

Tab 3	SB 308 by Benacquisto; (Similar to CS/H 0131) Persons or Domestic Animals Unattended in Motor Vehicles					
618588	D	S	RCS	CJ, Brandes	Delete everything after	11/17 02:14 PM

Tab 4	SB 380 by Abruzzo; (Similar to CS/H 0101) Violation of an Injunction for Protection					
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Tab 5	SB 440 by Abruzzo; (Similar to CS/H 0217) Care for Retired Law Enforcement Dogs					
915720	A	S	RCS	CJ, Clemens	Delete L.45 - 110:	11/17 02:14 PM

Tab 6	SB 498 by Sobel; (Identical to H 4003) Repeal of a Prohibition on Cohabitation					
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Tab 7	SB 618 by Evers; Prearrest Diversion Programs					
607808	D	S	RCS	CJ, Evers	Delete everything after	11/17 02:14 PM

Tab 8	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
570664	A	S		CJ, Gibson	btw L.85 - 86:	11/13 01:41 PM

Tab 9	SPB 7022 by CJ; OGSR/Agency Photograph, Video, or Audio Recording/Killing of a Person					
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Evers, Chair
Senator Gibson, Vice Chair

MEETING DATE: Tuesday, November 17, 2015**TIME:** 10:00 a.m.—12:00 noon**PLACE:** Mallory Horne Committee Room, 37 Senate Office Building**MEMBERS:** Senator Evers, Chair; Senator Gibson, Vice Chair; Senators Bradley, Brandes, and Clemens

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
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Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointments to the offices indicated.

Secretary of Juvenile Justice

1	Daly, Christina K. (Tallahassee)	Pleasure of Governor	Recommend Confirm Yeas 5 Nays 0
---	----------------------------------	----------------------	------------------------------------

Executive Director of Department of Law Enforcement

2	Swearingen, Richard L. ()	Pleasure of Governor and Cabinet	Recommend Confirm Yeas 5 Nays 0
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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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3	SB 308 Benacquisto (Similar CS/H 131, Compare H 329, S 200)	Persons or Domestic Animals Unattended in Motor Vehicles; Providing immunity from civil liability for forcible entry into a motor vehicle to remove an elderly person, disabled adult, minor, or domestic animal in certain circumstances; providing a definition, etc.	Fav/CS Yeas 5 Nays 0
---	--	---	-------------------------

CJ 11/17/2015 Fav/CS
 JU
 RC

4	SB 380 Abruzzo (Similar CS/H 101)	Violation of an Injunction for Protection; Providing enhanced criminal penalties for a third or subsequent violation of an injunction for protection against specified acts of violence or a foreign protection order issued under specified provisions, etc.	Favorable Yeas 5 Nays 0
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CJ 11/17/2015 Favorable
 ACJ
 FP

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, November 17, 2015, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	SB 440 Abruzzo (Similar CS/H 217)	Care for Retired Law Enforcement Dogs; Citing this act as the "Care for Retired Law Enforcement Dogs Program Act"; creating the Care for Retired Law Enforcement Dogs Program within the Department of Law Enforcement; requiring the department to contract with a corporation not for profit to administer and manage the program; placing an annual cap on the amount of funds available for the care of an eligible retired law enforcement dog, etc. CJ 11/17/2015 Fav/CS ACJ AP	Fav/CS Yeas 5 Nays 0
6	SB 498 Sobel (Identical H 4003)	Repeal of a Prohibition on Cohabitation; Deleting provisions prohibiting cohabitation by unmarried men and women, etc. CJ 11/17/2015 Favorable JU RC	Favorable Yeas 5 Nays 0
7	SB 618 Evers	Prearrest Diversion Programs; Encouraging local communities to implement prearrest diversion programs for certain offenders; authorizing law enforcement officers of participating law enforcement agencies, at their sole discretion, to issue civil citations to adults under specified circumstances, etc. CJ 11/17/2015 Fav/CS CA FP	Fav/CS Yeas 5 Nays 0
Consideration of proposed bill:			
8	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

Consideration of proposed bill:

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Tuesday, November 17, 2015, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	SPB 7022	OGSR/Agency Photograph, Video, or Audio Recording/Killing of a Person; Amending provisions which provide an exemption from public records requirements for a photograph or video or audio recording held by an agency that depicts or records the killing of a person; removing the scheduled repeal of the exemption, etc.	Not Considered

Other Related Meeting Documents

1300

**STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections**

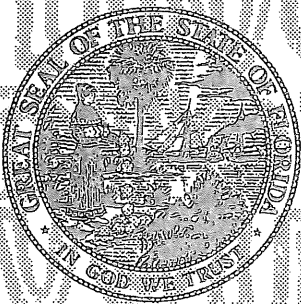
I, Ken Detzner, Secretary of State,
do hereby certify that

Christina K. Daly

is duly appointed

**Secretary,
Department of Juvenile Justice**

for a term beginning on the
Fourth day of May, A.D., 2015,
to serve at the pleasure of the Governor
and is subject to be confirmed by the Senate
during the next regular session of the Legislature.



*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Twenty-Second day of May, A.D., 2015.*

Ken Detzner

Secretary of State



RICK SCOTT
GOVERNOR

RECEIVED
DEPARTMENT OF STATE
2015 MAY -8 PM 4:17
DEPARTMENT OF JUVENILE JUSTICE
DIVISION OF ELECTIONS

May 4, 2015

Secretary Kenneth W. Detzner
Department of State
State of Florida
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following reappointment under the provisions of Section 20.316, Florida Statutes:

Secretary Christina K. Daly

as Secretary of the Department of Juvenile Justice, subject to confirmation by the Senate. This appointment is effective May 4, 2015, for a term ending at the pleasure of the Governor.

Sincerely,

A handwritten signature in black ink, appearing to be "Rick Scott".

Rick Scott
Governor

RS/vh

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

County of Leon

RECEIVED

15 MAY 21 PM 4:51

DIVISION OF ELECTIONS
SECRETARY OF STATE

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

Secretary, Florida Department of Juvenile Justice

(Title of Office)

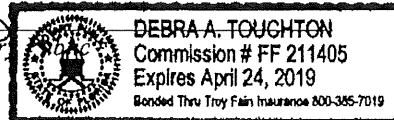
on which I am now about to enter, so help me God.

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

Christina K. Daly
Signature

Sworn to and subscribed before me this 20th day of May, 2015.

[Signature]
Signature of Officer Administering Oath or of Notary Public



Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR

Produced Identification ☐

Type of Identification Produced _____

ACCEPTANCE

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

Mailing Address: ☐ Home ☒ Office

2737 Centerview Drive

Street or Post Office Box

Tallahassee, Florida 32399

City, State, Zip Code

Christina K. Daly

Print name as you desire commission issued

Christina K. Daly
Signature

QUESTIONNAIRE FOR SENATE CONFIRMATION

The information from this questionnaire will be used by the Florida Senate in considering action on your confirmation. The questionnaire **MUST BE COMPLETED IN FULL**. Answer "none" or "not applicable" where appropriate. Please type or print in blue or black ink.

May 20, 2015

Date Completed

1. Name: Ms. Daly Christina Kay
Mr./Mrs./Ms. Last First Middle/Maiden

2. Business Address: 2737 Centerview Drive Tallahassee
Street Office # City
Florida 32399 850-413-7313
Post Office Box State Zip Code Area Code/Phone Number

3. Residence Address: Leon
Street City County
Post Office Box State Zip Code Area Code/Phone Number

Specify the preferred mailing address: Business ☐ Residence ☒ Fax # _____
(optional)

4. A. List all your places of residence for the last five (5) years.

Address	City & State	From	To
		2008	Current

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

Address	City & State	From	To
n/a			

5. Date of Birth: 10/28/74 Place of Birth: Pensacola, Florida

6. Social Security Number: _____

7. Driver License Number: _____ Issuing State: Florida

8. Have you ever used or been known by any other legal name? Yes ☐ No ☒ If "Yes" Explain

DIVISION OF ELECTIONS
SECRETARY OF STATE

15 MAY 21 PM 4:51

RECEIVED

9. Are you a United States citizen? Yes ☒ No ☐ If "No" explain:

If you are a naturalized citizen, date of naturalization: _____

10. Since what year have you been a continuous resident of Florida? 1974

11. Are you a registered Florida voter? Yes ☒ No ☐ If "Yes" list:

A. County of Registration: Leon

B. Current Party Affiliation: Republican

12. Education

A. High School: Leon High School, Tallahassee, Florida
(Name and Location)

Year Graduated: 1993

B. List all postsecondary educational institutions attended:

<u>Name & Location</u>	<u>Dates Attended</u>	<u>Certificates/Degrees Received</u>
<u>Tallahassee Community College</u>	<u>1993-1995</u>	<u>A.A.</u>
<u>Florida State University</u>	<u>1995-1997</u>	<u>B.S. in Social Work</u>

13. Are you or have you ever been a member of the armed forces of the United States? Yes ☐ No ☒ If "Yes" list:

A. Dates of Service: _____

B. Branch or Component: _____

C. Date & type of discharge: _____

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of \$150 or less was paid.) Yes ☐ No ☒ If "Yes" give details:

<u>Date</u>	<u>Place</u>	<u>Nature</u>	<u>Disposition</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

<u>Employer's Name & Address</u>	<u>Type of Business</u>	<u>Occupation/Job Title</u>	<u>Period of Employment</u>
<u>FL Dept. of Juvenile Justice</u>	<u>State Government</u>	<u>*see below</u>	<u>2007 - present</u>
<u>2737 Centerview Drive</u>		<u>*Legislative Affairs Director, External Affairs</u>	
<u>Tallahassee, FL 32399</u>		<u>Director, FL Juvenile Justice Foundation Director,</u>	
		<u>Chief of Staff, Deputy Secretary, Interim Secretary</u>	

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes ☒ No ☐
If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

<u>Position</u>	<u>Employing Agency</u>	<u>Period of Employment</u>
<u>Please see above</u>	<u>FL Dept. of Juvenile Justice</u>	<u>2007 - present</u>
_____	_____	_____
_____	_____	_____

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

I have dedicated the past nearly 2 decades to improving the lives of at-risk youth. I played an integral role in the aggressive reform of juvenile justice under Governor Scott and former Secretary Walters. I have held numerous leadership positions at DJJ over the past 7 years, along with 10 years of experience in the private sector with organizations aimed to prevent delinquency.

B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes ☒ No ☐ If "Yes", list:

B.S. in Social Work

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes ☐ No ☒ If "Yes", list:

D. Identify all association memberships and association offices held by you that relate to this appointment:

Florida Police Chiefs Association

Council of Juvenile Correctional Administrators

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government? Yes ☐ No ☒ If "Yes", list:

19. A. Have you ever been elected or appointed to any public office in this state? Yes ☒ No ☐ If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

<u>Office Title</u>	<u>Date of Election or Appointment</u>	<u>Term of Office</u>	<u>Level of Government</u>
Interim Secretary of DJJ	July, 2014	July, 2014 - December, 2014	State
Secretary of DJJ	December, 2014		State

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: Florida Children & Youth Cabinet: Quarterly; CareerSource Florida Board of Directors: bi-monthly

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

Meetings Attended

Meetings Missed

Reason for Absence

No meetings missed

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes ☐ No ☒ If "Yes", give details:

Date

Nature of Violation

Disposition

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes ☐ No ☒ If "Yes", list:

A. Title of office: _____

C. Reason for suspension: _____

B. Date of suspension: _____

D. Result: Reinstated ☐ Removed ☐ Resigned ☐

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes ☐ No ☒ If "Yes", list:

A. Title of Office: _____

B. Term of Appointment: _____

C. Confirmation results: _____

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes ☐ No ☒ If "Yes", explain:

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes ☐ No ☒ If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

License/Certificate

Original

Title & Number

Issue Date

Issuing Authority

Disciplinary Action/Date

25. A. Have you, or businesses of which you have been and owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☐ No ☒ If "Yes", explain:

Name of Business

Your Relationship to Business

Business' Relationship to Agency

B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☒ No ☐ If "Yes", explain:

<u>Name of Business</u>	<u>Family Member's Relationship to You</u>	<u>Family Member's Relationship to Business</u>	<u>Business' Relationship to Agency</u>
North Highland	Sister	Former Employee	*Provided consulting services to DJJ

*Company provided services, but my sister did not work on any project related to DJJ.

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes ☒ No ☐

A. Did you receive any compensation other than reimbursement for expenses? Yes ☐ No ☒

B. Name of agency or entity you lobbied and the principal(s) you represented:

<u>Agency Lobbied</u>	<u>Principal Represented</u>
	FL Department of Juvenile Justice

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

<u>Name</u>	<u>Mailing Address</u>	<u>Zip Code</u>	<u>Area Code/Phone Number</u>
Cozy Bixler			
Wansley Walters			
Colleen Englert			

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

<u>Name</u>	<u>Mailing Address</u>	<u>Office(s) Held & Term</u>	<u>Date(s) of Membership</u>
Leadership Tallahassee	P.O. Box 1639	None	August 2007- Present

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes ☐ No ☒ If "Yes", explain:

30. If required by law or administrative rule, will you file financial disclosure statements? Yes ☒ No ☐

MEMORANDUM

AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPTIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC. IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.

☐ Yes, I assert that identifying information provided in this application should be excluded from inspection under the Public Records Law.

Because: (please provide cite.) _____

IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OF ANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.

The Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399
(850) 245-0150

CERTIFICATION

STATE OF FLORIDA

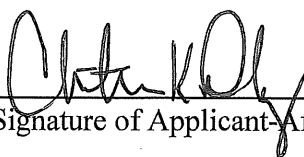
COUNTY OF

Leon

Before me, the undersigned Notary Public of Florida, personally appeared

Christina K. Daly

who, after being duly sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.



Signature of Applicant-Affiant

Sworn to and subscribed before me this 20th day of May, 2015.


Signature of Notary Public-State of



(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: _____

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____

(seal)

The Florida Senate
Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of
Christina K. Daly
Secretary of Juvenile Justice

NOTICE OF HEARING

TO: Ms. Christina K. Daly

YOU ARE HEREBY NOTIFIED that the Committee on Criminal Justice of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, November 17, 2015, in the Mallory Horne Committee Room, 37 Senate Office Building, commencing at 10:00 a.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 9th day of November, 2015

Committee on Criminal Justice



Senator Greg Evers
As Chair and by authority of the committee

cc: Members, Committee on Criminal Justice
Office of the Sergeant at Arms

THE FLORIDA SENATE

COMMITTEE WITNESS OATH

CHAIR:

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

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

WITNESS'S NAME: Christina K. Daly (Secretary-DJJ)

ANSWER: I do

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

COMMITTEE NAME: Senate Criminal Justice

DATE: November 17, 2015

THE FLORIDA SENATE
APPEARANCE RECORD

11/17/15

Meeting Date

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

Bill Number (if applicable)

Topic Confirmation Hearing

Amendment Barcode (if applicable)

Name Christina K. Daly

Job Title Secretary

Address 2737 Centerview Drive

Phone (850) 413-7313

Street

Tallahassee FL 32399

City

State

Zip

Email Christy.daly@djj.state.fl.us

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Department of Juvenile Justice

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)

11/17/15

Meeting Date

N/A
Bill Number (if applicable)

Topic SENATE CONFIRMATION HEARING ~~Sec~~ CHRISTINA DALY

N/A
Amendment Barcode (if applicable)

Name ALAN ABRAMOWITZ

Job Title Executive Director, GUARDIAN AD LIFE Program

Address 600 Calhoun St.
Street

Phone 850.241.2232

Tallahassee FL 32301
City State Zip

Email Alan.Abramowitz@galileo.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing GAL Program

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)

11/17/15

Meeting Date

Bill Number (if applicable)

Topic Appointment of Christy Daly

Amendment Barcode (if applicable)

Name Sheriff Mark Hunter

Job Title Sheriff of Columbia County

Address 2617 Mohon
Street

Phone 850-877-2165

Tallahassee FL 32308
City State Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

17 Nov 15

Meeting Date

Bill Number (if applicable)

Topic Confirmation of DOJ Secretary

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 204 S. Monroe St. 201

Phone 577.3032

Street

Tall

City

FL

State

32301

Zip

Email barney@smart
justicealliance.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)

11/17/15

Meeting Date

Bill Number (if applicable)

Topic Conformation hearing Secretary Daily

Amendment Barcode (if applicable)

Name Greg Pound

Job Title _____

Address 9166 Sunrise Dr.

Phone _____

Street

Largo

Fl.

33773

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☒ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

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

11-17-2015

Meeting Date

Bill Number (if applicable)

Topic Confirmation of Secretary daily

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-929

Street

St Petersburg

FL

State

33705

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

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

Representing Justice-2-Jesus

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)

1385

**STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections**

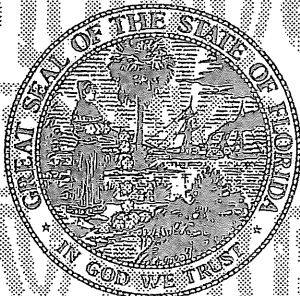
I, Ken Detzner, Secretary of State,
do hereby certify that

Richard L. Swearingen

is duly appointed

**Executive Director,
Department of Law Enforcement**

for a term beginning on the
Fifth day of August, A.D., 2015,
to serve at the pleasure of the Governor and Cabinet
and is subject to be confirmed by the Senate
during the next regular session of the Legislature.



*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Eighth day of October, A.D., 2015.*

Ken Detzner

Secretary of State



RICK SCOTT
GOVERNOR

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DEPARTMENT OF STATE

2015 OCT -7 PM 5:05

DIVISION OF ELECTIONS
TALLAHASSEE, FL

October 7, 2015

The Honorable Kenneth W. Detzner
Secretary of State
State of Florida
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised that effective August 5, 2015, I have made the following appointment under the provisions of Section 20.201, Florida Statutes:

Mr. Rick Swearingen

as Executive Director of the Florida Department of Law Enforcement, subject to approval of the Florida Cabinet and confirmation by the Senate. This appointment was approved by the Florida Cabinet on August 5, 2015, for a term ending at the pleasure of the Governor and Florida Cabinet.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott
Governor

RS/cc

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

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15 OCT -8 PM 2:18

STATE OF FLORIDA

County of Leon

DIVISION OF ELECTIONS
SECRETARY OF STATE

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

Executive Director

(Title of Office)

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

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


Signature

Sworn to and subscribed before me this 7th day of October, 2015.

Samantha L. Andrews
Signature of Officer Administering Oath or of Notary Public



Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR

Produced Identification ☐

Type of Identification Produced _____

ACCEPTANCE

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

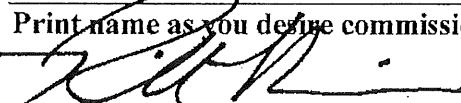
Mailing Address: ☐ Home ☒ Office

Street or Post Office Box

City, State, Zip Code

Richard L. Swearingen

Print name as you desire commission issued


Signature

113632

QUESTIONNAIRE FOR SENATE CONFIRMATION

The information from this questionnaire will be used by the Florida Senate in considering action on your confirmation. The questionnaire MUST BE COMPLETED IN FULL. Answer "none" or "not applicable" where appropriate. Please type or print in blue or black ink.

9/14/15

Date Completed

1. Name: Mr. Swearingen Richard Lawrence
Mr./Mrs./Ms. Last First Middle/Maiden

2. Business Address: _____
Street Office # City

Post Office Box State Zip Code Area Code/Phone Number

3. Residence Address: _____
Street City County

Post Office Box State Zip Code Area Code/Phone Number

Specify the preferred mailing address: Business ☒ Residence ☒ Fax # _____
(optional)

4. A. List all your places of residence for the last five (5) years.

Address	City & State	From	To
			Present

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

Address	City & State	From	To
N/A			

5. Date of Birth: 8/11/59 Place of Birth: Taunton, MA

6. Social Security Number _____

7. Driver License Number _____ Issuing State: Florida

8. Have you ever used or been known by any other legal name? Yes ☐ No ☒ If "Yes" Explain

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PM 2:19
CLERK OF THE FLORIDA SENATE

9. Are you a United States citizen? Yes ☒ No ☐ If "No" explain:

If you are a naturalized citizen, date of naturalization: _____

10. Since what year have you been a continuous resident of Florida? 1984

11. Are you a registered Florida voter? Yes ☒ No ☐ If "Yes" list:

A. County of Registration: Leon

B. Current Party Affiliation: NPA

12. Education

A. High School: Taylor County High School, Perry, FL
(Name and Location)

Year Graduated: 1977

B. List all postsecondary educational institutions attended:

<u>Name & Location</u>	<u>Dates Attended</u>	<u>Certificates/Degrees Received</u>
<u>Auburn University</u>	<u>1977-1982</u>	<u>BA</u>

13. Are you or have you ever been a member of the armed forces of the United States? Yes ☐ No ☒ If "Yes" list:

A. Dates of Service: _____

B. Branch or Component: _____

C. Date & type of discharge: _____

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of \$150 or less was paid.) Yes ☐ No ☒ If "Yes" give details:

<u>Date</u>	<u>Place</u>	<u>Nature</u>	<u>Disposition</u>

15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

<u>Employer's Name & Address</u>	<u>Type of Business</u>	<u>Occupation/Job Title</u>	<u>Period of Employment</u>
<u>Florida Dept. of Law Enforcement</u>	<u>State law enforcement</u>	<u>Executive Director</u>	<u>Dec. 2014 - Present</u>
<u>Florida Dept. of Law Enforcement</u>	<u>State law enforcement</u>	<u>Capitol Police Director</u>	<u>May 2013 - Dec. 2014</u>
<u>Florida Dept. of Law Enforcement</u>	<u>State law enforcement</u>	<u>Asst. Special Agent in Charge</u>	<u>Sept. 2010 - May 2013</u>

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes ☒ No ☐
If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

<u>Position</u>	<u>Employing Agency</u>	<u>Period of Employment</u>
<u>Various</u>	<u>Florida Dept. of Law Enforcement</u>	<u>March 1984 - Present</u>

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

I have always been interested in law enforcement and focused my post-secondary education and career in this field.

B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes ☒ No ☐ If "Yes", list:

BA from Auburn University in criminal justice, Basic Law Enforcement Recruit Academy, DEA Basic Narcotics Investigators Course, SKYNARC Narcotics Interdiction National Incident Management System training, Air Smugglers Investigators Association Interdiction, Basic Narcotic Academy (St. Pete College), FDLE Mentoring Program, as well as numerous other law enforcement related training courses during my 30 year career.

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes ☒ No ☐ If "Yes", list:

FDLE High Performance Productivity Award (2000-2001); A member of the 1987 FDLE Distinguished Team of the Year (Drug Abuse Task Force); and Silver Medal of Valor, Metro-Dade PD (1996).

D. Identify all association memberships and association offices held by you that relate to this appointment:

Florida Sheriffs Association (FSA), Florida Police Chiefs Association (FPCA), Association of State Criminal Investigative Agencies (ASCIA), International Association of Chiefs of Police (IACP)

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government? Yes ☐ No ☒ If "Yes", list:

19. A. Have you ever been elected or appointed to any public office in this state? Yes ☐ No ☒ If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

<u>Office Title</u>	<u>Date of Election or Appointment</u>	<u>Term of Office</u>	<u>Level of Government</u>

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: _____

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

Meetings Attended

Meetings Missed

Reason for Absence

<u>Meetings Attended</u>	<u>Meetings Missed</u>	<u>Reason for Absence</u>

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes ☐ No ☒ If "Yes", give details:

Date

Nature of Violation

Disposition

<u>Date</u>	<u>Nature of Violation</u>	<u>Disposition</u>

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes ☐ No ☒ If "Yes", list:

A. Title of office: _____ C. Reason for suspension: _____

B. Date of suspension: _____ D. Result: Reinstated ☐ Removed ☐ Resigned ☐

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes ☒ No ☐ If "Yes", list:

A. Title of Office: Executive Director of FDLE

B. Term of Appointment: N/A

C. Confirmation results: Senate failed to consider appointment.

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes ☐ No ☒ If "Yes", explain:

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes ☐ No ☒ If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

License/Certificate
Title & Number

Original
Issue Date

Issuing Authority

Disciplinary Action/Date

<u>License/Certificate</u> <u>Title & Number</u>	<u>Original</u> <u>Issue Date</u>	<u>Issuing Authority</u>	<u>Disciplinary Action/Date</u>

25. A. Have you, or businesses of which you have been and owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☐ No ☒ If "Yes", explain:

Name of Business

Your Relationship to Business

Business' Relationship to Agency

<u>Name of Business</u>	<u>Your Relationship to Business</u>	<u>Business' Relationship to Agency</u>

B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☐ No ☒ If "Yes", explain:

<u>Name of Business</u>	<u>Family Member's Relationship to You</u>	<u>Family Member's Relationship to Business</u>	<u>Business' Relationship to Agency</u>

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes ☐ No ☒

A. Did you receive any compensation other than reimbursement for expenses? Yes ☐ No ☒

B. Name of agency or entity you lobbied and the principal(s) you represented:

<u>Agency Lobbied</u>	<u>Principal Represented</u>

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

<u>Name</u>	<u>Mailing Address</u>	<u>Zip Code</u>	<u>Area Code/Phone Number</u>
Don Odham			
Mark Zadra			
Scott McAllister			

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

<u>Name</u>	<u>Mailing Address</u>	<u>Office(s) Held & Term</u>	<u>Date(s) of Membership</u>
N/A			

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes ☐ No ☒ If "Yes", explain:

30. If required by law or administrative rule, will you file financial disclosure statements? Yes ☒ No ☐

MEMORANDUM

AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPTIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC. IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.

☒ Yes, I assert that identifying information provided in this application should be excluded from inspection under the Public Records Law.

Because: (please provide cite.) s. 119.071(4)(d)2.a.(l), F.S.

IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OF ANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.

The Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399
(850) 245-0150

CERTIFICATION

STATE OF FLORIDA

COUNTY OF Leon

Before me, the undersigned Notary Public of Florida, personally appeared

Richard L. Swearingen

who, after being duly sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

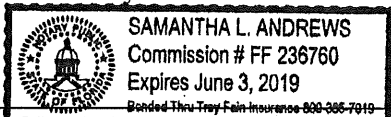
[Signature]

Signature of Applicant-Affiant

Sworn to and subscribed before me this 7th day of October, 2015.

Samantha L. Andrews

Signature of Notary Public-State of Florida



(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: 6/3/19

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____

(seal)

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DIVISION OF ELECTIONS
SECRETARY OF STATE

15 OCT -8 PM 2:19

The Florida Senate
Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of
Richard L. Swearingen
Executive Director of Department of Law Enforcement

NOTICE OF HEARING

TO: Mr. Richard L. Swearingen

YOU ARE HEREBY NOTIFIED that the Committee on Criminal Justice of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, November 17, 2015, in the Mallory Horne Committee Room, 37 Senate Office Building, commencing at 10:00 a.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 9th day of November, 2015

Committee on Criminal Justice



Senator Greg Evers
As Chair and by authority of the committee

cc: Members, Committee on Criminal Justice
Office of the Sergeant at Arms

THE FLORIDA SENATE

COMMITTEE WITNESS OATH

CHAIR:

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

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

WITNESS'S NAME: Richard L. Swearingen (Exec. Dir.-FDLE)

ANSWER: I do

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

COMMITTEE NAME: Senate Criminal Justice

DATE: November 17, 2015

THE FLORIDA SENATE
APPEARANCE RECORD

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

11/17/15

Meeting Date

Bill Number (if applicable)

Topic Appt of ^{Rick} Swearingen

Amendment Barcode (if applicable)

Name Sheriff Mark Hunter

Job Title Sheriff of Columbia County

Address 2617 Mohan

Phone 850-877-2165

Street

Tallahassee

FL

32308

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

11.17.15

Meeting Date

Bill Number (if applicable)

Topic Confirmation

Amendment Barcode (if applicable)

Name Commissioner Rick Swearingen

Job Title FDLE Commissioner

Address 2331 Phillips Road

Phone 850.410.7001

Street

Tallahassee

City

State

Zip

Email RICKSWEARINGEN@FDLE.STATE.

FL.US

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

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

Representing _____

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
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 308

INTRODUCER: Criminal Justice Committee and Senator Benacquisto

SUBJECT: Persons or Domestic Animals Unattended in Motor Vehicles

DATE: November 18, 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 308 creates immunity from civil liability for property damage that may occur when a good samaritan is attempting to rescue a minor, elderly or disabled adult, or domestic animal from a locked vehicle.

In order to qualify for such immunity, the good samaritan must:

- Determine that the vehicle is locked or there is no other reasonable method for the minor, elderly or disabled person, or animal to get out of the vehicle without help;
- Have a good faith and reasonable belief, based upon the known circumstances, that it is necessary to enter the vehicle because the minor, elderly or disabled person, or animal is in imminent danger of suffering harm;
- Contact law enforcement before entering the vehicle or immediately thereafter;
- Use no more force than necessary to make entry into the vehicle and remove the person or animal; and
- Stay with the person or animal in a safe location, in reasonable proximity to the vehicle, until a law enforcement officer or other first responder arrives.

The bill creates s. 768.139, F.S., and is effective upon becoming a law.

II. Present Situation:

Current Law: The Good Samaritan Act

The “Good Samaritan Act” (GSA), codified in s. 768.13, F.S., provides immunity from civil liability for damages to any person who:

- Gratuitously and in good faith renders emergency care or treatment either in direct response to declared state emergencies or at the scene of an emergency situation, without objection of the injured victim, if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.¹
- Participates in emergency response activities of a community emergency response team if that person acts prudently and within the scope of his or her training.²
- Gratuitously and in good faith renders emergency care or treatment to an injured animal at the scene of an emergency if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.³

However, the GSA does not specifically address immunity from liability for property damage related to the forcible entry of a motor vehicle to rescue an endangered person or animal.

Children and Others Left Unattended in Vehicles

In situations where a child is left unattended in a vehicle, current law empowers only law enforcement officers to use whatever means are reasonably necessary to protect the minor child and to remove the child from the vehicle.⁴ However, a great number of tragic incidents involving children, the elderly, disabled adults, and animals trapped in hot cars have been avoided by the forcible entry into such vehicles by good samaritans.⁵

¹ Section 768.13(2)(a), F.S.

² Section 768.13(2)(d), F.S.

³ Section 768.13(3), F.S.

⁴ 316.6135 Leaving children unattended or unsupervised in motor vehicles; penalty; authority of law enforcement officer.—

(1) A parent, legal guardian, or other person responsible for a child younger than 6 years of age may not leave the child unattended or unsupervised in a motor vehicle:

(a) For a period in excess of 15 minutes;

(b) For any period of time if the motor of the vehicle is running, the health of the child is in danger, or the child appears to be in distress. ...

(5) Any law enforcement officer who observes a child left unattended or unsupervised in a motor vehicle in violation of subsection (1) may use whatever means are reasonably necessary to protect the minor child and to remove the child from the vehicle.

⁵ See, e.g., *Hero Who Saved Toddler From Hot Car: I Was Just Doing the Right Thing*, FOX NEWS INSIDER <http://insider.foxnews.com/2015/07/21/video-woman-smashes-window-save-toddler-locked-hot-car> (last visited October 15, 2015); Rachelle Blidner, *Georgia Army Veteran Arrested For Smashing Window To Save Dog From Hot Car*, NEW YORK DAILY NEWS (May 12, 2015), <http://www.nydailynews.com/news/national/ga-man-charged-smashing-window-save-dog-hot-car-article-1.2219041>; and *3-year-old Toddler Saves Elderly Man Locked In Hot Car*, THE WEATHER CHANNEL (July 16, 2014), <http://www.weather.com/safety/heat/news/3-year-old-toddler-saves-elderly-man-locked-hot-car-20140716>.

Good samaritans who forcibly enter motor vehicles for the purpose of rescuing an endangered person or animal do so at the risk of being held civilly liable for damages caused to the vehicle. Additionally, the motor vehicle owner may pursue a civil cause of action for trespass to personal property⁶ or conversion⁷ against the good samaritan unless the good samaritan's actions are protected under the "Good Samaritan Act."

The good samaritan who makes entry into another's vehicle without permission could be charged with a criminal law violation such as trespass.⁸

Vehicular Heatstroke

Since 1998, more than 660 children have died from vehicular heatstroke⁹ in the United States.¹⁰ Seventy two of those deaths, including 4 in 2015, occurred in Florida.¹¹ Florida ranks second only behind Texas for the number of child vehicular stroke fatalities in the United States.¹² These tragic incidents are often caused when children are left unattended in a motor vehicle by a caregiver - intentionally or unintentionally - or become trapped while playing in an unlocked vehicle.¹³

Although outside temperatures may be mild or relatively cool, the interior temperatures of a motor vehicle can rise significantly and rapidly as the chart below shows.

Estimated Vehicle Interior Air Temperature v. Elapsed Time						
Elapsed time	Outside Air Temperature (F)					
	70	75	80	85	90	95
0 minutes	70	75	80	85	90	95
10 minutes	89	94	99	104	109	114
20 minutes	99	104	109	114	119	124
30 minutes	104	109	114	119	124	129

⁶ Trespass to personal property, also known as trespass to chattels, is the intentional use of, or interference with, personal property which is in the possession of another without justification. The measure of damages is the value of the property at the time and place of the wrongful taking or removal. *Coddington v. Staab*, 716 So. 2d 850, 851(Fla. 4th DCA 1998).

⁷ Conversion is an unauthorized act that deprives another of his or her property permanently or for an indefinite time. A defendant may be found liable for conversion if he or she deprived the plaintiff of his or her property by means of such an unauthorized act. The essence of conversion is the exercise of wrongful dominion or control over property to the detriment of the rights of the actual owner. It is interference with the legal rights that is incident to ownership, such as the right to possession. *See* 12 Fla. Jur. 2d *Conversion and Replevin* § 1 (2015).

⁸ See tampering or interfering with a motor vehicle under s. 860.17, F.S., or trespass in a conveyance under s. 810.08, F.S.

⁹ Hyperthermia is the condition of having an abnormally high body temperature caused by a failure of the thermoregulation mechanisms of the body to dissipate more heat than it absorbs from the environment. Heat fatigue, heat syncope (sudden dizziness after prolonged exposure to the heat), heat cramps, heat exhaustion, and heat stroke are commonly known forms of hyperthermia. NATIONAL INSTITUTES OF HEALTH, *Hyperthermia: too hot for your health*, <http://www.nih.gov/news/health/jun2012/nia-27.htm> (last visited November 5, 2015).

¹⁰ Jan Null, *Heatstroke Deaths of Children in Vehicles*, Department of Meteorology & Climate Science, San Jose State University, <http://noheatstroke.org/> (last visited November 5, 2015).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* In the period of 1998 through 2014, a total of 636 infants and children died of heatstroke inside hot motor vehicles. Just over half (338, 53%) of these were accidentally forgotten by a parent or other caregiver with 98 being the mother and 115 the father. See also *Sentences Vary When Kids Die in Hot Cars*, Allen G. Breed, copyright 2007, Associated Press.

40 minutes	108	113	118	123	128	133
50 minutes	111	116	121	126	131	136
60 minutes	113	118	123	128	133	138
> 1 hour	115	120	125	130	135	140
Courtesy Jan Null, CCM: Department of Geosciences, San Francisco State University						

The effect of such rapid and extreme temperature rise on infants and small children is often deadly because a child's body temperature heats up three to five times faster than that of an adult.¹⁴

In addition to fatalities involving children, seventeen seniors have died of vehicular heatstroke in Florida since 2010.¹⁵ Elderly adults, disabled individuals, and pets left alone in a motor vehicle are at particular risk of succumbing to vehicular heatstroke, as these groups of individuals may be unable to open car doors, to express discomfort verbally (or audibly, inside a closed car), or may suffer from existing health issues.¹⁶

III. Effect of Proposed Changes:

The bill creates s. 768.139, F.S., to protect persons who are acting as good samaritans from civil liability for any damage resulting from their entry into a motor vehicle to remove a minor, elderly or disabled person, or domestic companion animal.

To act with immunity from civil liability, the person must:

- Determine that the vehicle is locked or there is no other reasonable method for the minor, elderly or disabled person, or animal to get out of the vehicle without help;
- Have a good faith and reasonable belief, based upon the known circumstances, that it is necessary to enter the vehicle because the minor, elderly or disabled person, or animal is in imminent danger of suffering harm;
- Contact law enforcement before entering the vehicle or immediately thereafter;
- Use no more force than necessary to make entry into the vehicle and remove the person or animal; and
- Stay with the person or animal in a safe location, in reasonable proximity to the vehicle, until a law enforcement officer or other first responder arrives.

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

- "Domestic animal" is a dog, cat, or other animal that is domesticated and may be kept as a household pet, but not livestock or other farm animals.
- "Vulnerable person" means:

¹⁴ Trisha Corinth, *Children left in cars can die of heatstroke in minutes*, AMERICAN ACADEMY OF PEDIATRICS <http://aapnews.aappublications.org/content/36/8/33.4.full> (last visited November 5, 2015).

¹⁵ Dan Sweeney, *Bill shielding good samaritans passes committee*, SUN SENTINEL, October 20, 2015, <http://www.sun-sentinel.com/news/florida/fl-breaking-into-hot-cars-bill-20151020-story.html>.

¹⁶ See also <http://www.weather.com/safety/heat/news/police-dog-deaths-hot-car> and <http://www.weather.com/pets/news/dog-heat-stroke-20120420>.

- A disabled adult.¹⁷
- An elderly person.¹⁸
- A minor.

Although not specified in the bill, the term “minor” is generally defined as any person who has not attained the age of 18 years.¹⁹ “Motor vehicle” is defined by reference to s. 320.01, F.S.²⁰

Good samaritans who enter a motor vehicle to rescue an endangered person or animal may be subject to criminal penalty for tampering or interfering with a motor vehicle under s. 860.17, F.S., or trespass in a conveyance under s. 810.08, F.S. The immunity provided by the bill does not appear to absolve a good samaritan of any potential criminal liability in such cases.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹⁷ A person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person’s ability to perform the normal activities of daily living. s. 825.101(3), F.S.

¹⁸ A person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person’s own care or protection is impaired. s. 825.101(4), F.S.

¹⁹ Section 101(13), F.S.

²⁰ “Motor vehicle” means:

(a) An automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons or property, and propelled by power other than muscular power, but the term does not include traction engines, road rollers, special mobile equipment as defined in s. 316.003(48), vehicles that run only upon a track, bicycles, swamp buggies, or mopeds.

(b) A recreational vehicle-type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. s. 320.01(1), F.S.

B. Private Sector Impact:

This bill has an indeterminate²¹ financial impact on motor vehicle owners and insurance companies. Generally, “other than collision”²² automobile insurance, also known as “comprehensive coverage” covers intentional damage to a motor vehicle by a third party. If insured, the motor vehicle owner is responsible for the cost of repair up to the amount of the policy deductible.²³ The remaining cost is paid by the insurance company pursuant to the terms of the policy. If uninsured, the motor vehicle owner must pay the entire cost to repair any damage.

Under current law, a motor vehicle owner and an insurance company, as a subrogee²⁴ to all of the insured’s rights to recovery, may recover their respective costs from the party which caused the damage. The immunity provided by this bill will prevent the motor vehicle owner and the insurance company from recovering such costs.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 768.139 of the Florida Statutes.

²¹The extent and cost of the damage caused by a good samaritan with immunity under the bill will depend upon the specific circumstances of the event as well as the age, make, and model of the motor vehicle. However, one of the most common methods of forcible entry into a motor vehicle in such cases, breaking a car window, typically involves damages of several hundred dollars. See SAFELITE AUTOGLASS, *Quick Quote*, <https://www.safelite.com/auto-glass-repair-replacement-cost/> (last visited November 6, 2015).

²²Coverage which is available under a personal automobile policy that provides a form of “all risks” protection for damage to a covered auto from perils other than collision. Losses include but are not limited to fire, theft or larceny, explosion or earthquake, windstorm, hail, water, flood, malicious mischief, vandalism, riot, contact with an animal, and glass breakage. This protection is sometimes referred to as “comprehensive coverage.” INSURANCE RISK MANAGEMENT INSTITUTE, <https://www.irmi.com/online/insurance-glossary/terms/o/other-than-collision-coverage.aspx> (last visited October 13, 2015).

²³If the damage occurs to the windshield of the motor vehicle, the motor vehicle owner is not required to pay the deductible in order to obtain the benefits of comprehensive coverage. s. 627.7288, F.S.

²⁴Black’s Law Dictionary (10th ed. 2014) defines subrogation as “the principle under which an insurer [the subrogee] that has paid a loss under an insurance policy is entitled to all the rights and remedies belonging to the insured [the subrogor] with respect to any loss covered by the policy.”

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 November 17, 2015:
Reorganizes the substance of the bill and places it in a new section of the Florida Statutes.

- B. **Amendments:**

None.

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



618588

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
11/17/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 768.139, Florida Statutes, is created to
read:

768.139 Rescue of vulnerable person or domestic animal from
a motor vehicle; immunity from civil liability.—

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

(a) "Domestic animal" means a dog, cat, or other animal



618588

that is domesticated and may be kept as a household pet. The term does not include livestock or other farm animals.

(b) "Motor vehicle" has the same meaning as provided in s. 320.01.

(c) "Vulnerable person" means:

1. A disabled adult as defined in s. 825.101(3).

2. An elderly person as defined in s. 825.101(4).

3. A minor.

(2) IMMUNITY FOR DAMAGE TO MOTOR VEHICLE.—A person who enters a motor vehicle, by force or otherwise, for the purpose of removing a vulnerable person or domestic animal is immune from civil liability for damages to the motor vehicle if the person:

(a) Determines the motor vehicle is locked or there is otherwise no reasonable method for the vulnerable person or domestic animal to exit the motor vehicle without assistance.

(b) Has a good faith and reasonable belief, based upon the known circumstances, that entry into the motor vehicle is necessary because the vulnerable person or domestic animal is in imminent danger of suffering harm.

(c) Ensures that law enforcement is notified before entering the motor vehicle or immediately thereafter.

(d) Uses no more force to enter the motor vehicle and remove the vulnerable person or domestic animal than is necessary.

(e) Remains with the vulnerable person or domestic animal in a safe location, in reasonable proximity to the motor vehicle, until law enforcement or other first responder arrives.

(3) APPLICABILITY.—This section does not limit or expand



618588

any immunity provided under s. 768.13 for the care or treatment
of the vulnerable person or domestic animal.

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

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to unattended persons and animals in
motor vehicles; creating s. 768.139, F.S.; providing
definitions; providing immunity from civil liability
for entry into a motor vehicle to remove a person or
animal under certain circumstances; providing for
applicability; providing an effective date.

By Senator Benacquisto

30-00446-16

2016308__

A bill to be entitled

An act relating to persons or domestic animals unattended in motor vehicles; amending s. 768.13, F.S.; providing immunity from civil liability for forcible entry into a motor vehicle to remove an elderly person, disabled adult, minor, or domestic animal in certain circumstances; providing a definition; providing an effective date.

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

Section 1. Subsection (4) is added to section 768.13, Florida Statutes, to read:

768.13 Good Samaritan Act; immunity from civil liability.—

(4) (a) A person is immune from civil liability for any damage resulting from the forcible entry of a motor vehicle for the purpose of removing an elderly person or a disabled adult, as those terms are defined in s. 825.101, a minor, or a domestic animal from the vehicle if the person:

1. Determines that the vehicle is locked or there is otherwise no reasonable method for the elderly person, disabled adult, minor, or domestic animal to exit the vehicle.

2. Has a good faith belief that forcible entry into the vehicle is necessary because the elderly person, disabled adult, minor, or domestic animal is in imminent danger of suffering harm if not immediately removed from the vehicle and, based upon the circumstances known to the person at the time, the belief is a reasonable one.

3. Contacts a local law enforcement agency, fire

Page 1 of 2

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

30-00446-16

2016308__

department, or 911 operator before forcibly entering the vehicle.

4. Remains with the elderly person, disabled adult, minor, or domestic animal in a safe location but reasonably close to the vehicle, until a law enforcement officer, firefighter, or other first responder arrives.

5. Uses no more force to enter the vehicle and remove the elderly person, disabled adult, minor, or domestic animal from the vehicle than necessary under the circumstances.

(b) As used in this subsection, the term "domestic animal" means a dog, cat, or other animal that is domesticated and kept as a household pet, but does not include livestock or other farm animals.

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

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Chair*
Appropriations, *Vice Chair*
Appropriations Subcommittee on Health
and Human Services
Education Pre-K-12
Higher Education
Judiciary
Rules

SENATOR LIZBETH BENACQUISTO

30th District

JOINT COMMITTEE:

Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

October 13, 2015

The Honorable Greg Evers
Senate Criminal Justice, Chair
308 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 308- Relating to Persons or Animals in a Vehicle

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to agenda SB 308, Relating to Persons or Animals in a Vehicle, for a public hearing at your earliest convenience.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Lizbeth Benacquisto".

Lizbeth Benacquisto
Senate District 30

Cc: Amanda Cannon

A large handwritten checkmark.

REPLY TO:

- ☐ 2310 First Street, Suite 305, Fort Myers, Florida 33901 (239) 338-2570
- ☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

11/17/15

Meeting Date

308

Bill Number (if applicable)

Topic Persons or Animals Unattended Vehicles

Amendment Barcode (if applicable)

Name Sheriff Bill Prummell

Job Title Sheriff of Charlotte County

Address 2716 Mahan Dr

Phone 850-877-2165

Street

Tallahassee

FL

32308

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

11/17/15
Meeting Date

308
Bill Number (if applicable)

Topic Persons in Unattended Motor Vehicles

Amendment Barcode (if applicable)

Name Rocco Salvatori

Job Title Firefighter

Address 345 W Madison St
Street

Phone 941-724-5914

Tallahassee
City

FL
State

33201
Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Professional Firefighters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 380

INTRODUCER: Senator Abruzzo

SUBJECT: Violation of an Injunction for Protection

DATE: November 16, 2015 REVISED: 11/17/15

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Sumner	Cannon	CJ	Favorable
2.		ACJ	
3.		FP	

I. Summary:

SB 380 amends ss. 741.31(4), 784.047, and 784.0487(4), F.S., increasing the penalty for third or subsequent violations of an injunction for protection to a third degree felony if a person has two or more prior convictions for the same offense. A third degree felony is punishable by probation or up to a maximum of five years in prison.

The bill defines “conviction” to mean a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

II. Present Situation:

Injunctions for Protection against Specified Acts of Violence

Domestic Violence

Any person who is the victim of domestic violence¹ or who reasonably believes that he or she is in imminent danger of becoming the victim of domestic violence may file a petition for an injunction for protection against domestic violence.² The sworn petition must allege the existence of domestic violence and include specific facts and circumstances upon which relief is sought.³ A hearing must be set at the earliest possible time after a petition is filed and the respondent must be personally served with a copy of the petition.⁴ At the hearing, specified injunctive relief may be granted if the court finds that the petitioner is:

- The victim of domestic violence; or

¹ Section 741.28, F.S., defines “domestic violence” as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

² Section 741.30(1), F.S.

³ Section 741.30(3), F.S.

⁴ Section 741.30(4), F.S.

- Has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence.⁵

If it appears to the court that an immediate and present danger of domestic violence exists when the petition is filed, the court may grant a temporary injunction ex parte.⁶ Temporary injunctions are only effective for a fixed period that cannot exceed 15 days.⁷ The hearing on the petition must be set for a date on or before the date when the temporary injunction expires.⁸

Repeat, Dating, and Sexual Violence

Section 784.046, F.S., governs the issuance of injunctions against repeat violence, dating violence, and sexual violence. This statute largely parallels the provisions discussed above regarding domestic violence injunctions. Section 784.046(1)(b)(a), F.S., defines “repeat violence” to mean two incidents of violence or stalking committed by the Respondent, one of which must have been within six months of the filing of the petition, which are directed against the petitioner or the petitioner’s immediate family member. Section 784.046(1)(a), F.S., defines “violence” to mean any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death, by a person against any other person.

Section 784.046(1)(d), F.S., defines “dating violence” to mean violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization. The existence of such a relationship is determined by considering the following factors:

- A dating relationship must have existed within the past six months;
- The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
- The persons involved in the relationship must have been involved over time and on a continuous basis during the course of the relationship.

Section 784.046(1)(c), F.S., defines “sexual violence” to mean any one incident of:

- Sexual battery;
- A lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age;
- Luring or enticing a child;
- Sexual performance by a child; or
- Any other forcible felony wherein a sexual act is committed or attempted.

⁵ Either party may move the court to modify or dissolve an injunction at any time. s. 741.30(6)(c) and (10), F.S.

⁶ Pursuant to s. 741.30(5), F.S., the court may grant such relief as it deems proper, including an injunction restraining the respondent from committing any acts of domestic violence, awarding to the petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner, and providing the petitioner a temporary parenting plan.

⁷ Section 741.30(5)(c), F.S.

⁸ Pursuant to s. 741.30(5)(c), F.S., the court may grant a continuance of the hearing for good cause, which may include obtaining service of process. A temporary injunction must be extended, if necessary, during any period of continuance.

For purposes of this definition, it does not matter whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.

Stalking and Cyberstalking

Section 784.0485, F.S., governs the issuance of injunctions against stalking and cyberstalking. This statute largely parallels the provisions discussed above regarding domestic violence injunctions.

Violation of an Injunction

A respondent violates the terms of an injunction for protection against domestic violence, repeat, dating or sexual violence, or stalking or cyberstalking by willfully:

- Refusing to vacate the dwelling that the parties share;⁹
- Going to, or is within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
- Committing an act of domestic violence against the petitioner;
- Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner;
- Telephoning, contacting, or otherwise communicating with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party;
- Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
- Defacing or destroying the petitioner's personal property, including the petitioner's car; or
- Refusing to surrender firearms or ammunition if ordered to do so by the court.¹⁰

A court can enforce a violation of an injunction for protection through civil or criminal contempt proceedings, or the state attorney may prosecute the violation as a first degree misdemeanor.¹¹

Currently, violating an injunction for protection is a first degree misdemeanor, regardless of how many times a person is convicted of this offense.¹²

III. Effect of Proposed Changes:

The bill amends ss. 741.31(4), 784.047 and 784.0487(4) F.S., making the penalty for an offense of violating an injunction for protection a third degree felony if a person has two or more prior convictions for the same offense.

The bill defines "conviction" to mean a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

⁹ This provision does not apply to injunctions for protection against stalking or cyberstalking. s. 784.0487, F.S.

¹⁰ Sections 741.31(4)(a), 784.047, and 784.0487, F.S.

¹¹ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. See ss. 775.082, and 775.083, F.S.

¹² Section 741.30, F.S.

The bill provides an effective date of October 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:

The Criminal Justice Impact Conference met in October 2015, and gave a recommended estimate of positive indeterminate. FDLE reported that in FY 14-15, there were 190 guilty/convicted counts and 6 adjudication withheld counts for repeat offenders violating s. 741.31, F.S. There were 12 guilty/convicted counts and 1 adjudication withheld count for repeat offenders violating s. 784.047, F.S. There was 1 guilty/convicted count and 0 adjudication withheld counts for repeat offenders violating s. 784.0487, F.S. It is unknown what number of these repeat offenses were third or subsequent violations. In FY 14-15, the incarceration rate for unranked 3rd degree felonies was 9.9 percent.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 741.31, 784.047, and 784.0487.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Abruzzo

25-00301A-16

2016380__

1 A bill to be entitled
 2 An act relating to violation of an injunction for
 3 protection; amending ss. 741.31, 784.047, and
 4 784.0487, F.S.; providing enhanced criminal penalties
 5 for a third or subsequent violation of an injunction
 6 for protection against specified acts of violence or a
 7 foreign protection order issued under specified
 8 provisions; providing an effective date.
 9
 10 Be It Enacted by the Legislature of the State of Florida:
 11
 12 Section 1. Subsection (4) of section 741.31, Florida
 13 Statutes, is amended to read:
 14 741.31 Violation of an injunction for protection against
 15 domestic violence.—
 16 (4) (a) A person who willfully violates an injunction for
 17 protection against domestic violence issued pursuant to s.
 18 741.30, or a foreign protection order accorded full faith and
 19 credit pursuant to s. 741.315, by:
 20 1. Refusing to vacate the dwelling that the parties share;
 21 2. Going to, or being within 500 feet of, the petitioner's
 22 residence, school, place of employment, or a specified place
 23 frequented regularly by the petitioner and any named family or
 24 household member;
 25 3. Committing an act of domestic violence against the
 26 petitioner;
 27 4. Committing any other violation of the injunction through
 28 an intentional unlawful threat, word, or act to do violence to
 29 the petitioner;

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2016380__

30 5. Telephoning, contacting, or otherwise communicating with
 31 the petitioner directly or indirectly, unless the injunction
 32 specifically allows indirect contact through a third party;
 33 6. Knowingly and intentionally coming within 100 feet of
 34 the petitioner's motor vehicle, whether or not that vehicle is
 35 occupied;
 36 7. Defacing or destroying the petitioner's personal
 37 property, including the petitioner's motor vehicle; or
 38 8. Refusing to surrender firearms or ammunition if ordered
 39 to do so by the court
 40
 41 commits a misdemeanor of the first degree, punishable as
 42 provided in s. 775.082 or s. 775.083, except as provided in
 43 paragraph (c).
 44 (b)1. It is a violation of s. 790.233, and a misdemeanor of
 45 the first degree, punishable as provided in s. 775.082 or s.
 46 775.083, for a person to violate a final injunction for
 47 protection against domestic violence by having in his or her
 48 care, custody, possession, or control any firearm or ammunition.
 49 2. It is the intent of the Legislature that the
 50 disabilities regarding possession of firearms and ammunition are
 51 consistent with federal law. Accordingly, this paragraph shall
 52 not apply to a state or local officer as defined in s.
 53 943.10(14), holding an active certification, who receives or
 54 possesses a firearm or ammunition for use in performing official
 55 duties on behalf of the officer's employing agency, unless
 56 otherwise prohibited by the employing agency.
 57 (c) A person who has two or more prior convictions for
 58 violation of an injunction and who commits any third or

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2016380

subsequent violation commits a felony of the third degree,
punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
For purposes of this paragraph, the term "conviction" means a
determination of guilt that is the result of a plea or a trial,
regardless of whether adjudication is withheld or a plea of nolo
contendere is entered.

Section 2. Section 784.047, Florida Statutes, is amended to
read:

784.047 Penalties for violating protective injunction
against violators.—

(1) A person who willfully violates an injunction for
protection against repeat violence, sexual violence, or dating
violence, issued pursuant to s. 784.046, or a foreign protection
order accorded full faith and credit pursuant to s. 741.315 by:

(a) ~~(1)~~ Refusing to vacate the dwelling that the parties
share;

(b) ~~(2)~~ Going to, or being within 500 feet of, the
petitioner's residence, school, place of employment, or a
specified place frequented regularly by the petitioner and any
named family or household member;

(c) ~~(3)~~ Committing an act of repeat violence, sexual
violence, or dating violence against the petitioner;

(d) ~~(4)~~ Committing any other violation of the injunction
through an intentional unlawful threat, word, or act to do
violence to the petitioner;

(e) ~~(5)~~ Telephoning, contacting, or otherwise communicating
with the petitioner directly or indirectly, unless the
injunction specifically allows indirect contact through a third
party;

25-00301A-16

2016380

(f) ~~(6)~~ Knowingly and intentionally coming within 100 feet
of the petitioner's motor vehicle, whether or not that vehicle
is occupied;

(g) ~~(7)~~ Defacing or destroying the petitioner's personal
property, including the petitioner's motor vehicle; or

(h) ~~(8)~~ Refusing to surrender firearms or ammunition if
ordered to do so by the court,

commits a misdemeanor of the first degree, punishable as
provided in s. 775.082 or s. 775.083, except as provided in
subsection (2).

(2) A person who has two or more prior convictions for
violation of an injunction and who commits any third or
subsequent violation commits a felony of the third degree,
punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
For purposes of this subsection, the term "conviction" means a
determination of guilt that is the result of a plea or a trial,
regardless of whether adjudication is withheld or a plea of nolo
contendere is entered.

Section 3. Subsection (4) of section 784.0487, Florida
Statutes, is amended to read:

784.0487 Violation of an injunction for protection against
stalking or cyberstalking.—

(4) (a) A person who willfully violates an injunction for
protection against stalking or cyberstalking issued pursuant to
s. 784.0485, or a foreign protection order accorded full faith
and credit pursuant to s. 741.315, by:

1. ~~(a)~~ Going to, or being within 500 feet of, the
petitioner's residence, school, place of employment, or a

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specified place frequented regularly by the petitioner and any named family members or individuals closely associated with the petitioner;

~~2.(b)~~ Committing an act of stalking against the petitioner;
~~3.(c)~~ Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner;

~~4.(d)~~ Telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly, unless the injunction specifically allows indirect contact through a third party;

~~5.(e)~~ Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;

~~6.(f)~~ Defacing or destroying the petitioner's personal property, including the petitioner's motor vehicle; or

~~7.(g)~~ Refusing to surrender firearms or ammunition if ordered to do so by the court,

commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, except as provided in paragraph (b).

(b) A person who has two or more prior convictions for violation of an injunction and who commits any third or subsequent violation commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For purposes of this paragraph, the term "conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo

25-00301A-16

2016380__

contendere is entered.

Section 4. This act shall take effect October 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Finance and Tax, *Vice Chair*
Appropriations Subcommittee on Health and Human
Services
Communications, Energy, and Public Utilities
Community Affairs
Fiscal Policy
Regulated Industries

JOINT COMMITTEE:

Joint Legislative Auditing Committee, *Chair*

SENATOR JOSEPH ABRUZZO

Minority Whip
25th District

October 6th, 2015

The Honorable Greg Evers

316 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

A large handwritten checkmark is drawn in the right margin of the letter.

Dear Chairman Evers:

I respectfully request that Senate Bill 380, Violation of Injunction for Protection, be considered for placement on the Criminal Justice Committee agenda. This piece of legislation provides enhanced criminal penalties for a third or subsequent violation of an injunction for protection against domestic violence, stalking or cyberstalking, and repeat violence.

Thank you in advance for your consideration. Please feel free to contact me if I can provide you with any additional information.

Sincerely,

A handwritten signature in cursive script, appearing to read "JA", is written over the signature line.

Joseph Abruzzo

Cc: Amanda Cannon, Staff Director

REPLY TO:

- ☐ 12300 Forest Hill Boulevard, Suite 200, Wellington, Florida 33414-5785 (561) 791-4774 FAX: (888) 284-6495
- ☐ 110 Dr. Martin Luther King, Jr. Boulevard, Belle Glade, Florida 33430-3900 (561) 829-1410
- ☐ 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

11-13-2015
Meeting Date

380
308
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St. Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

380
Bill Number (if applicable) _____

Topic Injunction Enhancement

Amendment Barcode (if applicable) _____

Name Jeanne D. Howard

Job Title Asst State Mty

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/17/15

Meeting Date

380

Bill Number (if applicable)

Topic Domestic Violence Injunctions

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Public Defender, 2nd Circuit

Address 301 S. Monroe St. #401

Phone 850 606-1010

Street

Tallahassee

FL

32308

City

State

Zip

Email nancy.daniels@flpd.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

11/16/15

Meeting Date

380

Bill Number (if applicable)

Topic Violation of an Injunction for Protection

Amendment Barcode (if applicable)

Name Sheriff Gordon Smith

Job Title Sheriff of Bradford County

Address 2716 Mahan

Phone 850-877-2165

Street

Tallahassee

FL

32308

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate
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 440

INTRODUCER: Criminal Justice Committee and Senator Abruzzo

SUBJECT: Care for Retired Law Enforcement Dogs

DATE: November 18, 2015 REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 440 creates the Care for Retired Law Enforcement Dogs Program. The program will provide reimbursement for up to \$1,500 of annual veterinary costs associated with caring for a retired law enforcement dog for the former handler or adopter who incurs the costs. The program will be administered and managed by a not-for-profit corporation in a contractual arrangement with FDLE.

The bill provides that for Fiscal Year 2016-2017, and each fiscal year thereafter, recurring funds in the amount of \$300,000 is appropriated from General Revenue for the purpose of implementing the program.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

Law enforcement dogs have become an integral part of many law enforcement efforts statewide, including suspect apprehension through tracking and searching, evidence location, drug and bomb detection, and search and rescue operations. Law enforcement agencies agree that the use

of law enforcement dogs is an extremely cost-effective means for crime control and that these dogs possess skills and abilities that frequently exceed that of existing technology.¹

Just one example of a law enforcement dog's invaluable service is Koda, who worked with the Leon County Sheriff's Office. K9 Koda was shot and killed in January 2013 as he attempted to immobilize a subject following a vehicle pursuit. Deputies pursued a vehicle several blocks until the vehicle crashed into a ditch. The subject continued to flee on foot and then opened fire on K9 Koda and the deputies. Two deputies returned fire and wounded the subject before taking him into custody. It was later determined that the subject was wanted on warrants for attempted first degree murder, aggravated battery with a deadly weapon, and discharging a firearm from a vehicle.²

III. Effect of Proposed Changes:

The bill creates the Care for Retired Law Enforcement Dogs Program (program) within the Florida Department of Law Enforcement (department). The program will provide up to \$1,500 annually to any former handler or adopter of a retired law enforcement dog for reimbursement of veterinary care for the dog if the agency from which the dog retired provides verification of the dog's service. The former handler or adopter must submit a valid invoice from a veterinarian for care provided in Florida and proof of payment for reimbursement to occur. When the annual funding for the program is depleted, reimbursements must be discontinued for the remainder of the year.

"Retired law enforcement dog" is defined by the bill as a dog that has received certification in obedience and apprehension work from a certifying organization, such as the National Police Canine Association.³ The dog must have been in the service of or employed by a law enforcement agency in this state for the purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders.

The bill defines "law enforcement agency" as a state or local public agency that has primary responsibility for the prevention and detection of crime or the enforcement of the penal, traffic, highway, regulatory, game, immigration, postal, customs, or controlled substance laws.

The bill adopts the term "veterinarian" from s. 474.202, F.S. Subsection (11) of s. 474.202, F.S., defines "veterinarian" as a health care practitioner who is licensed to engage in the practice of veterinary medicine in Florida under the authority of ch. 474, F.S.⁴ The bill defines "veterinary

¹ <http://brevardsheriff.com/home/commands-services/operational-services/k-9-unit> (last visited March 17, 2015); www.soflretiredk9fund.com and <http://www.wsvn.com/story/27320793/student-launches-retired-k-9-donation-fund> (last visited November 4, 2015).

² Read more: <http://www.odmp.org/k9/1497-k9-koda#ixzz2vrveuHYu>

³ www.npca.net (last visited November 4, 2015). The National Police Canine Association is one of many such organizations in the country, including The Florida Law Enforcement Canine Association (FLECA) which is a 501(c)(3) non-profit organization dedicated to the training and certification of Florida's Law Enforcement Canine Teams according to the website, <http://www.fleca9.com/>. Additionally, the department provides a 400 hour K-9 Team training course and proficiency exam.

⁴ (9) "Practice of veterinary medicine" means diagnosing the medical condition of animals and prescribing, dispensing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease thereof; performing any manual procedure for the diagnosis of or treatment for pregnancy or fertility or infertility of animals; or representing oneself by the use of titles or words, or undertaking, offering,

care” as the practice of veterinary medicine as defined in s. 474.202, F.S., by a veterinarian. The definition of “veterinary care” includes:

- Annual wellness examinations,
- Vaccines,
- Internal and external parasite prevention treatments,
- Testing and treatment of illnesses and diseases,
- Medications,
- Emergency care and surgeries,
- Care provided in specialties of veterinary medicine such as veterinary oncology, and
- Euthanasia and cremation services.

The department is directed to contract with a corporation not-for-profit, organized under ch. 617, F.S., to administer and manage the program.⁵ The corporation will be selected through a competitive grant award process. The corporation must:

- Be dedicated to the protection and care of retired law enforcement dogs.
- Hold tax-exempt status under the Internal Revenue code as a s. 501(c)(3) organization.⁶
- Have held tax-exempt status for at least five years.
- Agree to be subject to review and audit at the discretion of the Auditor General to ensure accurate accounting and disbursement of state funds.
- Demonstrate the ability to effectively and efficiently disseminate information and assist former handlers and adopters of retired law enforcement dogs in complying with the bill.
- Receive administrative fees, including salaries and benefits, not to exceed 10 percent of appropriated funds.

The bill contains legislative findings related to the value of law enforcement dogs to the residents of Florida.

The department is given rulemaking authority to implement the provisions in the bill.

The bill provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

or holding oneself out, as performing any of these functions. The term includes the determination of the health, fitness, or soundness of an animal.

⁵ Section 617.01401(5), F.S., defines “corporation not for profit” to be a corporation no part of the income or profit of which is distributable to its members, directors, or officers, except as otherwise provided under this chapter.

⁶ See 26 U.S.C.A. s. 501(c)(3).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that the retired K9's former handler or adopter is reimbursed for the dog's on-going veterinary care, the bill will have a positive financial impact for those persons.

C. Government Sector Impact:

The bill provides that for Fiscal Year 2016-2017, and each fiscal year thereafter, recurring funds in the amount of \$300,000 is appropriated from General Revenue for the purpose of implementing the program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 943.69 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

CS by Criminal Justice on November 17, 2015:

- Contains a new definition of “veterinary care.”
- Requires that the retired law enforcement dog's former handler or adopter must show proof of payment of the veterinary services for which he or she seeks reimbursement.
- Specifies that the selection process for the corporation not-for-profit to administer the program will be accomplished through a competitive grant award process.

B. Amendments:

None.



915720

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
11/17/2015	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 45 - 110
and insert:

(d) "Veterinary care" means the practice of veterinary medicine as defined in s. 474.202 by a veterinarian. The term includes annual wellness examinations, vaccines, internal and external parasite prevention treatments, testing and treatment of illnesses and diseases, medications, emergency care and surgeries, specialty care such as veterinary oncology,



915720

euthanasia, and cremation.

(3) LEGISLATIVE FINDINGS.—The Legislature finds that:

(a) Law enforcement dogs have become an integral part of many law enforcement efforts statewide, including the apprehension of suspects through tracking and searching, evidence location, drug and bomb detection, and search and rescue operations;

(b) Law enforcement agencies agree that the use of law enforcement dogs is an extremely cost-effective means of crime control and that these dogs possess skills and abilities that frequently exceed those of existing technology;

(c) The service of law enforcement dogs is often dangerous and can expose them to injury at a rate higher than that of nonservice dogs; and

(d) Law enforcement dogs provide significant contributions to the residents of this state.

(4) ESTABLISHMENT OF PROGRAM.—The Care for Retired Law Enforcement Dogs Program is created within the department to provide a stable funding source for veterinary care provided to these dogs.

(5) ADMINISTRATION.—The department shall contract with a corporation not for profit organized under chapter 617 to administer and manage the Care for Retired Law Enforcement Dogs Program. Notwithstanding chapter 287, the department shall select a corporation not for profit through a competitive grant award process which:

(a) Is dedicated to the protection or care of retired law enforcement dogs;

(b) Is exempt from taxation under s. 501(a) of the Internal



915720

Revenue Code as an organization described in s. 501(c)(3) of that code;

(c) Has maintained such tax-exempt status for at least 5 years;

(d) Agrees to be subject to review and audit at the discretion of the Auditor General in order to ensure accurate accounting and disbursement of state funds; and

(e) Demonstrates the ability to effectively and efficiently disseminate information and to assist former handlers and adopters of retired law enforcement dogs in complying with this section.

(6) FUNDING.—

(a) The corporation not for profit shall be the disbursing authority for funds appropriated by the Legislature to the department for the Care for Retired Law Enforcement Dogs Program. These funds shall be disbursed to the former handler or adopter of a retired law enforcement dog upon receipt of:

1. Valid documentation from the law enforcement agency from which the dog retired which verifies that the dog was in the service of or employed by such agency; and

2. A valid invoice from a veterinarian for veterinary care provided in this state to a retired law enforcement dog and documentation establishing payment of the invoice by the former handler or adopter of a retired law enforcement dog.

(b) Annual disbursements to a former handler or adopter to reimburse him or her for the cost of veterinary care provided to a retired law enforcement dog may not exceed \$1,500 per dog. A former handler or adopter of a retired law enforcement dog may not accumulate unused funds from a current year for use in a



915720

69 future year.
70 (c) A former handler or adopter of a retired law
71 enforcement dog who seeks reimbursement for veterinary care

By Senator Abruzzo

25-00507-16

2016440__

A bill to be entitled

An act relating to care for retired law enforcement dogs; creating s. 943.69, F.S.; providing a short title; defining terms; providing legislative findings; creating the Care for Retired Law Enforcement Dogs Program within the Department of Law Enforcement; requiring the department to contract with a corporation not for profit to administer and manage the program; providing requirements for the corporation not for profit; providing requirements for the disbursement of funds for the veterinary care of eligible retired law enforcement dogs; placing an annual cap on the amount of funds available for the care of an eligible retired law enforcement dog; prohibiting a former handler or adopter from receiving reimbursement if funds are depleted for the year for which such reimbursement is sought; providing for administrative fees; requiring the department to adopt rules; providing an appropriation; providing an effective date.

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

Section 1. Section 943.69, Florida Statutes, is created to read:

943.69 Care for Retired Law Enforcement Dogs Program.—

(1) SHORT TITLE.—This section may be cited as the "Care for Retired Law Enforcement Dogs Program Act."

(2) DEFINITIONS.—As used in this section, the term:

Page 1 of 5

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

25-00507-16

2016440__

(a) "Law enforcement agency" means a lawfully established state or local public agency having primary responsibility for the prevention and detection of crime or the enforcement of the penal, traffic, highway, regulatory, game, immigration, postal, customs, or controlled substance laws.

(b) "Retired law enforcement dog" means a dog that was previously in the service of or employed by a law enforcement agency in this state for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders and that received certification in obedience and apprehension work from a certifying organization such as the National Police Canine Association or other certifying organization.

(c) "Veterinarian" has the same meaning as provided in s. 474.202.

(d) "Veterinary care" means a veterinary medical service specified in s. 474.202 which is provided by a veterinarian licensed under chapter 474. The term includes annual wellness examinations, vaccines, internal and external parasite prevention treatments, testing and treatment of illnesses and diseases, medications, emergency care and surgeries, specialty care such as veterinary oncology, euthanasia, and cremation.

(3) LEGISLATIVE FINDINGS.—The Legislature finds that:

(a) Law enforcement dogs have become an integral part of many law enforcement efforts statewide, including the apprehension of suspects through tracking and searching, evidence location, drug and bomb detection, and search and rescue operations;

(b) Law enforcement agencies agree that the use of law

Page 2 of 5

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

25-00507-16

2016440

enforcement dogs is an extremely cost-effective means of crime control and that these dogs possess skills and abilities that frequently exceed those of existing technology;

(c) The service of law enforcement dogs is often dangerous and can expose them to injury at a rate higher than that of nonservice dogs; and

(d) Law enforcement dogs provide significant contributions to the residents of this state.

(4) ESTABLISHMENT OF PROGRAM.—The Care for Retired Law Enforcement Dogs Program is created within the Department of Law Enforcement to provide a stable funding source for veterinary care provided to these dogs.

(5) ADMINISTRATION.—The Department of Law Enforcement shall contract with a corporation not for profit organized under chapter 617 to administer and manage the Care for Retired Law Enforcement Dogs Program. Notwithstanding the competitive sealed bid procedures required under chapter 287, the department shall enter into a contract with a corporation not for profit that:

(a) Is dedicated to the protection or care of retired law enforcement dogs;

(b) Is exempt from taxation under s. 501(a) of the Internal Revenue Code as an organization described in s. 501(c)(3) of that code;

(c) Has maintained such tax-exempt status for at least 5 years;

(d) Agrees to be subject to review and audit at the discretion of the Auditor General in order to ensure accurate accounting and disbursement of state funds; and

(e) Demonstrates the ability to effectively and efficiently

25-00507-16

2016440

disseminate information and to assist former handlers and adopters of retired law enforcement dogs in complying with this section.

(6) FUNDING.—

(a) The corporation not for profit shall be the disbursing authority for funds appropriated by the Legislature to the department for the Care for Retired Law Enforcement Dogs Program. These funds shall be disbursed upon receipt of:

1. Valid documentation from the law enforcement agency from which the dog retired which verifies that the dog was in the service of or employed by such agency; and

2. A valid invoice from a veterinarian for veterinary care provided in this state to a retired law enforcement dog which is submitted by the former handler or adopter of a retired law enforcement dog.

(b) Annual disbursements to a former handler or adopter to reimburse him or her for the cost of care provided to a retired law enforcement dog may not exceed \$1,500 per dog. A former handler or adopter of a retired law enforcement dog may not accumulate unused funds from a current year for use in a future year.

(c) A former handler or adopter of a retired law enforcement dog who seeks reimbursement for veterinary services may not receive reimbursement if funds appropriated for the Care for Retired Law Enforcement Dogs Program are depleted in the year for which the reimbursement is sought.

(7) ADMINISTRATIVE FEES.—The corporation not for profit must receive administrative fees, including salaries and benefits, of up to 10 percent of appropriated funds.

25-00507-16

2016440__

117 (8) RULEMAKING AUTHORITY.-The department shall adopt rules
118 pursuant to ss. 120.536(1) and 120.54 to implement this section.

119 Section 2. For the 2016-2017 fiscal year, and each fiscal
120 year thereafter, the sum of \$300,000 in recurring funds is
121 appropriated from the General Revenue Fund to the Department of
122 Law Enforcement for the purpose of implementing the Care for
123 Retired Law Enforcement Dogs Program.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Finance and Tax, *Vice Chair*
Appropriations Subcommittee on Health and Human
Services
Communications, Energy, and Public Utilities
Community Affairs
Fiscal Policy
Regulated Industries

JOINT COMMITTEE:

Joint Legislative Auditing Committee, *Chair*

SENATOR JOSEPH ABRUZZO

Minority Whip
25th District

October 19th, 2015

The Honorable Greg Evers
308 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Evers:

I respectfully request that Senate Bill 440, Care for Retired Law Enforcement Dogs, be considered for placement on the Criminal Justice committee agenda. This piece of legislation will create the "Care for Retired Law Enforcement Dogs Program" which will provide a stable funding source for handlers of retired law enforcement dogs as a means of providing for their veterinary services. This program will be administered through the Florida Department of Law Enforcement (FDLE).

Please feel free to notify me if I can provide you with any additional information. Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "JA", written over a horizontal line.

Joseph Abruzzo

Cc: Amanda Cannon, *Staff Director*

REPLY TO:

- ☐ 12300 Forest Hill Boulevard, Suite 200, Wellington, Florida 33414-5785 (561) 791-4774 FAX: (888) 284-6495
- ☐ 110 Dr. Martin Luther King, Jr. Boulevard, Belle Glade, Florida 33430-3900 (561) 829-1410
- ☐ 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/17/15

Meeting Date

440

Bill Number (if applicable)

Topic Retired K-9 units Relating to care for
RETIRED LE DOGS.

Amendment Barcode (if applicable)

Name GARY BRADFORD

Job Title Government Relations

Address 300 E. Broadway St

Phone 800-733-3722

Street

Tallahassee

City

FL

State

32301

Zip

Email GARY@FLPBA.ORG

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA PBA

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)

11/17/15

Meeting Date

440

Bill Number (if applicable)

Topic Care for Retirement Law Enforcement Dogs

Amendment Barcode (if applicable)

Name Sheriff Bobby Shultz

Job Title Sheriff of Gilchrist County

Address 2716 Mahan

Street

Phone 850-877-2165

Tallahassee

City

FL

State

32308

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

10/17/2015

Meeting Date

440

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-7291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 498

INTRODUCER: Senator Sobel

SUBJECT: Repeal of a Prohibition on Cohabitation

DATE: November 16, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Cannon	CJ	Favorable
2.			JU	
3.			RC	

I. Summary:

SB 498 repeals the provision in s. 798.02, F.S., which makes it a second degree misdemeanor for any unmarried man and woman, lewdly and lasciviously to associate and cohabit together. The bill takes effect upon becoming a law.

II. Present Situation:

Cohabitation Law in Florida

Florida law makes it a second degree misdemeanor for any unmarried man and woman to lewdly and lasciviously associate and cohabit together, or if married or unmarried engage in open and gross lewdness and lascivious behavior. This law, originally enacted in 1868, made the crime of cohabitation punishable by up to 2 years in prison, up to 1 year in the county jail, or up to a \$300 fine. Somewhat similarly, s. 800.02, F.S., makes it a second degree misdemeanor for a person to engage in any unnatural and lascivious act with another person.

Cohabitation Law in other States

According to the National Conference of State Legislatures only three states, Florida, Michigan, and Mississippi, make cohabitation illegal. Eight states that once made cohabitation illegal have repealed those statutes, one as recently as 2013.¹

¹ E-mail from staff of the National Conference of State Legislatures (November 6, 2015) (on file with the Senate Committee on Criminal Justice).

States with Cohabitation Laws other than Florida

State	Statute	Language
Michigan	MCLA § 750.335	Any man or woman, not being married to each other, who shall lewdly and lasciviously associate and cohabit together, and any man or woman, married or unmarried, who shall be guilty of open and gross lewdness and lascivious behavior, shall be guilty of a misdemeanor, punishable by imprisonment in the county jail not more than 1 year, or by fine of not more than \$1,000.00. No prosecution shall be commenced under this section after 1 year from the time of committing the offense.
Mississippi	97-29-1	If any man and woman shall unlawfully cohabit, whether in adultery or fornication, they shall be fined in any sum not more than five hundred dollars each, and imprisoned in the county jail not more than six months; and it shall not be necessary, to constitute the offense, that the parties shall dwell together publicly as husband and wife, but it may be proved by circumstances which show habitual sexual intercourse.

The following states have repealed laws which made cohabitation illegal: Arizona, Idaho, Maine, New Mexico, North Carolina, North Dakota, Virginia, and West Virginia.

III. Effect of Proposed Changes:

The bill repeals the provision in s. 798.02, F.S., which makes it a second degree misdemeanor for any unmarried man and woman, lewdly and lasciviously to associate and cohabit together. The bill takes effect 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:

In 2006, the Superior Court of Pender County, North Carolina held that the State's fornication law² which prohibited an unmarried man and a woman to cohabit, violated the plaintiff's substantive due process right to liberty as explained in the U.S. Supreme

² Section 14-184 NCGSA provided in part that "(I)f any man and woman, not being married to each other, shall lewdly and lasciviously associate, bed and cohabit together, shall be guilty of a Class 2 misdemeanor."

Court case in *Lawrence v. Texas*.³ Justice Kennedy quoting Justice Stevens' controlling opinion in *Bowers v. Hardwick*⁴ stated:

(I)ndividual decisions by married persons, concerning the intimacies of their physical relationship, even when not intended to produce offspring, are a form of "liberty" protected by the Due Process Clause of the Fourteenth Amendment. Moreover, this protection extends to intimate choices by unmarried as well as married persons.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 798.02 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

³ 123 S. Ct. 2472 (2003).

⁴ 478 U.S. 186 (1986).

By Senator Sobel

33-00401A-16

2016498__

A bill to be entitled

An act relating to the repeal of a prohibition on cohabitation; amending s. 798.02, F.S.; deleting provisions prohibiting cohabitation by unmarried men and women; providing an effective date.

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

Section 1. Section 798.02, Florida Statutes, is amended to read:

798.02 Lewd and lascivious behavior. ~~If any man and woman, not being married to each other, lewdly and lasciviously associate and cohabit together, or~~ If any man or woman, married or unmarried, engages in open and gross lewdness and lascivious behavior, they shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Children, Families, and Elder Affairs, *Chair*
Health Policy, *Vice Chair*
Agriculture
Education Pre-K-12
Appropriations Subcommittee on Health
and Human Services

SENATOR ELEANOR SOBEL

33rd District

October 27, 2015

Senator Greg Evers
Chair of Committee on Criminal Justice
308 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399

Dear Chair Evers,

This letter is to request that **SB 498** relating to **the Repeal of a Prohibition on Cohabitation** be placed on the agenda of the next scheduled meeting of the Criminal Justice Committee.

Thank you for your consideration of this request.

Respectfully,



Eleanor Sobel
State Senator, 33rd District

Cc: Amanda Cannon, Sue Arnold

REPLY TO:

- ☐ The "Old" Library, First Floor, 2600 Hollywood Blvd., Hollywood, Florida 33020 (954) 924-3693 FAX: (954) 924-3695
- ☐ 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

November 16, 2015

Meeting Date

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

498

Bill Number (if applicable)

Topic Repeal Cohabitation

Amendment Barcode (if applicable)

Name Honorable Nancy Daniels

Job Title Public Defender, 2nd Circuit

Address 301 South Monroe Street, Suite 401

Phone 850.606.1000

Street

Tallahassee

Florida

32301

Email nancy.daniels@flpda2.com

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.

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 618

INTRODUCER: Criminal Justice Committee and Senator Evers

SUBJECT: Prearrest Diversion Programs

DATE: November 18, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/CS
2.			CA	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 618 encourages local communities and public or private educational institutions to implement a prearrest diversion program that affords certain adults who fulfill specified intervention and community service obligations the opportunity to avoid an arrest record. The program shall allow a law enforcement officer, at the officer's sole discretion, to issue a civil citation to an adult who commits an eligible misdemeanor offense (as determined by the program), admits to committing the offense, and does not have a prior arrest as an adult. An adult is ineligible for a civil citation if the misdemeanor involves a victim and the victim objects to the issuance of the citation.

An adult who agrees to a civil citation must successfully complete a program that includes interventions and community service hours. If the adult successfully completes the program, an arrest record may not be associated with the offense. If the adult does not successfully complete the program, the law enforcement agency that issued the citation shall criminally charge the adult for the original offense and refer the case to the state attorney to determine if prosecution is appropriate.

II. Present Situation:

"...[S]tates and local jurisdictions have been pursuing justice practices that fall under the broad heading of 'diversion.' In its most general usage, diversion means that an individual is placed on a justice track that is less restrictive and affords more opportunities for rehabilitation and

restoration. In its most pure form, diversion may result in the avoidance or dropping of a charge and dismissal of a case completely. At either end of the diversion spectrum, the overriding goals are the same – to maximize the opportunity for success and minimize the likelihood of recidivism.”¹

One example of diversion is deferred prosecution, in which a state attorney enters into what is known as a “deferred prosecution agreement” with a defendant. This agreement requires the defendant to waive the right to speedy trial in order to allow time to complete the terms of the agreement. Often the terms of the agreement are tailored to the specific offense committed and require community service work, restitution, costs, and other requirements.² Upon completion of the terms of the agreement, the pending criminal case is disposed of by the state attorney.

Another example of diversion is prearrest diversion. One form of prearrest diversion is a civil citation program for juveniles or adults. A law enforcement officer may issue a civil citation to a juvenile or adult who commits an eligible misdemeanor offense (as determined by the prearrest diversion program), meets other eligibility requirements, and agrees to participate in and successfully complete a program (interventions and sanctions, including community services hours). If the juvenile or adult successfully completes the program, he or she does not have an arrest or arrest record.

Juvenile civil citation programs are in operation throughout the state and are established by Florida law.³ It appears that Leon County currently operates the only adult civil citation program. Florida law does not specifically address adult civil citation programs or other prearrest diversion programs for adults.

Juvenile Civil Citation

Section 985.12, F.S.,⁴ establishes “a juvenile civil citation process for the purpose of providing an efficient and innovative alternative to custody by the Department of Juvenile Justice for children who commit nonserious delinquent acts and to ensure swift and appropriate consequences.” This section requires the Department of Juvenile Justice (DJJ) to “encourage and assist in the implementation and improvement of civil citation programs or other similar diversion programs around the state.” These programs are discretionary. They exist at the local level with the concurrence of the chief judge of the circuit, state attorney, public defender, and the head of each local law enforcement agency involved. Civil citation programs require the youth to complete no more than 50 community service hours, and may require participation in intervention services appropriate to the identified needs of the youth, including family counseling, urinalysis monitoring, and substance abuse and mental health treatment services.

¹ *No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives* (2013), The Center for Health and Justice at TASC, available at http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report_web.pdf (last visited on November 9, 2015).

² For example, state attorneys are specifically authorized by law to establish worthless check case diversion programs. Restitution and costs are paid by the worthless check defendant through these programs and the defendant is required to attend a program designed to assist and educate them on the issue of worthless checks. Section 832.08, F.S.

³ Section 985.12, F.S.

⁴ All information regarding juvenile civil citations is from this source.

A law enforcement officer is authorized to issue a civil citation to a youth who admits having committed a misdemeanor. Upon issuance of a citation, the local law enforcement agencies are required to send a copy of the citation to the DJJ so that the department can enter the appropriate information into the Juvenile Justice Information System. A copy must also be sent by law enforcement to the sheriff, state attorney, the DJJ's intake office, the community service performance monitor, the youth's parent, and the victim. At the time a civil citation is issued, the law enforcement officer must advise the youth that he or she has the option of refusing the civil citation and of being referred to the DJJ. The youth may refuse the civil citation at any time before completion of the work assignment.

The youth is required to report to a community service performance monitor within seven working days after the civil citation has been issued, and must also complete at least five community service hours per week. The monitor reports to the DJJ information regarding the youth's service hour completion and the expected completion date. If the youth fails to timely report or complete a work assignment, fails to timely comply with assigned intervention services, or commits a subsequent misdemeanor, the law enforcement officer must issue a report to the DJJ alleging that the youth has committed a delinquent act, thereby initiating formal judicial processing.

Adult Civil Citation

The American Bar Association has observed: "Although Florida's civil citation programs are focused on juveniles, the guidelines and principles inherent in the programs are generally applicable to adults, as well."⁵ As previously noted, it appears that Leon County currently operates the only adult civil citation program ("ACCP"). This program was created in March of 2013. Stakeholders in the creation of the program included: the chief judge, state attorney, and public defender for the Second Judicial Circuit; the Leon County Commission; the Leon County Sheriff's Office (LCSO); the Tallahassee City Commission; the Tallahassee Police Department (TPD); and DISC Village, Inc.⁶ (the social services provider).

The current program is a partnership⁷ involving DISC Village, Inc., TPD, LCSO, and the Tallahassee Community College Police Department, which recently joined the partnership. The Florida A&M University Police Department will also be joining the partnership.

⁵ *State Policy Implementation Project*, Criminal Justice Section, American Bar Association, available at http://www.americanbar.org/content/dam/aba/administrative/criminal_justice/spip_civilcitations.authcheckdam.pdf (last visited on November 9, 2015).

⁶ DISC Village, Inc., is a non-profit social services provider. DISC Village, Inc., also operates the juvenile assessment center and juvenile civil citation program that serve counties in the Second Judicial Circuit.

⁷ The partnership is pursuant to memorandums of understanding. A steering committee of the partners provides oversight.

The Leon County Adult Civil Citation Process⁸

Once the law enforcement officer has determined there is probable cause to arrest an adult⁹ and has advised the adult of his or her Miranda rights, the officer has the discretion to issue a civil citation if he or she determines the adult meets all of the following criteria:

- The offense is one of the following misdemeanor offenses:
 - Possession of alcohol by a person under 21 years of age;
 - Possession of less than 20 grams of marijuana;
 - Possession of drug paraphernalia;
 - An open house party violation;
 - Selling or giving alcoholic beverages to a minor;
 - Criminal mischief (restitution may not exceed \$50);¹⁰
 - Trespass;
 - Non-domestic battery or assault;
 - Petit theft (restitution may not exceed \$50); or
 - Disorderly conduct.
- The adult must be cooperative and admit that he or she committed the misdemeanor offense.
- The adult must reside within the Second Judicial Circuit.¹¹
- The adult must be a first-time adult offender (no previous arrest as an adult and no previous adult civil citation).¹²

If the officer determines that the adult is eligible to participate in the ACCP and that a civil citation is appropriate, the officer explains to the adult that he or she may participate in the ACCP. Participation in the ACCP is voluntary. If the adult agrees to participate in the ACCP, the officer issues a civil citation. If the adult chooses not to participate in the ACCP, the officer either issues a Notice to Appear (NTA) or transports the adult to the jail for formal booking. Subsequently, the adult may face prosecution if the state attorney determines that prosecution is appropriate.

⁸ Most of the information regarding the adult civil citation process was compiled from information provided by the Civil Citation Network on its website (<http://www.civilcitationnetwork.com/>). “The Civil Citation Network is a non-profit organization created and supported through a private foundation. Its mission is to advocate the use of adult and juvenile civil citations with integrated intervention services.” Frost, Greg. “Adult Civil Citations: A Practical Tool in the Sea of Reform,” *The Police Chief* (September 2015), available at http://www.policechiefmagazine.org/magazine/issues/92015/pdfs/Frost_PoliceChief_September2015.pdf (last visited on November 9, 2015). Additional information came from the following sources: “Leon County Adult Civil Citation Program,” *Crime Watch* (May-July 2014), Leon County Sheriff’s Office, available at http://www.leoncountysos.com/docs/default-source/crime-watch-magazine/2014_cw_spring.pdf?sfvrsn=2 (last visited on November 9, 2015); the Tallahassee Police Department’s General Orders Manual and technical training materials (on file with the Senate Committee on Criminal Justice); and telephonic or e-mail communications between staff of the Senate Committee on Criminal Justice and staff of the Civil Citation Network, the Florida Smart Justice Alliance, and DISC Village, Inc.

⁹ Eighteen years of age or older. There is no age cap.

¹⁰ Restitution may be a sanction or condition of diversion. It is not part of the program fee.

¹¹ The Second Judicial Circuit includes the following counties: Franklin; Gadsden; Jefferson; Leon; Liberty; and Wakulla.

¹² A prior juvenile civil citation does not make the adult ineligible.

The adult who agrees to participate in the ACCP has 7 days to report to the social service provider (DISC Village, Inc.) for intake and assessment.¹³ Based on the results of the assessment and initial drug screening, the provider creates an individualized intervention plan. Generally, the participant must complete the plan within 90 days.¹⁴

The intervention plan includes:

- Counseling sessions (at least three with a behavioral health specialist);
- Cognitive behavioral therapy;
- Motivational interviewing;
- Drug screening;
- At least one screening (and depending on offense assessment, up to three screenings);
- Online intervention modules, which may include drug education, anger management, decision making, and petit theft (associated behaviors and risks);
- Community service hours;¹⁵ and
- A program fee.¹⁶

If the adult successfully completes all sanctions and intervention services, the social services provider notifies the referring law enforcement agency and the case is cleared “exceptionally” and the person does not have an arrest record.

If the participant does not successfully complete the program, the social services provider notifies the referring law enforcement agency. The law enforcement agency contacts the adult and attempts to issue a NTA. If the adult does not comply with arrangements to receive a NTA, an arrest affidavit and warrant are submitted to the court. The case is closed and cleared by the law enforcement agency upon notification of the arrest. Subsequently, the adult may face prosecution if the state attorney determines that prosecution is appropriate.

Information on Leon County Adult Civil Citation Program Participants¹⁷

According to information provided by the Civil Citation Network,¹⁸ since March of 2013, approximately 1,000 adult civil citations have been issued by the Tallahassee Police Department and Leon County Sheriff's Office.

¹³ If there is no communication with the adult within the 7-day period, the case is referred back to the law enforcement agency for further action.

¹⁴ Should individual circumstance create obstacles to completing the program within the 90-day period, (e.g., illness or family emergencies), the case manager can extend the completion deadline by a reasonable period.

¹⁵ The general requirement appears to be that the law enforcement officer assigns 25 hours of community service. The program case manager may impose additional community service hours.

¹⁶ The current program fee is \$350. A flexible payment schedule is available and a payment waiver may be requested. No person is denied services based on inability to pay.

¹⁷ Information regarding ACCP participants comes from data provided by DISC Village, Inc. This data was aggregated by Dr. Albert Kopak, an assistant professor with the Department of Criminology and Criminal Justice, Western Carolina University.

¹⁸ Supplemental information was provided by Greg Frost, President of the Civil Citation Network.

For the time period of March of 2013 to August of 2015, approximately 850 adult civil citations were issued. Most of the citations issued were for petit theft (54 percent).¹⁹

Approximately 80 percent of the ACCP participants successfully completed the program. The successful completion rate for each offense was:

- 93 percent for criminal mischief;
- 90 percent for possession of alcohol by a person under 21 years of age;
- 84 percent for petit theft;
- 80 percent for possession of less than 20 grams of marijuana;
- 68 percent for non-domestic battery or assault; and
- 68 percent for other offenses.

Of those who successfully completed the ACCP, the rearrest²⁰ rate was 6 percent. Of those who did not successfully complete the program, the rearrest rate was 43 percent.

III. Effect of Proposed Changes:

The bill creates s. 901.40, F.S., which encourages local communities and public or private educational institutions to implement a prearrest diversion program that affords certain adults who fulfill specified intervention and community service obligations the opportunity to avoid an arrest record. The program shall allow a law enforcement officer, at the officer's sole discretion, to issue a civil citation to an adult who commits an eligible misdemeanor offense (as determined by the program), admits to committing the offense, and does not have a prior arrest as an adult. An adult is ineligible for a civil citation if the misdemeanor involves a victim and the victim objects to the issuance of the citation.

The bill provides that misdemeanor offenses that qualify for a prearrest diversion program include, but are not limited to:

- Disorderly conduct.
- Nondomestic assault as defined in s. 784.011, F.S., or nondomestic battery as provided in s. 784.03(1), F.S.
- Open house parties.
- Petit theft of stolen property valued at less than \$50.
- Possession of alcohol by a person younger than 21 years of age.
- Possession of 20 grams or less of cannabis.
- Selling or providing alcoholic beverages to a minor.
- Trespass in structure or conveyance.

An adult who receives a civil citation shall report for intake as required by the program. The adult shall be provided appropriate assessment, intervention, education, and behavioral health care services. While in the program, the adult shall complete community service hours as specified by the program.

¹⁹ Other offenses: Possession of less than 20 grams of marijuana (24 percent); possession of alcohol by a person under 21 year of age (9 percent); non-domestic battery or assault (4 percent); possession of drug paraphernalia (3 percent); criminal mischief (2 percent); trespass (1 percent); and other offenses (1 percent).

²⁰ Rearrest covers arrests for any offense committed in this state.

If the adult successfully completes the program, an arrest record may not be associated with the offense. If the adult does not successfully complete the program, the law enforcement agency that issued the citation shall criminally charge the adult for the original offense and refer the case to the state attorney to determine if prosecution is appropriate.

The bill takes effect on July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not mandate that local governments create a prearrest diversion program for adults; it only “encourages” the creation of such a program. Additionally, criminal laws are excluded from Article VII, section 18 of the Florida Constitution, relating to state mandates that affect revenues and expenditures of local governments.

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:

Under the Leon County model, an eligible adult who chooses to participate in the ACCP must pay a program fee, but this fee may be waived if the participant does not have the means to pay it.

Under the Leon County model, the social services provider for the ACCP is a non-profit services provider: DISC Village, Inc. The program is paid for through program fees.

C. Government Sector Impact:

The bill does not require any state expenditures.

The bill does not mandate that local governments or public or private educational institutions create a prearrest diversion program for adults. Under the Leon County model, the adult civil citation program is self-sustaining (paid for by program fees). If this program model is adopted in other localities or by educational institutions (and the program fees are sufficient to sustain the program), there should be no fiscal impact.

Creation of an adult civil citation program could result in cost savings (e.g., reduced detention/confinement costs and booking/arrest-processing costs), depending on the number of eligible offenses, other eligibility criteria chosen, the pool of eligible adults, the number of participating law enforcement agencies, the use of civil citations by those agencies, and any impact the program may have in reducing arrests.

VI. Technical Deficiencies:

The reference to “petit theft of stolen property” should be reworded to read: “petit theft of property.”

VII. Related Issues:

Florida law does specifically address adult civil citation programs or other prearrest diversion programs for adults. If the bill were to become law, the law would specifically indicate that the Legislature encourages the creation of such programs.

The approach taken by the bill affords law enforcement officers complete discretion in the decision to arrest or issue a civil citation. The Florida Supreme Court has remarked that “the discretionary judgmental power granted a police officer to make an arrest and enforce the law” is “considered basic to the police power function of governmental entities and is recognized as critical to a law enforcement officer’s ability to carry out his duties.”²¹

VIII. Statutes Affected:

This bill creates section 901.40 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 November 17, 2015:

- Encourages public or private educational institutions to implement a prearrest diversion program that affords certain adults who fulfill specified intervention and community service obligations the opportunity to avoid an arrest record.
- Authorizes the prearrest diversion program to determine eligible “misdemeanor” offenses rather than eligible “nonviolent” misdemeanor offenses.
- Clarifies that an adult with a prior arrest as an adult is ineligible to receive a civil citation.
- Provides that an adult is ineligible to receive a civil citation if the misdemeanor involves a victim and the victim objects to the issuance of the citation.
- Provides that a prearrest diversion program shall also provide appropriate assessment, intervention, and education services to an adult in the program.

²¹ *Everton v. Willard*, 468 So.2d 936, 938 (Fla.1985) (citations omitted).

- Specifies some misdemeanor offenses the prearrest diversion program may wish to consider as eligible misdemeanor offenses.
- Clarifies that the law enforcement agency that issued a citation to an adult shall criminally charge the adult for the original offense if the adult does not successfully complete the prearrest diversion program and shall refer the case to the state attorney to determine if prosecution is appropriate.

B. Amendments:

None.



607808

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
11/17/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 901.40, Florida Statutes, is created to
read:

901.40 Prearrest diversion programs.—The Legislature
encourages local communities and public or private educational
institutions to implement prearrest diversion programs that
afford certain adults who fulfill specified intervention and



607808

community service obligations the opportunity to avoid an arrest record. Such programs shall allow law enforcement officers, at their sole discretion, to issue civil citations to certain adults who commit misdemeanor offenses. A civil citation may be issued under this section only if the adult admits that he or she committed the offense and if the adult has not been previously arrested as an adult for an offense. However, an adult may not be issued a civil citation if the misdemeanor offense involves a victim and the victim objects to issuance of the civil citation.

(1) An adult who receives a civil citation shall report for intake as required by the local prearrest diversion program and shall be provided appropriate assessment, intervention, education, and behavioral health care services. While in the local prearrest diversion program, the adult shall perform community service hours as specified by the local prearrest diversion program. If the adult does not successfully complete the prearrest diversion program, the law enforcement agency that issued the civil citation shall criminally charge the adult for the original offense and refer the case to the state attorney to determine if prosecution is appropriate. If the adult successfully completes the program, an arrest record may not be associated with the offense.

(2) Misdemeanor offenses that qualify for a prearrest diversion program include, but are not limited to:

(a) Disorderly conduct.

(b) Nondomestic assault as defined in s. 784.011 or nondomestic battery as provided in s. 784.03(1).

(c) Open house parties.



607808

- (d) Petit theft of stolen property valued at less than \$50.
(e) Possession of alcohol by a person younger than 21 years
of age.
(f) Possession of 20 grams or less of cannabis.
(g) Selling or providing alcoholic beverages to a minor.
(h) Trespass in structure or conveyance.

Section 2. This act shall take effect July 1, 2016.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to prearrest diversion programs;
creating s. 901.40, F.S.; encouraging local
communities and public or private educational
institutions to implement prearrest diversion programs
for certain offenders; requiring that the programs
allow law enforcement officers of participating
agencies, at their sole discretion, to issue civil
citations to adults under specified circumstances;
prohibiting the issuance of the civil citation if the
misdemeanor offense involves a victim and he or she
objects to its issuance; requiring that an adult who
receives a civil citation from a participating law
enforcement agency report for intake as required by
the local prearrest diversion program; requiring the
provision of appropriate assessment, intervention,
education, and behavioral health care services;



607808

69 requiring that an adult who is issued a citation
70 fulfill a community service requirement specified by
71 the local prearrest diversion program; requiring the
72 law enforcement agency that issued the civil citation
73 to criminally charge an adult who fails to complete
74 the prearrest diversion program and refer that adult
75 to the state attorney for prosecution; prohibiting the
76 association of an arrest record with adults who
77 successfully complete the program; specifying
78 misdemeanor offenses that qualify for the local
79 prearrest diversion program; providing an effective
80 date.

By Senator Evers

2-00321A-16

2016618__

A bill to be entitled

An act relating to prearrest diversion programs; creating s. 901.40, F.S.; encouraging local communities to implement prearrest diversion programs for certain offenders; authorizing law enforcement officers of participating law enforcement agencies, at their sole discretion, to issue civil citations to adults under specified circumstances; requiring that an adult who is issued a civil citation by a participating law enforcement agency report for intake as required by the local prearrest diversion program; requiring the provision of appropriate behavioral health care services; requiring that an adult who is issued a citation fulfill a community service requirement specified by the local program; requiring the diversion program to refer for prosecution an adult who fails to complete the prearrest diversion program; authorizing a court to issue a bench warrant; requiring that there be no arrest record for adults who successfully complete the program; requiring local prearrest diversion programs to specify eligible misdemeanor offenses; providing an effective date.

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

Section 1. Section 901.40, Florida Statutes, is created to read:

901.40 Prearrest diversion programs.—The Legislature encourages local communities to implement prearrest diversion

Page 1 of 2

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

2-00321A-16

2016618__

programs that afford certain adults who fulfill specified intervention and community service obligations the opportunity to avoid an arrest record. Such programs shall allow law enforcement officers, at their sole discretion, to issue civil citations to certain adults who commit nonviolent misdemeanor offenses. A civil citation may be issued under this section only if the adult admits that he or she committed the offense and if the alleged violation is the adult's first offense.

(1) An adult who receives a civil citation shall report for intake as required by the local prearrest diversion program and shall be provided appropriate behavioral health care services. While in the local prearrest diversion program, the adult shall perform community service hours as specified by the local prearrest diversion program. If the adult does not successfully complete the prearrest diversion program, he or she shall be referred back for prosecution by the law enforcement agency that issued the citation, and a bench warrant may be issued. If the adult successfully completes the program, an arrest record may not be associated with the offense.

(2) A local prearrest diversion program shall specify the misdemeanor offenses that may be included in the diversion program.

Section 2. This act shall take effect July 1, 2016.

Page 2 of 2

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



CIVIL CITATION NETWORK

Making a Positive Change in the Right Direction



Our Mission

The Civil Citation Network® is a non-profit organization created and supported through a private foundation. Our mission is to advocate the use of adult and juvenile civil citations with integrated intervention services. Communities across the country have access to the Network's research and evaluation services, data resources, integrated technology platform, and technical assistance related to implementation of civil citation programs. Through participating communities the law enforcement direct diversion model improves public safety and reduces criminal justice system costs. Equally important, individuals are held accountable for committing a minor crime without the life-long negative consequences of being arrested.



A Call for Reform

President's Task Force on 21st Century Policing

“Law enforcement agencies should consider adopting preferences for seeking ‘least harm’ resolutions, such as diversion programs or warnings and citations in lieu of arrest for minor infractions.”

American Bar Association

“The ABA urges states to implement civil citation programs for non-violent, minor misdemeanors to promote judicial efficiency and save taxpayer money.”

Florida Tax Watch

“The state should put in place the guidelines for an Adult Civil Citation program, patterned on the existing Juvenile Civil Citation program, which offers an alternative process to misdemeanor arrest for first-time nonviolent youth offenders. The adult program must include law enforcement discretion, as the responding officer is still in the best position to determine whether the use of civil citation is preferred to actual arrest.



Criminal Arrests Result in Collateral Damage and Racial Disparity

“Yet too often we see ordinary people, some even our neighbors, held for minor violations such as driving with a suspended license, public intoxication, or shoplifting because they cannot afford bail as low as \$500. Single parents may lose custody of their children, sole wage-earners in families, their jobs...”

[Center on Sentencing and Corrections. (February 2015) “Incarceration’s Front Door: The misuse of Jails in America,” Vera Institute of Justice.]

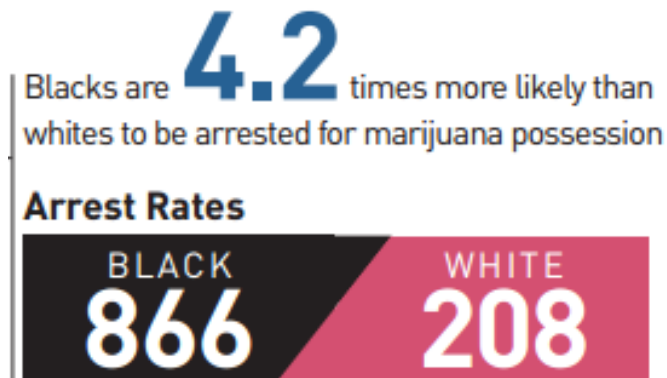
“Prosecutors, judges and defense counsel must pay more attention to the collateral consequences of convictions. In many jurisdictions, after an individual is convicted of an offense and completes his or her sentence (by serving time, paying a fine or completing probation or parole), the individual nevertheless faces a life sentence of disqualification and deprivation of educational, employment, housing and other opportunities. “

[American Bar Association and NAACP Legal Defense and Educational Fund: (July 2015) “Joint Statement on Eliminating Bias in the Criminal Justice System,” http://www.americanbar.org/content/dam/aba/images/abanews/aba-ldf_statement.pdf



Criminal Arrests Result in Collateral Damage and Racial Disparity

“The War on Marijuana in Black and White.”
Comparison of Marijuana arrest rates in Florida for
blacks and whites:



[www.aclu.org/files/assets/aclu-thewaronmarijuana-rel2.pdf]

**All counties with racial disparities
above the national average (3.73)**



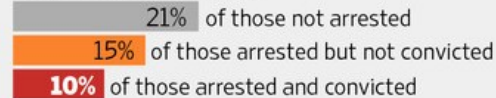


Economic Erosion as a Result of Arrests

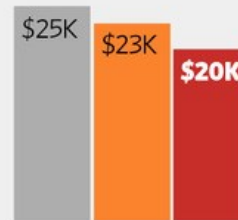
Impact | What happens after arrest

A national survey of youth indicates that being arrested by the age of 23, regardless of whether convicted, correlates with negative outcomes in one's life. Below, indicators of respondents who have been arrested (convicted and not convicted) compared with those not arrested.

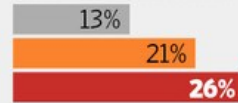
Own a home at age 25



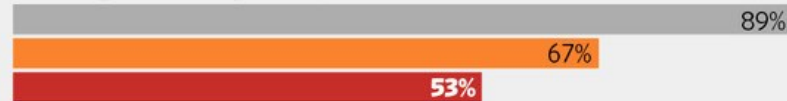
Median income at age 25



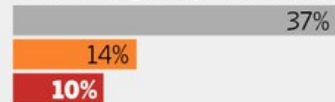
Household income below poverty line at age 25



With high school diploma (or more)



With college degree (or more)



Source: Tia Stevens Andersen of University of South Carolina's analysis of a National Longitudinal Survey of Youth conducted in 1997-2010 by the Labor Department which studied 8,984 people born in 1980-84

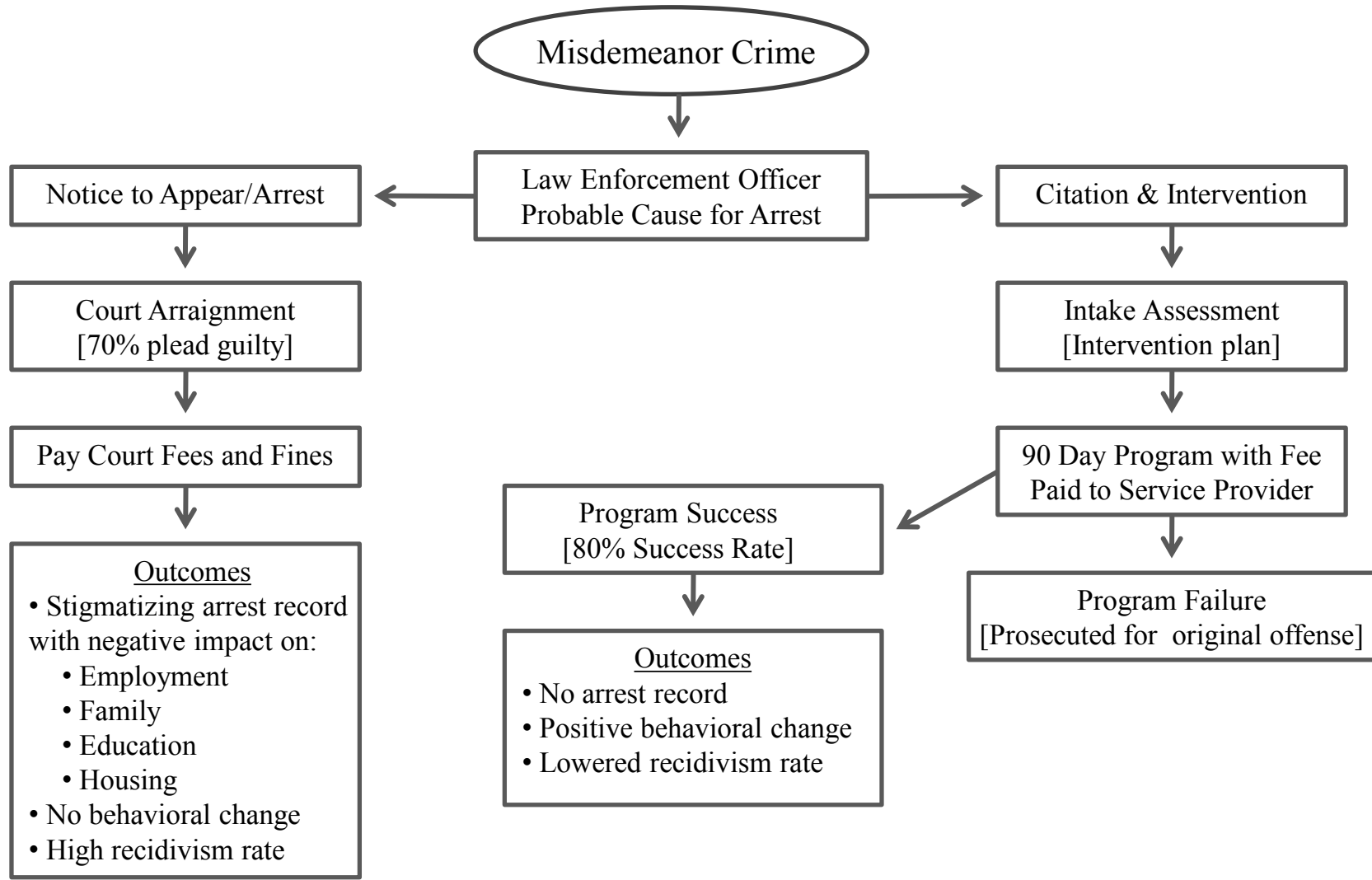
The Wall Street Journal

The Center for American Progress in their report, *"One Strike and You're Out,"* estimates that employment losses due to criminal records resulted in a \$65 billion loss in gross domestic product during 2008.

As Arrest Records Rise Americans Find Consequences can Last a Lifetime: Wall Street Journal, August 18, 2014. [<http://www.wsj.com/articles/as-arrest-records-rise-americans-find-consequences-can-last-a-lifetime-1408415402>]



Law Enforcement Direct Diversion Model





Law Enforcement Process

- Law enforcement officer makes contact with offender
- Offender is cooperative, honest, and admits wrongdoing
- Law enforcement officer has the discretion to issue a civil citation
- Offender is issued a citation and assigned community service by the law enforcement officer

Former Florida Supreme Court Chief Justice Gerald Kogan, “The future consequences of even a minor criminal conviction can change the course of a defendant’s life.”

Three Minute Justice: Haste and Waste in Florida’s Misdemeanor Courts



Intervention Process

- Participant must contact community provider agency within seven days
- Intake and assessment are completed
- Evidenced-based assessment tools and drug screenings are used as part of the initial assessment
 - ✓ Criminogenic behavioral factors
 - ✓ Substance use disorders
 - ✓ Mental health illnesses
- Based on the participant's assessment an individualized intervention plan is developed



Individualized Intervention Plan

- Counseling sessions – at least three with behavioral health specialist
 - ✓ Cognitive behavioral therapy
 - ✓ Motivational interviewing
- Drug screening
 - ✓ All participants have at least one screening
 - ✓ Depending on charge and results may have up to three
- Online intervention modules
 - ✓ Drug education
 - ✓ Anger management
 - ✓ Decision making
 - ✓ Petit theft
- Community service hours
 - ✓ Assigned by law enforcement officer – up to 25 hours
 - ✓ Case manager monitors and may increase hours
- Program fee
 - ✓ Payments made by participants, flexible payment system, and a payment waiver may be requested



Economic Benefits of Citations Vs. Citations



A National Institute of Health study* found that the criminal justice system cost to process a simple theft offense is \$2,879.

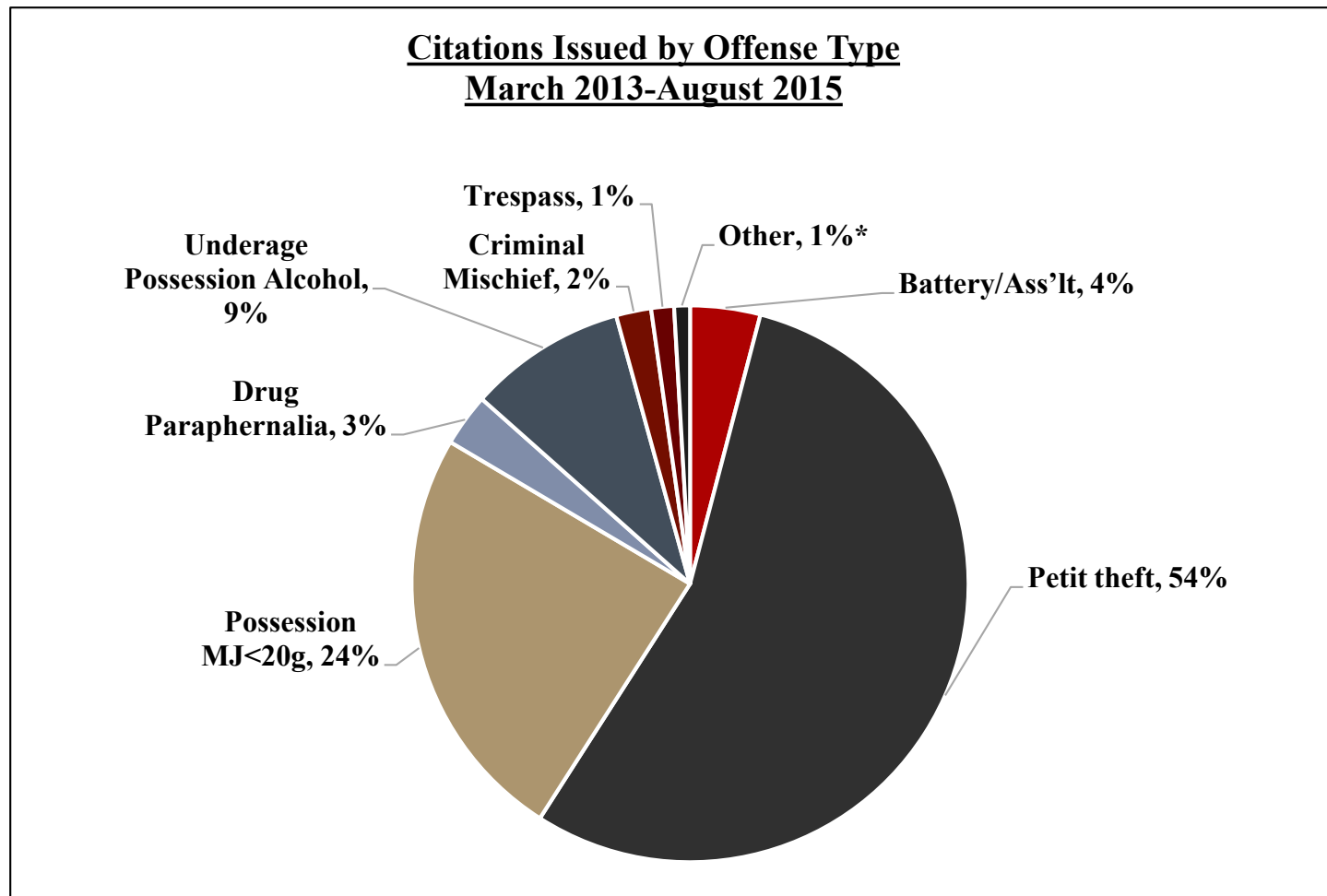
* *The Cost of Crime to Society: New Crime Specific Estimates for Policy and Program Evaluation* – Drug Alcohol Depend. 2010, April 1: 98-109
[<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2835847>]



The Civil Citation Network estimates the average cost to issue an adult civil citation is approximately \$200 – Law enforcement agency time to issue, monitor, and close-out successful citations.



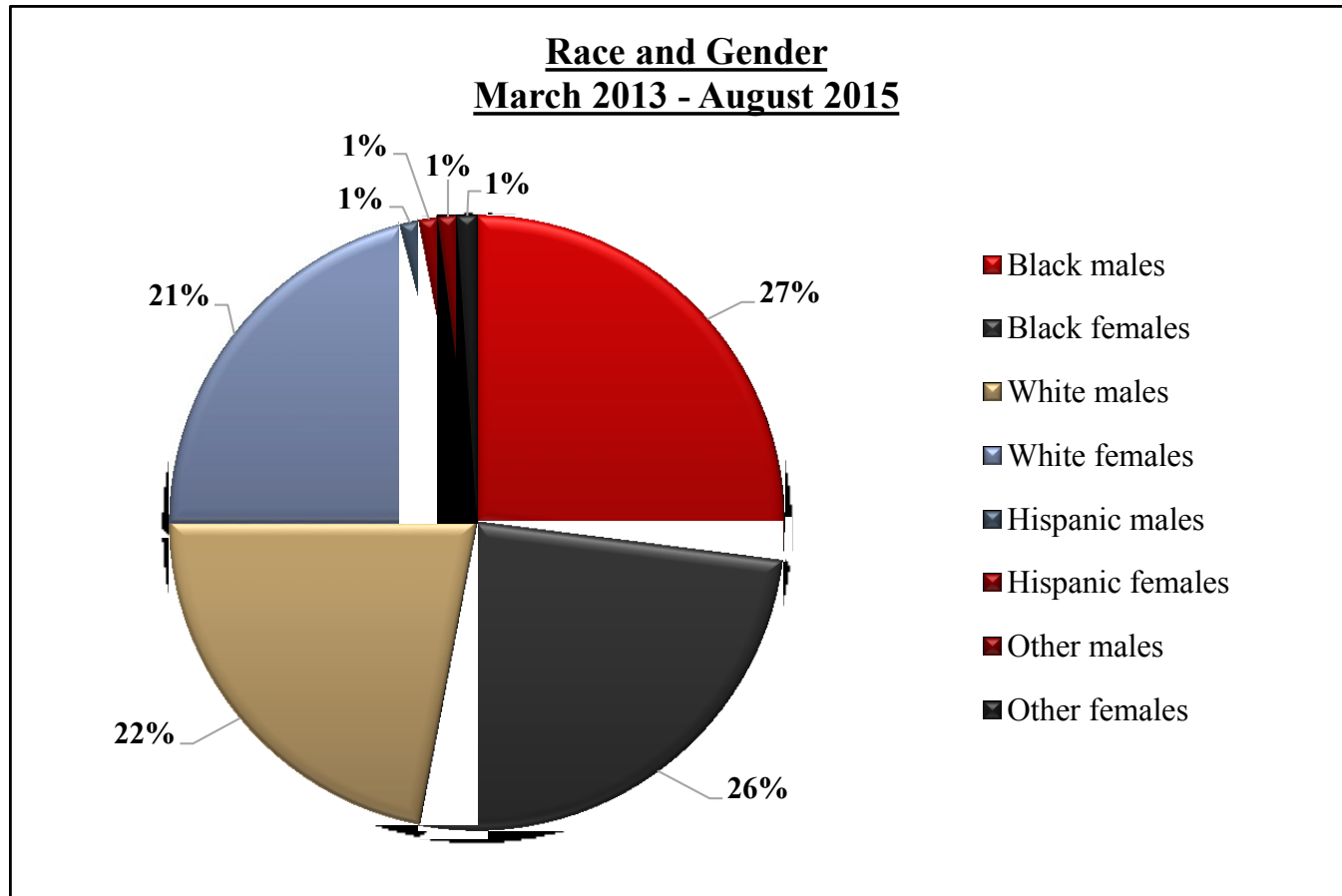
Tallahassee/Leon County Program Outcomes



* "Other" category includes disorderly conduct, open house party, serving alcohol to minor.

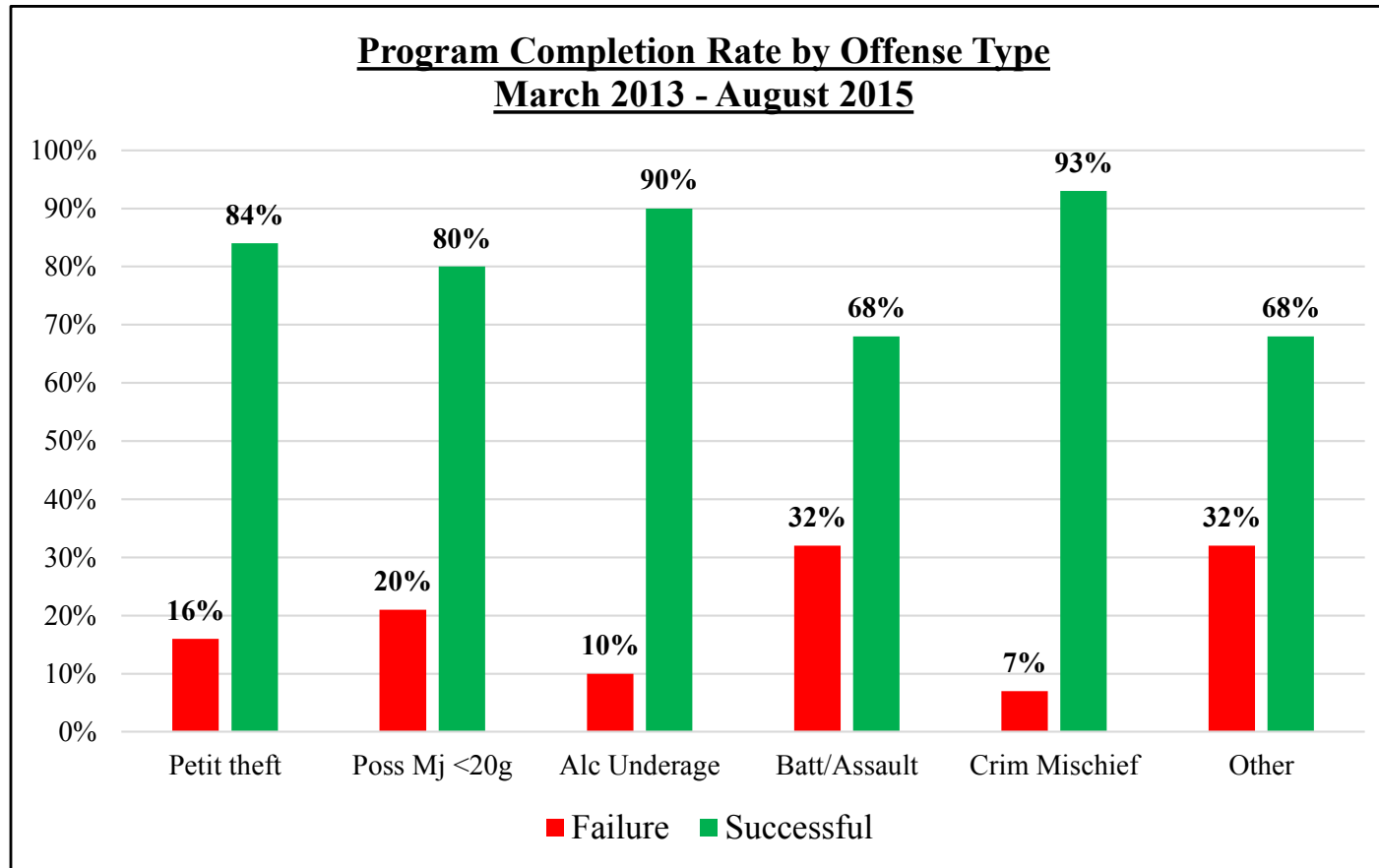


Tallahassee/Leon County Program Outcomes



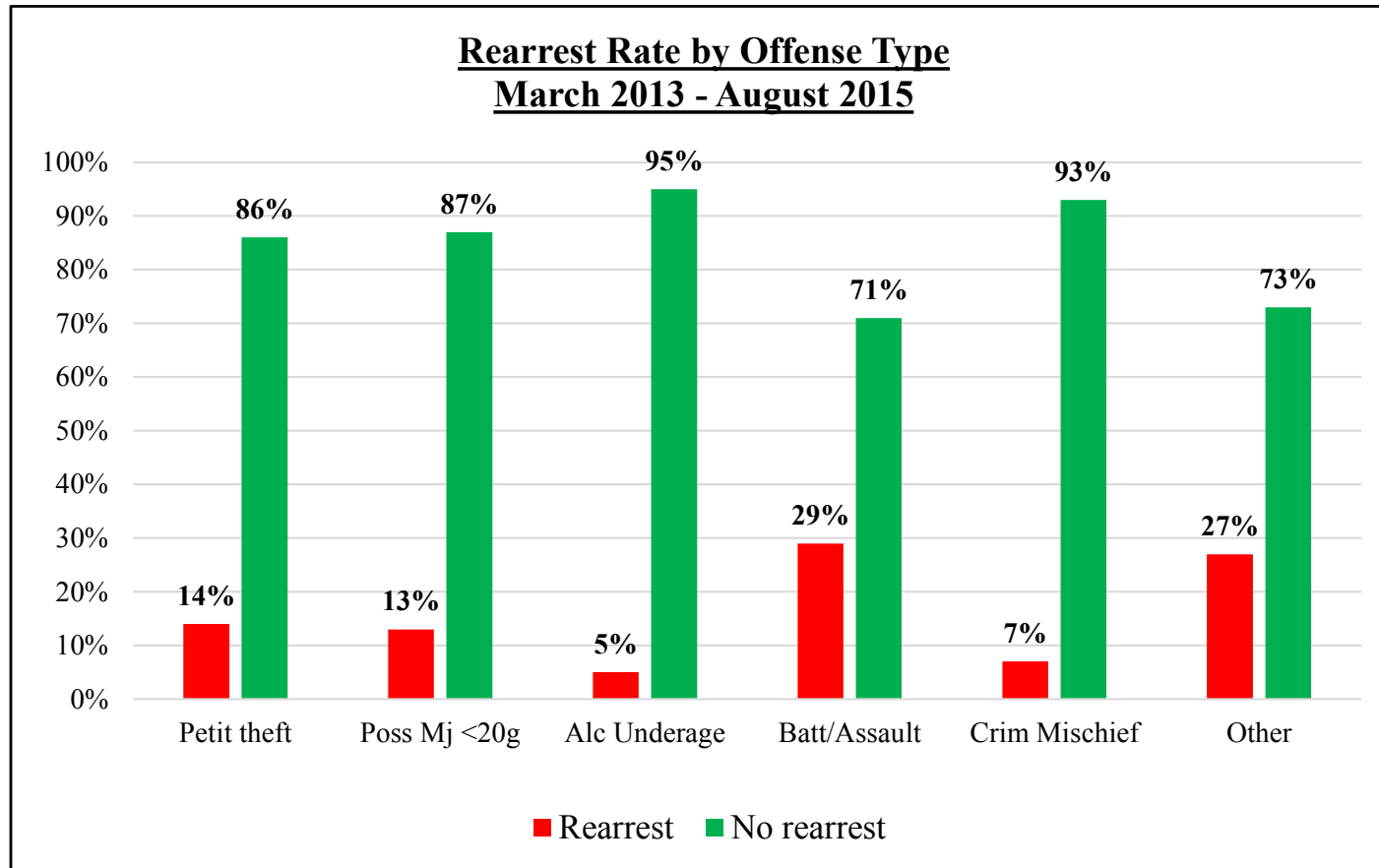


Tallahassee/Leon County Program Outcomes





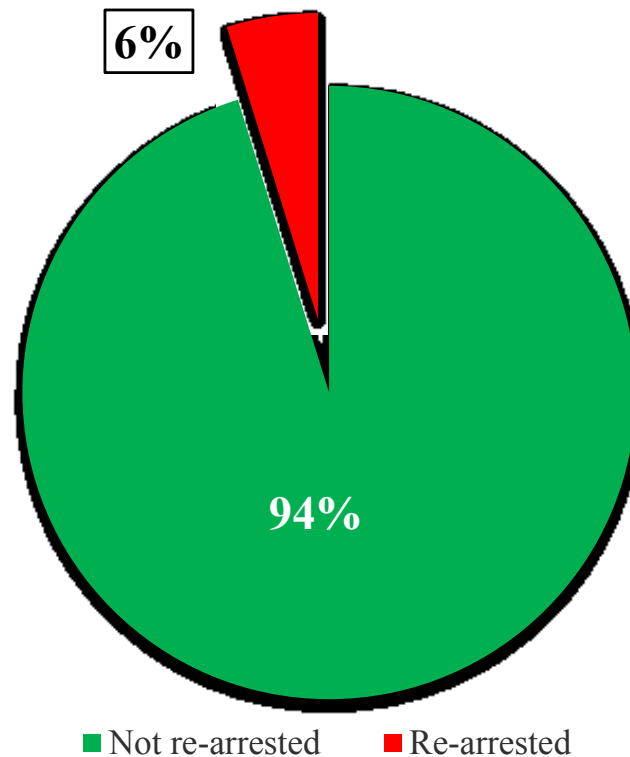
Tallahassee/Leon County Program Outcomes





Tallahassee/Leon County Program Outcomes

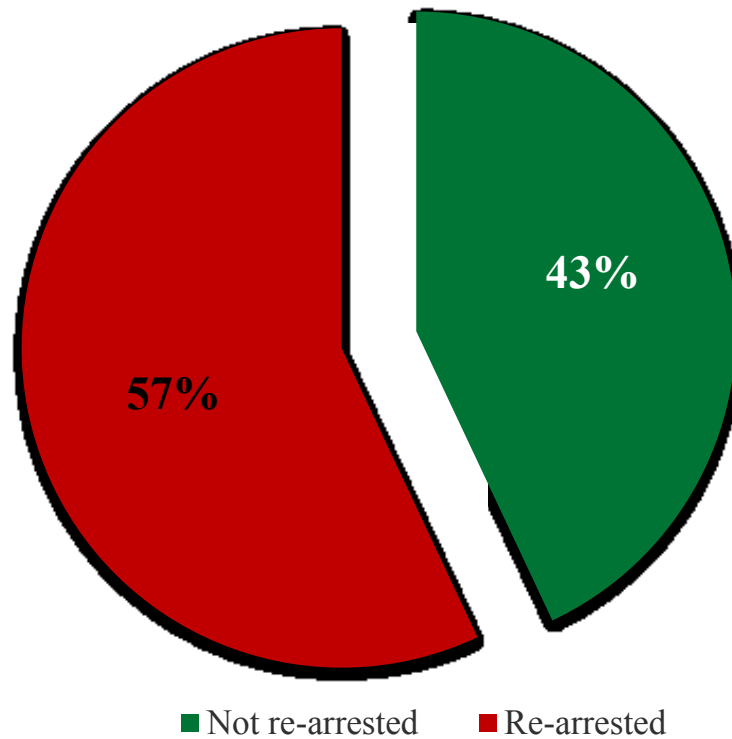
Statewide Rearrest Rate for Successful Program Completion
March 2013-August 2015





Tallahassee/Leon County Program Outcomes

Statewide Rearrest Rate for Unsuccessful Program Termination
March 2013-August 2015





Barriers to Implementation

Florida Courts System Revenue

- The Conference of State Court Administrators: “Most courts agree that court costs imposed in criminal proceedings must bear a reasonable relationship to the expenses of prosecution.”
- Florida’s court system generates approximately \$1 billion annually. This is more than the cost to operate the court system which accounts for less than 1% of the overall State budget – Florida Office of the State Court Administrator Website
- Extensive implementation of pre-arrest diversion programs throughout the state may require adjustment to the current budget allocation formula for operating Florida’s court system. The economic benefits far outweigh any necessary adjustment.



Barriers to Implementation

Legislative Approval

Florida's highly successful Juvenile Civil Citation program was enrolled in Florida Statutes 2006. The endorsement of the Legislature provided many communities with the confidence to implement the use of juvenile civil citations.

Approving the proposed Adult Civil Citation bill will spur program expansion and realize statewide benefits more rapidly.



The Time to Act is Now!

The calls for reform are truly bipartisan, but there is a lot of work to be done!

Supporting community justice through the use of civil citations with intervention services provides a new, practical tool that has immediate impact on local communities and is an essential part of strategic reform to our criminal justice system.

THE FLORIDA SENATE
APPEARANCE RECORD

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

11-17-15

Meeting Date

SB 618

Bill Number (if applicable)

Topic Pre Arrest Diversion

Amendment Barcode (if applicable)

Name Mark Fontaine

Job Title Executive Director

Address 2868 Mahan Drive

Phone 878-2196

Street

Tallahassee

City

FL

State

32308

Zip

Email mfontaine@fadaa.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Alcohol + Drug Abuse Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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)

11/17/15
Meeting Date

SB618
Bill Number (if applicable)

Topic PRE-ARREST DIVERSION

Amendment Barcode (if applicable)

Name GREG FROST

Job Title PRESIDENT

Address 3333 W. PENSACOLA
Street
TALLAHASSEE FL 32308
City State Zip

Phone 850-544-7350

Email GREG@CIVILCITATIONNETWORK.COM

Speaking: ☒ For ☐ Against ☐ Information

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

Representing CIVIL CITATION NETWORK

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)

11-17-15

Meeting Date

SB 618

Bill Number (if applicable)

Topic ADULT Breast Ducts

Amendment Barcode (if applicable)

Name THAD LOWRIE

Job Title VP GOV. RELATIONS

Address 7720 WASHINGTON ST-

Street

PORT RICHIE FL 34668

City

State

Zip

Phone 727 992-8508

Email lowrie@operation.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing OPERATION PAR

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

November 17, 2015

Meeting Date

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

618

Bill Number (if applicable)

Topic Prearrest Diversion Programs

Amendment Barcode (if applicable)

Name Honorable Nancy Daniels

Job Title Public Defender, 2nd Circuit

Address 301 South Monroe Street, Suite 401

Phone 850.606.1000

Street

Tallahassee

Florida

32301

Email nancy.daniels@flpd2.com

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

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S-001 (10/14/14)

APPEARANCE RECORD

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

17 Nov 15

Meeting Date

Last

618

Bill Number (if applicable)

Topic Prearrest Diversion

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 204 S. Monroe St., Ste. 201

Phone 577.3032

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Tall

FL

32301

City

State

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.

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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)

11/17/15

Meeting Date

SB 618

Bill Number (if applicable)

Topic Diversion - Civil Citation (Adult)

Amendment Barcode (if applicable)

Name Buddy Jacobs

Job Title General Counsel Fla. Prosecuting Attorneys Association

Address 961687 Gateway Blvd.

Phone 904-261-3693

Street

Fernandina Beach, FL

State

32034

Zip

Email _____

Speaking: ☐ For ☐ Against ☒ Information

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

Representing State Attorneys of FL

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)

11/17/15

Meeting Date

618

Bill Number (if applicable)

Topic Prearrest Diversion Programs

Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title General Counsel

Address 227 S. Adams St.

Street

Phone 850 222-4082

Tallahassee

FL

32301

City

State

Zip

Email samantha@frf.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Retail Federation & FPMA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on 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.

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



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.



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

(b) The Governor, in making appointments under this section, shall take into consideration representation by geography, population, and other relevant factors in order that the representation on the commission be apportioned to give representation to the state at large rather than to a particular area. Of the appointed members, and except for correctional officers of a state institution, there may be only one 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. ~~4.~~ 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



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

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

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

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



328176

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

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

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

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

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

And the title is amended as follows:

Delete lines 1 - 12

and insert:

An act relating to criminal justice; amending s. 216.136, F.S.; requiring the Criminal Justice Estimating Conference to develop projections of prison admissions and populations for elderly felony offenders; amending s. 921.0021, F.S.; 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; conforming a provision to changes made by the act; amending s. 943.11, F.S.; modifying the composition of the Criminal Justice



328176

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



723682

LEGISLATIVE ACTION

Senate

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House

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

Senate Substitute for Amendment (328176) (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



723682

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



723682

appointment from any employing agency.

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

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

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

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

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



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

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

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

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



723682

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

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

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

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

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

And the title is amended as follows:

Delete lines 1 - 12

and insert:

An act relating to criminal justice; amending s. 216.136, F.S.; requiring the Criminal Justice Estimating Conference to develop projections of prison admissions and populations for elderly felony offenders; amending s. 921.0021, F.S.; 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



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



570664

LEGISLATIVE ACTION

Senate

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House

The Committee on Criminal Justice (Gibson) 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.



570664

The commission shall be composed of 22 ~~19~~ members, consisting of the Secretary of Corrections or a designated assistant; the Attorney General or a designee; the Director of the Division of the Florida Highway Patrol; 1 circuit judge with past criminal jurisdiction designated by the Office of the State Courts Administrators; 1 state attorney designated by the Florida Prosecuting Attorneys Association; 1 public defender designated by the Florida Public Defender Association; and 16 members appointed by the Governor, consisting of 3 sheriffs; 3 chiefs of police; 6 ~~5~~ law enforcement officers or correctional officers who are of the rank of captain ~~sergeant~~ or below within the employing agency; 2 correctional officers, 1 of whom is an administrator of a state correctional institution and 1 of whom ~~is of the rank of sergeant or below within the employing agency;~~ ~~1 training center director;~~ ~~1 person who is in charge of a county correctional institution;~~ and 2 residents ~~1 resident~~ of the state who have never been employed by any of the departments, institutions, or agencies in any ~~falls into none~~ of the foregoing classifications. Prior to the appointment, the sheriff, chief of police, law enforcement officer, and correctional officer members must have had at least 4 years' experience as law enforcement officers or correctional officers.

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



570664

appointment from any employing agency.

1. In appointing one circuit judge, the Governor shall choose the appointment from a list of two nominees submitted by the Office of the State Courts Administrators. The Office of the State Courts Administrators shall submit its list of two nominees at least 3 months before the expiration of the term of any circuit judge.

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

3. In appointing one public defender, the Governor shall choose the appointment from a list of two nominees submitted by the Florida Public Defender Association. The Florida Public Defender Association shall submit its list of two nominees at least 3 months before the expiration of the term of any public defender.

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

5.2. In appointing the three chiefs of police, the Governor shall choose each appointment from a list of six nominees submitted by the Florida Police Chiefs Association. The Florida Police Chiefs Association shall submit its list of six nominees at least 3 months before the expiration of the term of any



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69 police chief member.

70 6.3. For appointments made on or after July 1, 2016, in
71 appointing the ~~five~~ law enforcement officers and ~~one~~
72 correctional officers ~~officer~~ of the rank of captain ~~sergeant~~ or
73 below, the Governor shall choose each appointment from a list of
74 six nominees submitted by a committee comprised of three members
75 of the collective bargaining agent for the largest number of
76 certified law enforcement or correctional officer bargaining
77 units, two members of the collective bargaining agent for the
78 second largest number of certified law enforcement or
79 correctional officer bargaining units, and one member of the
80 collective bargaining agent representing the largest number of
81 state law enforcement officers or correctional officers in
82 certified law enforcement bargaining units. At least one of the
83 names submitted for each of the ~~six~~ ~~five~~ appointments who are
84 law enforcement officers or correctional officers must be an
85 officer who is not in a collective bargaining unit.

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

93 (d) Each member appointed by the Governor shall be
94 accountable to the Governor for the proper performance of the
95 duties of his or her office. The Governor may remove from office
96 any such member for malfeasance, misfeasance, neglect of duty,
97 incompetence, or permanent inability to perform official duties



570664

or for pleading guilty or nolo contendere to, or being found guilty of, a felony.

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

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

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

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

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

And the title is amended as follows:

Delete lines 2 - 12
and insert:

An act relating to criminal justice; amending s.
216.136, F.S.; requiring the Criminal Justice
Estimating Conference to develop projections of prison



570664

admissions and populations for elderly felony offenders; amending s. 921.0021, F.S.; 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; conforming a provision to changes made by the act; amending s. 943.11, F.S.; revising the composition of the Criminal Justice Standards and Training Commission; adding to the commission a circuit judge, a state attorney, a public defender, and an additional resident of the state; requiring that the law enforcement officers and correctional officers appointed to the commission be of the rank of captain or below; deleting the training center director from the commission; prohibiting residents serving on the commission from having been employed by certain departments, institutions, or agencies; specifying that the Governor choose the appointments from lists submitted by the Office of the State Courts Administrators, by the Florida Prosecuting Attorneys Association, and by the Florida Public Defender Association; amending s.

FOR CONSIDERATION By the Committee on Criminal Justice

591-00528-16

20167006pb

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

Page 1 of 19

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

591-00528-16

20167006pb

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),~~

Page 2 of 19

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

591-00528-16

20167006pb

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

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

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

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

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

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

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

591-00528-16

20167006pb

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

944.275 Gain-time.—

(4)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. 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

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

(c) ~~(b)~~1. As used in this paragraph, the term "sexual misconduct" means 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.

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

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

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

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

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

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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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295	784.021(1)(b)	3rd	Aggravated assault;
			intent to commit felony.
296	784.041	3rd	Felony battery; domestic
			battery by
			strangulation.
297	784.048(3)	3rd	Aggravated stalking;
			credible threat.
298	784.048(5)	3rd	Aggravated stalking of
			person under 16.
299	784.07(2)(c)	2nd	Aggravated assault on
			law enforcement officer.
300	784.074(1)(b)	2nd	Aggravated assault on
			sexually violent
			predators facility
			staff.
301	784.08(2)(b)	2nd	Aggravated assault on a
			person 65 years of age
			or older.
302	784.081(2)	2nd	Aggravated assault on
			specified official or
			employee.

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303

784.082 (2)

2nd

Aggravated assault by
detained person on
visitor or other
detainee.

304

784.083 (2)

2nd

Aggravated assault on
code inspector.

305

787.02 (2)

3rd

False imprisonment;
restraining with purpose
other than those in s.
787.01.

306

790.115 (2) (d)

2nd

Discharging firearm or
weapon on school
property.

307

790.161 (2)

2nd

Make, possess, or throw
destructive device with
intent to do bodily harm
or damage property.

308

790.164 (1)

2nd

False report of deadly
explosive, weapon of
mass destruction, or act
of arson or violence to
state property.

309

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790.19

2nd

Shooting or throwing
deadly missiles into
dwellings, vessels, or
vehicles.

310

794.011 (8) (a)

3rd

Solicitation of minor to
participate in sexual
activity by custodial
adult.

311

794.05 (1)

2nd

Unlawful sexual activity
with specified minor.

312

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.

313

800.04 (6) (b)

2nd

Lewd or lascivious
conduct; offender 18
years of age or older.

314

806.031 (2)

2nd

Arson resulting in great
bodily harm to
firefighter or any other
person.

315

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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
334	847.012	3rd	minors.
			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

Nov. 17, 2015

Meeting Date

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

7006

Bill Number (if applicable)

723682

Amendment Barcode (if applicable)

Topic Corrections

Name Stephan Dembinsky

Job Title Public Safety Director, Daytona Beach Shores

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Daytona Beach FL 32118

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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.

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)

11/17/2015

Meeting Date

7006

Bill Number (if applicable)

723682

Amendment Barcode (if applicable)

Topic Corrections

Name Matt Ruckett

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Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Police Benevolent Association

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

Nov. 17. 2015

Meeting Date

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

7006

Bill Number (if applicable)

570664

Amendment Barcode (if applicable)

Topic Corrections

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S-001 (10/14/14)

THE FLORIDA SENATE
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11/17/2015

Meeting Date

7006

Bill Number (if applicable)

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Amendment Barcode (if applicable)

Topic Corrections

Name Matt Pukett

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Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Police Benevolent Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SPB 7022

INTRODUCER: For consideration by the Criminal Justice Committee

SUBJECT: OGSR/Agency Photograph, Video, or Audio Recording/Killing of a Person

DATE: October 30, 2015

REVISED: _____

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

I. Summary:

SPB 7022 is the result of an Open Government Sunset Review of s. 406.136, F.S., performed by the Criminal Justice Committee. That section makes confidential and exempt photographs and video and audio recordings of the killing of a person when held by an agency. It permits a surviving spouse to view and copy these records. If there is no surviving spouse, then the deceased's surviving parents may view and copy them. If there are no surviving parents, then an adult child of the deceased may view and copy them. The surviving relative who has the authority to view and copy these records is authorized to designate in writing an agent to obtain them. Additionally, federal, state, and local governmental agencies, upon written request, may have access to these records in the performance of their duties and responsibilities. Other than these exceptions, the custodian is prohibited from releasing the records to any other person not authorized under the exemption without a court order.¹ This exemption is subject to review under the Open Government Sunset Review Act.² It will expire on October 2, 2016, unless the Legislature reviews and reenacts it.

The bill reenacts the exemption.

It does not expand the scope of the public records exemption and therefore does not require a two-thirds vote of each house of the Legislature for passage.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.³ This applies to the official business

¹ Section 406.136, F.S.

² Section 119.15, F.S.

³ FLA. CONST., art. I, s. 24(a).

of any public body, officer or employee of the state, including all three branches of state government, local governmental entities and any person acting on behalf of the government.⁴

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.⁵ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁶ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁷

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁸ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁹ A violation of the Public Records Act may result in civil or criminal liability.¹⁰

The Legislature may create an exemption to public records requirements.¹¹ An exemption must pass by a two-thirds vote of the House and the Senate.¹² In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹³ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹⁴

⁴ FLA. CONST., art. I, s. 24(a).

⁵ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁶ Public records laws are found throughout the Florida Statutes.

⁷ Section 119.01(1), F.S.

⁸ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁹ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

¹⁰ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹¹ FLA. CONST., art. I, s. 24(c).

¹² FLA. CONST., art. I, s. 24(c).

¹³ FLA. CONST., art. I, s. 24(c).

¹⁴ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹⁵ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian.¹⁶

Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR).

The OGSR prescribes a legislative review process for newly created or substantially amended public records.¹⁷ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁸ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

Under the OGSR the purpose and necessity of reenacting the exemption are reviewed. The Legislature must consider the following questions during its review of an exemption:¹⁹

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.²⁰ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.²¹

¹⁵ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

¹⁷ Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one legislature cannot bind a future legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(a), F.S.

²⁰ FLA. CONST., art. I, s. 24(c).

²¹ Section 119.15(7), F.S.

Current Exemption Under Review

In 2011, the Legislature created a public record exemption for photographs and video and audio recordings that depict or record the killing of a person when held by an agency.²² These photographs and video and audio recordings are confidential and exempt from public records requirements, except that the exemption permits a surviving spouse to view, listen, and copy these photographs and video and audio recordings.²³ If there is no surviving spouse, then the deceased's surviving parents may view and copy them. If there are no surviving parents, then an adult child of the deceased may view and copy them.²⁴ The surviving relative who has the authority to view and copy these records is authorized to designate in writing an agent to obtain them.²⁵

Additionally, federal, state, and local governmental agencies, upon written request, may have access to these records in the performance of their duties and responsibilities. The identity of the deceased must remain confidential and exempt.²⁶

Persons other than those covered by the exceptions above have access to the photographs and recordings only with a court order upon a showing of good cause and are limited by any restrictions or stipulations that the court deems appropriate. In determining good cause, the court must consider the following:

- Whether such disclosure is necessary for the public evaluation of governmental performance;
- The seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available; and
- The availability of similar information in other public records, regardless of form.²⁷

The specified family members must be given reasonable notice of a petition requesting access to the photographs and recordings, a copy of the petition, and the opportunity to be present and heard at any hearing on the matter.²⁸ Such access, if granted by the court, must be performed under the direct supervision of the custodian of the record or his or her designee.²⁹

It is a third degree felony for any custodian of a photograph, video, or audio recording to willingly and knowingly violate these provisions. The same penalty applies to anyone who willingly and knowingly violates a court order issued under these provisions.³⁰

The exemption does not apply to photographs or video or audio recordings submitted as part of a criminal or administrative proceeding; however, nothing prohibits a court in such proceedings from restricting the disclosure of a killing, crime scene, or similar photograph or video or audio

²² Ch. 2011-115, s. 1, Laws of Fla. (creating s. 406.136, F.S., effective July 1, 2011). "Killing of a person" is defined to mean "all acts or events that cause or otherwise relate to the death of any human being, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death." s. 406.136(1), F.S.

²³ Section 406.136(2), F.S.

²⁴ *Id.*

²⁵ Section 406.136(3), F.S.

²⁶ *Id.*

²⁷ Section 406.136(4), F.S.

²⁸ Section 406.136(5), F.S.

²⁹ Section 406.136(4)(c), F.S.

³⁰ Section 406.136(6), F.S.

recording.³¹ The exemption is retroactive, except that it is not intended to overturn, abrogate, or alter any existing court order in effect on July 1, 2011, that restricts or limits access to any such photograph or recording.³²

The exemption is patterned after the public record exemption created earlier in s. 406.135, F.S., relating to photographs and video and audio recordings of an autopsy held by a medical examiner.³³ The same justification that was used in the public necessity statement for autopsy photographs was also used for the exemption under review:

... photographs or video or audio recordings that depict or record the killing of any person render a visual or aural representation of the deceased in graphic and often disturbing fashion. Such photographs or video or audio recordings provide a view of the deceased in the final moments of life, often bruised, bloodied, broken, with bullet wounds or other wounds, cut open, dismembered, or decapitated. As such, photographs or video or audio recordings that depict or record the killing of any person are highly sensitive representations of the deceased which, if heard, viewed, copied, or publicized, could result in trauma, sorrow, humiliation, or emotional injury to the immediate family of the deceased, as well as injury to the memory of the deceased. The Legislature recognizes that the existence of the World Wide Web and the proliferation of personal computers throughout the world encourages and promotes the wide dissemination of such photographs and video and audio recordings 24 hours a day and that widespread unauthorized dissemination of photographs and video and audio recordings would subject the immediate family of the deceased to continuous injury. The Legislature further recognizes that there continue to be other types of available information, such as crime scene reports, which are less intrusive and injurious to the immediate family members of the deceased and which continue to provide for public oversight.³⁴

The exemption is subject to the Open Government Sunset Review Act and as such, will be repealed on October 2, 2016, unless reviewed and reenacted by the Legislature.³⁵

Based upon the Open Government Sunset Review of the exemption, professional staff of the Senate Criminal Justice Committee recommends that the Legislature retain the public records exemption created in s. 406.136, F.S. This recommendation is made in light of information gathered for the Open Government Sunset Review, indicating that there is a public necessity to continue protecting photographs and video and audio recordings that depict or record the killing of any person when held by an agency because they are highly sensitive and personal representations of the deceased. As such, widespread and continuous display of these

³¹ *Id.* In *State v. Schenecker*, No. 11-CF-001376A (Fla. 13th Cir.Ct. August 3, 2011), *cert. denied sub nom.*, *Media General Operations v. State*, 71 So. 3d 124 (Fla. 2d DCA 2011), the circuit court applied the exemption to crime scene photographs of homicide victims.

³² Section 406.136(7), F.S.

³³ Chapter 2001-1, s. 1, Laws of Fla.

³⁴ Chapter 2011-115, s. 2, Laws of Fla.

³⁵ Section 406.136(9), F.S.

photographs or recordings subjects the surviving family members to unwarranted trauma and emotional distress and harms the memory of the deceased.³⁶

III. Effect of Proposed Changes:

The bill reenacts the public records exemption in s. 406.136, F.S., which provides that photographs and video and audio recordings that depict or record the killing of any person when held by an agency are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, except they are accessible to certain specified family members of the deceased person and public governmental agencies without a court order. The bill also amends s. 406.136, F.S., to remove the sentence that requires its repeal.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

In *Campus Communications, Inc., v. Earnhardt*,³⁷ the Fifth District Court of Appeal upheld the law this exemption is patterned after (which exempts autopsy photographs and video and audio recordings) against an unconstitutional overbreadth challenge brought by a newspaper. The court held that the newspaper had not established good cause to view or copy the photographs and that the exemption applied retroactively.³⁸ The court found that s. 406.135, F.S., met constitutional and statutory requirements that the exemption is no broader than necessary to meet its public purpose, even though not all autopsy recordings are graphic and result in trauma when viewed. The court also found that the Legislature stated with specificity the public necessity justifying the exemption in ch. 2001-1, L.O.F.³⁹ Furthermore, the court found the statute provides for disclosure of written autopsy reports, allows for the publication of exempted records upon good cause if the requisite statutory criterion is met, and is supported by a thoroughly articulated public policy to protect against trauma that is likely to result upon disclosure to the public.⁴⁰

³⁶ According to the majority of survey responses from state agencies, state universities and colleges, municipalities, and local law enforcement agencies that receive or maintain such records, the exemption should be reenacted because it protects information that is personal and highly sensitive, the release of which subjects the surviving family members to further trauma and emotional distress. The responses were as follows: out of 23 state agencies, 10 recommended reenactment (13 were not applicable); out of 20 state university and colleges, 6 recommended reenactment (14 were not applicable); out of 109 municipalities, including 49 police departments, 34 recommended reenactment (31 were from police departments) (77 were not applicable); and out of 32 sheriff's offices, 26 recommended reenactment (6 were not applicable). Several responses had no recommendation regarding repeal or reenactment. One response recommended repealing the exemption. Several responses recommended clarifying the notification provision. Reenactment was generally recommended to continue protecting the surviving family members from emotional distress and trauma and protecting the memory of the deceased.

³⁷ *Campus Communications, Inc.*, 821 So. 2d 388, 403 (Fla. 5th DCA 2002), *review dismissed* 845 So. 2d 894 (Fla. 2003), *review denied*, 848 So. 2d 1153 (Fla. 2003) *certiorari denied* 540 U.S. 1049 (2003).

³⁸ *Id.*

³⁹ *Id.* at 395.

⁴⁰ *Id.* at 394.

The court concluded that it is the prerogative of the Legislature to determine that autopsy photographs are private and need to be protected and that this privacy right prevails over the right to inspect and copy public records. The court also stated that its function is to determine whether the Legislature made this determination in a constitutional manner. Finding that the statute was constitutionally enacted and that it was properly applied to the facts in this case, the Fifth District Court of Appeal affirmed the lower court's finding of constitutionality.⁴¹ The court went on to certify the question of constitutionality to the Florida Supreme Court. On July 1, 2003, the Florida Supreme Court, per curiam, denied review of this case, leaving in place the appellate court's holding.⁴²

This bill reenacts and amends an existing public records exemption specified in s. 406.136, F.S. The bill does not expand the scope of the exemption and therefore does not require a two-thirds vote of each house of the Legislature for passage.

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:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 406.136 of the Florida Statutes.

⁴¹ *Id.* at 403.

⁴² *Campus Communications, Inc. v. Earnhardt*, 845 So. 2d 894 (Fla. 2003), *review denied*, 848 So. 2d 1153 (Fla. 2003) *certiorari denied* 540 U.S. 1049 (2003).

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

FOR CONSIDERATION By the Committee on Criminal Justice

591-00875-16

20167022pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 406.136, F.S., which provides an exemption from public records requirements for a photograph or video or audio recording held by an agency that depicts or records the killing of a person; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 406.136, Florida Statutes, is amended to read:

406.136 A photograph or video or audio recording that depicts or records the killing of a person.—

(1) As used in this section, the term "killing of a person" means all acts or events that cause or otherwise relate to the death of any human being, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death.

(2) A photograph or video or audio recording that depicts or records the killing of a person is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that a surviving spouse of the decedent may view and copy any such photograph or video recording or listen to or copy any such audio recording. If there is no surviving spouse, then the surviving parents shall have access to such records. If there is no surviving spouse or parent, then an adult child shall have access to such records.

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591-00875-16

20167022pb

(3) (a) The deceased's surviving relative, with whom authority rests to obtain such records, may designate in writing an agent to obtain such records.

(b) A local governmental entity, or a state or federal agency, in furtherance of its official duties, pursuant to a written request, may view or copy a photograph or video recording or may listen to or copy an audio recording of the killing of a person and, unless otherwise required in the performance of their duties, the identity of the deceased shall remain confidential and exempt.

(c) The custodian of the record, or his or her designee, may not permit any other person to view or copy such photograph or video recording or listen to or copy such audio recording without a court order.

(4) (a) The court, upon a showing of good cause, may issue an order authorizing any person to view or copy a photograph or video recording that depicts or records the killing of a person or to listen to or copy an audio recording that depicts or records the killing of a person and may prescribe any restrictions or stipulations that the court deems appropriate.

(b) In determining good cause, the court shall consider:

1. Whether such disclosure is necessary for the public evaluation of governmental performance;

2. The seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available; and

3. The availability of similar information in other public records, regardless of form.

(c) In all cases, the viewing, copying, listening to, or

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other handling of a photograph or video or audio recording that depicts or records the killing of a person must be under the direct supervision of the custodian of the record or his or her designee.

(5) A surviving spouse shall be given reasonable notice of a petition filed with the court to view or copy a photograph or video recording that depicts or records the killing of a person or to listen to or copy any such audio recording, a copy of such petition, and reasonable notice of the opportunity to be present and heard at any hearing on the matter. If there is no surviving spouse, then such notice must be given to the parents of the deceased and, if the deceased has no living parent, then to the adult children of the deceased.

(6) (a) Any custodian of a photograph or video or audio recording that depicts or records the killing of a person who willfully and knowingly violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person who willfully and knowingly violates a court order issued pursuant to this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A criminal or administrative proceeding is exempt from this section but, unless otherwise exempted, is subject to all other provisions of chapter 119, provided however that this section does not prohibit a court in a criminal or administrative proceeding upon good cause shown from restricting or otherwise controlling the disclosure of a killing, crime scene, or similar photograph or video or audio recordings in the

591-00875-16

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manner prescribed herein.

(7) This exemption shall be given retroactive application and shall apply to all photographs or video or audio recordings that depict or record the killing of a person, regardless of whether the killing of the person occurred before, on, or after July 1, 2011. However, nothing herein is intended to, nor may be construed to, overturn or abrogate or alter any existing orders duly entered into by any court of this state, as of the effective date of this act, which restrict or limit access to any photographs or video or audio recordings that depict or record the killing of a person.

(8) This section only applies to such photographs and video and audio recordings held by an agency as defined in s. 119.011.

~~(9) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

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

11/17/15

Meeting Date

7022

Bill Number (if applicable)

Topic Public Records Exemption

Amendment Barcode (if applicable)

Name Sheriff Bobby Shultz

Job Title Sheriff of Gilchrist County

Address 2716 Mahan

Phone 850-877-2165

Street

Tallahassee

FL

32308

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

CourtSmart Tag Report

Room: LL 37

Case No.:

Type:

Caption: Senate Criminal Justice Committee

Judge:

Started: 11/17/2015 10:03:58 AM

Ends: 11/17/2015 11:59:57 AM

Length: 01:56:00

10:03:58 AM Meeting called to order
10:04:11 AM SB 308- Presented by Sen Benaquisto
10:05:38 AM Ammendment 618588 (Brandes)- Presented by Sen Benaquisto
10:06:37 AM Ammendment 618588- Adopted
10:06:52 AM Debate on SB 308 as ammended
10:15:10 AM Rocco Salvatori- FL Professional Firefighters-Speaking in Favor
10:17:42 AM Sherriff Bill Prummell- FL Sheriffs Assoc- Waive in support
10:19:45 AM CSSB 308- Reported favorably
10:20:45 AM SB 498- Presented by Sen Sobel
10:22:28 AM Honorable Nancy Daniels- FL Public Defender Assoc- Waive in support
10:23:31 AM SB 498- Reported favorably
10:23:54 AM SB 380- Presented by Sen Abruzzo
10:40:00 AM Sheriff Gordon Smith- FL Sheriffs Assoc- Speaking in support
10:53:13 AM Jeanne Howard- Asst State Attorney- Speaking on bill
11:04:14 AM Nancy Daniels - Defense Attorney - Speaking in support with information
11:08:04 AM Brian Pitts- Justice 2 Jesus- Speaking with information
11:15:40 AM Sen Abruzzo closing on SB380
11:17:10 AM SB 380- Reported Favorably
11:18:21 AM SB 440- Presented by Sen Abuzzo
11:19:24 AM Ammendment 915720- Courtesy by Clemens
11:20:20 AM Ammendment 915720- Presented by Abruzzo
11:20:28 AM Ammendment 915720- Adopted
11:20:54 AM Bobby Shultz- FL Sherif Assoc- Waive in support
11:21:14 AM Gary Bradford- FL PBA- Waive in support
11:21:34 AM Brain Pitts- Justice 2 Jesus- Waive in Support
11:21:52 AM CS SB 440- Reported Favorably
11:22:15 AM Confirmation- Secretary of Juvenile Justice- Christina Daly
11:22:45 AM Christina Daly - DJJ- Sworn in -- Comments
11:42:59 AM Brian Pitts- Justice 2 Jesus- Speaking in support of Daly for DJJ
11:45:41 AM Greg Pound- Speaking with information on Juvenile Justice
11:47:50 AM Barney Bishop- FL Smart Justice Alliance- Support Secretary
11:48:23 AM Sheriff Mark Hunter- FL Sheriffs Assoc- Waive in support
11:48:38 AM Alan Abramowitz- Guardian Ad Litem- Speaking in support
11:48:59 AM Move for favorable recommendation to confirm Sec Daly
11:49:13 AM Secretary Daly- Recommended favorable confirmation
11:49:24 AM Rick Swearingen- Appointee Exec Director of Dept of Law Enforcement- Sworn in
11:52:35 AM Clemons moves for favorable recommendation to confirm Rick Swearigen
11:53:38 AM Committee recommended favorable for confirmation
11:54:15 AM Sheriff Mark Hunter- FL Sheriffs Assoc- Waive in Support
11:54:32 AM Motion to maintain committee time
11:55:00 AM Vice Chair Sen Gibson
11:55:16 AM SB 618-Presented by Sen Evers
11:55:36 AM Ammendment adopted
11:56:39 AM Nancy Daniels- Public Defender- Waive in support
11:56:47 AM Thad Lowrey- Operation PAR- Waive in support
11:57:07 AM Greg Frost- Civil Citation Network- Waive in support
11:57:17 AM Samantha Padget- FL Retail - Waive in opposition
11:57:32 AM Mark Fontaine -FL Alcohol and Drugs Assoc- Waive in support
11:57:51 AM Buddy Jacobs- State Attorneys of FL- Waive
11:57:55 AM Barney Bishop- FL Smart Justice Alliance- Waive in support
11:58:07 AM Sen Evers Waive Close
11:58:13 AM CS SB 618- Reported favorably
11:58:40 AM Chair back to Chairman Evers
11:59:26 AM Sen Evers- closing
11:59:37 AM Meeting adjourned