzler v. Carson*, 262 So.2d 661, 665 (Fla. 1972).

¹¹ *Norman*, 159 So.3d at 220-222.

¹² *Id.* at 220.

¹³ *Id.* at 220.

¹⁴ *Id.* at 222-224.

¹⁵ Since the adoption of this amendment, several lower courts have held unconstitutional certain Louisiana statutes that prohibit minors and felons from possessing firearms under the strict scrutiny standard. Each of these rulings has been reversed by a superior Louisiana appellate court. *See, e.g., State v. Draughter*, 130 So.3d 855 (La. 2013); *State of Louisiana in the Interest of J.M.*, 144 So.3d 853 (La. 2014); *State v. Eberhardt*, 145 So.3d 377 (La. 2014); and *State v. Dixon*, 146 So.3d 662 (La.App. 4th Cir. 2014). In other cases, both the lower courts and appellate courts rejected arguments that certain gun regulation statutes are unconstitutional under strict scrutiny review. *See, e.g., State v. Zeno*, 155 So.3d 4 (La.App. 1st Cir. 2014); and *State in Interest of D.V.*, 144 So.3d 1097 (La.App. 4th Cir. 2014).

- Article 1, section 23 of the Missouri Constitution provides, “That the right of every citizen to keep and bear arms, ammunition, and accessories typical to the normal function of such arms, in defense of his home, person, family and property, or when lawfully summoned in aid of the civil power, shall not be questioned. The rights guaranteed by this section shall be unalienable. Any restriction on these rights shall be subject to strict scrutiny and the state of Missouri shall be obligated to uphold these rights and shall under no circumstances decline to protect against their infringement. Nothing in this section shall be construed to prevent the general assembly from enacting general laws which limit the rights of convicted violent felons or those adjudicated by a court to be a danger to self or others as result of a mental disorder or mental infirmity.”¹⁶
- Article I, section 26(a) of the Alabama Constitution states: “Every citizen has a fundamental right to bear arms in defense of himself or herself and the state. Any restriction on this right shall be subject to strict scrutiny.”¹⁷

Florida’s Statutes Relating to the Open and Concealed Carry of Weapons and Firearms

Generally, in Florida, an individual is authorized to own, possess, and lawfully use a firearm and other weapon¹⁸ without a license if the individual is not statutorily prohibited from possessing a firearm or weapon¹⁹ and such possession and use occurs in a lawful manner and location.²⁰

Concealed Carry

In order to lawfully carry a concealed weapon or concealed firearm,²¹ a person, unless exempted, must obtain a license from the Department of Agriculture and Consumer Services.²² If a person is unlicensed, s. 790.01, F.S., specifies that it is:

- A first degree misdemeanor²³ for the person to carry a concealed weapon²⁴ or electric weapon or device²⁵ on or about his or her person.²⁶

¹⁶ The Missouri Supreme Court recently held that the right to bear arms is a fundamental right and that any law restricting such right is subject to strict scrutiny regardless of whether the pre-amended or amended version of Missouri’s Constitution applies. *Missouri v. Merritt*, No. SC 94096, 2015 WL 4929765, at *3-4 (August 18, 2015).

¹⁷ There does not appear to be any case law in Alabama discussing the 2014 constitutional amendment.

¹⁸ Section 790.001(13), F.S., defines “weapon” as “any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife.”

¹⁹ There are numerous prohibitions in statute specifying individuals who may not lawfully possess a gun. *See, e.g.*, ss. 790.22 and 790.23, F.S., (prohibiting the possession of firearms and certain weapons by minors, convicted felons, and delinquents, except under specified circumstances).

²⁰ *See* s. 790.25, F.S.

²¹ The term “concealed weapons or concealed firearms” is defined as “a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun” s. 790.06(1), F.S.

²² Section 790.06, F.S.

²³ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

²⁴ Section 790.001(3)(a), F.S., defines the term “concealed weapon” as “any dirk, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon carried on or about a person in such a manner as to conceal the weapon from the ordinary sight of another person.” The weapons listed in this definition require licensure to carry them in a concealed manner.

²⁵ Section 790.001(14), F.S., defines the term “electric weapon or device” as “any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury.”

²⁶ Section 790.01(1), F.S.

- A third degree felony²⁷ to carry a concealed firearm.^{28, 29}

These prohibitions do not apply to:

- A person who carries a concealed weapon, or a person who may lawfully possess a firearm and who carries a concealed firearm, on or about his or her person while in the act of evacuating during certain mandatory evacuation orders.
- A person who carries for purposes of lawful self-defense in a concealed manner:
 - A self-defense chemical spray.³⁰
 - A nonlethal stun gun or dart-firing stun gun³¹ or other nonlethal electric weapon or device that is designed solely for defensive purposes.³²

The carrying of a concealed weapon in violation of s. 790.01, F.S., is statutorily designated as a breach of peace for which an officer may make a warrantless arrest if the officer has reasonable grounds or probable cause to believe that the offense of carrying a concealed weapon is being committed.³³

Licenses are limited with regard to where they may carry a concealed weapon or concealed firearm. Section 790.06(12)(a), F.S., specifies that the license does not authorize a person to openly carry a handgun or carry a concealed weapon or firearm into:

- Any place of nuisance as defined in s. 823.05.
- Any police, sheriff, or highway patrol station.
- Any detention facility, prison, or jail.
- Any courthouse.
- Any courtroom, except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom.
- Any polling place.
- Any meeting of the governing body of a county, public school district, municipality, or special district.
- Any meeting of the Legislature or a committee thereof.
- Any school, college, or professional athletic event not related to firearms.
- Any elementary or secondary school facility or administration building.
- Any career center.
- Any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose.

²⁷ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

²⁸ Section 790.001(2), F.S., defines the term, “concealed firearm” as “any firearm, as defined in subsection (6), which is carried on or about a person in such a manner as to conceal the firearm from the ordinary sight of another person.”

²⁹ Section 790.01(2), F.S.

³⁰ Section 790.001(3)(b), F.S., defines the term “self-defense chemical spray” as “a device carried solely for purposes of lawful self-defense that is compact in size, designed to be carried on or about the person, and contains not more than two ounces of chemical.”

³¹ Section 790.001(15), F.S., defines the term “dart-firing stun gun” as “any device having one or more darts that are capable of delivering an electrical current.”

³² Section 790.01(3), F.S.

³³ Section 790.02, F.S.

- Any college or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile.
- The inside of the passenger terminal and sterile area of any airport, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft.
- Any place where the carrying of firearms is prohibited by federal law.

A person who knowingly and willfully carries a concealed weapon or firearm into any of the above-listed locations commits a second degree misdemeanor.³⁴

Open Carry

Florida law prohibits the open carrying of firearms and certain weapons unless an exemption applies. Specifically, s. 790.053, F.S., makes it a second degree misdemeanor³⁵ for a person to openly carry on or about his or her person any firearm or electric weapon or device. This section does not apply to a person who has a license to carry concealed weapons or concealed firearms³⁶ if the licensee briefly and openly displays the firearm to the ordinary sight of another person, unless “the firearm is intentionally displayed in an angry or threatening manner, not in necessary self-defense.”^{37, 38}

Exemptions from Open Carry Prohibitions and Concealed Carry Licensing Requirements

Section 790.25(3), F.S., provides that certain persons under specified circumstances are exempt from the requirements for a license to carry concealed weapons or concealed firearms in s. 790.06, F.S., and the limitations on open carrying in s. 790.053, F.S. These persons and circumstances include:

- Members of the Militia, National Guard, Florida State Defense Force, Army, Navy, Air Force, Marine Corps, Coast Guard, organized reserves, and other armed forces of the state and of the United States, when on duty, when training or preparing themselves for military duty, or while subject to recall or mobilization.
- Citizens of this state subject to duty under certain sections of law if on duty or when training or preparing themselves for military duty.
- Persons carrying out or training for emergency management duties under ch. 252, F.S.
- Sheriffs, marshals, prison or jail wardens, police officers, Florida highway patrol officers, game wardens, revenue officers, forest officials, special officers appointed under the provisions of ch. 354, F.S., and other peace and law enforcement officers and their deputies

³⁴ Section 790.06(12)(d), F.S.

³⁵ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

³⁶ The term “concealed weapons or concealed firearms” is defined as “a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun . . .” s. 790.06(1), F.S.

³⁷ s. 790.053(1), F.S.

³⁸ Section 790.053(2), F.S., also specifies that a person may openly carry for purposes of lawful self-defense a self-defense chemical spray and a nonlethal stun gun or dart-firing stun gun or other nonlethal electric weapon or device that is designed solely for defensive purposes.

and assistants and full-time paid peace officers of other states and of the Federal Government who are carrying out official duties while in this state.

- Officers or employees of the state or United States duly authorized to carry a concealed weapon.
- Guards or messengers of common carriers, express companies, armored car carriers, mail carriers, banks, and other financial institutions, while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.
- Regularly enrolled members of any organization duly authorized to purchase or receive weapons from the United States or from this state, or regularly enrolled members of clubs organized for target, skeet, or trap shooting, while at or going to or from shooting practice; or regularly enrolled members of clubs organized for modern or antique firearms collecting, while such members are at or going to or from their collectors' gun shows, conventions, or exhibits.
- A person engaged in fishing, camping, or lawful hunting or going to or returning from a fishing, camping, or lawful hunting expedition.
- A person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person while engaged in the lawful course of such business.
- A person firing weapons for testing or target practice under safe conditions and in a safe place not prohibited by law or going to or from such place.
- A person firing weapons in a safe and secure indoor range for testing and target practice.
- A person traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession.
- A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business.
- Investigators employed by the public defenders and capital collateral regional counsel of the state while carrying out official duties.³⁹

Open Carry in Other States

*States that Generally Permit Open Carry of Firearms*⁴⁰

Forty-three states permit the open carrying of both long guns and handguns.⁴¹ Of these states, 26 do not require a license and do not restrict whether the firearm is loaded or unloaded.^{42, 43}

³⁹ Section 790.25(3), F.S.

⁴⁰ "Firearms" refers to both handguns and long guns.

⁴¹ These states are Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas (effective January 1, 2016), Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

⁴² These states include Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Idaho, Kansas, Kentucky, Louisiana, Maine, Michigan, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Carolina, Ohio, Oregon, South Dakota, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

⁴³ The status of Arkansas law is based on Attorney General Opinion No. 2015-064 issued August 28, 2015.

Connecticut,⁴⁴ Georgia,⁴⁵ Maryland,⁴⁶ New Hampshire,⁴⁷ Rhode Island,⁴⁸ and Tennessee⁴⁹ require a license to openly carry a handgun, but not a long gun, such as a rifle or shotgun. Conversely, Massachusetts,⁵⁰ Minnesota,⁵¹ New Jersey,⁵² Texas,⁵³ and Utah⁵⁴ require a license to openly carry any firearm.

The remaining six states permit open carry, but impose special limitations on the circumstances in which a person can openly carry a firearm.⁵⁵ For example, North Dakota limits the hours during which an unlicensed person may openly carry an unloaded handgun.⁵⁶

Three states permit openly carrying specific types of firearms. South Carolina⁵⁷ permits openly carrying a long gun without a license, while prohibiting openly carrying a handgun in any circumstance. Hawaii⁵⁸ permits openly carrying a handgun with a license and prohibits openly carrying a long gun in any circumstance. Oklahoma⁵⁹ permits openly carrying a handgun with a license and prohibits openly carrying a long gun in most circumstances.

Some states regulate the manner of openly carrying a handgun. For example in Texas, licensees must carry the handgun in a shoulder or belt holster.⁶⁰ In Oklahoma, licensees may carry a “unconcealed handgun,” which means, “a loaded or unloaded pistol carried upon the person in a belt holster or shoulder holster that is wholly or partially visible, or carried upon the person in a scabbard or case designed for carrying firearms that is wholly or partially visible.”⁶¹

⁴⁴ CONN. GEN. STAT. §29-35.

⁴⁵ GA. CODE ANN. §§16-11-126 and 129(a).

⁴⁶ MD. CODE ANN. CRIM. LAW §4-203.

⁴⁷ A license is required if carrying a firearm in a vehicle or if carrying a loaded handgun, regardless of whether the firearm is concealed or openly carried. N.H. REV. STAT. ANN. §159:4.

⁴⁸ R.I. GEN. LAWS ANN. §11-47-18.

⁴⁹ A license is only required if openly carrying a *loaded* handgun. TENN. CODE ANN. §§39-17-1308 and 1351.

⁵⁰ MASS. GEN. LAWS ch. 140 §131.

⁵¹ MINN. STAT. ANN. §§624.714 and 7181.

⁵² A license is required to carry a handgun in an open or concealed manner. N.J. STAT. ANN. §2C:39-5(b). A license is also required to openly carry an *unloaded* long gun. Loaded long guns may not be openly carried. N.J. STAT. ANN. §2C:39-5(c) and §2C:58-3.

⁵³ TEX. PENAL CODE ANN. §46.02 and 46.15(b).

⁵⁴ A person may not carry a loaded firearm openly or concealed in most places. UTAH CODE ANN. §76-10-505. However, this restriction does not apply to holders of a concealed weapon license issued under UTAH CODE ANN. §53-5-704. UTAH CODE ANN. §76-10-523(2)(a).

⁵⁵ Indiana, Iowa, Missouri, Ohio, Oregon, and Pennsylvania.

⁵⁶ N.D. CENT CODE ANN. §62.1-03-01.

⁵⁷ S.C. CODE ANN. §16-23-20.

⁵⁸ HAW. REV. STAT. §§134-9 and 134-25.

⁵⁹ OKLA. STAT. ANN. tit. 21, §§1290.5 and 1289.6.

⁶⁰ TEX. PENAL CODE ANN. §46.02(a-1) (effective January 1, 2016).

⁶¹ OKLA. STAT. ANN. tit. 21, §§1290.2 and 1290.8.

States that Prohibit Open Carry

The District of Columbia,⁶² Florida,⁶³ Illinois,⁶⁴ and New York,⁶⁵ prohibit the open carry of both handguns and long guns. California does not statutorily prohibit the open carrying of all firearms; however, the restrictions on openly carrying a firearm in the state result in very limited ability to openly carry.⁶⁶

Legislative Preemption of the Regulation of Firearms and Ammunition

In s. 790.33(1), F.S., the Florida Legislature has preempted “the whole field of regulation of firearms⁶⁷ and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof.” Local government authority to regulate firearms and ammunition is prohibited, “except as otherwise expressly provided by the State Constitution or general law....”^{68, 69}

Section 790.33(3), F.S., specifies that any person, county, agency, municipality, district, or other entity that violates the preemption by enacting or causing to be enforced any local ordinance or administrative rule or regulation impinging upon such exclusive occupation of the field is subject to the following liability:

- The court is required to declare the improper ordinance, regulation, or rule invalid and issue a permanent injunction against the local government prohibiting it from enforcing such ordinance, regulation, or rule. Acting in good faith or upon advice of counsel is not a defense.
- If the court determines that a violation was knowing and willful, the court must assess a civil fine of up to \$5,000 against the elected or appointed local government official or officials or administrative agency head under whose jurisdiction the violation occurred. Additionally, a knowing and willful violation by a person acting in an official capacity for any entity that commits a violation is cause for termination of employment or contract or removal from office by the Governor.
- A county, agency, municipality, district, or other entity is liable to a prevailing plaintiff for actual damages, up to \$100,000, and attorney fees and costs, including a contingency fee multiplier, if the plaintiff is found to have been adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced in violation of the preemption.

⁶² D.C. CODE §22-4504.01.

⁶³ Section 790.053, F.S.

⁶⁴ ILL. COMP. STAT. 5/24-1(a)(4).

⁶⁵ N.Y. PENAL §265.01.

⁶⁶ It is illegal to carry any loaded firearm in an open or concealed manner, CAL. PENAL §25850, or to openly carry an unloaded handgun, CAL. PENAL §26350, in any public place in an incorporated city or on a public street in any prohibited area of an unincorporated territory.

⁶⁷ Section 790.001(6), F.S., defines the term “firearm” as “any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term ‘firearm’ does not include an antique firearm unless the antique firearm is used in the commission of a crime.”

⁶⁸ Section 790.33(1), F.S.

⁶⁹ The Legislature has expressly authorized local government regulation of the location and construction of a sport shooting range. s. 823.16(7), F.S.

- Unless required by applicable law, public funds may not be used to defend or reimburse the unlawful conduct of any person found to have knowingly and willfully committed a violation.⁷⁰

Section 790.33(4), F.S., states that the section does not prohibit:

- Certain zoning ordinances that encompass firearms businesses along with other businesses.
- A law enforcement agency from enacting and enforcing regulations pertaining to firearms, ammunition, or firearm accessories issued to or used by peace officers in the course of their official duties.
- Any entity subject to the section from regulating or prohibiting the carrying of firearms and ammunition by an employee of the entity during and in the course of the employee's official duties, except as provided in s. 790.251, F.S., relating to the protection of the right to keep and bear arms in motor vehicles for self-defense and other lawful purposes.
- A court or administrative law judge from hearing and resolving any case or controversy or issuing any opinion or order on a matter within the jurisdiction of that court or judge.
- The Florida Fish and Wildlife Conservation Commission from regulating the use of firearms or ammunition as a method of taking wildlife and regulating the shooting ranges managed by the commission.

III. Effect of Proposed Changes:

Courts Required to Use Strict Scrutiny

The bill creates s. 776.00111, F.S., to require the courts to use the strict scrutiny standard of review when analyzing any statute that implicates the right to bear arms or defend one's self pursuant to ch. 776, F.S. Chapter 776, F.S., contains the Justifiable Use of Force (or Self Defense) laws.⁷¹ Strict scrutiny is the highest standard of constitutional review.

The new section of law further states that the right to bear arms is a fundamental and individual right that exists in any place that a person has the right to be, subject only to "exceptionally and narrowly tailored restrictions that employ the least possible restriction on the right in order to achieve a compelling government interest." This language is similar to, but not exactly like the language used by Florida courts when describing the requirements of strict scrutiny review.⁷²

Unlicensed Concealed Carry Warrantless Arrest

The bill amends s. 790.02, F.S., which authorizes an officer who is authorized to make arrests to make a warrantless arrest for the carrying of a concealed weapon in violation of s. 790.01, F.S., when the officer has reasonable grounds or probable cause to believe such offense has been

⁷⁰ Section 790.33(3), F.S.

⁷¹ Some of the sections in ch. 776, F.S., are commonly known as the "Stand Your Ground" law.

⁷² In *Norman v. State*, the Fourth District described strict scrutiny as requiring, "the Government to prove that [a challenged law] 'furthers a compelling interest and is narrowly tailored to achieve that interest.'" *Norman*, 159 So.3d at 220. The Florida Supreme Court has stated, "To withstand strict scrutiny, a law must be necessary to promote a compelling governmental interest and must be narrowly tailored to advance that interest. ... Strict scrutiny requires the State to demonstrate that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means." *State v. T.M.*, 907 So.2d 1101 (Fla. 2004)(citations omitted).

committed. The amendment clarifies that s. 790.02, F.S., should apply to the *unlicensed* carrying of a concealed weapon. It also eliminates statutory authorization for warrantless arrests based on reasonable grounds. Under the bill, *warrantless arrests may only be based upon probable cause*.

Open Carry Authorized

The bill amends s. 790.053(1), F.S., to authorize *concealed carry licensees to openly carry* firearms or weapons, including electric weapons or devices. The term “openly carry” is not defined. There is no new licensing or training requirement, for current or future license-holders, prescribed in association with the open carry provision.

Persons openly carrying firearms or weapons are required to do so subject to the provisions of s. 790.06 and s. 790.10, F.S. This clarifies two things:

- That the application of the concealed carry licensing statute, s. 790.06, F.S., to a person who chooses to openly carry, is not changed by the bill; and
- A person who is authorized to openly carry under the bill is not exempted from the prohibition in s. 790.10, F.S., against exhibiting a firearm or weapon in the presence of another person in a rude, careless, angry, or threatening manner, not in necessary self defense.

Liability for Infringement of Rights

The bill adds a new subsection (4) to s. 790.053, F.S., which specifies that, “Unless probable cause exists to believe that a crime has been committed by an individual, *any person or entity* infringing upon the rights conferred on that individual by this chapter, chapter 776, s. 8, Art. I of the State Constitution, or the Second Amendment to the United States Constitution is “*liable*” pursuant to s. 790.33(3)(c), (d), (e), and (f).”⁷³

It is not entirely clear whether the bill creates a *new cause of action* against *any* person or entity beyond those people and governmental entities described in s. 790.33(3), F.S.

The bill’s intent *may* be to apply the “penalties” set forth in s. 790.33(3)(c)-(f), F.S., in cases where *those listed persons*⁷⁴ are found to have infringed upon the right to keep and bear arms and the right to defend oneself (others and property) rather than creating a new cause of action against *any* person or entity.

⁷³ As previously discussed s. 790.33(3)(c) through (f), F.S., provide for:

- A civil fine of up to \$5,000 and possible termination of employment or contract or removal from office by the Governor and
- Actual damages, up to \$100,000, and attorney fees and costs, including a contingency fee multiplier, if the plaintiff is found to have been adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced in violation of the preemption.

⁷⁴ Sections 790.33(3)(c)-(f), F.S., identify the following persons and entities that may not violate the Legislature’s preemption of the “whole field of regulation of firearms and ammunition”:

- Elected or appointed local government official
- Administrative agency head and
- Person acting in an official capacity for an entity enacting or causing to be enforced a prohibited local ordinance or administrative rule or regulation.

No Immunity in Cases of Infringement of Rights

This new subsection (4) also states, “Notwithstanding any other law, *no immunity* shall apply to persons infringing on such rights in violation of this subsection.”

Law emanating from federal and state statutes, court decisions, and the common law affords a variety of immunities from liability. For example, s. 768.28(9), F.S., provides that an officer, employee, or agent of the state or its subdivisions may not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment, unless certain exceptions apply.

Prosecutorial and judicial immunity derived from the common law is afforded to prosecutors and judges because “a strict guarantee of immunity is necessary to preserve the effectiveness and impartiality of judicial and quasi-judicial offices.”⁷⁵ Qualified or absolute immunity in actions under 42 U.S.C. s. 1983, for a deprivation of civil rights is afforded to legislative, executive, and judicial branch government officials under certain circumstances.⁷⁶

Legislative Findings, Intent

Finally, the bill amends s. 790.25, F.S., to:

- Specify that the Legislature finds that the possession and carrying of weapons and firearms by law-abiding individuals for lawful purposes, including self-defense, enhances public safety.
- Require the judiciary to construe this act in conjunction with the right to bear arms or defend one’s self as provided in ch. 776, F.S.
- Specify that the right to bear arms and defend one’s self is a fundamental and individual right that exists in any place that a person has the right to be, subject only to exceptionally and narrowly tailored restrictions that employ the least possible restriction on the right in order to achieve a compelling government interest.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁷⁵ *Office of State Attorney, Fourth Judicial Circuit of Florida v. Parrotino*, 628 So.2d 1097, 1098-1099 (Fla. 1993).

⁷⁶ *See, e.g., Junior v. Reed*, 693 So.2d 586 (1st DCA 1997); *Greason v. Kemp*, 891 F.2d 829, 833 (11th Cir.1990); and *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982).

D. Other Constitutional Issues:

The Bill's Waiver of Immunity Provisions

The bill's waiver of immunity when a violation of the new subsection (4) to s. 790.053, F.S., occurs may be challenged on the theory that it violates the separation of powers or the supremacy clause.

The Florida Supreme Court has held that it is a violation of the Separation of Powers Doctrine set forth in Article II, Section 3 of the Florida Constitution for the Legislature to waive prosecutorial or judicial immunity.⁷⁷ If the bill were construed to waive a federal law immunity, legal challenges might be brought based on an argument that such waiver violates the Supremacy Clause set forth in Article VI, Clause 2 of U.S. Constitution.⁷⁸

The Bill's Strict Scrutiny Provisions

Additionally, the bill creates s. 776.00111, F.S., and amends s. 790.25(4), F.S., to require the judiciary to employ strict scrutiny in reviewing any statute that implicates the right to bear arms or defend one's self. In directing the judiciary to employ a certain standard of review, issues might be raised under the Separation of Powers Doctrine set forth in Article II, Section 3 of the Florida Constitution,⁷⁹ which prohibits any branch of state government from encroaching upon the powers of another,⁸⁰ because the judicial branch is responsible for interpreting and determining the constitutionality of statutes.⁸¹

There is precedent in Florida Statute for a similar legislative prescription of strict scrutiny review. Section 761.03, F.S. (emphasis added), of the Florida Religious Freedom Restoration Act (FRFRA) of 1998, states:

- (1) The government shall not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, *except that government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person:*
- (a) *Is in furtherance of a compelling governmental interest; and*
 - (b) *Is the least restrictive means of furthering that compelling governmental interest.*

⁷⁷ The Florida Supreme Court has stated, "While the legislature has authority to waive immunity for those organs of government within its purview, the legislature cannot take actions that would undermine the independence of Florida's judicial and quasi-judicial offices. This would violate the doctrine of separation of powers. Art. II, § 3, Fla. Const." *Office of State Attorney, Fourth Judicial Circuit of Florida*, 628 So.2d at 1099.

⁷⁸ The Florida Supreme Court has stated, "Under the Supremacy Clause of the United States Constitution, U.S. Const. art. VI, cl. 2, state laws may be preempted by federal laws in three situations: (1) where express federal statutory language so provides; (2) where federal law has so thoroughly occupied a legislative field as to create a reasonable inference that there is no room for the state to supplement it; or (3) where a state law conflicts with a federal law." *Rosado v. DaimlerChrysler Financial Services Trust*, 112 So.3d 1165 (Fla. 2013).

⁷⁹ Holly Martin, *Legislating Judicial Review: An Infringement on Separation of Powers*, 17 N.Y.U.J. Legis. & Pub. Pol'y 1097, 1115 (2014).

⁸⁰ *Chiles v. Children A,B,C,D,E, and F*, 589 So. 260, 263-264 (Fla. 1991).

⁸¹ *Chiles v. Phelps v. Webster*, 714 So.2d 453, 456 (Fla. 1998).

(2) A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief.

There is no case law considering the constitutionality of this statute.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The fines and damages and attorney fee and cost awards under s. 790.053(4), F.S., could result in a private sector fiscal impact if applicable to private persons or entities.

C. Government Sector Impact:

The fines and damages and attorney fee and cost awards under s. 790.053(4), F.S., could result in a fiscal impact for violations by local government entities.

VI. Technical Deficiencies:

In s. 790.053(4), F.S., the bill requires, through a cross-reference to s. 790.33(3)(c)-(f), F.S., that *any* persons or entities who infringe on specified rights to bear arms and defend one's self be held liable for civil fines, subject to termination from government employment, and liable for actual damages and attorney fees and costs. Section 790.33, F.S., however, addresses violations by government entities and officials of the Legislature's preemption of the field of firearms and ammunitions. Due to the differences in the types of violations created by the bill in s. 790.053(4), F.S., and in existing law in s. 790.33, F.S., there may not be sufficient guidance in the bill for implementation of the cited penalty scheme in s. 790.033(3), F.S., for violations of s. 790.053(4), F.S., and to whom the penalties apply.

Throughout the bill, references are made to "the right to bear arms *or* defend one's self," the "right to bear arms" without reference to self defense, and the "right to bear arms *and* defend one's self." For consistency in interpretation, it may be desirable to amend the bill to use the same phrase throughout.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 790.02, 790.053, and 790.25.

This bill creates section 776.00111 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 October 20, 2015:

- Clarifies that the application of the concealed carry licensing statute, s. 790.06, F.S., to a person who chooses to openly carry, is not changed by the bill; and
- Clarifies a person who is authorized to openly carry under the bill is not exempted from the prohibition in s. 790.10, F.S., against exhibiting a firearm or weapon in the presence of another person in a rude, careless, angry, or threatening manner, not in necessary self defense.

- B. **Amendments:**

None.



703182

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
10/20/2015	.	
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	.	

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

Senate Amendment (with title amendment)

Delete line 47

and insert:

(1) Subject to the provisions of s. 790.06 and s. 790.10, a person licensed to carry a concealed firearm or

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

And the title is amended as follows:

Delete line 12



703182

11 and insert:

12 or weapon as long as such person is in compliance with
13 s. 790.06 and s. 790.10; providing that a person or
14 entity who



201112

LEGISLATIVE ACTION

Senate	.	House
Comm: TP	.	
10/20/2015	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 75 and 76
insert:

(5) Nothing in this section shall diminish the private property rights of any private business or private person. A private business or private person may prohibit the open carry of firearms on private property but must post highly visible signs in conspicuous places to assure visibility to all who enter such private property.



201112

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

And the title is amended as follows:

Delete line 16

and insert:

and entities have no immunity; providing that nothing
in this section shall diminish the private property
rights of any private business or private person;
clarifying that a private business or private person
may prohibit the open carrying of firearms on private
property under specified conditions; amending s.
790.25,

By Senator Gaetz

1-00237A-16

2016300__

1 A bill to be entitled
2 An act relating to weapons and firearms; creating s.
3 776.00111, F.S.; providing for construction of
4 statutes that implicate the right to bear arms or
5 engage in self-defense; amending s. 790.02, F.S.;
6 specifying that a law enforcement officer may arrest a
7 person for the unlicensed carrying of a concealed
8 weapon only upon probable cause that such a violation
9 is being committed; amending s. 790.053, F.S.;
10 providing that a person licensed to carry a concealed
11 firearm or weapon may also openly carry such firearm
12 or weapon; providing that a person or entity who
13 infringes on specified rights of an individual may be
14 subject to liability under specified provisions;
15 providing an exception; providing that certain persons
16 and entities have no immunity; amending s. 790.25,
17 F.S.; revising legislative findings concerning the
18 possession and carrying of weapons and firearms;
19 revising provisions concerning the construction of
20 provisions; providing an effective date.

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

23
24 Section 1. Section 776.00111, Florida Statutes, is created
25 to read:

26 776.00111 Construction.—The judiciary shall employ strict
27 scrutiny in reviewing any statute that implicates the right to
28 bear arms or defend one's self pursuant to this chapter. The
29 right to bear arms is a fundamental and individual right that

1-00237A-16

2016300__

30 exists in any place that a person has the right to be, subject
31 only to exceptionally and narrowly tailored restrictions that
32 employ the least possible restriction on the right in order to
33 achieve a compelling government interest.

34 Section 2. Section 790.02, Florida Statutes, is amended to
35 read:

36 790.02 Officer to arrest without warrant and upon probable
37 cause.—The unlicensed carrying of a concealed weapon is declared
38 a breach of peace, and any officer authorized to make arrests
39 under the laws of this state may make arrests without warrant of
40 persons violating ~~the provisions of s. 790.01~~ when said officer
41 has ~~reasonable grounds or~~ probable cause to believe that the
42 offense of unlicensed carrying of a concealed weapon is being
43 committed.

44 Section 3. Section 790.053, Florida Statutes, is amended to
45 read:

46 790.053 Open carrying of weapons.—

47 (1) A person licensed to carry a concealed firearm or
48 weapon pursuant to this chapter may openly carry such firearm or
49 weapon; however, except as otherwise provided by law and in
50 subsection (2), it is unlawful for any other person to openly
51 carry on or about his or her person a ~~any~~ firearm or electric
52 weapon or device. ~~It is not a violation of this section for a~~
53 ~~person licensed to carry a concealed firearm as provided in s.~~
54 ~~790.06(1), and who is lawfully carrying a firearm in a concealed~~
55 ~~manner, to briefly and openly display the firearm to the~~
56 ~~ordinary sight of another person, unless the firearm is~~
57 ~~intentionally displayed in an angry or threatening manner, not~~
58 ~~in necessary self-defense.~~

1-00237A-16

2016300__

59 (2) A person may openly carry, for purposes of lawful self-
60 defense:

61 (a) A self-defense chemical spray.

62 (b) A nonlethal stun gun or dart-firing stun gun or other
63 nonlethal electric weapon or device that is designed solely for
64 defensive purposes.

65 (3) Any person violating this section commits a misdemeanor
66 of the second degree, punishable as provided in s. 775.082 or s.
67 775.083.

68 (4) Unless probable cause exists to believe that a crime
69 has been committed by an individual, any person or entity
70 infringing upon the rights conferred on that individual by this
71 chapter, chapter 776, s. 8, Art. I of the State Constitution, or
72 the Second Amendment to the United States Constitution is liable
73 pursuant to s. 790.33(3)(c), (d), (e), and (f). Notwithstanding
74 any other law, no immunity shall apply to persons infringing on
75 such rights in violation of this subsection.

76 Section 4. Subsections (1) and (4) of section 790.25,
77 Florida Statutes, are amended to read:

78 790.25 Lawful ownership, possession, and use of firearms
79 and other weapons.—

80 (1) DECLARATION OF POLICY.—The Legislature finds as a
81 matter of public policy and fact that the possession and
82 carrying of weapons and firearms by law-abiding individuals for
83 lawful purposes, including self-defense, enhances public safety
84 and that it is necessary to promote firearms safety and to curb
85 and prevent the use of firearms and other weapons in crime and
86 by incompetent persons without prohibiting the lawful use in
87 defense of life, home, and property, and the use by United

1-00237A-16

2016300__

88 States or state military organizations, and as otherwise now
89 authorized by law, including the right to use and own firearms
90 for target practice and marksmanship on target practice ranges
91 or other lawful places, and lawful hunting and other lawful
92 purposes.

93 (4) CONSTRUCTION.—The judiciary shall construe this act in
94 conjunction with the right to bear arms or defend one's self as
95 provided in chapter 776. The right to bear arms and defend one's
96 self is a fundamental and individual right that exists in any
97 place that a person has the right to be, subject only to
98 exceptionally and narrowly tailored restrictions that employ the
99 least possible restriction on the right in order to achieve a
100 compelling government interest. This act shall be liberally
101 construed to carry out the declaration of policy herein and in
102 favor of the constitutional right to keep and bear arms for
103 lawful purposes. This act is supplemental and additional to
104 existing rights to bear arms now guaranteed by law and decisions
105 of the courts of Florida, and nothing herein shall impair or
106 diminish any of such rights. This act shall supersede any law,
107 ordinance, or regulation in conflict herewith.

108 Section 5. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

10-20-15

Meeting Date

300

Bill Number (if applicable)

703182

Amendment Barcode (if applicable)

Topic Weapons and Firearms Open Carry

Name Eric J. Friday

Job Title General Counsel, Florida Carry, Inc.

Address 541 E. Monroe St.

Street

Jacksonville

City

FL

State

32202

Zip

Phone 904-353-7733

Email efriday@fletcherandphillips.com

Speaking: For Against Information

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

Representing Florida Carry, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

10-20-15

Meeting Date

300

Bill Number (if applicable)

201112

Amendment Barcode (if applicable)

Topic Weapons and Firearms Open Carry

Name Eric J. Friday

Job Title General Counsel, Florida Carry, Inc.

Address 541 E. Monroe St.

Street

Jacksonville

City

FL

State

32202

Zip

Phone 904-353-7733

Email efriday@fletcherandphillips.com

Speaking: For Against Information

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

Representing Florida Carry, 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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

10-20-15

Meeting Date

Topic OPEN CARRY OF FIREARMS

Bill Number SB-300
(if applicable)

Name MARION P. HAMMER

Amendment Barcode _____
(if applicable)

Job Title _____

Address P.O. BOX 1387
Street

Phone 850-222-9518

TALLAHASSEE FL 32302
City State Zip

E-mail _____

Speaking: For Against Information

Representing NRA (NATIONAL RIFLE ASSOCIATION) UNITED SPORTSMEN OF FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

10/20/15

Meeting Date

300

Bill Number (if applicable)

Topic Olen Carry

Amendment Barcode (if applicable)

Name Sheriff Gordon Smith

Job Title Sheriff

Address 945-B N Temple Ave

Phone 904-966-6301

Street

Starke

City

State

32091

Zip

Email

Speaking: For Against Information

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

Representing Bradford County SO

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

300

Meeting Date _____

Bill Number (if applicable) _____

Topic OPEN CARRY

Amendment Barcode (if applicable) _____

Name _____

Job Title Advocate for FL Citizens Alliance

Address 1390

Phone 239-250-3320

Street

Mars Island, FL

Email KOFla@fla.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Citizens 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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

10-20-15

Meeting Date

300

Bill Number (if applicable)

Topic Weapons and Firearms Open Carry

Amendment Barcode (if applicable)

Name Eric J. Friday

Job Title General Counsel, Florida Carry, Inc.

Address 541 E. Monroe St.

Street

Phone 904-353-7733

Jacksonville

FL

32202

Email efriday@fletcherandphillips.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Carry, 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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

300
Bill Number (if applicable)

Meeting Date _____

Topic OPEN CARLY - OPEN LEO BILL

Amendment Barcode (if applicable) _____

Name JAVIER ORTIZ

Job Title FOP PRESIDENT

Address 710 SW 12 AVE

Phone _____

Street
MIAMI FL 33130
City State Zip

Email _____

Speaking: For Against Information

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

Representing FRATERNAL ORDER OF POLICE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

300

Meeting Date

Bill Number (if applicable)

Topic Open carry anti-teo bill

Amendment Barcode (if applicable)

Name Lisa Henning

Job Title Director Legislative Affairs

Address 242 Office Plaza Dr

Phone

Tallahassee FL 32301

Email

City State Zip

Speaking: For Against Information

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

Representing Fraternal Order of Police

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

10/20/15
Meeting Date

S.B. 300
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Gary Hunter

Job Title Attorney

Address 119 S. Monroe St. Suite 300

Phone 850-222-7500

Tallahassee FL 32301
City State Zip

Email garyh@hgslaw.com

Speaking: For Against Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

10-20-15

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

300

Meeting Date

Bill Number (if applicable)

Topic Open Carry

Amendment Barcode (if applicable)

Name PATRICIA BRIGHAM

Job Title Gun Safety Committee Chair, League of Women Voters of FL

Address 614 W. King St.

Phone 407-797-2562

Street

ORLANDO FL 32804

City

State

Zip

Email patbrigham@gmail.com

Speaking: For Against Information

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

Representing LWV 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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

16-26-15
Meeting Date

300
Bill Number (if applicable)

Topic Weapons and Firearms

Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title General Counsel

Address 227 S. Adams St.
Street

Phone 222-4082

Tallahassee FL 32301
City State Zip

Email samantha@arf.org

Speaking: For Against Information

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

Representing Florida Retail Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

10/20/15
Meeting Date

310
Bill Number (if applicable)

Topic OPEN CARRY

Amendment Barcode (if applicable)

Name BOB ROOT

Job Title _____

Address PO. Box 681
Street
SHADY GROVE, FL 32357
City State Zip

Phone 850-584-8311

Email _____

Speaking: For Against Information

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

Representing FLORIDA CITIZENS ALLIANCE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

10/20/2015

Meeting Date

SB 300

Bill Number (if applicable)

Topic OPEN CARRY OF FIREARMS

Amendment Barcode (if applicable)

Name M. SCOTT WHIGHAM

Job Title TRAINING DIRECTOR

Address 6349 FORDHAM CR. E.

Street

Phone 904-465-0499

JACKSONVILLE, FL, 32217

City

State

Zip

Email MSWHIGHAM@COMCAST.NET

Speaking: For Against Information

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

Representing MYSELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Education, *Chair*
Appropriations
Education Pre-K - 12
Ethics and Elections
Health Policy
Higher Education
Rules

SENATOR DON GAETZ
1st District

Committee Request

To: Senator Greg Evers, Chair
Criminal Justice Committee

Subject: Committee Agenda Request

Date: October 8, 2015

I respectfully request that Senate Bill 300, Weapons and Firearms, be placed on the Criminal Justice Committee agenda at your convenience. Thank you for your time and consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "Don Gaetz", written in a cursive style.

Senator Don Gaetz

REPLY TO:

- 4300 Legendary Drive, Suite 230, Destin, FL 32541 (850) 897-5747 FAX: (888) 263-2259
- 420 Senate Office Building, 404 South Monroe Street, Tallahassee, FL 32399-1100 (850) 487-5001
- 5230 West U.S. Highway 98, Administration Building, 2nd Floor, Panama City, FL 32401 (850) 747-5856

Senate's Website: www.flsenate.gov

ANDY GARDINER
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 344

INTRODUCER: Criminal Justice Committee and Senator Bradley

SUBJECT: Justifiable Use or Threatened Use of Defensive Force

DATE: October 21, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 344 shifts the burden of proof from the defendant to the prosecution in “justifiable use of force” cases. These new statutory procedures allocate the “beyond a reasonable doubt” evidentiary standard to the prosecution to overcome a defendant’s claim of immunity from criminal prosecution.

The bill contains Legislative findings and intent language which include the requirement that the new immunity hearing procedures created in the bill “shall apply retroactively to proceedings pending at the time this act becomes law.”

The bill creates s. 939.061, F.S., which provides that if the court grants the defendant’s motion to dismiss claiming immunity from prosecution, the defendant will be reimbursed for costs, fees, and expenses incurred in defending him or herself in the criminal prosecution up to \$200,000 if the court determines that:

- The prosecution willfully or substantially violated the rules of discovery or
- The prosecution’s filing of the case violates the court’s sense of fundamental fairness.

The bill is effective upon becoming law.

II. Present Situation:

In 2005, when the Legislature expanded certain sections of ch. 776, F.S., which contains the law related to the Justifiable Use of Force (Self Defense) it created a new right to immunity from criminal prosecution or civil action.¹ The law states:

776.032 Immunity from criminal prosecution and civil action for justifiable use or threatened use of force.—

(1) A person who uses or threatens to use force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in such conduct and is immune from criminal prosecution and civil action for the use or threatened use of such force by the person, personal representative, or heirs of the person against whom the force was used or threatened....As used in this subsection, the term “criminal prosecution” includes arresting, detaining in custody, and charging or prosecuting the defendant.

(2) A law enforcement agency may use standard procedures for investigating the use or threatened use of force as described in subsection (1), but the agency may not arrest the person for using or threatening to use force unless it determines that there is probable cause that the force that was used or threatened was unlawful.

(3) The court shall award reasonable attorney’s fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection (1).

Immunity from prosecution is different than the defense of justifiable use of force. Essentially, *immunity absolves* a person from criminal liability and the person has no risk of conviction of the crime for which immunity has been granted.

Whereas a defendant who is not immune from prosecution and who is presenting the affirmative defense of justifiable use of force is at risk of conviction, and the defense of justifiable use of force requires some evidentiary showing to the judge or jury that criminal actions are justifiable and therefore excusable under the law.

Application of the Immunity Statute

Although s. 776.032, F.S., created immunity from criminal prosecution where a person justifiably uses force it did not provide any *method* by which the immunity could be conferred. Therefore, it became the responsibility of the courts to craft a way to grant immunity from prosecution in cases where a defendant claims entitlement to immunity under s. 776.032, F.S.

Pretrial Evidentiary Hearing on Defendant’s Motion to Dismiss the Case Where Defendant has the Burden of Proof

After many years of litigation the courts developed the following procedure for granting immunity in self defense cases.

¹ Section 776.032, F.S.; s. 4, ch. 2005-27, L.O.F.

During the pretrial process the defendant may file a Motion to Dismiss² asking the court to dismiss the case against him or herself because the immunity statute applies to his or her actions. The courts have settled on the more general type of Motion to Dismiss,³ rejecting the Rule 3.190(c)(4) type of motion described in note 2 below. The trial court is required to conduct an evidentiary hearing on the motion to decide the facts as they relate to immunity.

[T]reating motions to dismiss pursuant to section 776.032 in the same manner as rule 3.190(c)(4) motions would not provide criminal defendants the opportunity to establish immunity and avoid trial that was contemplated by the Legislature. ... We conclude that where a criminal defendant files a motion to dismiss pursuant to section 776.032, the trial court should decide the factual question of the applicability of the statutory immunity.⁴

In *Peterson v. State*, 983 So.2d 27 (Fla. 1st DCA 2008), a case that early-on established the trial court procedures for immunity hearings and that was adopted in three of the other four district courts of appeal, the First District Court determined that:

[A] defendant may raise the question of statutory immunity pretrial and, when such a claim is raised, the trial court must determine whether the defendant has shown by a preponderance of the evidence that the immunity attaches. As noted by the trial court, courts have imposed a similar burden for motions challenging the voluntariness of a confession. *See, e.g., McDole v. State*, 283 So.2d 553, 554 (Fla.1973). We reject any suggestion that the procedure established by rule 3.190(c) should control so as to require denial of a motion whenever a material issue of fact appears.

The case of *Bretherick v. State*, 170 So.3d 766 (Fla. 2015), finally and squarely addressed the issue of the burden of proof in the pretrial evidentiary hearing. In the *Bretherick* case the court rejected the position that the State must disprove entitlement to immunity beyond a reasonable doubt at the pretrial evidentiary hearing. The court approved the *Peterson* court's view that the defendant should bear the burden of proof by a preponderance of the evidence.⁵

² The motion must be sworn to by the moving party. The Rules of Criminal Procedure provide two principal ways of approaching the Motion to Dismiss in a self defense situation.

- Under Rule 3.190(c)(4) the motion can allege that there are no materially disputed facts and that the undisputed facts do not establish a prima facie case of guilt against the defendant. The court is not supposed to decide issues of fact that may exist in a "(c)(4)" motion as the facts should not be materially disputed. (Note: If the State specifically alleges that the material facts are in dispute or that the facts refute the defendant's claim, the motion to dismiss must be denied. *Dennis v. State*, 51 So.3d 456 (Fla. 2010) citing *State v. Kalogeropolous*, 758 So.2d 110, 112 (Fla.2000).
- Rule 3.190(b) provides for the more general type of Motion to Dismiss.

³ Rule 3.190(b), FL R Cr. P.

⁴ *Dennis v. State*, 51 So.3d 456 (Fla. 2010). See also Defendant's Memorandum on Burden of Proof in *State v. Yaqubie*, 2009 WL 6866287 (Case No. F08-18175, Fla. 11th Jud.Cir., April 29, 2009).

⁵ The court reasoned that s. 776.032, F.S., although an immunity provision, is not a blanket immunity, but "rather requires the establishment that the use of force was legally justified." *Bretherick v. State*, 170 So.3d 766 (Fla. 2015). ("A 'preponderance' of the evidence is defined as 'the greater weight of the evidence,' or evidence that 'more likely than not' tends to prove a certain proposition." *Gross v. Lyons*, 763 So. 2d 276, 280 n.1 (Fla. 2000)).

Justifiable Use of Force as an Affirmative Defense – Procedure; Applicable Burdens of Proof at Trial

Trial Procedure

A criminal defendant can raise and argue the issue of self defense as an affirmative defense⁶ to the criminal charges to which such a defense is applicable at a number of points during the criminal process but the defense is generally raised in the trial.

If the defendant raises an affirmative defense at trial there must be *some proof presented* upon which the jury can lawfully base a decision on the verdict in the matter. This evidence may come from sources other than the defendant, such as other witnesses or physical evidence.

Because the prosecution has the burden of proof as to guilt, the State presents its evidence first. After the prosecution has presented its case in chief to the jury, the defendant typically moves the court to grant a Judgment of Acquittal finding that the evidence is not sufficient to require any further proceedings such as the defense presenting evidence.

At the point in the proceedings where all of the evidence has been presented, including any evidence offered by the defendant and any rebuttal evidence offered by the prosecution, the defendant typically argues the weaknesses in the prosecution's case and the strength of the self defense evidence to the court, again asking to have the case dismissed with a Judgment of Acquittal.

Standards of Proof at Trial

The standard of proof that must be met in order for the court to grant the defendant a Judgment of Acquittal requires the defendant to present a prima facie case of self defense that is not sufficiently rebutted by the prosecution.⁷

We recognize that the question of whether a defendant committed a homicide in justifiable self-defense is ordinarily one for the jury. However, when the State's evidence is legally insufficient to rebut the defendant's testimony establishing self-defense, the court must grant a motion for judgment of acquittal.⁸

It is important to remember that the burden of proof with regard to the question of the defendant's guilt *never leaves the prosecution*. The burden of proof requires that a defendant's guilt be proven beyond a reasonable doubt.

⁶ The affirmative defense of justifiable use of force is generally raised by a defendant when there are facts showing that the victim was killed or injured by the criminal act of the defendant *but* the defendant's act was factually and legally justifiable and therefore the defendant is not criminally liable.

⁷ The term prima facie evidence is usually used to describe whether the proponent, having the duty to produce evidence, has fulfilled the duty and there is sufficient evidence so that the jury will be allowed to consider the fact or issue. See IX Wigmore, Evidence § 2494 (1940 ed.). See *State v. Rygwelski*, 899 So. 2d 498 (Fla. 2d DCA 2005) (collecting Florida decisions which hold that a statute which provides that certain evidence is prima facie evidence of another fact create a permissible inference).

⁸ *Fowler v. State*, 921 So.2d 708 (Fla. 4th DCA 2008), citing *State v. Rivera*, 719 So.2d 335, 337 (Fla. 5th DCA 1998); *Sneed v. State*, 580 So.2d 169, 170 (Fla. 4th DCA 1991); and *Hernandez Ramos*, 496 So.2d at 838 (Fla. 2d DCA 1986).

While the defendant may have the burden of going forward with evidence of self-defense, the burden of proving guilt beyond a reasonable doubt never shifts from the State, and this standard broadly includes the requirement that the State prove that the defendant did not act in self-defense beyond a reasonable doubt.⁹

Other States

Although other states have justifiable use of force immunity statutes, in deciding the *Bretherick* case, the Florida Supreme Court focused on these five states:

Colorado

Colorado appears to be the first state to pass a law providing for immunity in certain cases of self defense.

In the 1987 case of *People v. Guenther*, 740 P.2d 971 (Colo. 1987), the Colorado Supreme Court found that the immunity statute does not prohibit a district attorney from initiating a criminal prosecution and therefore does not violate Colorado's separation of powers provision in the constitution.¹⁰

⁹ *Brown v. State*, 454 So.2d 596, 598 (Fla. 5th DCA 1984), *superseded by statute on other grounds*, *Thomas v. State*, 918 So.2d 327 (Fla. 1st DCA 2005).

(For a full explanation of what constitutes "reasonable doubt," see Fla. Standard Crim. Jury Instr. 3.7, which is read to the jury at the close of a criminal trial. The instruction states:

The defendant has entered a plea of not guilty. This means you must presume or believe the defendant is innocent. The presumption stays with the defendant as to each material allegation in the [information] [indictment] through each stage of the trial unless it has been overcome by the evidence to the exclusion of and beyond a reasonable doubt.

To overcome the defendant's presumption of innocence, the State has the burden of proving the crime with which the defendant is charged was committed and the defendant is the person who committed the crime.

The defendant is not required to present evidence or prove anything.

Whenever the words "reasonable doubt" are used you must consider the following: A reasonable doubt is not a mere possible doubt, a speculative, imaginary or forced doubt. Such a doubt must not influence you to return a verdict of not guilty if you have an abiding conviction of guilt. On the other hand, if, after carefully considering, comparing and weighing all the evidence, there is not an abiding conviction of guilt, or, if, having a conviction, it is one which is not stable but one which wavers and vacillates, then the charge is not proved beyond every reasonable doubt and you must find the defendant not guilty because the doubt is reasonable.

It is to the evidence introduced in this trial, and to it alone, that you are to look for that proof.

A reasonable doubt as to the guilt of the defendant may arise from the evidence, conflict in the evidence or the lack of evidence.

If you have a reasonable doubt, you should find the defendant not guilty. If you have no reasonable doubt, you should find the defendant guilty.)

¹⁰ *Id.* at 977. It should be noted that Colorado's statute differs from Florida's in that the Colorado law does not impose a probable cause standard for arresting the defendant (probable cause is the standard for arrest in *any* case), as the Florida statute does. Compare C.R.S.A. 18-1-704.5 with s. 776.032, F.S.

The court also decided that the *burden of proof* at the pretrial immunity hearing should be *upon the defendant*, who is seeking the benefit of the statute, and that he or she should establish by a *preponderance of the evidence* that the statute applies to the facts of the case.¹¹

South Carolina

The South Carolina courts implemented the statutory immunity provision¹² in reliance on the reasoning in the Florida *Dennis* and *Peterson* cases.¹³ The South Carolina “Protection of Persons and Property Act” is virtually identical to the Florida statutes.¹⁴

Georgia

The Georgia statutes related to self defense are also virtually identical to the Florida statutes.

The Georgia Supreme Court observed that: “As a potential bar to criminal proceedings which must be determined prior to a trial, immunity represents a far greater right than any encompassed by an affirmative defense, which may be asserted during trial but cannot stop a trial altogether.”¹⁵

The Court decided that: “[T]o avoid trial, a *defendant bears the burden* of showing that he is entitled to immunity... by a *preponderance of the evidence*.”¹⁶

Kentucky

The immunity provision in Kentucky’s law is substantially the same as the Florida law.

In *Rodgers v. Commonwealth*, the Kentucky Supreme Court distinguished the immunity statute as being procedural, not substantive.¹⁷ This issue has not been addressed in Florida as it relates to s. 776.032, F.S.

The *Rodgers* court arrived at a different conclusion than Florida, Colorado, South Carolina, or Georgia courts implementing very similar statutes.

Kentucky law differs from the Florida law in that the Kentucky application has *no evidentiary hearing* in matters of immunity, the *burden of proof is on the prosecution*, and the standard of proof is *probable cause* which may be reached by the admission of evidence in the form of witness statements, law enforcement reports, photos, and other documentation.¹⁸

¹¹*Id.* at 980-981. Note that the *Peterson* court relied heavily on the Colorado court’s reasoning in *Guenther. Peterson v. State*, 983 So.2d 27, (Fla. 1st DCA 2008). See also *Dennis v. State*, 51 So.3d 456 (Fla. 2010) which approved *Peterson*.

¹² Code 1976 § 16-11-450, SC ST § 16-11-450.

¹³ [W]e hold that when a party raises the question of statutory immunity prior to trial, the proper standard for the circuit court to use in determining immunity under the Act is a *preponderance of the evidence*. *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (S.C. 2011).

¹⁴ 2006 Act No. 379, effective June 9, 2006.

¹⁵ *Bunn v. State*, 284 Ga. 410, 667 S.E.2d 605 (Ga. 2008).

¹⁶ *Id.* at 608.

¹⁷ *Rodgers v. Commonwealth*, 285 S.W.3d 740 (Ky. 2009).

¹⁸ “Probable cause” means a reasonable ground of suspicion supported by circumstances strong enough to warrant a cautious person to believe that the named suspect is guilty of the charged offense. *Gould v. State*, App. 2 Dist., 974 So.2d 441 (2007).

Kansas

Likewise, the Kansas immunity statute was interpreted and implemented to *require the State to negate a claim of immunity by the probable cause standard or proof.*¹⁹

The Florida statute is nearly identical to the Kansas law in that both statutes contain substantially the same phrases:

- “[C]riminal prosecution’ includes arrest, detention in custody and charging or prosecution of the defendant”; and
- A law enforcement agency may use standard procedures for investigating the use or threatened use of force as described in subsection (1), but the agency may not arrest the person for using or threatening to use force unless it determines that there is probable cause that the force that was used ... was unlawful.²⁰

However, the Kansas statute contains the following phrase which does *not* appear in the Florida immunity statute:

- A prosecutor may commence a criminal prosecution upon a determination of probable cause.²¹

From this statutory language, the *Ultreras* court inferred that because the only burden and standard of proof mentioned in the Kansas statute rested with the prosecution, the prosecution should bear the burden of showing that the force used by the defendant was not justified “*as part of the probable cause determination*” already required for the issuance of an arrest warrant or summons under Kansas criminal procedures.²²

In *State v. Hardy*, 51 Kan.App.2d 296, 347 P.3d 222 (Kan.App. 2015) the court determined that the immunity claim should be decided at the time of the Kansas system’s “preliminary hearing” and that the hearing should be evidentiary in nature.²³

Reimbursement of Costs, Attorney Fees

Section 776.032(3), F.S., provides for the award of reasonable attorney’s fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in a civil action brought by a plaintiff if the court finds the defendant immune from prosecution.²⁴

The State of Washington, at Wa.St. 9A.16.110, allows for a defendant who has been found not guilty by reason of self defense (at trial) to be reimbursed for all reasonable costs, including loss of time, legal fees, and other expenses involved in his or her defense. The jury must find the claim of defense was sustained by a preponderance of the evidence and the jury must make

¹⁹ K.S.A. 21-5231; *State v. Ultreras*, 296 Kan. 828, 295 P.3d 1020 (Kan. 2013).

²⁰ K.S.A. 21-5231; s. 776.032, F.S.

²¹ Compare K.S.A. 21-5231(c) with s. 776.032, F.S.

²² *State v. Ultreras*, 296 Kan. 828, at 844-845; 295 P.3d 1020 (Kan.2013).

²³ *State v. Hardy*, 51 Kan.App.2d 296, 303; 347 P.3d 222 (Kan.App. 2015). The preliminary hearing seems analogous to Florida’s first appearance hearing at which the court determines whether probable cause supports the defendant’s arrest and any terms of release of the defendant from custody.

²⁴ See also the identical provision in the Oklahoma statute, 21 Okl.St. Ann. 1289.25.

specific findings of fact in a special verdict form. The court determines the amount of the reimbursement.

The Washington statute requires “the state of Washington” to make the reimbursement to the defendant, although the claim bill process is cited to in the statute as a possible avenue for additional reimbursement or when no reimbursement at all was ordered by the court.

Role of State Attorney (Prosecutor) in the Criminal Justice System

In Florida the prosecuting attorney makes case filing decisions – whether to file or not, and what charges to file – based upon the prosecutor’s assessment of the evidence known to him or her as it relates to the likelihood of meeting the beyond a reasonable doubt standard of proof.²⁵ These decisions are discretionary but the elected state attorney is answerable for them.²⁶

Case evidence generally comes to the state attorney in the form of sworn law enforcement reports, witness statements, and forensic evidence. Sometimes the suspect or suspects, if they are located by law enforcement, may make a statement. A suspect has the right not to incriminate him or herself, therefore the state attorney may never know the suspect or defendant’s “side of the story.”

III. Effect of Proposed Changes:

The bill amends s. 776.032, F.S., to create a procedure for implementing the justifiable use of force immunity provisions therein.

The procedure set forth in the bill differs from the one settled on by the courts in the absence of legislative provisions on the implementation of the 2005 expansion of the justifiable use of force law in Chapter 776 of the Florida Statutes.²⁷

The bill eliminates a defendant’s burden of showing by a preponderance of the evidence²⁸ that he or she is entitled to immunity from arrest, detention, charges being filed against him or her, or prosecution in a situation where the defendant justifiably used or threatened to use force.

Instead, under the bill, once a defendant has made a prima facie²⁹ claim of self-defense immunity, the burden falls on the party seeking to overcome the claim. The bill diminishes the

²⁵ For a comprehensive explanation of this process, see Lawson, “A Fresh Cut in an Old Wound – A Critical Analysis of the Trayvon Martin Killing: The Public Outcry, The Prosecutors’ Discretion, and the Stand Your Ground Law,”

23 U.Fla.J.L.&Pub.Pol’y 271 (2012). The article suggests that beyond the legal issues in any given case, there are other factors that may be taken into account in filing decisions.

²⁶ “In each judicial circuit a state attorney shall be elected for a term of four years.” Article 5, Section 17, Florida Constitution.

²⁷ See *Bretherick v. State*, 170 So.3d 766 (Fla. 2015); *Dennis v. State*, 51 So.3d 456 (Fla. 2010); *Peterson v. State*, 983 So.2d 27 (Fla. 1st DCA 2008).

²⁸ “A ‘preponderance’ of the evidence is defined as ‘the greater weight of the evidence,’ or evidence that ‘more likely than not’ tends to prove a certain proposition.” *Gross v. Lyons*, 763 So. 2d 276, 280 n.1 (Fla. 2000).

²⁹ Prima facie evidence is that evidence which is legally sufficient to establish a fact or a case unless disproved. <http://www.merriam-webster.com/dictionary/prima%20facie>.

defendant's standard of proof because a prima facie claim is a lower standard of proof than the current preponderance of the evidence standard.³⁰

The bill limits these allocations of the burden and standard of proof to claims of immunity from criminal prosecution. They do not apply to civil cases that may be brought against a defendant.

The bill requires that once the defendant has made a prima facie claim of immunity, the state bears the burden of proving beyond a reasonable doubt, at a pretrial evidentiary hearing, whether the defendant is entitled to a prima facie claim of self-defense immunity.

The bill contains Legislative findings and intent which include the requirement that the new immunity hearing procedures created in the bill "shall apply retroactively to proceedings pending at the time this act becomes law."

Additionally, the bill creates s. 939.061, F.S., which provides that if the court grants the defendant's motion to dismiss claiming immunity from prosecution, the defendant will be reimbursed for costs, fees, and expenses incurred in defending him or herself in the criminal prosecution up to \$200,000 if the court determines that:

- The prosecution willfully or substantially violated the rules of discovery or
- The prosecution's filing of the case violates the court's sense of fundamental fairness.

The rules of discovery govern the pretrial exchange of information between the prosecution and defense counsel. If the defendant elects to engage in the discovery process, he or she is entitled to receive all of the information upon which the prosecution bases its case and, in exchange, the defendant reciprocates. The information shared during discovery includes reports, witness statements, and findings related to forensic evidence. The prosecution, should it possess such information, is required to turn over evidence or information that might be exculpatory – beneficial to the defendant in some way.³¹

The court's "sense of fundamental fairness" could be violated in myriad ways as it relates to the prosecution's filing of its case against a defendant who then seeks immunity under s. 776.032, F.S. For example, the court may determine that the prosecutor's assessment of the evidence against the defendant is indefensible and that the filing of the case violated the defendant's constitutional rights in some manner.³²

³⁰ See notes 28 and 29.

³¹ FLRCrP 3.220. See *United States v. Lyons*, 352 F.Supp.2d (M.D. FL., 2004) quoting *Berger v. United States*, 295 U.S. 78, 88 (1935): "The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnest and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." See also *State v. Carpenter*, 899 So. 2d 1176 (Fla. 3rd, 2005).

³² "Included in the Due Process Clause of the Fourteenth Amendment to the United States Constitution is the right of a criminal defendant to a fair trial. (citations omitted) The element of fundamental fairness evades precise definition. The facts of each particular case must be examined in determining whether a criminal defendant's trial was conducted in accordance with the mandates of the Constitution." *Brown v. Wainwright*, 459 F.Supp. 244 (M. D. FL., 1978). See also Richard

There is no provision for the court to determine the amount of reimbursement, but rather the Justice Administrative Commission must approve and pay the reimbursement based upon valid documentation submitted by the defendant within 60 days of receiving the defendant's request.

The funds to pay the reimbursement claim are required by the bill to come from the operating trust fund of the state attorney who prosecuted the defendant.

The bill directs the Division of Law Revision and Information to replace the phrase "this act" as it appears in the bill with the chapter law number if the bill becomes a law.

The bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Savings Clause

The bill contains Legislative findings and intent which includes the requirement that the new immunity hearing procedures "shall apply retroactively to proceedings pending at the time this act becomes law." Retroactive application is not generally accepted in criminal justice jurisprudence and this provision in the bill may lead to legal challenges.

Article X, Section 9, of the Florida Constitution provides that "[r]epeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed." This constitutional provision operates as a savings clause to preserve laws in effect at the time of a defendant's crime that affect prosecution or punishment. It applies to a substantive change in the law.³³

Lawrence Daniels, *United States v. Simpson: 'Outrageousness!' What Does It Really Mean? – An Examination of the Outrageous Conduct Defense*, 18 Sw. U. L. Rev. 105, 1988.

³³ See, e.g., *Smiley v. State*, 966 So.2d 330 (Fla. 2007). The law in effect at the time a defendant commits a crime controls prosecution and punishment of the crime and a substantive change in the criminal law that occurs after the commission of the crime cannot be retroactively applied to that crime to affect prosecution or punishment of that crime. See e.g., *Smiley, supra*, and *Castle v. State*, 305 So.2d 794 (Fla. 4th DCA 1974), *affirmed*, 330 So.2d 10 (Fla. 1976).

Separation of Powers

The bill's provision for reimbursement to the defendant whose case is dismissed based on an immunity claim from the prosecuting state attorney's operating trust fund may be subject to a claim that it violates the separation of powers clause.

This constitutional claim may arise even though the state attorney is not sued individually for reimbursement but because it may be argued that his or her prosecutorial discretion is effected due to the "financial threat" to the operation of the state attorney's office.³⁴

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Defendants who have their case dismissed will be reimbursed for costs, fees, and expenses and will therefore benefit from the provisions in this bill.

C. Government Sector Impact:

If a defendant's case is dismissed pursuant to the bill, the prosecuting state attorney's office could be required to reimburse the defendant's costs, fees, and expenses incurred in defending him or herself in the criminal prosecution up to \$200,000 from the office's operating trust fund.

VI. Technical Deficiencies:

As a matter of clarification, it is suggested that the language appearing in the Legislative intent/findings – at lines 35-38 – regarding the burdens and standards of proof, and the pretrial evidentiary hearing, could be included in the newly-created subsection (5) of s. 776.032, F.S. The burden falling on the state at a pretrial evidentiary hearing and the standard of proof (beyond a reasonable doubt) are important changes to the current state of the law which will be more readily apparent to practitioners in the new (5).

³⁴ "The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." FL CONST Art. 2 § 3. See also *Valdes v. State*, 728 So.2d 736 (Fla. 1999): "Article V, section 17, specifically provides that state attorneys are the prosecuting officers of all trials in each circuit. This Court has long held that as the prosecuting officer, the state attorney has "complete discretion" in the decision to charge and prosecute, *Cleveland v. State*, 417 So.2d 653, 654 (Fla.1982), and the judiciary cannot interfere with this "discretionary executive function." *State v. Bloom*, 497 So.2d 2, 3 (Fla.1986); and *Office of the State Attorney v. Parrotino*, 628 So.2d 1097 (Fla. 1993): "Article V of the Florida Constitution creates the judicial branch of this state, deliberately separating it from and making it coequal to the other branches of government. Article V also creates the office of State Attorney, implying what is obvious-the State Attorneys are quasi-judicial officers....While the legislature has authority to waive immunity for those organs of government within its purview, the legislature cannot take actions that would undermine the independence of Florida's judicial and quasi-judicial offices. This would violate the doctrine of separation of powers. Art. II, § 3, Fla. Const. For example, subjecting the judiciary and the state's quasi-judicial officers to punitive lawsuits for official actions obviously would fall into the latter category, because it would impinge upon the independence of these offices."

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 776.032 of the Florida Statutes.

This bill creates section 939.061 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 October 20, 2015:

Limits the award of costs, fees, and expenses to the defendant who has his or her case dismissed under s. 776.032, F.S., to cases where the court finds:

- The prosecution willfully or substantially violated the rules of discovery or
- The prosecution's filing of the case violates the court's sense of fundamental fairness.

- B. **Amendments:**

None.



807382

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
10/20/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 85 - 87

and insert:

(1) If a defendant files, and the court grants, a motion to dismiss claiming immunity from criminal prosecution under s. 776.032, and the court determines that the state willfully or substantially violated the rules of discovery or that the state's filing of an information violates the court's sense of fundamental fairness, the defendant shall be reimbursed for



807382

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

And the title is amended as follows:

Delete line 13

and insert:

specified costs, attorney fees, and related expenses
if a court makes specified determinations;

By Senator Bradley

7-00299-16

2016344__

1 A bill to be entitled
2 An act relating to justifiable use or threatened use
3 of defensive force; amending s. 776.032, F.S.;
4 providing legislative findings and intent; providing
5 for retroactive application; specifying that once a
6 prima facie claim of self-defense immunity has been
7 raised, the burden of proof shall be on the party
8 seeking to overcome the immunity from criminal
9 prosecution; providing a directive to the Division of
10 Law Revision and Information; creating s. 939.061,
11 F.S.; entitling criminal defendants who successfully
12 claim immunity under s. 776.032, F.S., to an award of
13 specified costs, attorney fees, and related expenses;
14 specifying a procedure for submitting reimbursement
15 requests; requiring the Justice Administrative
16 Commission to review and approve the reimbursement
17 request if the requested costs, fees, and related
18 expenses are reasonable and supported by valid
19 documentation; requiring reimbursements to be paid
20 from the operating trust fund of the state attorney
21 who prosecuted the defendant; limiting the amount of
22 the award; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Section 776.032, Florida Statutes, is amended to
27 read:

28 776.032 Immunity from criminal prosecution and civil action
29 for justifiable use or threatened use of force.-

7-00299-16

2016344__

30 (1) The Legislature finds that imposing the burden of proof
31 on a person who uses or threatens to use defensive force as
32 permitted by general law at a pretrial evidentiary hearing
33 substantially curtails the benefit of the immunity from trial
34 provided by this section. The Legislature intends to make it
35 explicit that the state shall bear the burden of proof in
36 establishing beyond a reasonable doubt whether a defendant is
37 entitled to a prima facie claim of self-defense immunity at a
38 pretrial evidentiary hearing. The Legislature has never intended
39 that a person who acts in defense of self, others, or property
40 be denied immunity and subjected to trial when that person would
41 be entitled to acquittal at trial. The amendments to this
42 section made by this act are intended to correct
43 misinterpretations of legislative intent made by the courts and
44 shall apply retroactively to proceedings pending at the time
45 this act becomes a law.

46 (2)~~(1)~~ A person who uses or threatens to use force as
47 permitted in s. 776.012, s. 776.013, or s. 776.031 is justified
48 in such conduct and is immune from criminal prosecution and
49 civil action for the use or threatened use of such force by the
50 person, personal representative, or heirs of the person against
51 whom the force was used or threatened, unless the person against
52 whom force was used or threatened is a law enforcement officer,
53 as defined in s. 943.10(14), who was acting in the performance
54 of his or her official duties and the officer identified himself
55 or herself in accordance with any applicable law or the person
56 using or threatening to use force knew or reasonably should have
57 known that the person was a law enforcement officer. As used in
58 this subsection, the term "criminal prosecution" includes

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59 arresting, detaining in custody, and charging or prosecuting the
60 defendant.

61 (3)~~(2)~~ A law enforcement agency may use standard procedures
62 for investigating the use or threatened use of force as
63 described in subsection (2)~~(1)~~, but the agency may not arrest
64 the person for using or threatening to use force unless it
65 determines that there is probable cause that the force that was
66 used or threatened was unlawful.

67 (4)~~(3)~~ The court shall award reasonable attorney ~~attorney's~~
68 fees, court costs, compensation for loss of income, and all
69 expenses incurred by the defendant in defense of any civil
70 action brought by a plaintiff if the court finds that the
71 defendant is immune from prosecution as provided in subsection
72 (2)~~(1)~~.

73 (5) Once a prima facie claim of self-defense immunity from
74 criminal prosecution has been raised, the burden of proof shall
75 be on the party seeking to overcome the immunity from criminal
76 prosecution provided in subsection (2).

77 Section 2. The Division of Law Revision and Information is
78 directed to replace the phrase "this act" wherever it occurs in
79 the amendments to s. 776.032, Florida Statutes, made by this
80 act, with the chapter law number of this act, if it becomes a
81 law.

82 Section 3. Section 939.061, Florida Statutes, is created to
83 read:

84 939.061 Motion to dismiss; costs.-

85 (1) If a defendant files a motion to dismiss claiming
86 immunity from criminal prosecution under s. 776.032 and the
87 court grants the motion, the defendant shall be reimbursed for

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2016344__

88 court costs, reasonable private attorney fees, and related
89 expenses incurred in defending the criminal prosecution, up to
90 the limit specified in subsection (4).

91 (2) To receive reimbursement under this section, a
92 defendant must submit a written request for reimbursement to the
93 Justice Administrative Commission within 6 months after the
94 issuance of the order granting the motion to dismiss. The
95 defendant must include with the reimbursement request an order
96 from the court granting the motion to dismiss and documentation
97 of any court costs or private attorney fees and related expenses
98 paid or owed.

99 (3) The Justice Administrative Commission shall review each
100 request and make a determination within 30 days after receiving
101 the request. If the requested court costs are supported by valid
102 documentation and the requested private attorney fees and
103 related expenses are reasonable and supported by valid
104 documentation, the commission must approve the reimbursement
105 request. Approved reimbursement requests must be paid to the
106 defendant from the operating trust fund of the state attorney
107 who prosecuted the defendant within 60 days after receipt of the
108 approved reimbursement request.

109 (4) A reimbursement request under this section may not
110 exceed \$200,000.

111 Section 4. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

10/20/2015
Meeting Date

SB 344
Bill Number (if applicable)

Topic BURDEN OF PROOF

Amendment Barcode (if applicable)

Name M. SCOTT WHIGHAM

Job Title TRAINING DIRECTOR

Address 6349 FORDHAM CRE.

Phone 904-465-0499

Street

JACKSONVILLE, FL. 32217

Email MSWHIGHAM@COMCAST.NET

City

State

Zip

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

10-20-15
Meeting Date

SB 344
Bill Number (if applicable)

Topic Self-Defense Immunity

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Floridian Pastness

Address 108 S. Monroe St.
Street

Phone 850.980.0551

Tallahassee, FL 32301
City State Zip

Email jorge@flapartners.com

Speaking: For Against Information

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

Representing FACDL (Fla. Ass'n. of Criminal Defense Lawyers)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

10-20-15

Meeting Date

Bill Number (if applicable)

Topic SB 344

Amendment Barcode (if applicable)

Name Patricia Brigham

Job Title gun safety committee chair

Address 614 W. King St

Phone 407-797-2562

Street

Orlando FL 32804

City

State

Zip

Email

Speaking: For Against Information

Waive Speaking: In Support Against

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

Representing LWV of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

10-20-15
Meeting Date

SB 344
Bill Number (if applicable)

Topic Self-Defense Immunity

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title State Policy Director

Address P.O. Box 142933

Phone 352.682.2542

Street

Gainesville, FL 32614

City

State

Zip

Email gnewburn@famf.org

Speaking: For Against Information

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

Representing Families Against Mandatory Minimums

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

10-20-15

Meeting Date

344

Bill Number (if applicable)

Topic Justifiable Use or Threatened Use of Defensive Force

Amendment Barcode (if applicable)

Name Eric J. Friday

Job Title General Counsel, Florida Carry, Inc.

Address 541 E. Monroe St.

Street

Phone 904-353-7733

Jacksonville

FL

32202

Email efriday@fletcherandphillips.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Carry, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

10-20-15

Meeting Date

344

Bill Number (if applicable)

807382

Amendment Barcode (if applicable)

Topic Justifiable Use or Threatened Use of Defensive Force

Name Eric J. Friday

Job Title General Counsel, Florida Carry, Inc.

Address 541 E. Monroe St.

Street

Phone 904-353-7733

Jacksonville

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32202

Email efriday@fletcherandphillips.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Carry, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

October 20, 2015

344

Meeting Date

Bill Number (if applicable)

Topic Justifiable Use of Force

Amendment Barcode (if applicable)

Name Honorable Stacy Scott

Job Title Public Defender, 8th Judicial Circuit

Address 35 Main Street

Phone 352.338.7370

Street

Gainesville

Florida

32601

Email scotts@pdo8.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Public Defender Association, 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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

10/20/15

Meeting Date

344

Bill Number (if applicable)

Topic JUSTIFIABLE USE OF FORCE

Amendment Barcode (if applicable)

Name MATT WILLARD

Job Title CRIMINAL TRIAL LAWYER

Address PB Box 10007

Phone 850 224 2001

Street

Tallahassee FL 32302

City

State

Zip

Email mattewillard@hulday.com

Speaking: For Against Information

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

Representing FL ASSOC. OF CRIMINAL DEFENSE LAWYERS (FACDL)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

10/20/15
Meeting Date

SB 344 / HB 169
Bill Number (if applicable)

Topic Stand your ground expansion

Amendment Barcode (if applicable)

Name Lucia McBath

Job Title Everytown For Gun Safety, Faith & Community Outreach

Address 1432 Brentwood Drive

Phone (404) 771-7231

Marietta Ga. 30062
City State Zip

Email lucymcath@comcast.net

Speaking: For Against Information

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

Representing Everytown For Gun Safety

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

10/20/15

Meeting Date

SB 344

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Glen Hess, State Attorney 14th Judicial Circuit

Job Title Pres. FLA. Prosecuting Attys Association

Address 421 Magnolia Ave

Phone 850-832-5566

Panama City FL 32401

Street

City

State

Zip

Email Judgehess@gmail.com

Speaking: For Against Information

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

Representing State Attorneys of FLA.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

10-20-15

Meeting Date

Topic BURDEN OF PROOF

Bill Number 5B-344
(if applicable)

Name MARION P. HAMMER

Amendment Barcode _____
(if applicable)

Job Title _____

Address P.O. BOX 1387

Phone 850-222-9518

Street

TALLAHASSEE FL 32302

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing NRA (NATIONAL RIFLE ASSOCIATION) UNITED SPORTSMEN OF FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



The Florida Senate

Committee Agenda Request

To: Senator Greg Evers, Chair
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: October 6, 2015



I respectfully request that **Senate Bill # 344**, relating to Justifiable Use or Threatened Use of Defensive Force, be placed on the:

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

A handwritten signature in cursive script, appearing to read "Rob Bradley".

Senator Rob Bradley
Florida Senate, District 7

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: SPB 7006

INTRODUCER: For consideration by the Criminal Justice Committee

SUBJECT: Corrections

DATE: October 2, 2015

REVISED: 10/19/15

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Sumner	Cannon		Pre-meeting

I. Summary:

SPB 7006:

- Requires the Criminal Justice Estimating Conference to develop projections of prison admissions and populations for elderly felony offenders;
- Removes the current restriction against assessing victim injury sentencing points against a correctional officer or employee who commits sexual misconduct with an inmate without committing sexual battery;
- Expands the ability of an inmate to get a one-time award of gain-time for educational attainment without violating the requirement for every inmate to serve 85 percent of their court imposed sentence;
- Creates a new felony for Department of Corrections (DOC) employees or employees of a private provider who withhold water, food, and other essential services; and
- Increases the frequency of mental and physical health care surveys conducted by the Correctional Medical Authority at prisons from every three years to every 18 months.

II. Present Situation:

Criminal Justice Estimating Conference

Consensus Estimating Conferences have statutory authority under ss. 216.133 – 216.138, F.S., to forecast economic, demographic, caseload, and revenue information for a variety of governmental planning and budgeting functions. This ensures that the “State meets the constitutional balanced budget requirement.”¹ The forecasts are “primarily used in the development of the constitutionally required Long-Range Financial Outlook, the Governor’s budget recommendations and the General Appropriations Act. Economic and demographic forecasts are also used to support estimates of revenues and demands for state services.”⁴

¹ <http://edr.state.fl.us/Content/conferences/index.cfm>

Specifically, the Criminal Justice Estimating Conference is statutorily tasked under s. 216.136(6), F.S., with developing forecasts of prison admissions and population and of supervised felony offender admissions and population; developing information relating to the number of eligible discharges and the projected number of civil commitments for determining needs for space; and developing information relating to the number of sexual offenders and sexual predators who are required by law to be placed on community control, probation, or conditional release who are subject to electronic monitoring.

Elderly Inmates in Prison

- The majority of elderly inmates in prison on June 30, 2015, were serving time for sex offenses (21.7 percent), murder/manslaughter (21.0 percent), or drug offenses (12.5 percent).
- The 21,620 elderly inmates in prison on June 30, 2014, represented 21.6 percent of the total inmate population.
- 94.4 percent of the elderly inmates in prison were male; 5.6 percent were female.
- 46.1 percent of the elderly inmates in prison had no prior prison commitments.
- On June 30, 2015, the department housed three inmates whose age was 93.²

Though the department does not house or treat inmates based solely on age, the elderly inmates are housed in the following institutions consistent with their custody level and medical status:

- RMC and the South Unit at CFRC house inmates that have intensive long term medical issues. They may not necessarily be elderly;
- Zephyrhills CI houses both inmates who are elderly (age 50 and older) and they also have an intensive medical unit;
- Union CI houses elderly inmates (age 50 and older);
- South Florida South Unit houses elderly inmates (age 59 and older); and
- Lowell CI-Annex has a dormitory designated for female inmates (age 59 and older).³

Increased Costs for Elderly Inmates

Florida Tax Watch in September 2014 reported that the department budget had grown by \$560 million (35 percent) from 2000-2012. The health care cost had grown by \$176 million or 76 percent. The report states that the elderly patients accounted for 49 percent of all hospital in days in 2012. By assuming that hospitalization is a representation of overall prison health care costs, the report states the elderly prison population is responsible for approximately half of the \$408 million in prisoner healthcare costs in 2012.

The DOC reports that the Pew Center on Research estimated that the overall cost of managing an elderly prisoner is \$70,000 annually. This yields a per diem cost of \$192 per inmate compared to the average DOC per diem of \$50 per inmate.⁴

² <http://www.dc.state.fl.us/pub/annual/1314/AnnualReport-1314.pdf>

³ Id.

⁴ Id.

Conditional Medical Release

In 1992, the Florida Legislature created the Conditional Medical Release Program (s. 947.149, F.S.) which is a discretionary release process allowing the Florida Commission on Offender Review (FCOR) to release inmates on supervision who are “terminally ill” or “permanently incapacitated” and who are not a danger to others. The department is charged with the responsibility of recommending to the FCOR inmates who are eligible to be considered for conditional medical release. Upon release, the offender is subject to conditions of supervision set by the FCOR. The FCOR monitors the offender’s progress through periodic medical reviews. Supervision can be revoked and the offender returned to prison if the FCOR determines that a willful and substantial violation of supervision has occurred or if their medical or physical condition improves to the point that the offender no longer meets release criteria. In Fiscal Year 2013-2014, the FCOR granted conditional medical release to eight of the 19 inmates recommended by the department.

Sentencing for Sexual Misconduct with an Inmate or Supervised Offender

Section 944.35(3)(b)2., F.S., prohibits an employee of the department or a private correctional facility from engaging in sexual misconduct with an inmate or an offender on community supervision. “Sexual misconduct” is defined as the “oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object, but does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of the employee’s duty.”⁵ Sexual misconduct is prohibited regardless of whether the activity is non-consensual or consensual. However, if the activity is non-consensual, the more serious offense of sexual battery could be charged. The offense is a third degree felony, punishable by imprisonment for a maximum five years and a potential fine not exceeding \$5,000.

Sexual Misconduct with an Inmate or Supervised Offender is ranked by default as a Level 1 offense, which means that four sentencing points are scored. No victim injury points can be assessed for sexual contact or sexual penetration for a violation of s. 944.35(3)(b)2., F.S., and correctional employees can be expected to have no significant prior offenses for which sentencing points would be added. Therefore, it is unlikely that there would be more than 22 total sentencing points. Because s. 944.35(3)(b)2., F.S., is not a forcible felony and the sentencing points total would likely be 22 or lower, s. 775.082(10), F.S., would limit the sentence to a nonprison sanction.

Gain-Time

Gain-time is authorized in s. 944.275, F.S., and is a means by which eligible inmates can earn a reduction in the sentence that was imposed by the court. Current forms of gain-time are based upon the department’s assessment that the inmate has behaved satisfactorily and engaged in constructive activities. As such, gain-time is a tool by which the department can encourage good behavior and motivate inmates to participate in programs and work assignments. Inmates who are serving life sentences or certain minimum mandatory sentences are not eligible for gain-time

⁵ Section 944.35(3)(b)1., F.S.

during the portion of time that the mandatory sentences are in effect. Incentive gain-time is awarded to inmates for institutional adjustment, work, and participation in programs.

Meritorious gain-time may be considered for an inmate who commits an outstanding deed. The maximum award is 60 days. Examples of outstanding deeds are saving a life or assisting in recapturing an escaped inmate, or in some manner performing an outstanding service.

Educational Achievement gain-time in the amount of 60 days may be awarded to an inmate who receives a General Education Development (GED) diploma or a certificate for completion of a vocational program. Inmates whose offense was committed on or after October 1, 1995, are not eligible for this one-time award.

Criminal Penalties and Employee Misconduct

Employees of the department who, with malicious intent, commit a battery on an inmate supervised by the department, commit a first degree misdemeanor. Employees who, with malicious intent, commit a battery or inflict cruel or inhuman treatment by neglect causing great bodily harm, permanent disability, or permanent disfigurement to an inmate commit a third degree felony.⁶

Correctional Medical Authority

The Correctional Medical Authority (CMA) was created in July 1986, while the state's prison healthcare system was under the jurisdiction of the federal court as a result of litigation that began in 1972. *Costello v. Wainwright* (430 U.S. 57 (1977)) was a class action suit brought by inmates alleging that their constitutional rights had been violated by inadequate medical care, insufficient staffing, overcrowding, and poor sanitation. The CMA was created as part of the settlement of that case and continues to serve as an independent monitoring body providing oversight of the systems in place to provide health care to inmates in the Department of Corrections. In the final order closing the case, Judge Susan Black noted that creation of the CMA made it possible for the Federal Court to relinquish the prison monitoring and oversight function it had performed for the prior twenty years. In light of "Florida's affirmation of its continued commitment to the CMA's independence" and the support from the Defendant and the State of Florida, the court found that the CMA was capable of "performing an oversight and monitoring function over the department in order to assure continued compliance with the orders entered in this case."

In December 2001, the DOC entered into a settlement agreement in a lawsuit (*Osterback v. Crosby*, 16 Fla. Weekly Fed. D 513 (N.D. Fla. 2003)) involving mentally ill inmates housed in close management. The purpose of close management is to confine inmates separate from the general inmate population for reasons of security and for the order and effective management of the prison system. The Osterback agreement included a stipulation that the CMA monitor provisions of the agreement including clinical, administrative, and security components of the program designed to ensure effective treatment of mental illness in the close management population. The CMA completed its special monitoring responsibilities pending the outcome of

⁶ Section 944.35(3)(a), F.S.

the federal court's hearing of the case. The department completed and complied with each component of the close management corrective action plan process. The court entered a final judgment ruling in favor of the department and the case was closed on March 28, 2008. Facilities with close management are now monitored as part of the regular CMA survey process.

The CMA has stated that "Osterback, along with the multitude of lawsuits related to the provision of correctional health care, serve as reminders of the CMA's important role in ensuring proper health and mental health care is provided to incarcerated members of society."⁷

Prior to July 1, 2011, the CMA was housed within the Department of Health (DOH) for administrative purposes. During the 2011 Legislative Session two bills designed to abolish the CMA passed both chambers and were sent to the Governor for approval: Chapter 2011-69, Laws of Florida, (the 2011 General Appropriations Act), which eliminated the funding and positions related to the authority; and HB 5305, which repealed the statutes related to the CMA. The Governor vetoed HB 5305, but not the General Appropriations Act. Therefore, the CMA existed in statute but did not have the funding to operate or perform its duties for the 2011-2012 fiscal year. The CMA was funded again in 2012 and reconstituted as an independent state agency housed within the administrative structure of the Executive Office of the Governor.

The governing board of the authority is composed of nine persons appointed by the Governor subject to confirmation by the Senate. Members of the CMA are not compensated for performance of their duties but they are paid expenses incurred while engaged in the performance of such duties pursuant to s. 112.061, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 216.136, F.S., to require the Criminal Justice Estimating Conference to develop projections of prison admissions and populations for elderly felony offenders.

Section 2 deletes s. 921.0021(7)(c), F.S., removing the prohibition against assessing victim injury points for sexual penetration or sexual contact in calculating the sentencing score for Sexual Misconduct with an Inmate or Supervised Offender (s. 944.35(3)(b)2., F.S.). By definition, the offense cannot be committed without either sexual contact or sexual penetration. Currently, in almost all cases the sentencing range would be limited to a nonprison sanction because no more than 22 sentencing points would be scored. The amendment significantly changes the sentencing range:

- If there was sexual contact, the offender would have a minimum of 44 sentencing points (four points for the base offense plus 40 victim injury points). A total sentencing score of 44 would allow the judge to impose any sentence from a nonprison sanction to the five year maximum prison sentence. If there are additional sentencing points, a prison sentence would be required unless the judge finds statutory grounds for a departure below the minimum permissible sentence.

⁷ The first two paragraphs of this section and the designated quote are from the State of Florida, Correctional Medical Authority 2012-2013 Annual Report and Report on Aging Inmates, http://www.flgov.com/wp-content/uploads/pdfs/correctional_medical_authority_2012-2013_annual_report.pdf

- If there was sexual penetration, the offender would have a minimum of 84 sentencing points (four points for the base offense plus 80 victim injury points). A total sentencing score of 84 would permit the judge to impose any sentence from 42 months in prison to the five year maximum prison sentence.

Section 3 amends s. 944.275, F.S., to allow inmates sentenced for an offense committed on or after October 1, 1995, to be eligible for education attainment gain-time in the amount of 60 days. If this bill becomes law, an inmate may receive a one-time award of 60 days of gain-time for receiving a General Education Development (GED) diploma or for earning a certificate for completion of a vocational program. Under current law, inmates whose offense was committed on or after October 1, 1995, are not eligible for this one-time award.

Section 4 creates a new third degree felony for an employee of the department, private provider, or private correctional facility who knowingly, and with the intent to cause an inmate great bodily harm, permanent disability, or permanent disfigurement, withholds food, water, clothing, shelter, supervision, medicine, or medical services from the inmate and causes an inmate to suffer great bodily harm, permanent disability, or permanent disfigurement by such action.

Section 5 amends s. 945.6031, F.S., to change the CMA's frequency of surveys of the physical and mental health care system at each institution from every three years to every 18 months.

Section 6 conforms a cross reference.

Section 7, 8, 9 reenacts ss. 944.023, 435.04, and 921.022, F.S., for the purpose of incorporating amendments made in the bill.

Section 10 provides an effective date of July 1, 2016.

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:**Correctional Medical Authority**

The increase in the frequency of CMA surveys from every 4 years to every 18 months has an estimated fiscal impact of approximately \$790,000 for additional personnel and expenses.

Education Gain-time

According to the 2015 projections by the department, approximately 650 inmates will immediately receive the one-time 60 day additional gain-time award for past educational attainments. It is estimated that approximately 60 of these inmates will be immediately released due to this award since this group is within 60 days of release. In terms of future impact on prison bed space, the department estimates 24,000 inmate-days will be saved per year as a result of this bill. In other words, the average daily prison population is projected to be reduced by 66 inmates over the course of the year. Reduction of the average daily population by 66 inmates would reduce costs by approximately \$1.2 million each year at the current inmate per diem cost of \$49.49.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Between May and September, 2015, Governor Rick Scott signed three Executive Orders addressing reforms and initiatives for the Department of Corrections. Executive Order No. 15-102 addresses providing a safe and humane environment for offenders and staff and increased security. Executive Order 15-134 calls for an independent audit of the Department's operations by the National Institute of Corrections and the Association of State Correctional Administrators,⁸ and creating a partnership between the Department of Corrections, the Department of Juvenile Justice, and the Department of Children and Families to establish best management practices in order to improve mental health services using facilities in Broward County. Executive Order 15-175 is an addendum to Executive Order 15-134 and adds the Department of Health and the Agency for Health Care Administration to the partnership and expands the pilot mental health programs to Alachua and Pinellas Counties.

The study by the National Institute of Corrections (NIC) was completed pursuant to Executive Order No. 15-134. In the description of the problem the NIC stated it was to provide assistance to DOC by providing an evaluation of staffing adequacy, the application of appropriate relief

⁸ The Order establishes two prototype institutions in Lake and Liberty Counties focused on identifying and measuring enhanced operational methods.

factors consistent with national practices, and a review of the agency's use of special assignment allocations. The study made nine specific findings related to staffing and hiring practices including discontinuing the use of 12-hour shifts with its most "fervent" recommendation that Florida return to its leadership role in prison staffing protocols and performance.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 212.136, 921.0021, 944.275, 944.35, 945.6031, and 951.221.

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.



976882

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

Delete line 47
and insert:
populations for elderly felony offenders. The projections shall
also include the ethnicity and health status of those elderly
offenders.



328176

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Between lines 85 and 86

insert:

Section 3. Section 943.11, Florida Statutes, is amended to read:

943.11 Criminal Justice Standards and Training Commission; membership; meetings; compensation.—

(1) (a) There is created a Criminal Justice Standards and Training Commission within the Department of Law Enforcement.



328176

11 The commission shall be composed of 21 ~~19~~ members, consisting of
12 the Secretary of Corrections or a designated assistant; the
13 Attorney General or a designee; the Director of the Division of
14 the Florida Highway Patrol; 1 circuit court judge with past
15 criminal jurisdiction designated by the Office of the State
16 Court Administrator; 1 state attorney designated by the Florida
17 Prosecuting Attorneys Association; and 16 members appointed by
18 the Governor, consisting of 3 sheriffs; 3 chiefs of police; 5
19 law enforcement officers who are of the rank of captain ~~sergeant~~
20 or below within the employing agency; 2 correctional officers, 1
21 of whom is an administrator of a state correctional institution
22 and 1 of whom is of the rank of captain ~~sergeant~~ or below within
23 the employing agency; ~~1 training center director;~~ 1 person who
24 is in charge of a county correctional institution; ~~and~~ 2
25 residents ~~1 resident~~ of the state who have never been employed
26 by any of the departments, institutions, or agencies in any
27 ~~falls into none~~ of the foregoing classifications. Prior to the
28 appointment, the sheriff, chief of police, law enforcement
29 officer, and correctional officer members must have had at least
30 4 years' experience as law enforcement officers or correctional
31 officers.

32 (b) The Governor, in making appointments under this
33 section, shall take into consideration representation by
34 geography, population, and other relevant factors in order that
35 the representation on the commission be apportioned to give
36 representation to the state at large rather than to a particular
37 area. Of the appointed members, and except for correctional
38 officers of a state institution, there may be only one
39 appointment from any employing agency.



328176

40 1. In appointing one circuit judge, the Governor shall
41 choose the appointment from a list of two nominees submitted by
42 the Office of the State Court Administrator. The Office of the
43 State Court Administrator shall submit its list of two nominees
44 at least three months before the expiration of the term of any
45 circuit judge.

46 2. In appointing one state attorney, the Governor shall
47 choose the appointment from a list of two nominees submitted by
48 the Florida Prosecuting Attorneys Association. The Florida
49 Prosecuting Attorneys Association shall submit its list of two
50 nominees at least 3 months before the expiration of the term of
51 any state attorney.

52 3. 1. In appointing the three sheriffs, the Governor shall
53 choose each appointment from a list of six nominees submitted by
54 the Florida Sheriffs Association. The Florida Sheriffs
55 Association shall submit its list of six nominees at least 3
56 months before the expiration of the term of any sheriff member.

57 4. 2. In appointing the three chiefs of police, the
58 Governor shall choose each appointment from a list of six
59 nominees submitted by the Florida Police Chiefs Association. The
60 Florida Police Chiefs Association shall submit its list of six
61 nominees at least 3 months before the expiration of the term of
62 any police chief member.

63 5. 3. In appointing the five law enforcement officers and
64 one correctional officer of the rank of captain ~~sergeant~~ or
65 below, the Governor shall choose each appointment from a list of
66 six nominees submitted by a committee comprised of three members
67 of the collective bargaining agent for the largest number of
68 certified law enforcement bargaining units, two members of the



328176

69 collective bargaining agent for the second largest number of
70 certified law enforcement bargaining units, and one member of
71 the collective bargaining agent representing the largest number
72 of state law enforcement officers in certified law enforcement
73 bargaining units. At least one of the names submitted for each
74 of the five appointments who are law enforcement officers must
75 be an officer who is not in a collective bargaining unit.

76 (c) Members appointed by the Governor shall be appointed
77 for terms of 4 years, and no member shall serve beyond the time
78 he or she ceases to hold the office or employment by reason of
79 which the member was eligible for appointment to the commission.
80 Any member appointed to fill a vacancy occurring because of
81 death, resignation, or ineligibility for membership shall serve
82 only for the unexpired term of his or her predecessor.

83 (d) Each member appointed by the Governor shall be
84 accountable to the Governor for the proper performance of the
85 duties of his or her office. The Governor may remove from office
86 any such member for malfeasance, misfeasance, neglect of duty,
87 incompetence, or permanent inability to perform official duties
88 or for pleading guilty or nolo contendere to, or being found
89 guilty of, a felony.

90 (e) Membership on the commission shall be construed as an
91 extension of the duties of the office by which the member was
92 appointed to the commission. Membership on the commission does
93 not disqualify a member from holding any other public office or
94 being employed by a public entity, except that no member of the
95 Legislature shall serve on the commission. The Legislature finds
96 that the commission serves a state, county, and municipal
97 purpose and that service on the commission is consistent with a



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98 member's principal service in a public office or employment.

99 (f) Members of the commission shall serve without
100 compensation but shall be entitled to be reimbursed for per diem
101 and travel expenses as provided by s. 112.061.

102 (2) The commission shall annually elect its chair and other
103 officers. The commission shall hold at least four regular
104 meetings each year at the call of the chair or upon the written
105 request of three members of the commission. A majority of the
106 members of the commission constitutes a quorum.

107 (3) The Department of Legal Affairs shall serve as legal
108 counsel to the commission.

109

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

111 And the title is amended as follows:

112 Delete lines 1 - 12

113 and insert:

114 An act relating to criminal justice; amending s.
115 216.136, F.S.; requiring the Criminal Justice
116 Estimating Conference to develop projections of prison
117 admissions and populations for elderly felony
118 offenders; amending s. 921.0021, F.S.; revising the
119 definition of "victim injury" by removing a
120 prohibition on assessing certain victim injury
121 sentence points for sexual misconduct by an employee
122 of the Department of Corrections or a private
123 correctional facility with an inmate or an offender
124 supervised by the department; conforming a provision
125 to changes made by the act; amending s. 943.11, F.S.;
126 modifying the composition of the Criminal Justice



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127 Standards and Training Commission; adding to the
128 commission a circuit court judge, a state attorney and
129 additional resident of the state; specifying that the
130 Governor choose the newly added appointments from
131 lists submitted by the Office of the State Court
132 Administrator and from the Florida Prosecuting
133 Attorneys Association; requiring residents serving on
134 the commission to have never been employed with
135 certain departments, institutions, or agencies;
136 removing the training center director from the
137 commission; requiring that the 5 law enforcement
138 officers and one correctional officer appointed to the
139 commission be of the rank of captain or below;
140 amending s.



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LEGISLATIVE ACTION

Senate

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House

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

1 **Senate Substitute for Amendment (328176) (with title**
2 **amendment)**

3
4 Between lines 85 and 86
5 insert:

6 Section 3. Section 943.11, Florida Statutes, is amended to
7 read:

8 943.11 Criminal Justice Standards and Training Commission;
9 membership; meetings; compensation.—

10 (1) (a) There is created a Criminal Justice Standards and



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11 Training Commission within the Department of Law Enforcement.
12 The commission shall be composed of 21 ~~19~~ members, consisting of
13 the Secretary of Corrections or a designated assistant; the
14 Attorney General or a designee; the Director of the Division of
15 the Florida Highway Patrol; 1 circuit court judge with past
16 criminal jurisdiction designated by the Office of the State
17 Court Administrator; 1 state attorney designated by the Florida
18 Prosecuting Attorneys Association; and 16 members appointed by
19 the Governor, consisting of 3 sheriffs; 3 chiefs of police; 6 ~~5~~
20 law enforcement officers or correctional officers who are of the
21 rank of captain ~~sergeant~~ or below within the employing agency; 2
22 correctional officers, 1 of whom is an administrator of a state
23 correctional institution and 1 of whom ~~is of the rank of~~
24 ~~sergeant or below within the employing agency; 1 training center~~
25 ~~director; 1 person who~~ is in charge of a county correctional
26 institution; and 2 residents ~~1 resident~~ of the state who have
27 never been employed by any of the departments, institutions, or
28 agencies in any ~~falls into none~~ of the foregoing
29 classifications. Prior to the appointment, the sheriff, chief of
30 police, law enforcement officer, and correctional officer
31 members must have had at least 4 years' experience as law
32 enforcement officers or correctional officers.

33 (b) The Governor, in making appointments under this
34 section, shall take into consideration representation by
35 geography, population, and other relevant factors in order that
36 the representation on the commission be apportioned to give
37 representation to the state at large rather than to a particular
38 area. Of the appointed members, and except for correctional
39 officers of a state institution, there may be only one



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40 appointment from any employing agency.

41 1. In appointing one circuit judge, the Governor shall
42 choose the appointment from a list of two nominees submitted by
43 the Office of the State Court Administrator. The Office of the
44 State Court Administrator shall submit its list of two nominees
45 at least three months before the expiration of the term of any
46 circuit judge.

47 2. In appointing one state attorney, the Governor shall
48 choose the appointment from a list of two nominees submitted by
49 the Florida Prosecuting Attorneys Association. The Florida
50 Prosecuting Attorneys Association shall submit its list of two
51 nominees at least 3 months before the expiration of the term of
52 any state attorney.

53 3. ~~1.~~ In appointing the three sheriffs, the Governor shall
54 choose each appointment from a list of six nominees submitted by
55 the Florida Sheriffs Association. The Florida Sheriffs
56 Association shall submit its list of six nominees at least 3
57 months before the expiration of the term of any sheriff member.

58 4. ~~2.~~ In appointing the three chiefs of police, the
59 Governor shall choose each appointment from a list of six
60 nominees submitted by the Florida Police Chiefs Association. The
61 Florida Police Chiefs Association shall submit its list of six
62 nominees at least 3 months before the expiration of the term of
63 any police chief member.

64 5. ~~3.~~ For appointments made on or after July 1, 2016, in
65 appointing the ~~five~~ law enforcement officers and ~~one~~
66 correctional officers ~~officer~~ of the rank of captain ~~sergeant~~ or
67 below, the Governor shall choose each appointment from a list of
68 six nominees submitted by a committee comprised of three members



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69 of the collective bargaining agent for the largest number of
70 certified law enforcement or correctional officer bargaining
71 units, two members of the collective bargaining agent for the
72 second largest number of certified law enforcement or
73 correctional officer bargaining units, and one member of the
74 collective bargaining agent representing the largest number of
75 state law enforcement officers or correctional officers in
76 certified law enforcement bargaining units. At least one of the
77 names submitted for each of the six ~~five~~ appointments who are
78 law enforcement officers or correctional officers must be an
79 officer who is not in a collective bargaining unit.

80 (c) Members appointed by the Governor shall be appointed
81 for terms of 4 years, and no member shall serve beyond the time
82 he or she ceases to hold the office or employment by reason of
83 which the member was eligible for appointment to the commission.
84 Any member appointed to fill a vacancy occurring because of
85 death, resignation, or ineligibility for membership shall serve
86 only for the unexpired term of his or her predecessor.

87 (d) Each member appointed by the Governor shall be
88 accountable to the Governor for the proper performance of the
89 duties of his or her office. The Governor may remove from office
90 any such member for malfeasance, misfeasance, neglect of duty,
91 incompetence, or permanent inability to perform official duties
92 or for pleading guilty or nolo contendere to, or being found
93 guilty of, a felony.

94 (e) Membership on the commission shall be construed as an
95 extension of the duties of the office by which the member was
96 appointed to the commission. Membership on the commission does
97 not disqualify a member from holding any other public office or



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98 being employed by a public entity, except that no member of the
99 Legislature shall serve on the commission. The Legislature finds
100 that the commission serves a state, county, and municipal
101 purpose and that service on the commission is consistent with a
102 member's principal service in a public office or employment.

103 (f) Members of the commission shall serve without
104 compensation but shall be entitled to be reimbursed for per diem
105 and travel expenses as provided by s. 112.061.

106 (2) The commission shall annually elect its chair and other
107 officers. The commission shall hold at least four regular
108 meetings each year at the call of the chair or upon the written
109 request of three members of the commission. A majority of the
110 members of the commission constitutes a quorum.

111 (3) The Department of Legal Affairs shall serve as legal
112 counsel to the commission.

113
114 ===== T I T L E A M E N D M E N T =====

115 And the title is amended as follows:

116 Delete lines 1 - 12

117 and insert:

118 An act relating to criminal justice; amending s.
119 216.136, F.S.; requiring the Criminal Justice
120 Estimating Conference to develop projections of prison
121 admissions and populations for elderly felony
122 offenders; amending s. 921.0021, F.S.; revising the
123 definition of "victim injury" by removing a
124 prohibition on assessing certain victim injury
125 sentence points for sexual misconduct by an employee
126 of the Department of Corrections or a private



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127 correctional facility with an inmate or an offender
128 supervised by the department; conforming a provision
129 to changes made by the act; amending s. 943.11, F.S.;
130 modifying the composition of the Criminal Justice
131 Standards and Training Commission; adding to the
132 commission a circuit court judge, a state attorney and
133 additional resident of the state; specifying that the
134 Governor choose the newly added appointments from
135 lists submitted by the Office of the State Court
136 Administrator and from the Florida Prosecuting
137 Attorneys Association; requiring residents serving on
138 the commission to have never been employed with
139 certain departments, institutions, or agencies;
140 removing the training center director from the
141 commission; requiring that the 6 law enforcement
142 officers and one correctional officer appointed to the
143 commission be of the rank of captain or below;
144 amending s.

FOR CONSIDERATION By the Committee on Criminal Justice

591-00528-16

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1 A bill to be entitled
2 An act relating to corrections; amending s. 216.136,
3 F.S.; requiring the Criminal Justice Estimating
4 Conference to develop projections of prison admissions
5 and populations for elderly felony offenders; amending
6 s. 921.0021, F.S.; revising the definition of "victim
7 injury" by removing a prohibition on assessing certain
8 victim injury sentence points for sexual misconduct by
9 an employee of the Department of Corrections or a
10 private correctional facility with an inmate or an
11 offender supervised by the department; conforming a
12 provision to changes made by the act; amending s.
13 944.275, F.S.; prohibiting an inmate from receiving
14 incentive gain-time for completing the requirements
15 for and receiving a high school equivalency diploma or
16 vocational certificate if the inmate is convicted of a
17 specified offense on or after a specified date;
18 amending s. 944.35, F.S.; expanding applicability of a
19 current felony offense to include employees of private
20 providers and private correctional facilities;
21 creating criminal penalties for employees who
22 knowingly and with the intent to cause specified harm
23 withhold food, water, or essential services from an
24 inmate; amending s. 945.6031, F.S.; increasing the
25 frequency of required surveys of health care systems
26 at correctional institutions; amending s. 951.221,
27 F.S.; conforming a cross-reference; reenacting s.
28 944.023(1)(a), F.S., relating to the definition of the
29 term "Criminal Justice Estimating Conference", to

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30 incorporate the amendment made to s. 216.136, F.S., in
31 a reference thereto; reenacting ss. 435.04(2)(uu) and
32 921.0022(3)(f), F.S., relating to level 2 screening
33 standards and level 6 of the offense severity ranking
34 chart, respectively, to incorporate the amendment made
35 to s. 944.35, F.S., in references thereto; providing
36 an effective date.

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

39
40 Section 1. Paragraph (d) is added to subsection (5) of
41 section 216.136, Florida Statutes, to read:

42 216.136 Consensus estimating conferences; duties and
43 principals.—

44 (5) CRIMINAL JUSTICE ESTIMATING CONFERENCE.—The Criminal
45 Justice Estimating Conference shall:

46 (d) Develop projections of prison admissions and
47 populations for elderly felony offenders.

48 Section 2. Subsection (7) of section 921.0021, Florida
49 Statutes, is amended to read:

50 921.0021 Definitions.—As used in this chapter, for any
51 felony offense, except any capital felony, committed on or after
52 October 1, 1998, the term:

53 (7) (a) "Victim injury" means the physical injury or death
54 suffered by a person as a direct result of the primary offense,
55 or any additional offense, for which an offender is convicted
56 and which is pending before the court for sentencing at the time
57 of the primary offense.

58 (b) Except as provided in paragraph (c): ~~or paragraph (d),~~

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59 1. If the conviction is for an offense involving sexual
60 contact that includes sexual penetration, the sexual penetration
61 must be scored in accordance with the sentence points provided
62 under s. 921.0024 for sexual penetration, regardless of whether
63 there is evidence of any physical injury.

64 2. If the conviction is for an offense involving sexual
65 contact that does not include sexual penetration, the sexual
66 contact must be scored in accordance with the sentence points
67 provided under s. 921.0024 for sexual contact, regardless of
68 whether there is evidence of any physical injury.

69
70 If the victim of an offense involving sexual contact suffers any
71 physical injury as a direct result of the primary offense or any
72 additional offense committed by the offender resulting in
73 conviction, such physical injury must be scored separately and
74 in addition to the points scored for the sexual contact or the
75 sexual penetration.

76 ~~(c) The sentence points provided under s. 921.0024 for~~
77 ~~sexual contact or sexual penetration may not be assessed for a~~
78 ~~violation of s. 944.35(3)(b)2.~~

79 (c)~~(d)~~ If the conviction is for the offense described in s.
80 872.06, the sentence points provided under s. 921.0024 for
81 sexual contact or sexual penetration may not be assessed.

82 (d)~~(e)~~ Notwithstanding paragraph (a), if the conviction is
83 for an offense described in s. 316.027 and the court finds that
84 the offender caused victim injury, sentence points for victim
85 injury may be assessed against the offender.

86 Section 3. Paragraphs (d) and (e) of subsection (4) of
87 section 944.275, Florida Statutes, are amended, and paragraph

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88 (b) of that subsection is republished, to read:

89 944.275 Gain-time.—

90 (4)

91 (b) For each month in which an inmate works diligently,
92 participates in training, uses time constructively, or otherwise
93 engages in positive activities, the department may grant
94 incentive gain-time in accordance with this paragraph. The rate
95 of incentive gain-time in effect on the date the inmate
96 committed the offense which resulted in his or her incarceration
97 shall be the inmate's rate of eligibility to earn incentive
98 gain-time throughout the period of incarceration and shall not
99 be altered by a subsequent change in the severity level of the
100 offense for which the inmate was sentenced.

101 1. For sentences imposed for offenses committed prior to
102 January 1, 1994, up to 20 days of incentive gain-time may be
103 granted. If granted, such gain-time shall be credited and
104 applied monthly.

105 2. For sentences imposed for offenses committed on or after
106 January 1, 1994, and before October 1, 1995:

107 a. For offenses ranked in offense severity levels 1 through
108 7, under former s. 921.0012 or former s. 921.0013, up to 25 days
109 of incentive gain-time may be granted. If granted, such gain-
110 time shall be credited and applied monthly.

111 b. For offenses ranked in offense severity levels 8, 9, and
112 10, under former s. 921.0012 or former s. 921.0013, up to 20
113 days of incentive gain-time may be granted. If granted, such
114 gain-time shall be credited and applied monthly.

115 3. For sentences imposed for offenses committed on or after
116 October 1, 1995, the department may grant up to 10 days per

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117 month of incentive gain-time, except that no prisoner is
118 eligible to earn any type of gain-time in an amount that would
119 cause a sentence to expire, end, or terminate, or that would
120 result in a prisoner's release, prior to serving a minimum of 85
121 percent of the sentence imposed. For purposes of this
122 subparagraph, credits awarded by the court for time physically
123 incarcerated shall be credited toward satisfaction of 85 percent
124 of the sentence imposed. Except as provided by this section, a
125 prisoner shall not accumulate further gain-time awards at any
126 point when the tentative release date is the same as that date
127 at which the prisoner will have served 85 percent of the
128 sentence imposed. State prisoners sentenced to life imprisonment
129 shall be incarcerated for the rest of their natural lives,
130 unless granted pardon or clemency.

131 (d) Notwithstanding paragraph (b) ~~subparagraphs (b)1. and~~
132 ~~2.~~, the education program manager shall recommend, and the
133 Department of Corrections may grant, a one-time award of 60
134 additional days of incentive gain-time to an inmate who is
135 otherwise eligible and who successfully completes requirements
136 for and is awarded a high school equivalency diploma or
137 vocational certificate. This incentive gain-time award may be
138 granted to reduce any sentence for an offense committed on or
139 after October 1, 1995. However, this gain-time may not be
140 granted to reduce any sentence for an offense committed on or
141 after October 1, 1995, if the inmate is, or has previously been,
142 convicted of a violation of s. 794.011, s. 794.05, former s.
143 796.03, former s. 796.035, s. 800.04, s. 825.1025, s. 827.03, s.
144 827.071, s. 847.0133, s. 847.0135, s. 847.0137, s. 847.0138, s.
145 847.0145, or s. 985.701(1), or a forcible felony offense that is

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146 specified in s. 776.08, except burglary as specified in s.
147 810.02(4). An inmate subject to the 85 percent minimum service
148 requirement pursuant to subparagraph (b)3. may not accumulate
149 gain-time awards at any point when the tentative release date is
150 the same as the 85 percent minimum service date of the sentence
151 imposed. Under no circumstances may an inmate receive more than
152 60 days for educational attainment pursuant to this section.

153 (e) Notwithstanding subparagraph (b)3. and paragraph (d),
154 for sentences imposed for offenses committed on or after October
155 1, 2014, the department may not grant incentive gain-time if the
156 offense is a violation of s. 782.04(1)(a)2.c.; s. 787.01(3)(a)2.
157 or 3.; s. 787.02(3)(a)2. or 3.; s. 794.011, excluding s.
158 794.011(10); s. 800.04; s. 825.1025; or s. 847.0135(5).

159 Section 4. Subsection (3) of section 944.35, Florida
160 Statutes, is amended to read:

161 944.35 Authorized use of force; malicious battery and
162 sexual misconduct prohibited; reporting required; penalties.—

163 (3)(a)1. Any employee of the department, a private
164 provider, or private correctional facility who, with malicious
165 intent, commits a battery upon an inmate or an offender
166 supervised by the department in the community, commits a
167 misdemeanor of the first degree, punishable as provided in s.
168 775.082 or s. 775.083.

169 2. Any employee of the department, a private provider, or
170 private correctional facility who, with malicious intent,
171 commits a battery or inflicts cruel or inhuman treatment by
172 neglect or otherwise, and in so doing causes great bodily harm,
173 permanent disability, or permanent disfigurement to an inmate or
174 an offender supervised by the department in the community,

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175 commits a felony of the third degree, punishable as provided in
176 s. 775.082, s. 775.083, or s. 775.084.

177 (b) An employee of the department, a private provider, or
178 private correctional facility commits a felony of the third
179 degree, punishable as provided in s. 775.082, s. 775.083, or s.
180 775.084, if the employee:

181 1. Knowingly and with the intent to cause an inmate great
182 bodily harm, permanent disability, or permanent disfigurement,
183 withholds food, water, clothing, shelter, supervision, medicine,
184 or medical services from the inmate; and

185 2. Causes an inmate to suffer great bodily harm, permanent
186 disability, or permanent disfigurement by such action.

187 (c) ~~(b)~~1. As used in this paragraph, the term "sexual
188 misconduct" means the oral, anal, or vaginal penetration by, or
189 union with, the sexual organ of another or the anal or vaginal
190 penetration of another by any other object, but does not include
191 an act done for a bona fide medical purpose or an internal
192 search conducted in the lawful performance of the employee's
193 duty.

194 2. Any employee of the department or a private correctional
195 facility as defined in s. 944.710 who engages in sexual
196 misconduct with an inmate or an offender supervised by the
197 department in the community, without committing the crime of
198 sexual battery, commits a felony of the third degree, punishable
199 as provided in s. 775.082, s. 775.083, or s. 775.084.

200 3. The consent of the inmate or offender supervised by the
201 department in the community to any act of sexual misconduct may
202 not be raised as a defense to a prosecution under this
203 paragraph.

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204 4. This paragraph does not apply to any employee of the
205 department or any employee of a private correctional facility
206 who is legally married to an inmate or an offender supervised by
207 the department in the community, nor does it apply to any
208 employee who has no knowledge, and would have no reason to
209 believe, that the person with whom the employee has engaged in
210 sexual misconduct is an inmate or an offender under community
211 supervision of the department.

212 (d)~~(d)~~ Notwithstanding prosecution, any violation of the
213 provisions of this subsection, as determined by the Public
214 Employees Relations Commission, shall constitute sufficient
215 cause under s. 110.227 for dismissal from employment with the
216 department, and such person shall not again be employed in any
217 capacity in connection with the correctional system.

218 (e)~~(d)~~ Each employee who witnesses, or has reasonable cause
219 to suspect, that an inmate or an offender under the supervision
220 of the department in the community has been unlawfully abused or
221 is the subject of sexual misconduct pursuant to this subsection
222 shall immediately prepare, date, and sign an independent report
223 specifically describing the nature of the force used or the
224 nature of the sexual misconduct, the location and time of the
225 incident, and the persons involved. The report shall be
226 delivered to the inspector general of the department with a copy
227 to be delivered to the warden of the institution or the regional
228 administrator. The inspector general shall immediately conduct
229 an appropriate investigation, and, if probable cause is
230 determined that a violation of this subsection has occurred, the
231 respective state attorney in the circuit in which the incident
232 occurred shall be notified.

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233 Section 5. Subsection (2) of section 945.6031, Florida
234 Statutes, is amended to read:

235 945.6031 Required reports and surveys.—

236 (2) The authority shall conduct surveys of the physical and
237 mental health care system at each correctional institution at
238 least every 18 months ~~triennially~~ and shall report the survey
239 findings for each institution to the Secretary of Corrections.

240 Section 6. Subsection (1) of section 951.221, Florida
241 Statutes, is amended to read:

242 951.221 Sexual misconduct between detention facility
243 employees and inmates; penalties.—

244 (1) Any employee of a county or municipal detention
245 facility or of a private detention facility under contract with
246 a county commission who engages in sexual misconduct, as defined
247 in s. 944.35(3)(c)1. ~~s. 944.35(3)(b)1.~~, with an inmate or an
248 offender supervised by the facility without committing the crime
249 of sexual battery commits a felony of the third degree,
250 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
251 The consent of an inmate to any act of sexual misconduct may not
252 be raised as a defense to prosecution under this section.

253 Section 7. For the purpose of incorporating the amendment
254 made by this act to section 216.136, Florida Statutes, in a
255 reference thereto, paragraph (a) of subsection (1) of section
256 944.023, Florida Statutes, is reenacted to read:

257 944.023 Comprehensive correctional master plan.—

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

259 (a) "Criminal Justice Estimating Conference" means the
260 Criminal Justice Estimating Conference referred to in s.
261 216.136(5).

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262 Section 8. For the purpose of incorporating the amendment
 263 made by this act to section 944.35, Florida Statutes, in a
 264 reference thereto, paragraph (uu) of subsection (2) of section
 265 435.04, Florida Statutes, is reenacted to read:

266 435.04 Level 2 screening standards.—

267 (2) The security background investigations under this
 268 section must ensure that no persons subject to the provisions of
 269 this section have been arrested for and are awaiting final
 270 disposition of, have been found guilty of, regardless of
 271 adjudication, or entered a plea of nolo contendere or guilty to,
 272 or have been adjudicated delinquent and the record has not been
 273 sealed or expunged for, any offense prohibited under any of the
 274 following provisions of state law or similar law of another
 275 jurisdiction:

276 (uu) Section 944.35(3), relating to inflicting cruel or
 277 inhuman treatment on an inmate resulting in great bodily harm.

278 Section 9. For the purpose of incorporating the amendment
 279 made by this act to section 944.35, Florida Statutes, in a
 280 reference thereto, paragraph (f) of subsection (3) of section
 281 921.0022, Florida Statutes, is reenacted to read:

282 921.0022 Criminal Punishment Code; offense severity ranking
 283 chart.—

284 (3) OFFENSE SEVERITY RANKING CHART

285 (f) LEVEL 6

286

Florida	Felony	
Statute	Degree	Description
316.027(2)(b)	2nd	Leaving the scene of a

287

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crash involving serious
bodily injury.

288

316.193 (2) (b)

3rd

Felony DUI, 4th or
subsequent conviction.

289

400.9935 (4) (c)

2nd

Operating a clinic, or
offering services
requiring licensure,
without a license.

290

499.0051 (3)

2nd

Knowing forgery of
pedigree papers.

291

499.0051 (4)

2nd

Knowing purchase or
receipt of prescription
drug from unauthorized
person.

292

499.0051 (5)

2nd

Knowing sale or transfer
of prescription drug to
unauthorized person.

293

775.0875 (1)

3rd

Taking firearm from law
enforcement officer.

294

784.021 (1) (a)

3rd

Aggravated assault;
deadly weapon without
intent to kill.

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784.021 (1) (b)	3rd	Aggravated assault; intent to commit felony.
784.041	3rd	Felony battery; domestic battery by strangulation.
784.048 (3)	3rd	Aggravated stalking; credible threat.
784.048 (5)	3rd	Aggravated stalking of person under 16.
784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081 (2)	2nd	Aggravated assault on specified official or employee.

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784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
784.083 (2)	2nd	Aggravated assault on code inspector.
787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
790.164 (1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.

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310	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
311	794.011 (8) (a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
312	794.05 (1)	2nd	Unlawful sexual activity with specified minor.
313	800.04 (5) (d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
314	800.04 (6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
315	806.031 (2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.

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316	810.02 (3) (c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
317	810.145 (8) (b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
318	812.014 (2) (b) 1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
319	812.014 (6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
320	812.015 (9) (a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
321	812.015 (9) (b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
	812.13 (2) (c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).

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322

817.4821 (5) 2nd Possess cloning paraphernalia with intent to create cloned cellular telephones.

323

825.102 (1) 3rd Abuse of an elderly person or disabled adult.

324

825.102 (3) (c) 3rd Neglect of an elderly person or disabled adult.

325

825.1025 (3) 3rd Lewd or lascivious molestation of an elderly person or disabled adult.

326

825.103 (3) (c) 3rd Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.

327

827.03 (2) (c) 3rd Abuse of a child.

328

827.03 (2) (d) 3rd Neglect of a child.

329

827.071 (2) & (3) 2nd Use or induce a child in

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a sexual performance, or
 promote or direct such
 performance.

330

836.05 2nd Threats; extortion.

331

836.10 2nd Written threats to kill
 or do bodily injury.

332

843.12 3rd Aids or assists person
 to escape.

333

847.011 3rd Distributing, offering
 to distribute, or
 possessing with intent
 to distribute obscene
 materials depicting
 minors.

334

847.012 3rd Knowingly using a minor
 in the production of
 materials harmful to
 minors.

335

847.0135(2) 3rd Facilitates sexual
 conduct of or with a
 minor or the visual
 depiction of such
 conduct.

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336

914.23 2nd Retaliation against a witness, victim, or informant, with bodily injury.

337

944.35 (3) (a) 2. 3rd Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.

338

944.40 2nd Escapes.

339

944.46 3rd Harboring, concealing, aiding escaped prisoners.

340

944.47 (1) (a) 5. 2nd Introduction of contraband (firearm, weapon, or explosive) into correctional facility.

341

951.22 (1) 3rd Intoxicating drug, firearm, or weapon

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introduced into county
facility.

342

343

344

Section 10. This act shall take effect July 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

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

October 20, 2015
Meeting Date

7006
Bill Number (if applicable)

Topic Relating to Corrections

723682 SA
Amendment Barcode (if applicable)

Name Amy Mercer

Job Title Executive Director

Address 2636 Mitcham Dr

Phone 219-3631

Tallahassee FL 32308
City State Zip

Email amercur@fpca.com

Speaking: For Against Information

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

Representing The Florida Police Chiefs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

20 Oct 15

Meeting Date

SPB 7006

Bill Number (if applicable)

Topic Corrections

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 204 S. Monroe St., Ste. 201

Street

Phone 850/577-3032

Tallahassee

City

FL

State

32301

Zip

Email barney@smartjusticealliance.org

Speaking: For Against Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

7006
Bill Number (if applicable)

Meeting Date _____

Topic Corrections Bill

Amendment Barcode (if applicable) _____

Name Lisa Henning

Job Title Legislative Director

Address 242 Office Plaza Dr

Phone _____

Tallahassee FL 32301

Email _____

Street

City

State

Zip

Speaking: For Against Information

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

Representing Fraternal Order of Police

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

7946
Bill Number (if applicable)

Meeting Date _____

Topic CORRECTIONS BILL

Amendment Barcode (if applicable) _____

Name JAVIER ORTIZ (JAVIER ORTIZ)

Job Title TOP PRESIDENT

Address 714 SW 12 AVE

Phone _____

Street
MIAMI FL 33130
City State Zip

Email _____

Speaking: For Against Information

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

Representing FRATERNAL ORDER OF POLICE

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.

CourtSmart Tag Report

Room: LL 37
Caption: Senate Criminal Justice

Case No.:
Judge:

Type:

Started: 10/20/2015 9:36:38 AM
Ends: 10/20/2015 10:58:49 AM **Length:** 01:22:12

9:36:40 AM Meeting called to order.
9:36:48 AM Tab 3 SB344 Senator Bradley
9:40:05 AM Amendment Barcode 807382
9:41:16 AM Amendment Adopted
9:42:00 AM Patricia Brigham- League of Women Voters- Waive Against
9:42:53 AM Jorge Chamizo - Waive In Support
9:43:07 AM Scott Whigham- Training Director- Waive In Support
9:43:38 AM Lucia McBath- Speaking Against
9:48:34 AM Glen Hess- State Attorneys of FL- Speaking Against
9:58:12 AM Matt Willard- Criminal Trial Attorneys- Speaking For
10:01:38 AM Stacy Scott- Public Defender- Speaking For
10:08:06 AM Eric Friday- General Counsel, Florida Carry- In Support
10:15:01 AM Greg Newborn- State Policy Director- Speaking For
10:15:56 AM Marion P. Hammer- NRA- Speaking For
10:23:48 AM Senator Bradley closing on bill
10:25:48 AM CS for SB344 reported favorably
10:26:56 AM Tab 2- SB300 Senator Gaetz
10:27:25 AM Amendment Barcode 703182
10:28:24 AM Eric Friday- Waive in Support of Amendment
10:29:15 AM Amendment Adopted
10:29:20 AM Amendment Barcode 201112
10:29:33 AM Amendment TP'ed
10:30:06 AM Senator Gibson question on bill
10:39:04 AM Motion for Time Certain by Senator Bradley
10:40:16 AM Bob Root- Waive Support
10:40:41 AM Samantha Padgett- Speaking to Inform
10:41:22 AM Patricia Brigham- League of Women Voters- Speaking Against
10:42:56 AM Gary Hunter- FL Chamber- Speaking Against
10:44:06 AM Lisa Henning- Fraternal Order of Police- Speaking Against
10:45:46 AM Javier Ortiz- Miami Fraternal Order of Police- Speaking Against
10:48:43 AM Eric Friday- General Counsel, Florida Carry- Speaking For
10:50:14 AM Keith Law- Florida Citizens Alliance- Speaking For
10:51:18 AM Sheriff Gordon Smith- Bradford County- Speaking For
10:52:46 AM Marion Hammer- NRA- Speaking For
10:55:54 AM Senator Gaetz closing on bill
10:57:06 AM CS for SB300 reported Favorably
10:58:08 AM Meeting Adjourned